



RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

May 1, 2020

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

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Secretary Mnuchin and Commissioner Rettig:

Earlier this week, the Internal Revenue Service issued a list of Frequently Asked Questions (FAQ's) on the Employee Retention Credit, which was enacted as part of the CARES Act to encourage businesses to keep employees on the payroll during this difficult economic period. Last month, Rep. Tom Emmer (R-MN) and 27 of his House colleagues sent a letter to you requesting that guidance be issued broadly interpreting the terms "eligible employer" and "qualified wages" so as to allow the largest possible number of affected businesses to utilize the Employee Retention Credit.

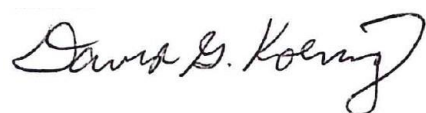
RILA thanks you for affirming the position that the credit should apply to a business operating in multiple locations that is subject to a governmental order requiring full or partial suspension of its operations in some jurisdictions.

We do, however, disagree with the interpretation in one of the FAQ's that a business is not eligible for the credit for health care expenses they continue to pay on behalf of their employees if they aren't paying any other wages. On April 23, the Joint Committee on Taxation (JCT) published JCX-12R-20, a description of the tax provisions in the CARES Act. In that document, JCT said the Treasury Secretary has the authority to treat qualified health plans expenses as "qualified wages" in a situation where no other qualified wages are paid by the eligible employer to the particular employee to which such expenses are allocable.

In light of this authority and to reflect Congressional intent, RILA respectfully requests that you reverse the position stated in the FAQ's and treat health care expenses paid on behalf of employees who are no longer receiving wages as "qualified wages" that are counted towards computing the Employee Retention Credit.

Thank you for your attention to this urgent matter.

Sincerely,

A handwritten signature in black ink that reads "Dave G. Koenig". The signature is written in a cursive style with a large, stylized 'D' and 'K'.

Dave Koenig
Vice President, Tax

