

May 26, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Charles P. Rettig  
Commissioner of the Internal Revenue Service  
U.S. Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Secretary Mnuchin and Commissioner Rettig:

We recognize and appreciate the U.S. Department of the Treasury's (Treasury) and the Internal Revenue Service's (IRS) ongoing efforts to provide prompt guidance to implement the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. However, we have concerns with eligibility limitations on the employee retention credit – specifically the determination that employers who have been designated as “essential business” are ineligible to receive the tax credit. We believe that this interpretation by the IRS runs contrary to congressional intent and places an undue burden on food and agriculture companies who have continued to operate throughout the national emergency in order to keep food on the tables of American families.

Companies are eligible to receive the retention credit if they have experienced a 50 percent reduction in quarterly receipts (based on the same quarter in 2019), or have been closed due to a governmental order that “limits commerce, travel, or group meetings,” as issued by the federal, state, or local government. While the IRS FAQ's on the retention tax credit mention declarations by Governors or Mayors, the guidance does not include declarations made by public health officials, who are often making decisions determining the status of manufacturing facilities.

Providing a safe work environment is the first priority for members of the food and agriculture supply chain, and that responsibility has only been heightened to respond to the threats of the COVID-19 virus. As a result, many state and local health inspectors are requiring that facilities be closed for anywhere between two to 14 days for cleaning, disinfection and testing. This clearly meets the standard for “limiting commerce.” During times when facilities are required to close by governmental decrees in order to ensure workforce safety, members of the food and agricultural supply chain should be eligible for the retention credit, in keeping with congressional intent.

In addition, virtually all office buildings that serve as support for food manufacturing (which remains critical infrastructure) have been closed by gubernatorial or mayoral decrees and should also be eligible for the retention credit. However, these operations have been excluded to this point under IRS guidance. As of this writing, many states have already announced that office space will not be eligible to reopen until June or July.

As representatives of the food and agriculture industry, the undersigned organizations request that the IRS make the necessary changes to ensure that companies who are designated as critical infrastructure and “essential business,” can utilize the employee retention credit.

Sincerely,

American Bakers Association  
American Frozen Food Institute  
American Herbal Products Association  
Independent Bakers Association  
International Foodservice Distributors Association  
National Automatic Merchandising Association  
National Confectioners Association  
National Fisheries Institute  
North American Meat Institute  
Peanut and Tree Nut Processors Association

cc:

The Honorable Chuck Grassley  
Chairman, Committee on Finance  
United States Senate

The Honorable Ron Wyden  
Ranking Member, Committee on Finance  
United States Senate

The Honorable Richard Neal  
Chairman, Committee on Ways and Means  
United States House of Representatives

The Honorable Kevin Brady  
Ranking Member, Committee on Ways and Means  
United States House of Representatives