



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

OFFICE OF THE CHIEF COUNSEL

September 28, 2022

Number: **2023-0004**  
Release Date: 3/31/2023

GENIN-117695-22

UIL: 3134.00-00

Dear \_\_\_\_\_ :

I'm responding to the December 27, 2021 correspondence you sent to \_\_\_\_\_, which we received by email on September 20, 2022. In your correspondence, you explained the problems your business experienced because of the amendments made to the employee retention credit (ERC) by the Infrastructure Investment and Jobs Act ("Infrastructure Act"), Pub. L. 117-58, 135 Stat. 429 (2021) during the fourth quarter of 2021.

I apologize for the delay in response and the financial hardship you are experiencing because of the effects on your business from the Infrastructure Act. Our goal is to provide all taxpayers excellent customer service.

The Infrastructure Act retroactively limited eligibility for the ERC for the fourth quarter of 2021 to employers that qualify as recovery startup businesses. On December 6, 2021, we published guidance for employers like you that became ineligible to receive the credit because the law changed. We shared how you can repay any advance payments received or how to deposit any amounts initially retained because you expected to receive the ERC. For further guidance, refer to Notice 2021-65, 2021-51 I.R.B. 880. If you didn't follow the procedures outlined in Notice 2021-65, you should visit our website at <https://www.irs.gov/payments> to explore various payment options.

Also, our national taxpayer advocate service (TAS), an internal but independent organization, assists taxpayers with the kind of concerns you have currently. They handle taxpayers experiencing economic harm, seeking help resolving internal problems, or who believe that an internal system or procedure is ineffective. If you need more information about TAS, you should call your local taxpayer advocate,

toll-free, at 877-777-4778. Also, you can visit the TAS website at <https://www.taxpayeradvocate.irs.gov>.

The information we shared with you in this communication is intended for your informational purposes only and doesn't constitute a ruling. See Rev. Proc. 2022-1, §2.04, 2022-1 I.R.B. 1 (Jan. 3, 2022).

I hope this information is helpful. If you have questions, please contact our staff at

Sincerely,

Sydney L. Gernstein, Branch Chief,  
Employment Tax Branch 1  
Office of the Associate Chief Counsel  
(Employee Benefits, Exempt Organizations,  
and Employment Tax)