October 5, 2026

Submitted via E-Mail at:

Mr. Scott Bessent
Secretary
U.S. Department of Treasury
1500 Pennsylvania, Ave., NW
Washington, D.C. 20220

Mr. Frank Bisgnano,
Commissioner
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Re: Earned Wage Access Tax Reporting

Dear Secretary, Bessent and Commissioner Bisignano:

This letter is submitted to the U.S. Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") on behalf of the Innovative Payments Association ("IPA"). The IPA appreciates the opportunity to share our views with Treasury and the IRS, and we look forward to continuing to work with you and your staff on future efforts to modernize regulations and identify regulatory gaps with respect to consumer financial products and services. The IPA offers our comments in the context of President Trump's **Executive Order 14405** ("EO 14405") entitled, "Integrating Financial Technology Into Regulatory Frameworks," and **Executive Order 14219** ("EO 14219") entitled, "Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative."

More specifically, the IPA would like to discuss an issue which directly relates to the EO 14405 stated policy goal "to streamline regulatory processes, reduce unnecessary barriers to entry, and encourage collaboration between fintech firms, federally regulated financial institutions, and Federal financial regulators."

The IPA respectfully recommends that Treasury and the IRS review sections of the IRS Code related to the Constructive Receipt Doctrine as it relates to Earned Wage Access ("EWA") products, specifically Treasury Regulation Section 1.451-2, which defines Constructive Receipt of Income, with the goal of potentially modernizing the section to reflect the current reality regarding EWA.

As detailed in the Consumer Financial Protection Bureau's December 2025 EWA **Advisory Opinion**[1] ("AO"), "a little over a decade ago, earned wage access has emerged as an innovative way for workers to meet short term liquidity needs that arise between paychecks without turning to potentially more costly alternatives. EWA seeks to address the lag between consumers' hours

[1] https://files.consumerfinance.gov/f/documents/cfpb_earned-wage-access-advisory-opinion_2025-12.pdf

worked, and receipt of their paychecks by facilitating advance access to earned but as yet unpaid wages." It is important to note that over 55 million Americans have access to EWA services, including many hourly workers who hold part-time, gig, or second jobs.[2]

As you know, the current Treasury and IRS regulations, if applied to EWA, could be construed to require employers to report to the IRS on a weekly basis whenever one of their employees participates in an EWA platform. This result would be outdated and out of step with the millions of Americans who utilize new EWA technologies to access short-term liquidity due to the mismatch between the time when they may need money and their pay period selected by their employer ends.

Generally, under the IRS's definition of "Constructive Receipt," wages are considered "paid" or the potential to be paid and deposited in the employee's account for purposes of employment and income tax withholding when they are actually or constructively received by the employee. Accordingly, when an employer allows employees to receive payment of earned wages before their regularly scheduled pay dates, there is a risk that employees could be deemed to be in more or less constant constructive receipt of their wages as they are earned. However, there is a broad diversity of withholding practices with respect to EWA by providers, and some cases employers, and most leading providers and employers continue to make full tax payments to the IRS via at the time the regular paycheck is due using the normal course of withholding based on scheduled payroll dates.

According to IRS regulations, a key aspect of the Constructive Receipt doctrine is control. Specifically, where an employee has unfettered control over the date on which they actually receive their wages, they are typically considered to be in constructive receipt of those wages. However, under most EWA arrangements in the market today, the employee does not have "unfettered" access to their wages because a third-party imposes various program rules and limitations on the employee's access. As just one example, many third-party providers limit access to earned funds based on a portion of the accrued wages earned in a specific pay period or based on net pay. This type of limitation clearly demonstrates a lack of "unfettered access" and control over the wages on the part of the employee.

One of the reasons these limitations are in place, in part, is to ensure that an employee does not access all of their pay and ensure that sufficient funds remain for taxes and other deductions that are due in the employer's regular pay cycle. Demonstrating again, that an employee's ability to access earned wages is not completely within their control. The EWA provider essentially serves as an unrelated, and unaffiliated third-party to the employer or the employee. In its role as an unrelated third-party, the EWA provider has broad ability to put in place significant limitations or restrictions on the employee's ability to access and receive any funds. These factors also show that employees accessing EWA services do not have full "control" over their wages and should therefore not be deemed to be in "Constructive Receipt" of those wages.

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[2] https://market.us/report/north-america-earned-wage-access-market/#:~:text=Over%2055%20million%20U.S.%20workers,hourly%2C%20gig%2C%20and%20paycheck%2Dto%2Dpaycheck%20employees.

To provide regulatory clarity, and to make Treasury regulations more consistent with the aforementioned EOs, we urge the Treasury/IRS to consider amending Treasury Regulation Section 1.451-2 to provide an affirmative ***exception*** to the constructive receipt rules for EWA arrangements, based on the factors articulated above so that employers, EWA providers, and consumers are aware of, and fully comply with, the tax treatment of EWA services.

Most importantly, modernizing the current tax reporting framework for independent third-party EWA providers will not have a financial impact on the tax revenues the IRS collects from employers. All income amounts and tax withholding by employers will continue to be recognized and remitted when the scheduled payroll is produced. Thus, neither employers nor EWA providers should be required to recognize EWA disbursements as wages subject to early income and employment tax withholding. Guidance from the agency should clarify that disbursements made by an EWA provider should be excluded for tax purposes at the time of their disbursement.

The IPA appreciates your consideration of our comments. We would very much appreciate the opportunity to meet with you or your staff to discuss the comments in this letter in greater detail. If you have any questions or wish to discuss this letter, please do not hesitate to contact me at: btate@ipa.org.

Sincerely,

Brian Tate
President and CEO
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