



National Conference of CPA Practitioners

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Call to Action Against IRS Notice 2021-49

August 11, 2021—Last week, the Internal Revenue Service released Notice 2021-49 in response to repeated requests by the accounting and business communities to provide clarification regarding rules governing the Employee Retention Credit (ERC). In so doing, the IRS issued a damaging blow to those businesses hardest hit by the COVID-19 pandemic—small family-owned businesses.

The original rules governing the ERC did not allow for a credit for wages paid to family members, including the children and other long-time employee-relatives of small businesses. That alone was damaging to small businesses, as generational businesses and farms employ family members as part of their business model. In addition, during the pandemic, rather than leave their children at home while schools were closed, many small business owners brought their children into work to be gainfully employed until schools reopened. Not having an allowance for those long-time family member employees and children was already a difficult pill for a small business owner to swallow.

Unfortunately Notice 2021-49 has made this situation worse. Under this guidance, the wages of the owner and their spouse no longer qualify for an ERC if the owner has ANY CLOSE LIVING RELATIVE, regardless of them being employed by the business. A close relative is defined as your child, sibling, parents, uncle, aunt, niece, nephew, or any in-law. It does not have to be a relative you employ; the existence of any living relative disqualifies a small business owner and their spouse from claiming an ERC on their earnings. You read that correctly! Furthermore, this notice is retroactive. Any tax returns filed by businesses claiming credits in contradiction to this notice are now made inaccurate and those affected tax returns must be amended and the credits repaid. Those affected businesses may also face severe penalties and interest charges.

During 2020, the IRS took a similar “letter of the law” approach in their interpretation of the CARES Act regarding deductibility of eligible Paycheck Protection Program (PPP) expenses rather than considering the intent of Congress. We in the accounting and small business community successfully implored our Congressional leaders to enact legislation to reverse that decision of the IRS. It appears that yet again, the recent IRS ERC guidance does NOT take the intent of the law into account.

It should be noted that the consequences of Notice 2021-49 to a small business, that employs the owner and their spouse, can cause a loss of up to \$66,000 from combined credits for 2020 and 2021. These funds may make the difference between closing the doors or enabling those businesses to remain open and continue employing their staff for years to come. The loss of these funds could destroy an already struggling small business at a time when our economy is trying to mount a recovery.

It is critical that our representatives be made aware of the potentially ‘unintended consequences’ of the IRS interpretation of this portion of the stimulus bills. Again, this can only be remedied by Congressional action, so we must rally again, and fast, as the effects of this change are immediate and severe.

About NCCPAP

The National Conference of CPA Practitioners (NCCPAP) is a professional organization comprised of Certified Public Accountants practicing in the United States. In addition to serving as a forum for education, networking, and community impact, NCCPAP also advocates for its clients. NCCPAP influences tax administration and tax policy by regularly meeting with Internal Revenue Service representatives, state taxing authorities, and elected officials. NCCPAP members represent over one million businesses and individual clients. The organization is headquartered in Woodbury, NY. For more information visit, www.NCCPAP.org.

As co-authored by Andrea Parness, CPA,CTC and Mark Stewart, CPA – please feel free to use this document as a base for a letter to your congressperson and senator. Please add your personal story and appeal for greater impact.