November 15, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Rettig:

On behalf of restaurants across the country, we thank you for your leadership in federal relief efforts for vulnerable small businesses. The implementation of the American Rescue Plan Act of 2021 – with the Restaurant Revitalization Fund (RRF) and a six-month extension of the COVID-19-related employee retention tax credit (ERTC) – was an essential step to revive the nation's second largest private sector employer. In the four months following its passage, employment in eating and drinking places surged by nearly 900,000 jobs. Combined with falling rates of COVID-19, restaurants hoped for a rebound in 2021.

However, the rapid spread of the Delta variant brought restaurant employment gains to a halt by the summer. Two in three eligible restaurants, about 177,000 small businesses, were told that the RRF could not honor their applications due to a shortfall in funds. As of October 2021, eating and drinking places remain nearly 800,000 jobs – or 6.4% – below their February 2020 pre-pandemic employment peak. For restaurants, ERTC was the only available federal government relief that could support payroll and employee benefits without adding new debt.

The termination of ERTC after September 30, 2021, deals a retroactive, sudden blow to restaurants currently utilizing the program during this calendar quarter. As restaurants enter a second winter with COVID-19, small businesses will now face a potential claw back of federal taxation and a compliance nightmare. While restaurants support the investments to our nation's infrastructure within the Infrastructure Investment and Jobs Act, we respectfully request that the Internal Revenue Service (IRS) implement the following steps on ERTC:

1) Speed the processing of ERTC payments so that the backlog from 2020 and previous calendar quarters in 2021 is completely resolved by the end of this year.
2) Allow small businesses to defer their fourth quarter federal income tax payments due on January 15, 2022, until July 15, 2022.
3) Safeguard all deferred fourth quarter federal income tax payments from any penalties or interest.

Restaurants are very grateful for the ERTC, which recognizes how capacity restrictions and sales losses trigger the immediate need for federal aid, but payment processing must be accelerated. Far too many struggling restaurants have waited more than six months since they originally submitted applications and have not received fiscal assistance under this program. According to a Government Accountability Office (GAO) report in July, the IRS has been experiencing a "paper return backlog" of 2.5 million unprocessed Forms 941. This is causing a severe delay for restaurants seeking ERTC refunds. We urge

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the IRS to immediately expedite the processing of all ERTC payments – for both 2020 and the previous calendar quarters of 2021 – so that eligible restaurants can receive these badly needed funds by the end of the calendar year.

Small businesses should have the option to defer their fourth quarter federal income tax payments. These payments are usually due on January 15, 2022, but businesses should be able to defer up to six months until July 15, 2022. Many restaurants will be alarmed when funds they reserved for increased payroll, upgraded benefits, or other improvements will now be subject to a tax claw back. In July, it was reported that over 424,000 employers had deferred about $112 billion in federal Social Security taxes as a way to retain liquidity for employee retention. If a similar sum is now subject to federal tax payments, the IRS should provide flexibility to pay the fourth quarter's quarterly income tax payment. This six-month deferral option provides an important window of time for the business to preserve liquidity, and gradually recover its fiscal stability. Given the immediate termination of the ERTC program mid-quarter, this deferral option demonstrates flexibility and can improve revenue collection.

Lastly, the IRS should ensure that all deferred federal income tax payments for the fourth quarter of 2021 are not subject to any penalties or interest. Restaurants are managing liquidity concerns due to the sharp rise of costs at every corner. About 85 percent of restaurants report lower profitability than before the pandemic, and many restaurants are beginning to make payments on existing debt obligations that helped them survive the past 20 months. We ask the IRS to use forbearance when collecting these payments without penalties or interest.

As President Biden signs the Infrastructure Investment and Jobs Act into law, and the IRS issues new regulations within weeks, we respectfully remind the Administration that this ERTC change will resonate with restaurants for years. Our recommendations will aid the ERTC transition and help restaurants, their employees, and the communities they serve. We look forward to working with your respective agencies to ensure restaurants have the tools available to demonstrate resilience in the coming year.

Thank you for your consideration.

Sincerely,

Sean Kennedy
Executive Vice President, Public Affairs