CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CAROLINE L. HARRIS
VICE PRESIDENT, TAX POLICY
& ECONOMIC DEVELOPMENT
CHIEF TAX POLICY COUNSEL
TAX POLICY DIVISION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202-463-5406

May 1, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Employee Retention Tax Credit (ERTC) Frequently Asked Questions (FAQs): FAQ65

Dear Secretary Mnuchin:

The U.S. Chamber of Commerce appreciates the Treasury Department's work issuing guidance in response to the coronavirus pandemic, including guidance to implement the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act was a vital step in providing relief and Chamber members are already implementing many measures provided in that legislation, including the employee retention tax credit (ERTC). Unfortunately, the recently issued ERTC Frequently Asked Questions (FAQs) deny employers who have continued to provide their furloughed employees health care benefits access to this credit. The Chamber urges the Treasury Department to revise this guidance to ensure these employers are eligible for the ERTC.

While the Chamber anticipates weighing in on additional issues, our initial request is that the Treasury Department immediately revise FAQ64 and FAQ65 to ensure these employers are eligible for the ERTC. As currently written, FAQ64 provides:

> "However, if the Eligible Employer [that averages 100 or fewer full-time employees] lays off or furloughs its employees and continues the employees' health care coverage, but does not pay the employees any wages for the time they are not working, the employer may not treat any portion of the health plan expenses as qualified wages for purposes of the Employee Retention Credit because no portion of the health plan expenses would be allocable to wages paid to the employees."

Similarly, FAQ 65 provides:

> "If an Eligible Employer that averaged more than 100 full-time employees does not pay its employees any wages for time that the employees are not providing services, the employer may not treat any portion of its health plan expenses as qualified wages for

> purposes of the Employee Retention Credit because no portion of the health plan expenses would be allocable to wages paid to its employees."

In contrast, the recent Joint Committee on Taxation description of the CARES Act states:

> "This broad grant of authority permits the Secretary (or the Secretary's delegate) to treat qualified health plan expenses as qualified wages in a situation where no other qualified wages are paid by the eligible employer or to the particular employee to which such expenses are allocable."

The Chamber strongly urges that the Treasury Department avail itself of this broad grant of authority to ensure these employers are eligible for the ERTC. Punishing employers who have continued to provide furloughed employees health care benefits during a global pandemic is simply poor public policy.

The Chamber appreciates the continuing work of the Treasury Department to provide regulatory relief during the pandemic as well as guidance implementing the CARES Act. As employers continue to work to navigate the crisis, the Chamber urges the Treasury Department to avail itself of the granted regulatory authority to modify FAQ64 and FAQ65 to ensure all intended employers have access to this vital relief.

Sincerely,

Caroline L. Harris

Cc: David J. Kautter, Assistant Secretary, Office of Tax Policy, U.S. Department of the Treasury

Michael Desmond, Chief Counsel, Office of the Chief Counsel, Internal Revenue Service