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LEGAL UPDATES

PUBLISHED: NOVEMBER 15, 2021

New Federal Infrastructure Legislation Eliminates Employee Retention Credit

Service

Employee Benefits & Executive Compensation

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On Monday, November 15, President Joseph Biden signed the $1.2 trillion Infrastructure Investment and Jobs Act (the Infrastructure Act). Although the legislation contains only a few tax provisions, one surprising change is the early termination of the employee retention credit (ERC) as of September 30, 2021.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) created the ERC as an incentive for employers to retain their employees during the pandemic. Under the CARES Act, eligible employers received a credit against their share of the Social Security taxes on qualified wages paid to workers retained during 2020. The Consolidated Appropriations Act 2021 (CAA) and the American Rescue Plan Act of 2021 (ARPA) expanded eligibility for the ERC, including permitting employers to claim the ERC on qualified wages paid through December 31, 2021. Adding further confusion for employers, the Infrastructure Act ends the ERC credit earlier than employers had expected. This change will require coordination with an employer's payroll vendors, potential amendments to Forms 941, and potential changes to accounting accruals.

Other tax provisions under the Infrastructure Act include an interest rate smoothing extension for pension plans and new reporting requirements for digital assets. Under the new reporting requirements, the definition of a broker will be expanded to include those who operate trading platforms for cryptocurrency and other digital assets. The result is that brokers will have to report transactions involving cryptocurrency on Forms 1099 and the like. Previously, these were largely not subject to reporting (see our recent legal alert, “U.S. Government Targets Digital Assets for Additional Revenue,” for more information).

The President’s Build Back Better Agenda (the BBB) contains the bulk of the tax provisions that have garnered recent attention in the press. Additional action by the U.S. House of Representatives on the BBB is not expected before the Congressional Budget Office (CBO) scores the bill, which could take several weeks. It is anticipated the CBO score will confirm earlier estimates that the bill is fully paid for by revenue offsets. Assuming that is correct—and the House passes the BBB bill—it will then head to the Senate where it faces an uncertain future. The Husch Blackwell Tax team will provide updates as this legislation works its way through Congress.

Contact us

If you have questions about the effect of these provisions on your activities, contact Craig Kovarik, Robert Romashko, Rachel Scott or your Husch Blackwell attorney.

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