STRADLEY RONON

Tax Insights

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IRS Announces Guidance on American Rescue Plan Act Tax Credits

The IRS and the Treasury Department announced further details of certain tax credits available under the American Rescue Plan Act (Act). The announcement referenced a fact sheet which details refundable tax credits that reimburse small and midsize employers and certain governmental employers for the cost of providing paid sick and family leave to their employees due to COVID-19, including leave taken by employees to receive or recover from the COVID-19 vaccinations. The tax credits are available to eligible employers that pay sick and family leave for leave from April 1, 2021, through Sept. 30, 2021.

The tax credit for paid sick leave wages is equal to the sick leave wages paid for COVID-19 related reasons for up to two weeks (80 hours), limited to $511 per day and $5,110 in the aggregate, at 100 percent of the employee's regular rate of pay. The tax credit for paid family leave wages is equal to the family leave wages paid for up to twelve weeks, limited to $200 per day and $12,000 in the aggregate, at two-thirds of the employee's regular rate of pay. The amount of these tax credits is increased by allocable health plan expenses and contributions for certain collectively bargained benefits, as well as the employer's share of social security and Medicare taxes paid on the wages (up to the respective daily and total caps).

Eligible employers report their total paid sick and family leave wages (plus the eligible health plan expenses and collectively bargained contributions and the eligible employer's share of social security and Medicare taxes on the paid leave wages) for each quarter on their federal employment tax return, usually Form 941, Employer's Quarterly Federal Tax Return PDF.

In anticipation of claiming the credits on the Form 941 PDF, eligible employers can keep the federal employment taxes that they otherwise would have deposited, including federal income tax withheld from employees, the employees' share of social security and Medicare taxes and the eligible employer's share of social security and Medicare taxes with respect to all employees up to the amount of credit for which they are eligible.

If an eligible employer does not have enough federal employment taxes set aside for deposit to cover amounts provided as paid sick and family leave wages (plus the eligible health plan expenses and collectively bargained contributions and the eligible employer's share of social security and Medicare taxes on the paid leave wages), the eligible employer may request an advance of the credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19. The eligible employer will account for the amounts received as an advance when it files its Form 941, Employer's Quarterly Federal Tax Return, for the relevant quarter.

IRS Announces Extension of Digital Signatures

The IRS has announced in a memorandum that it will continue to accept digital signatures and scanned or photograph images of signatures for extensions of the statute of limitations on assessment or collection, waivers of statutory notices of deficiency and consents to assessment, agreements to specific tax matters or tax liabilities (closing agreements), and any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures. The announcement also includes electronic means by which documents can be transmitted between the IRS and a taxpayer. This memorandum supersedes the June 12, 2020 memorandum. This memorandum expires on Dec. 31, 2021.

IRS Issues Guidance for PPP Recipients Who Can Deduct Certain 2020 Expenses in 2021

The IRS has issued Revenue Procedure 2021-20 which provides a safe harbor for certain taxpayers that received a loan pursuant to the Paycheck Protection Program (PPP) and did not deduct certain otherwise deductible expenses paid or incurred during the taxpayer's taxable year(s) ending after March 26, 2020, and on or before Dec. 31, 2020 (2020 taxable year) that resulted in, or were expected to result in, forgiveness of the loan. Under the safe harbor, such taxpayers may elect to deduct these expenses on the taxpayer's timely filed original Federal income tax return or information return, as applicable, for the taxpayer's first taxable year following the taxpayer's 2020 taxable year rather than filing an amended return or administrative adjustment request for the taxpayer's 2020 taxable year. Revenue Procedure 2021-20 is effective for any taxable year ending in calendar year 2020 and for the immediately subsequent taxable year. Revenue Procedure 2021-20 makes Revenue Procedure 2020-51 obsolete. (See our prior coverage here.)

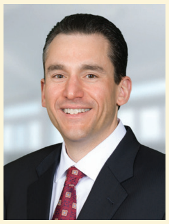
NYSBA Issues Report on PFIC Proposed Regulations

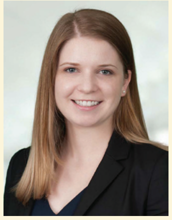
The New York State Bar Association Tax Section has issued its Report on the Proposed "PFIC" Regulations Under Sections 1297 and 1298 (the Report). (See our prior coverage here.) The proposed regulations, which were published in the federal registrar on Jan. 15, 2021, address the determination of whether a foreign corporation is treated as a passive foreign investment company (PFIC). The Report recommends that:

(1) The use of financial statements as a proxy for fair value should not be limited to non-public companies,

(2) The proposed rule determining when "more reliable" valuation information rather than financial statement values must be used be revised and clarified because the "reason to know" standard, as currently proposed, will create uncertainty that defeats the administrative simplicity benefits of allowing taxpayers to rely on financial statement values,

(3) The need for goodwill associated with a business to be treated as passive be reconsidered or, in the alternative, that the bifurcation of goodwill between active and passive be made clearer and that a presumption is included,





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(4) The 90-day expenses limit be expanded in certain situations,

(5) Active working capital includes capital invested in certain low-yielding, high grade and highly liquid, interest-bearing assets in certain situations,

(6) The proposed rule requiring basis reduction for dividends not previously taken into account under the look-through subsidiary rule be eliminated, and

(7) The active banking exception is synthesized into a single regulatory regime.

TIGTA Issues Oversight Report for American Rescue Plan Act

The Treasury Inspector General for Tax Administration (TIGTA) released a report, the Oversight of the Internal Revenue Service's Response to the American Rescue Plan Act, in which it outlines its oversight projects and investigative actions with regard to the implementation of the Act. TIGTA's Office of Audit will help ensure that only eligible individuals and businesses receive coronavirus relief in the Act. The report indicates that the TIGTA expects an increase in IRS impersonation activity, fraudulent and counterfeit Treasury checks, manipulations of IRS data service portals, and threats against the IRS as a result of the implementation of the Act. As such, TIGTA's Office of Investigations will continue to allocate investigative resources to address the most significant impacts on Federal tax administration. Lastly, TIGTA's Office of Inspections and Evaluations efforts will focus on issues related to the pandemic response that cut across the IRS.