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Senate Passes Infrastructure Bill

On Tuesday, Aug. 10, 2021, the Senate passed the Infrastructure Investment and Jobs Act ([H.R. 3684](#)) (the Act), which now heads to the House, which may make revisions to the tax provisions summarized below. In the Act, as currently drafted, there are several provisions addressing digital assets. Specifically, the Act would broaden the definition of “broker” under Section 6045 to include “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person,” which would require that broker to report certain information about its customers to the IRS, including the customer’s adjusted basis in the digital asset and any gross proceeds realized by the customer on any sale of the digital asset. The Act also amends Section 6045A to require brokers to report any transfers of a digital asset to another broker. And lastly, the Act would amend Section 6050I to provide that a digital asset is cash for purposes of the requirement to report to the IRS and the payor the receipt of more than \$10,000 in cash. These requirements would apply to statements required to be furnished after Dec. 31, 2023 and to any digital asset (“any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology”) acquired on or after Jan. 1, 2023. Other tax provisions included in the bill provide: (1) qualified broadband projects (those providing service to areas with specific limited internet access) will be permitted to be financed with tax-exempt facility bonds, (2) qualified carbon dioxide capture facilities will be permitted to be financed with tax-exempt facility bonds, (3) a reduction in the application of the employee retention tax credit, (4) certain deadline extensions for taxpayers affected by federally declared disasters, (5) the extension of interest rate smoothing for single-employer defined benefit plans and (6) a delay in the reduction of the excise fuel taxes that fund the Highway Trust Fund. (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Requests Updates to Responsible Party

The IRS is [urging](#) entities with an employer identification number (EIN) to update the responsible party or contact information if any change has been made. EIN holders are required to update responsible party information within 60 days of a change to the responsible party by filing [Form 8822-B, Change of Address or Responsible Party – Business](#). The IRS is reminding entities of this requirement out of concerns for identity theft or other fraud issues. The announcement also states that entities with EINs that are no longer in use should contact the IRS to cancel the EINs and close out the account with the IRS.

Additional Guidance on the Employer Retention Credit Released

The IRS has [announced](#) that the IRS and the Treasury Department have provided additional guidance in [Notice 2021-49](#) on the employee retention credit. The employee retention credit was first enacted by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act, part of the Consolidated Appropriations Act, 2021). The Notice, which amplifies prior related notices ([2021-20](#) and [2021-23](#), see our prior coverage [here](#)), provides guidance specifically applicable to employers claiming the credit in the third and fourth quarter of 2021. Eligible employers are entitled to claim the employee retention credit against the employer’s share of Medicare tax, or the portion of Tier 1 tax under the RRTA that is equivalent to the employer’s share of Medicare tax, after these taxes are reduced by any applicable credits. Generally, the

credit is equal to 70% of qualified wages (including allocable qualified health plan expenses). However, the amount of qualified wages that can be taken into account with respect to any employee is limited to \$10,000 per quarter, which equals a maximum credit of \$7,000 per employee per quarter. Additionally, the Notice provides guidance on the credit limit with respect to “recovery startup businesses,” who qualifies as a “full-time employee,” how tips are taken into account, an employer’s deduction for qualified wages after reduction by the employer retention credit and how to account for individuals paid qualified wages that are related to the employer.

NJ Announces End to COVID-19 Teleworking Suspensions

The State of New Jersey’s Division of Taxation (Division) has [announced](#) the end of its COVID-19 temporary suspension period for nexus and withholding purposes beginning on Oct. 1, 2021. During the suspension, the Division temporarily waived the Corporation Business Tax (CBT) nexus standard, which meant that as long as an out-of-state corporation did not otherwise meet any of the factors giving rise to nexus in NJ, other than employees working from home in NJ solely due to the pandemic, then such corporation was not considered to have nexus with NJ for purposes of the CBT. However, this waiver no longer applies on and after Oct. 1, 2021, in which case on and after Oct. 1, 2021, a corporation will have nexus with NJ if an employee is working from home for purposes of the CBT. Additionally, the nexus standard for NJ Sales Tax also was temporarily waived, meaning that as long as an out-of-state seller did not maintain any physical presence other than employees working from home



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in NJ solely due to the pandemic and was below the economic activity thresholds, such seller was not considered to have nexus for NJ Sales Tax purposes. However, on and after Oct. 1, 2021, the pre-pandemic NJ Sales Tax nexus standard applies whereby an employee working from home will create NJ Sales Tax nexus for an employer because working at a location in NJ is considered physical presence. Lastly, during the suspension period, employers were permitted to cease sourcing income in accordance with the employer’s jurisdiction, thus suspending withholding on wages for employees temporarily working from home due to COVID-19. However, beginning on and after Oct. 1, 2021, employers should resume sourcing income based on where the service or employment is performed and withhold New Jersey Gross Income Tax from such wages.