



February 17, 2021

The Honorable Rob Portman
U.S. Senate
448 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Portman:

On behalf of our organizations and the thousands of Ohio employers we collectively represent, we are reaching out to seek your assistance in urging the U.S. Small Business Administration (SBA) and Treasury to exclude the recent Ohio Bureau of Workers' Compensation (BWC) premium refunds from Ohio businesses' federal gross receipts when applying for Payroll Protection Program (PPP) loans and the

Employee Retention Credit (ERC). As you know, PPP and ERC have been critical lifelines for many Ohio businesses seeking to retain valued employees. Since applications for PPP are only being accepted until March 31 and ERC is currently scheduled to expire on June 30, it is important that guidance be issued quickly so Ohio employers can take advantage of these programs.

Specifically, BWC issued three rounds of “dividend” checks in 2020, totaling around \$8 billion total, money which could potentially be taxable income. Over the years, BWC has referred to these premium refund payments as either “rebates” or “dividends” and to date has not issued 1099 tax forms. However, BWC announced very recently that the IRS is now requiring that the 1099s be issued, and the forms are expected to reach Ohio employers very soon. Of note, the terminology used (rebates vs. dividends) does not affect whether the payments are taxable. Further, BWC has shared that the income will be reported in box 6, taxable grants, on the 1099-G.

Since Ohio is one of only four states that still has a state-run, exclusive system for workers’ compensation insurance, it is no surprise that the federal 1099-G does not have a box for “return of workers’ compensation premium.” Therefore, BWC placed the income in box 6 (even though this return of premium is not a grant) because there is no box that appropriately reflects this situation.

In the recent Consolidated Appropriations Act (CAA) enacted on December 27, borrowers are eligible for a second-draw PPP loan of up to \$2 million, provided they can certify they experienced a revenue reduction of 25% or more calculated by comparing gross receipts in any 2020 quarter with an applicable quarter in 2019. The expanded ERC also has a similar gross receipts test for eligibility.

Given this truly unique situation, the devastation that employers faced in 2020, and that these payment refunds are not a reflection of these Ohio businesses’ normal course of operations but a reflection of the state creatively helping struggling Ohio businesses, we are requesting that the three rounds of BWC premiums returned to Ohio employers in 2020 should not be included in federal gross receipts when calculating revenue during a PPP and/or ERC application and certification. Once again, SBA and Treasury’s decision would not affect whether the premiums returned are considered taxable at the state and federal level.

Any assistance you can provide in obtaining a clear answer that these BWC premium refunds do not negatively impact Ohio employers’ eligibility for second-draw PPP loans or the ERC would be greatly appreciated.

Thank you for your assistance. If you have any questions, please reach out to any of us.

Sincerely,

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