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CERTIFIED PUBLIC ACCOUNTANTS

LEGISLATIVE UPDATE

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The Infrastructure Investment and Jobs Act: Tax Provisions to Know About

President Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law on November 15, 2021. The legislation includes multiple tax-related provisions that may affect you or your business.

The bulk of the IIJA, known informally as the "bipartisan infrastructure bill," is directed toward massive investment in infrastructure projects across the country. However, a handful of noteworthy tax provisions are tucked inside it. Here's what you need to know about these key infrastructure bill tax provisions.

Early Termination of the Employee Retention Credit

The IIJA retroactively terminates the Employee Retention Credit (ERC), which was created in 2020 by the CARES Act, earlier than planned. The American Rescue Plan Act (ARPA) had extended the credit to eligible employers for the third and fourth quarters of 2021. For 2021, the ERC is worth up to $7,000 per qualifying employee per quarter. But under the new law, it is no longer available for wages paid after September 30, 2021 (rather than December 31, 2021), except for so-called "recovery startup businesses."

The ARPA generally defines recovery startup businesses as those that began operating after February 15, 2020, and have annual gross receipts that do not exceed $1,000,000 for the three-tax-year period ending with the tax year that precedes the calendar quarter for which the employee retention tax credit is determined. These employers can claim the ERC for up to $50,000 total per quarter for the third and fourth quarters of 2021 without showing suspended operations or reduced receipts.

Payroll tax compliance review may be needed

The ERC was terminated by the IIJA to apply only to wages paid before October 1, 2021, unless the employer is a recovery startup business. Thus, for wages paid in the fourth calendar quarter of 2021, only qualified recovery startup businesses can claim the credit.

The IRS announced on December 6, 2021 (Notice 2021-24) that employers (that are not recovery startup businesses) who received advance payments of the ERC for wages paid in the fourth quarter of 2021 will avoid failure to pay penalties if they repay those amounts by the due date of their applicable employment tax returns.

The IRS also clarified that employers (that are not recovery startup businesses) will not be subject to a failure to deposit penalty for federal tax deposits retained on or before December 20, 2021, if:

1. The employer reduced its deposits consistent with the rules in Notice 2021-24;
2. The employer deposits the retained amounts on or before the relevant due date for wages paid on December 31, 2021 (regardless of whether the employer pays wages on that date). Deposit due dates will vary based on the deposit schedule of the employer; and
3. The employer reports the tax liability resulting from the termination of the employer's ERC on its employment tax return or schedule that includes the period from October 1, 2021, through December 31, 2021 (fourth quarter of the 2021 calendar year). Employers should refer to the instructions to the applicable employment tax return or schedule for additional information on how to report the tax liability.

The IRS will not waive failure to deposit penalties for employers (other than recovery startup businesses) if they reduce deposits after December 20, 2021, for wages paid after September 30, 2021.

An employer that does not qualify for relief under Notice 2021-65 may reply to a penalty notice with an explanation and the IRS will consider reasonable cause relief.

If you retained payroll taxes in anticipation of receiving the ERC based on post-September 30, 2021, payroll taxes, reach out to your Seiler tax advisor to review your situation. We can help you determine how and when to repay those taxes and address any other compliance issues.

New Information Reporting on Digital Assets

The IIJA requires brokers to report to the IRS the cost basis of digital assets transferred by their clients to nonbrokers, similar to the way securities brokers report stock and bond trades. "Digital assets" are defined as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology." This definition could ensnare not only cryptocurrencies like Bitcoin and Ethereum, but also certain nonfungible tokens (NFTs). The IIJA expands the definition of the term "broker" to include those who operate trading platforms for digital assets, such as cryptocurrency exchanges.

In addition, the IIJA modifies existing tax law to treat digital assets as cash for information return reporting purposes. As a result, individuals engaged in a trade or business must submit IRS Form 8300, "Report of Cash Payments Over $10,000 Received in a Trade or Business," when they receive such amounts in one transaction or multiple related transactions.

The digital assets provisions take effect for returns required to be filed, and statements required to be furnished, after December 31, 2023. The IRS is expected to provide guidance before that time, but some businesses may find that accepting cryptocurrencies for payment isn't worth the reporting burden.

Miscellaneous Infrastructure Bill Tax Provisions

The IIJA also includes several tax extensions:

- Extends several excise taxes used to fund highway spending
- Extends and modifies certain Superfund excise taxes
- Allows private activity bonds for qualified broadband projects and carbon dioxide capture facilities
- Extends pension funding relief
- Expands certain IRS administrative relief for taxpayers affected by federally declared disasters and “significant fires”

More to Come

Other proposed tax law changes may be included in the upcoming Build Back Better Act (BBBA), to the extent they survive ongoing congressional negotiations. The BBBA could, for example, have significant provisions regarding the child tax credit, the cap on the state and local tax (SALT) deduction, and limits on the business interest expense deduction.

Reach out to your Seiler tax advisor at 650.365.4646 to learn about how the IIJA tax provisions and the BBBA could impact your personal and business taxes.