

VIA OVERNIGHT MAIL

September 13, 2023

The Honorable Daniel I. Werfel
Commissioner, Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C 20224

RE: Outstanding ADP TotalSource Employee Retention Credit (ERC) Filings

Dear Commissioner Werfel:

I am writing on behalf of ADP, Inc. and its subsidiary, ADP TotalSource, Inc., ("ADP TotalSource") to request that the IRS promptly resume processing amended returns seeking ERC claims for ADP TotalSource clients, many of whom have been waiting for more than 2 years to receive their ERC refunds.

As background, ADP TotalSource and its related entities are Certified Professional Employer Organizations ("CPEO"). A CPEO is a PEO that has met the rigorous background, financial, and reporting requirements set by the IRS. ADP TotalSource is proud to be one of the first Professional Employer Organization groups to be granted IRS certification in 2017 and has maintained its Certified status each year for each of its ADP TotalSource entities by continuing to meet the rigorous IRS standards. A CPEO files aggregate employment tax returns for all its customers using the CPEO's employer identification number (EIN), and ADP TotalSource files returns through 17 different entities, with each aggregate quarterly filing representing the claims of hundreds of clients.

The majority of Form 941-X filings that ADP TotalSource has filed over the past 3 years containing ERC claims remain outstanding. Our ADP TotalSource clients or former clients that have claimed the ERC are small to mid-sized businesses that were impacted by the pandemic. Many of our clients have been waiting for more than 1-2 years to receive their ERC refund, and while waiting for their ERC refunds, continue to face the prospect of needing to lay off employees, potentially take on daunting loans or borrow against their own retirement to make payroll, and, in some cases, shut down entirely.

We applauded your prior public commitment to clear the ERC backlogs and were encouraged over the past few months when a dedicated IRS agent was assigned to our account and began assisting us with the returns so they could be finalized and processed. Unfortunately, as our dedicated IRS agent was getting closer to completing the processing of the outstanding ADP TotalSource filings seeking ERC refunds, the agent was directed internally to discontinue processing any filings that contain ERC claims. ADP's IRS National Account Manager also recently advised ADP that the IRS has communicated internally to "slow-down" the processing of all Form 941-X tax filings, which is consistent with the reporting by the Wall Street Journal on September 5th that the "IRS has slowed" processing of ERC claims "to guard against fraudulent or incorrect submissions." The IRS website recognizes that it has a current inventory of over 600,000 unprocessed Forms 941-X, and that "processing of those that involve the [ERC] has slowed due to the complexity of the amended returns and the increase in aggressive and misleading marketing campaigns luring taxpayers into claiming the ERC when they are not eligible for it", as well as acknowledging that "all claims must be reviewed by an IRS employee."

ADP takes risk of fraud seriously, and we appreciate that the IRS has a concern with a heightened risk of ERC fraud. However, the IRS' apparent decision to "slow down" processing of all filings for all employers is fundamentally unfair to the ADP TotalSource clients that have been waiting for a long time for ERC refunds, and many whose claims were submitted well before the IRS started to highlight the risk posed by the increase in aggressive marketing by firms advertising ERC services. The IRS' direction to our dedicated IRS agent to halt the processing of ADP TotalSource's outstanding filings also disregards actions by ADP TotalSource to mitigate the risk of fraudulent ERC filings. For example, ADP TotalSource requires all clients and former clients that seek to file an ERC claim through ADP TotalSource to sign an ERC Attestation at the time of submitting the claim. ADP TotalSource also requires clients to provide supporting documentation for their claim prior to receiving any ERC funds. We have also recommended that all clients utilize a CPA or other tax professional when determining their own eligibility for ERC. The IRS' concern with ERC fraud does not justify penalizing ADP TotalSource clients. To the contrary, as a CPEO that has voluntarily continued to meet the rigorous certification requirements promulgated by the IRS, we believe the IRS should differentiate ADP TotalSource and provide a more streamlined process for the processing of these payroll tax returns.

Making matters worse, while the IRS has signaled it is "slowing down" processing, it is our understanding that, in fact, no further work is currently being done on ADP TotalSource's returns. The IRS website states that it is slowing down processing claims to allow for an IRS employee to review every claim, but the IRS' actions have had the exact opposite impact on ADP TotalSource – halting the ongoing diligent processing by our dedicated IRS agent. And while our dedicated IRS agent is no longer permitted to continue this work, it is our understanding that our open returns have not yet been transferred to any different unit within the IRS to complete the processing.

We continue to engage our existing IRS points of contact and appreciate their work and collaboration to date; however, after learning of this "slow down" we have been unable to obtain further information. We find it deeply concerning that our returns are now sitting stagnant with no guidance from the IRS on when it plans to continue processing, and that the IRS is leaving ADP TotalSource and our hundreds of clients in limbo. We implore you to consider the potentially devastating impact this "slow-down" will have on the small to mid-sized businesses that have been waiting for months and/or years to receive the ERC refund to which they are entitled, including the risk – contrary to the very purpose of the ERC - that many of these companies may not be able to continue in business if the IRS does not promptly resume processing their claims.

In sum, we respectfully request that you authorize IRS personnel to immediately resume and complete the processing of ADP TotalSource's outstanding returns containing ERC claims and believe the IRS can do so while it also continues to assess how best to address the risk of fraud overall. We also request the opportunity to discuss these issues with you or someone on your team empowered to work collaboratively with ADP TotalSource to ensure that our clients receive the ERC refunds for which they are eligible as soon as possible. Thank you for your prompt attention to this matter.

Sincerely,



Dave Kwon
Chief Legal Officer
ADP

CC: Adrienne Smith, National Account Manager, IRS
Crystal Stinson, Policy Analyst, IRS