Maddin Hauser
Attorneys and Counselors

SUMMER 2022 ROUNDUP OF RECENT TAX DEVELOPMENTS

William E. Sigler, Esq.

Maddin, Hauser, Roth & Heller, P.C.
28400 Northwestern Hwy. Southfield, MI 48034
p (248) 354-4030 f (248) 354-1422 maddinhauser.com

TOPICS COVERED

- Individuals
- Employers
- Businesses
- Other 2022 Tax Season Filing Issues
- Interim Results of the 2022 Filing Season
- New Developments in 2022
- Michigan
- City of Detroit

INDIVIDUALS

2021 EIP AND RECOVERY REBATE

- EIP up to $1,400 per taxpayer ($2,800 MFJ) for 2021
- Plus, $1,400 per dependent
- Based upon 2019 tax return
- Additional payment if EIP higher based on 2020 tax return
- EIP received reduces Recovery Rebate Credit on 2021 tax return

IRC § 6428B

2021 EIP AND RECOVERY REBATE, CONT'D

- **Dependent – IRS § 152 definition**
- **Phase-out**

- Single/MFS	$75,000-$80,000
- MFJ/QW	$150,000-$160,000
- HOH	$112,500-$120,000

2021 EIP AND RECOVERY REBATE, CONT'D

- **Ineligible Taxpayers**

  - Nonresident alien

  - Dependent of another taxpayer

  - Estate or trust

  - Person deceased as of January 1, 2021

2021 EIP AND RECOVERY REBATE, CONT'D

- Valid taxpayer identification number required
- $2,800 reduced to $1,400 for MFJ if only one spouse has a taxpayer identification number
- $2,800 not reduced if one spouse was a member of the armed services during the year and the other has a taxpayer identification number

2021 EIP AND RECOVERY REBATE, CONT'D

- For MFJ to single return one-half of EIP is treated as credit to each spouse
- An individual can't be taken into account more than once by reason of change in joint return or dependent status
- Not subject to offset or levy for unpaid taxes
- Not includible in gross income

CHILD TAX CREDIT

- **Prior law**

  - $2,000 per qualifying child

  - Of which $1,400 was refundable

CHILD TAX CREDIT, CONT'D

American Rescue Plan Act of 2021

- Increased to $3,000 per qualifying child
- Increased to $3,600 if qualifying child has not yet attained age 6
- Age limitation increased from 16 to 17
- Fully refundable credit

IRC § 24(i)

CHILD TAX CREDIT, CONT'D

- **Note re: $500 per dependent credit**

  - Dependents who are not a qualifying child

  - Remains the same as under prior law

  - Not refundable

CHILD TAX CREDIT, CONT'D

- **Phase-out of Amount Over Prior Law $2,000 Credit**

- MFJ/QW	$150,000
- HOH	$112,500
- Single/MFS	$75,000

- **Once the increase in the credit is phased out, the $2,000 per qualifying child credit still applies until AGI reaches the $400,000/$200,000 thresholds**

CHILD TAX CREDIT, CONT'D

- **Advanced payment of child tax credit**

  - 50% of annual advance amount estimated by IRS

  - IRS uses information from prior years

  - Made from 7/1/2021 through 12/31/2021

IRC § 7527A

CHILD TAX CREDIT, CONT'D

- **Child tax credit claimed on tax return for 2021 is then reduced by the advance payments**
- **Excess is added to the taxpayer's tax liability for 2021**
- **Potentially reduced by safe harbor amount if MAGI does not exceed the following:**

- MFJ/QW	$120,000
- HOH	$100,000
- Single/MFS	$80,000

CHILD TAX CREDIT, CONT'D

Question #1

Facts:

Susan has two children, ages 10 and 14. She has AGI of $195,000 and files as head of household, making her qualify for a CTC of $2,000 per child or $4,000 in total. She has arranged her withholding to receive a $500 refund each year taking into account the $4,000 CTC. Will Susan receive a refund if she doesn't elect out of the advance CTC payments?

Answer:

Susan would have received 50% of her total credit in monthly payments from July through December or $2,000. When she files her 2021 return, instead of receiving a $500 refund, she will owe $1,500 because she already received $2,000 of her CTC as an advance leaving only $2,000 available when she files her 2021 return.

CHILD TAX CREDIT, CONT'D

- **Safe Harbor Amount**

  - $2,000 multiplied by the excess of the number of qualified children taken into account for the annual advance amount over

  - The number of qualified children taken into account in determining the child tax credit on the tax return

CHILD TAX CREDIT, CONT'D

- Advance payments began 7/15/2021
- Made on the 15th of each month
- Up to $300 per month for each child under age 6
- Up to $250 per month for each child age 6 and above
- Online tool allows taxpayers to update information and/or elect out

IR-2021-113

CHILD TAX CREDIT, CONT'D

- **Non-filers**

  - Sign-up tool: IR-2021-129

  - Simplified return procedures: Rev. Proc. 2021-24

EARNED INCOME CREDIT

- **Under prior law**

  - Taxpayer with no qualifying children had to be at least age 25 and under age 65

  - For MFJ, only one spouse needed to meet these age requirements

IRC § 32

EARNED INCOME CREDIT, CONT'D

- **Effective for 2021 only, the minimum age is lowered to:**

  - Age 19 if the taxpayer is not a specified student

  - Age 24 if the taxpayer is a specified student

  - Age 18 if the taxpayer is a qualified former foster youth

EARNED INCOME CREDIT, CONT'D

- **Effective for 2021 only, more generous rules for taxpayers with no children:**
  - New law eliminates the under age 65 limitation
  - Phase-out percentages increased from 7.65% to 15.3%
  - Earned income amount is increased to $9,820
  - The phase out amount is increased to $11,610

EARNED INCOME CREDIT, CONT'D

- After 12/31/2020, taxpayers with children that do not meet the TIN requirement are allowed to claim the EIC
- Investment income limitation increased from $3,650 to $10,000 (inflation adjusted after 2021)
- For 2021 only, taxpayers may elect to use 2019 earned income

EARNED INCOME CREDIT, CONT'D

- **Under prior law, EIC was not allowed if taxpayer was MFS**
- **After 12/31/2020, an individual is not treated as married if:**

  - Is married and does not file a joint return;

  - Resides with a qualifying child for more than one-half of the tax year; and

  - During the last six months of the year, does not have the same principal place of abode as his/her spouse

DEPENDENT CARE EXPENSES

- **Two tax provisions for dependent child or adult**:
  - Dependent Care Credit (IRC §21)
  - Exclusion for employer provided dependent care benefits (IRC §129)
- **For 2021, the American Rescue Plan Act**:
  - Makes the Dependent Care Credit refundable
  - Increases the dollar limit
    - for one dependent from $3,000 to $8,000
    - for two or more dependents from $6,000 to $16,000
  - Increases the applicable percentage

DEPENDENT CARE ASSISTANCE PROGRAMS

- **American Rescue Plan of 2021**
  - Increases maximum exclusion for employer provided dependent care assistance from $5,000 ($2,500 MFS) to $10,500 ($5,250 MFS)
  - 2021 tax year only
  - Employers were able to retroactively amend their plans

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS

- **Prior Law: Health FSAs**

  - Employees can contribute up to $2,750

  - Including a limited-purpose FSA restricted to dental and vision care, which can be used in tandem with an HSA

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- **Prior Law: Dependent Care FSAs**

  - Set by statute, but not adjusted annually for inflation

  - $5,000 in MFJ

  - $2,500 in MFS

  - Subject to earned income limits

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- **Prior Law**

  - 2 ½ month grace period for health or dependent care FSAs

  - Health FSAs can additionally allow participants to roll over up to $550 of unused funds

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- **New dependent care FSA annual limits for pre-tax contributions**

  - $10,500 MFJ

  - $5,250 MFS

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- **Health and dependent care FSA participants can carry over unused balances**

  - From 2020 into 2021

  - From 2021 into 2022

  - Grace period for spending unused FSA funds extended to 12 months for 2020 and 2021

Notice 2021-15

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- Employees who stopped participating in a health FSA during 2020 or 2021 may continue to be reimbursed through the end of the plan year in which their participation terminates, including grace periods
- Prior to CAA, a qualifying child generally had to be under age 13.
- CAA changed age 13 to age 14 for plan years in which the regular enrollment period was on or before 1/31/2020 or, if the employee had an unused balance for that plan year, the subsequent plan year

HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENTS, CONT'D

- **Dependent care FSA funds that would have been excluded from income if used during 2020 or 2021 are excluded and not considered wages for 2021 and 2022, respectively**

Notice 2021-26

PREMIUM TAX CREDIT

- **Background**

  - Refundable credit design to subsidize health insurance purchased through an Exchange

  - Based on percentage of income the cost of premiums represents ranging from:

    - 2% of income for those below 133% of the federal poverty line, to

    - 9.5% of income for those at 400% of the federal poverty line

IRC §36B

PREMIUM TAX CREDIT, CONT'D

- **Background: Advanced Premium Tax Credit (APTC)**

  - Taxpayer signs up for insurance through the exchange using prior year tax information

  - Exchange then pays an amount to the health insurance provider

  - Health insurance provider reduces the monthly health insurance premium paid by taxpayer

  - Advance received reduces the PTC allowed on the tax return

PREMIUM TAX CREDIT, CONT'D

- **American Rescue Plan Act of 2021**

  - Changes the percentages to increase the affordability of health insurance for 2021 and 2022

  - Also makes the PTC available to taxpayers with income above 400% of the federal poverty line if cost of premiums would exceed 8.5% of household income

  - Anyone receiving unemployment during 2021 qualifies for 100% subsidized health insurance assuming other PTC requirements are met

MEDICAID COVERAGE OF COVID-19 TESTING

- **Premium tax credit allowed only for months an individual is not eligible for minimum essential coverage other than coverage in the individual market**
- **Government-sponsored health insurance programs are minimum essential coverage**
- **Medicaid coverage limited to COVID-19 testing and diagnostic services are not minimum essential coverage under IRC § 36B**
- **Does not prevent individual from qualifying for premium tax credit**

Notice 2020-66

COVID-19 COVERAGE FOR VACCINES

- **Interim final rule released by IRS to implement CARES Act and Families First Coronavirus Response Act**
- **Clarifies that plans must cover recommended immunizations without cost sharing**

T.D. 9931

HOME TESTING FOR COVID

- **The following are eligible medical expenses that can be paid or reimbursed under an FSA, HSA, HRA, or Archer MSA:**
  - Cost of home testing for COVID
  - Personal protective equipment, e.g., masks & hand sanitizer

Notice 2021-181

PERSONAL PROTECTION EQUIPMENT

- **Treated as amounts paid for medical care under IRC § 213(d)**
- **Deductible as medical expense under IRC § 213(a)**

  - Provided that taxpayer can itemize deductions; and

  - Medical expenses exceeds 7.5% of AGI

Announcement 2021-7

MEDICAL EXPENSES

- **Prior law raised the threshold for deducting medical expenses as itemized deductions from 7.5% to 10% of AGI**
- **A temporary suspension of this rule applied for tax years beginning before 1/1/2021**
- **CAA, 2021 eliminates the 10% of AGI limitation and makes the 7.5% of AGI limitation permanent for tax years beginning after 12/31/2020**

IRC §213

MEDICAL EXPENSES AND NON-PRESCRIPTION DRUGS

- **Over-the-counter medicines and drugs are no longer limited to those prescribed by a physician**
- **Applicable to distributions from HSAs and Archer MSAs for amounts paid after 12/31/2019**
- **Effective for reimbursements from health FSAs and HRAs for expenses incurred after 12/31/2019**

IRC §§ 106, 220 and 223

CHARITABLE CONTRIBUTIONS

- **AGI limitation for cash contributions under Section 170 made during 2020 and 2021 increased to from 60% to 100% of AGI**

IRC § 170

EDUCATIONAL ASSISTANCE

- **CARES Act expands definition of "educational assistance" to include payments of principal or interest made by an employer on a qualified education loan incurred by an employee**
- **Still subject to the $5,250 overall limit**
- **Any interest paid by the employer is not deductible by the employee as student loan interest**
- **Applies to payments made after March 27, 2020**

IRC § 127

REDUCTION OF PERSONAL EXEMPTION

- **Reduction of personal exemption to -0- does not alter operation of other provisions of the Internal Revenue Code**

  - Child Tax Credit (IRC § 151)

  - Head of household filing status (IRC § 152(d)(1)(B))

T.D. 9913

SAFE HARBOR FOR ELIGIBLE EDUCATORS

- Eligible educators may deduct up to $250 of unreimbursed expenses for the cost of books, supplies, computer equipment and supplementary materials used by the educator in the classroom
- $500 MFJ if both spouses are eligible educators
- Includes PPE, disinfectant and other supplies

Rev. Proc. 2021-15

STUDENT LOAN FORGIVENESS EXCLUSION

- **American Rescue Plan Act of 2021**

  - Excludes from gross income

  - Discharge of indebtedness income relating to student loan debt

    - Including private student loans

    - Unless student is required to provide services to the discharging lender

  - Effective for 2021-2025

IRC § 108(f)(5)

SUPREME COURT UPHOLDS AFFORDABLE CARE ACT

- **Patient Protection and Affordable Care Act (2010)**
  - Requires minimum essential health insurance coverage
  - Penalty imposed on individuals who fail to comply
- **TCJA reduced penalty to $-0-**
- **Several States brought suit claiming that without the penalty the Act was unconstitutional**
- **The Supreme Court disagreed in *California v. Texas*, decided on June 17, 2021**

SELF-DIRECTED IRA

- **With assistance from an online website, a taxpayer created an LLC owned by a self-directed IRA**
- **The LLC was used to purchase American Eagle Coins which were retained in the taxpayer's possession as the manager of the LLC**
- **The IRS audited and the taxpayer was found to have received a taxable distribution**

McNulty, 157 T.C. No. 10, November 18, 2021

OTHER CASES

- **SALT deduction limitation is constitutional**
  - *Yellen,* 2nd Circuit, October 5, 2021
- **Health insurance premiums paid by husband to wife pursuant to a divorce decree includible in the income of the wife is therefore deductible by the husband as alimony**
  - *Leyh,* 157 T.C. No. 7, October 4, 2021
- **Gambling loss not deductible as a nonbusiness loss from an “other” casualty under Section 165(c)(3)**
  - *Mancini,* U.S. Court of Appeals, 9th Circuit, June 29, 2021; *Mancini,* T.C. Memo. 2019-16, March 4, 2019

EMPLOYERS

PAYCHECK PROTECTION PROGRAM

- **Consolidated Appropriations Act, 2021, reversed the IRS position prohibiting the deduction of expenses if the payment resulted in forgiveness of a PPP loan**
- **The deduction may be taken on a taxpayer's return for the immediately subsequent tax year, rather than on an amended return**

Rev. Proc. 2021-20

FURTHER PPP GUIDANCE

- **Rev. Proc. 2021-48**
  - When tax-exempt income arising from the forgiveness of a PPP loan is received or accrued for other purposes, e.g. eligibility to use the cash method of accounting
- **Rev. Proc. 2021-49**
  - Guidance to partners on adjustments to basis as a result of tax-exempt income arising from the forgiveness of a PPP loan
- **Rev. Proc. 2021-50**
  - Allows partnerships subject to centralized partnership audit regime to issue amended Schedule K-1s on or before 12/31/2021 to adopt the guidance in Rev. Proc. 2021-48 and 2021-49

PAID SICK LEAVE AND PAID FAMILY LEAVE PAYROLL TAX CREDITS

- **Paid sick leave**

  - American Rescue Plan Act of 2021 reinstates the credit for 4/1/2021 through 9/30/2021

  - Up to 10 days of new paid sick leave is available

IRC §3131

PAID SICK LEAVE AND PAID FAMILY LEAVE PAYROLL TAX CREDITS, CONT'D

- **Employer is entitled to paid sick leave credit if employee unable to work or telework due to the following COVID-19 issues:**

    1. Employee is under a federal, state or local quarantine or isolation order
    2. Employee has been advised by a healthcare provider to self-quarantine
    3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis

PAID SICK LEAVE AND PAID FAMILY LEAVE PAYROLL TAX CREDITS, CONT'D

4. Employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order, or has been advised by a healthcare provider to self-quarantine

5. Employee is caring for a child if the school or place of care has been closed, or the childcare provider is unavailable

6. Employee is experiencing any other substantially similar condition specified by U.S. Department of HHS

PAID SICK LEAVE AND PAID FAMILY LEAVE PAYROLL TAX CREDITS, CONT'D

- **Reasons 1, 2 and 3**

  - $511 per day per employee

  - Limited to 10 days

- **Reasons 4, 5 and 6**

  - $200 per day per employee

  - Limited to 10 days

PAID SICK LEAVE AND PAID FAMILY LEAVE PAYROLL TAX CREDITS, CONT'D

- **American Rescue Plan Act of 2021 Addition:**

  - Employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19;

  - Employer has requested such test or diagnosis; or

  - Employee is obtaining immunization relating to COVID-19 or recovering from any illness related to such immunization

- **New language is added to reasons 1, 2 and 3 (thus, $511 per day per employee limit applies)**

- **Leave taken to receive COVID-19 vaccinations also applies**

PAID FAMILY LEAVE CREDIT

- **New applicable period for paid family leave credit:**

  - Runs from 4/1/2021 through 9/30/2021

  - $200 per day

  - Limited to $12,000 in the aggregate (including 2020)

IRC §3132

PAID FAMILY LEAVE CREDIT, CONT'D

- All of the reasons apply
- Means after an employee has used up the 10 day limit under the paid sick leave rules, the employee may continue to qualify for paid family leave up to the dollar limitation

PAID FAMILY LEAVE CREDIT, CONT'D

- **Coordination with PPP loans**
  - Credit for paid sick leave and paid family leave wages does not apply to wages taken into account as payroll cost for a PPP loan
- **Employers may elect not to take certain wages into account for the paid sick leave and paid family leave credits allowing them to use the wages for other purposes, such as a PPP loan**

TAX CREDIT CALCULATION

- Tax credits equal 100% of qualified paid leave
- Plus qualified health plan expenses
- Plus the employer's share of Medicare tax
- Employers are not subject to the employer's portion of Social Security tax imposed on paid sick and family leave wages

DETERMINING HOURS FOR PURPOSES OF PAID LEAVE

- 10 days of paid sick leave are based on 80 hours over a two-week period
- 12 weeks of paid family leave are based on 60 days (12 weeks x 5 days per week), or 480 hours (60 days x 8 hours per day)

TELEWORK

- **Employee's wages do not qualify for paid leave if employee is confined to home, but can still perform work**

INTERMITTENT WORK SCHEDULE

- Generally does not qualify for paid leave
- Exception for employee taking paid leave to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19
- *Example*: Employee takes paid leave to stay at home on Mondays, Wednesdays and Fridays to care for a child, and works at his/her normal work site on Tuesdays and Thursdays while spouse stays home

WORK SITE CLOSED

- Qualified leave does not apply if work site closed; and
- Employees sent home for lack of work

CLAIMING THE CREDITS

- Form 941, *Employer's Quarterly Federal Tax Return*
- In anticipation of receiving the credits, employers may reduce their federal employment tax deposits
- If deposits are not enough, employer can request an advance refund by filing Form 7200, *Advance of Employer Credits Due to COVID-19*

TAXATION AND DEDUCTIBILITY OF TAX CREDITS

- The tax credits are included in income by the employer, but are offset by the deduction for wages
- Employees are taxed on the amount of qualified leave wages received

SELF-EMPLOYED INDIVIDUALS

- **Self-employed individual who already qualified for the credit in 2020 is eligible for an additional credit in 2021, based upon the period from 4/1/2021 through 9/30/2021**
- **See Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals***

EMPLOYEE RETENTION CREDIT

- **CARES Act**

  - Wages paid after 3/12/2020 and before 1/1/2021

- **Consolidated Appropriations Act, 2021**

  - Wages paid after 12/31/2020 and before 7/1/2021

- **American Rescue Plan Act of 2021**

  - Wages paid after 6/30/2021 and before 1/1/2022

- **Infrastructure Investment and Jobs Act, enacted on 11/15/2021**

  - Repealed ERC for wages paid after 9/30/2021

IRC §3134

EMPLOYEE RETENTION CREDIT, CONT'D

- **CARES Act**

  - 50% of qualified wages

  - $10,000 limit on wages per employee for all calendar quarters in 2020

- **CAA & American Rescue Plan Act**

  - 70% of qualified wages

  - $10,000 limit on wages per employee applies on a per quarter basis

EMPLOYEE RETENTION CREDIT, CONT'D

- **Eligible employer**
  - Business fully or partially suspended during the calendar quarter due to governmental order relating to COVID-19;
  - For 2021, gross receipts for calendar quarter are less than 80% of the same quarter in 2019; or
  - Employer is a recovery startup business
- **Employer can elect to use the immediately preceding calendar quarter compared to the same calendar quarter in 2019**

EMPLOYEE RETENTION CREDIT, CONT'D

Question #2

Facts:

ABC Co. has $250,000 in gross receipts in Q1 2019. In Q1 2021, its gross receipts are $100,000. In Q2 2019, ABC Co.'s gross receipts were $200,000. In Q2 2021, its gross receipts were $150,000. Can ABC Co. claim an ERC?

Answer:

ABC Co.'s gross receipts have decreased by more than 20%, so it can claim the ERC for Q1 and Q2 2021.

EMPLOYEE RETENTION CREDIT, CONT'D

- **If more than 500 employees, the credit applies only to wages paid to employees who do not work**
- **If 500 or less employees, the credit applies to wages paid to all employees, including those who are still able to work during the applicable calendar quarter**

EMPLOYEE RETENTION CREDIT, CONT'D

- **ERC does not apply to wages taken into account for certain other purposes, e.g.:**

  - Paid sick leave credit

  - Paid family leave credit

- **Wages taken into account for PPP loan forgiveness do not qualify for ERC**

- **Employer can elect not to take qualified wages into account for ERC**

- **Wages include allocable amount of employer paid group health plan expenses**

EMPLOYEE RETENTION CREDIT, CONT'D

- **Claiming the ERC**

  - Payroll tax credits
  - Limited by applicable employment taxes during the quarter
  - Excess is refundable
  - May reduce otherwise required payroll tax deposits
  - Reconciled on payroll tax return

Notice 2021-23

EMPLOYEE RETENTION CREDIT, CONT'D

- **Wages paid to related individuals**

  - As defined by IRC § 51(i)(1)

  - Not taken into account for ERC

- **Applies to related individual owning, directly or indirectly, more than 50% of:**

  - Outstanding stock of a corporation

  - 50% of the capital or profits interest in other types of entities

Notice 2021-49

EMPLOYEE RETENTION CREDIT, CONT'D

- **Employer's operations not considered to have been fully or partially suspended if employees telework**
- **ERC reduces employer's deduction for compensation paid**

  - Offset against deduction for wages paid

  - Employer does not include credit in income

EMPLOYEE RETENTION CREDIT, CONT'D

- ARP extended the ERC for wages paid before 1/1/2022
- Infrastructure Investment and Jobs Act, enacted on 11/15/2021, repealed the ERC for wages paid after 9/30/2021, subject to an exception for recovery startup businesses
- Employers receiving an advanced payment in the 4th quarter of 2021 had to repay it by the due date of their employment tax return that included the 4th quarter of 2021
- For employers who reduced deposits in anticipation of the ERC for the 4th quarter of 2021, the failure to deposit penalties can be waived
- However, the IRS will not waive penalties for employers who reduced deposits after 12/20/2021

EMPLOYEE RETENTION CREDIT, CONT'D

- **Requirements for a waiver of the failure to deposit penalties:**
  - Deposits must have been reduced in anticipation of ERC
  - Deposits must be made up by the relevant due date for wages paid on 12/31/2021
  - The tax liability from the termination of the ERC must be reported on the employment tax return that includes the period from 10/1/2021 to 12/31/2021
- **A taxpayer who does not qualify for this relief can still apply under the reasonable cause provisions of Section 6656(a)**

Notice 2021-65

COBRA PREMIUM ASSISTANCE

- **COBRA**

  - Gives workers the right to continue group health benefits after a separation from service

  - May be required to pay up to 102% of the cost

  - Required to be offered by employers with 20 or more employees

COBRA PREMIUM ASSISTANCE, CONT'D

- **American Rescue Plan Act of 2021**

  - Temporary 100% reduction in the premium otherwise payable for COBRA

  - Eligible individuals treated as having paid the full amount of their COBRA premium

  - Employer entitled to a credit against its share of Medicare taxes

  - Overpayment is refundable

  - Employers can reduce payroll tax deposits in anticipation of the credit

Notice 2021-31; Notice 2021-46

COBRA PREMIUM ASSISTANCE, CONT'D

- **Temporary "COBRA premium assistance" is available to an "Assistance Eligible Individual" who:**
  - Qualifies for COBRA during the period from 4/1/2021 through 9/30/2021; and
  - Elects COBRA continuation coverage

COBRA PREMIUM ASSISTANCE, CONT'D

- **Extended election period provides additional 60 days to eligible individuals after they are provided with notice**
- **Applies to eligible individuals who:**

  - Had a COBRA election in effect on 4/1/2021; or

  - Previously elected COBRA continuation coverage and discontinued the coverage before 4/1/2021

HRA FINAL REGULATIONS

- **HRAs integrated with individual health insurance coverage or Medicare**
- **Regulations clarify application of:**

  - Employer shared responsibility provisions

  - Certain nondiscrimination rules

IRC Section 4980H

HRA FINAL REGULATIONS, CONT'D

- **Proposed regulations issued October 23, 2018**
- **Finalized on 6/14/2019**
- **T.D. 9949 provides additional guidance and safe harbors**

TD 9949, January 10, 2021

HRA FINAL REGULATIONS, CONT'D

- **Location Safe Harbor**
  - IRC § 4980H applies to applicable large employers (ALE) that average 50 or more full-time equivalent employees
  - ALE is subject to a penalty if it fails to offer health insurance coverage to at least 95% of its full-time employees and at least one full-time employee is allowed to claim the premium tax credit

HRA FINAL REGULATIONS, CONT'D

- **Location Safe Harbor, Continued**
  - Penalty does not apply if ALE offers coverage that is affordable
  - Affordable means not more than 9.5% of the employee's household income (inflation adjusted)
  - Based on self-only coverage for the individual's second lowest cost silver plan (SLCSP)

HRA FINAL REGULATIONS, CONT’D

- **Location Safe Harbor, Continued**
  - Determining SLCSP based on employee’s primary residence is difficult, because each employee lives in a different location
  - Safe harbor permits employer to use employee’s primary site of employment

HRA FINAL REGULATIONS, CONT'D

- **Age Based Safe Harbor**
  - Cost of coverage through an exchange also depends on the individual's age
  - Final regulations did not adopt an age based safe harbor

HRA FINAL REGULATIONS, CONT'D

- **Look-Back Month Safe Harbor**
  - May use the look-back month safe harbor to determine affordability
  - The look-back month safe harbor is January of the prior calendar year

HRA FINAL REGULATIONS, CONT'D

- **Household income safe harbor**
  - Regulations allow employers offering an individual coverage HRA to a class of employees to use one of the HHI safe harbors instead of the employee's household income
  - HHI safe harbors are based on employees W-2 wages

PAYROLL TAX DEPOSIT PENALTY RELIEF

- **Penalty relief is extended to employment tax deposits that are reduced in anticipation of the following credits:**

  - Paid sick and family leave credits

  - Employer Retention Credit

  - COBRA continuation coverage premium assistance credit

Notice 2021-24

DEFERRAL OF EMPLOYEE SOCIAL SECURITY TAXES

- August 8, 2020 Presidential Memorandum
- Permits deferral of withholding, deposit and payment of the employee's share of Social Security tax
- Deferral applies to September 1, 2020 through December 31, 2020 (Notice 2020-65)
- Allowed to be withheld and paid during January 1, 2021 through April 30, 2021
- CAA, 2021 extended repayment period through December 31, 2021

TRUST FUND RECOVERY PENALTY

- Chief administrator of a hospital found to be responsible for trust fund recovery penalties
- Hospital suffered severe financial setbacks
- One creditor even sued pursuant to which the hospital entered into an agreement freezing its bank accounts except for specified payments
- The chief administrator refused at times to sign checks for purposes that, in her eyes, did not align with patient services
- That led to her taking a leave of absence from which she never returned
- She did not dispute knowing that the hospital was not fully paying its trust fund taxes, but argued that it was not willful (as required under Section 6672) because the hospital's funds were encumbered by a legal agreement
- The court disagreed finding that the taxpayer's good faith belief is not a defense

Cashaw, T.C. Memo 2021-123, October 27, 2021

BUSINESSES

100 % DEDUCTION FOR BUSINESS MEALS

- CAA, 2021 added IRC § 274(n)(2)(D) which provides a temporary exception to the 50% limitation for business meals that are provided by a restaurant
- IRS released guidance regarding the temporary 100% deduction for expenses paid or incurred after 12/31/2020 and before 1/1/2023, for food or beverages provided by a restaurant
- The guidance explains when the 100% deduction applies and when the 50% limitation continues to apply
- Generally, the 50% limitation applies to non-restaurant businesses that sell pre-packaged food or beverages not for immediate consumption

Notice 2021-25

COVID-19 RELIEF FOR AUTOMOBILE LEASE VALUATION RULE

- **When an employer provides an employee with an automobile that is available to be used for business and personal purposes, the value of the personal use must be included in the employee's gross income**

COVID-19 RELIEF FOR AUTOMOBILE LEASE VALUATION RULE, CONT'D

- **Special valuation rules:**

  - Automobile lease valuation rule

  - Vehicle cents' per mile valuation rule

  - Commuting valuation rule

- **Each of the above rules include a consistency requirement**

COVID-19 RELIEF FOR AUTOMOBILE LEASE VALUATION RULE, CONT'D

- **Due to COVID-19, the IRS provided relief from the consistency rules**
- **An employer using the automobile lease valuation rule for 2020 may instead use the vehicle cents' per mile valuation rule beginning 3/13/2020 if certain conditions are met**

COVID-19 RELIEF FOR AUTOMOBILE LEASE VALUATION RULE, CONT'D

- Employers that switch from the automobile lease valuation rule to the vehicle cents' per mile valuation rule must prorate the value using the lease valuation rule for 1/1/2020 through 3/12/2020
- The cents' per mile method then begins on 3/13/2020
- Employers may choose to revert back to the automobile lease valuation rule for 2021

Notice 2021-7

QUALIFIED OPPORTUNITY FUND

- **The law allows a taxpayer to exclude from gross income any capital gains from the sale of property if the proceeds are invested in a qualified opportunity fund during the 180 day period beginning on the date of the sale (IRC § 1400Z-2)**
- **The excluded gain is then included in the taxpayer's gross income in the tax year which includes the earlier of:**

  - The date on which the taxpayer's investment in the fund is sold or exchanged, or

  - 12/31/2026

QUALIFIED OPPORTUNITY FUND, CONT'D

- **The IRS extended the 180-day deadline due to COVID-19**
- **If the last day of the 180-day investment period falls on or after 4/1/2020 and before 3/31/2021, then the last day of that 180-day investment period was postponed to 3/31/2021**

Notice 2021-10

BUSINESS INTEREST DEDUCTION LIMIT

- **Under TCJA, the deduction for interest paid on business debt is limited to 30% of business adjusted taxable income if the taxpayer's average annual gross receipts is in excess of $26 million (inflation adjusted for 2019 through 2021)**
- **The CARES Act further amended the business interest expense deduction rules for 2019 and 2020**

BUSINESS INTEREST DEDUCTION LIMIT, CON'T

- **Under the CARES Act, business interest is limited to the sum of:**

  - Business interest income;

  - 50% of the taxpayer's adjusted taxable income (ATI); and

  - Floor plan financing interest

- **After 2020, the 50% of ATI is reduced to 30% of ATI**

BUSINESS INTEREST DEDUCTION LIMIT, CON'T

- Trade or business does not include an electing real property trade or business or an electing farming business
- An electing real property trade or business must depreciate its property under the 30-year ADS rules
- The election is made under IRC § 163(j)(7)
- IRS has also provided a safe harbor for a trade or business that manages or operates a qualified residential living facility to be treated as a real property trade or business

Rev Proc. 2020-2022; 2021-9; and 2021-28

LIMITATION ON EXCESS BUSINESS LOSSES OF NON-CORPORATE TAXPAYERS

- **TCJA limited the deduction of non-corporate business losses in excess of $250,000 ($500,000 MFJ), adjusted annually for inflation, for tax years beginning before 1/1/2026**
- **CARES Act temporarily suspended the limitation for 2018-2020**
- **Thus, the limitation applies to 2021**
- **ARP extends the limitation on excess business losses to tax years beginning before 1/1/2027**

IRC §461(l)

BONUS DEPRECIATION

- Prior to TCJA, bonus depreciation was 50% of the cost of qualified property acquired and placed in service during the year
- TCJA increased bonus depreciation to 100% of the cost of qualified property acquired and placed in service after 9/27/2017

BONUS DEPRECIATION, CONT'D

- **Prior regulations had allowed taxpayers to claim 100% bonus depreciation on components of certain larger constructed property if construction began before 9/28/2017, and was placed in service before 2020, or 2021 for certain longer construction period property**
- **The final regulations removed this 2020 or 2021 cutoff deadline**

T.D. 9916

PCORTF FEE

- Under the ACA, a fee is imposed on the issuer of a specified health insurance policy, and the plan sponsor of an applicable self-insured health plan
- The fee is used to help fund the Patient-Centered Outcomes Researched Trust Fund (PCORTF)

PCORTF FEE, CONT'D

- The plan sponsor is liable for payment of the fee
- The plan sponsor is the employer in the case of a self-insured health plan maintained by a single employer
- *Example:* An employer that offers an HRA is considered the plan sponsor of a self-insured health plan

PCORTF FEE, CONT'D

- **The fee is considered an excise tax that is reported and paid by filing Form 720, *Quarterly Federal Excise Tax Return***
- **The fee was originally set to expire on 10/1/2019**
- **CAA, 2021 extended the termination date to policy and plan years ending after 9/30/2029**

Notice 2018-85; Notice 2020-44; Notice 2020-84

DEDUCTIBLE FINES AND PENALTIES

- IRC § 162(f) disallows an ordinary and necessary business expense deduction for any fine or similar penalty
- TCJA expanded the disallowance rule

DEDUCTIBLE FINES AND PENALTIES, CONT'D

- **Final regulations provide that a taxpayer may not deduct expenses for amounts:**

  - Paid or incurred by suit, agreement or otherwise;

  - To, or at the direction of, a government or governmental entity;

  - In relation to the violation, or investigation or inquiry by such government or governmental entity into the potential violation of any civil or criminal law

T.D. 9946, 1/7/2021

DEDUCTIBLE FINES AND PENALTIES, CONT'D

- The general rule applies whether or not the taxpayer admits guilt or liability or pays the amount imposed for any other reason, including to avoid the expense or uncertain outcome of an investigation or litigation
- IRC § 162(f) does not apply for amounts paid for the taxpayer's own legal fees and related expenses
- IRC § 162(f) does not apply to investigations of regulated businesses or industries conducted in the ordinary course of business
- IRC § 162(f) does not apply to contract disputes

OTHER 2022 TAX SEASON FILING ISSUES

RETIREMENT PLAN DISTRIBUTIONS, RECONTRIBUTIONS, AND LOANS

- **General Rules**

  - Distributions are taxable in the year of distribution

  - Absent an exception, distributions received before age 59 ½ are subject to a 10% early withdrawal penalty

  - Distributions may be rolled over, tax-free, within 60 days to another eligible retirement plan

  - Plans may permit participants to take loans if certain conditions are met

IRC §72

RETIREMENT PLAN DISTRIBUTIONS, RECONTRIBUTIONS AND LOANS, CONT'D

- **Coronavirus-related distributions**
  - Distributions made on or after 1/1/2020 and before 12/31/2020, which met certain requirements relating to COVID-19
  - Plan administrator could rely on the participant's certification that the conditions have been met
  - CARES Act allows taxpayers to include income attributable to Coronavirus-related distributions ratably over 3 years
  - Not subject to the 10% early withdrawal penalty
  - May recontribute Coronavirus-related distributions to another eligible retirement plan within 3 years

RETIREMENT PLAN DISTRIBUTIONS, RECONTRIBUTIONS, AND LOANS, CONT'D

Question #3

Facts:

Chuck receives a coronavirus-related distribution in 2020. That amount is included in income ratably over the year of distribution and the following two years. It is not subject to the 10% early withdrawal penalty. Can Chuck claim a refund if he recontributes the full amount to an eligible retirement plan in 2022?

Answer:

Chuck can file amended returns to claim a refund of the tax attributable to the amounts previously included in income. Any remaining portion of the distribution will likewise not be included in his income.

RETIREMENT PLAN DISTRIBUTIONS, RECONTRIBUTIONS AND LOANS, CONT'D

- **Loans**

  - CARES Act increased maximum loan amount during the 180-day period beginning on 3/27/2020, to the lesser of:

    - The present value of the non-forfeitable accrued benefit of the employee under the plan; or

    - $100,000

- **Due dates for repayment falling between 3/27/2020 and 12/31/2020 are extended for one year**

RETIREMENT PLAN DISTRIBUTIONS, RECONTRIBUTIONS AND LOANS, CONT'D

- Plans may be amended to incorporate Coronavirus-related distributions and/or loan provisions
- Amendment must be made on or before the last day of the first plan year beginning on or after 1/1/2022

REQUIRED MINIMUM DISTRIBUTIONS (RMD'S)

- Prior to 1/1/2020, the age after which RMDs were required to begin was 70 ½
- Under the Secure Act, if a person's 70th birthday is July 1, 2019, or later, they do not have to take their first RMD until the year they reach age 72

REQUIRED MINIMUM DISTRIBUTIONS (RMD'S), CONT'D

- **Under the CARES Act:**

  - No minimum distribution is required for calendar year 2020

- **Next RMD was for calendar year 2021**
- **In the case of an individual who dies and whose benefit is required to be distributed within 5 years, the 5-year period is determined without regard to 2020**

REQUIRED MINIMUM DISTRIBUTIONS (RMD'S), CONT'D

- **The CARES Act waiver applies to the following RMDs**:
  - Initial RMDs that were due by April 1, 2020 (and not already paid before 2020) to retired participants who turned age 70-1/2 in 2019 (or 5% owners who turned 70-1/2 in 2019, even if still working)
  - RMDs that would have been due by December 31, 2020 to participants who received their initial RMD before 2020 and to beneficiaries of deceased participants who died before 2020
  - Initial RMDs due by April 1, 2021 to participants who retired in 2020 after turning 70-1/2 before 2020 (initial RMDs for retired participants or 5% owners turning 70-1/2 this year aren't due until April 1 after the year they turn age 72)
- **Ongoing RMDs due by December 31, 2021, are not waived for any participant or beneficiary — including those whose initial RMDs would have been due by April 1, 2021, absent the CARES Act waiver**

IR-2021-57, March 16, 2021

REQUIRED MINIMUM DISTRIBUTIONS (RMD'S), CONT'D

- **A 2020 distribution that would have been an RMD is now treated as an eligible rollover**
- **Plans that made payments in early 2020 and treated the payments as RMDs instead of eligible rollover distributions aren't be treated as having violated the rollover rules, i.e., by not applying mandatory 20% withholding or not providing a 402(f) rollover notice for payments mischaracterized as RMDs**

Notice 2020-51

NEW DUE DILIGENCE REQUIREMENTS

- CAA, 2021 allows eligible taxpayers to use their 2019 earned income to calculate the 2020 earned income credit or additional child tax credit when more than their 2020 earned income
- American Rescue Plan Act of 2021 allows the taxpayer to elect to use 2019 earned income instead of 2021 earned income for purposes of the EIC for the 2021 tax year

NEW DUE DILIGENCE REQUIREMENTS, CONT'D

- **A paid preparer preparing a tax return in which the election has been made is subject to due diligence requirements with respect to the following:**
  - The 2020 tax year to determine that earned income has decreased from 2019; and
  - The 2019 tax year to determine the earned income used to compute each credit claimed under the election

Form 8867, Paid Preparers Due Diligence Checklist for the Earned Income Credit, American Opportunity Tax Credit, Child Tax Credit (including the Additional Child Tax Credit and Credit for Other Dependents), and/or Head of Household Filing Status

ESTATE OR NONGRANTOR TRUST EXPENSES THAT ARE NOT MISCELLANEOUS ITEMIZED DEDUCTIONS

- **TCJA added IRC § 67(g), which disallows miscellaneous itemized deductions for tax years beginning after 12/31/2017 and before 1/1/2026**
- **IRC § 67(e) provides that an estate or trust computes its adjusted gross income in the same manner as an individual, except that certain deductions that would have been classified as miscellaneous itemized deductions for an individual are not miscellaneous itemized deductions for an estate or trust**

T.D. 9918

ESTATE OR NONGRANTOR TRUST EXPENSES THAT ARE NOT MISCELLANEOUS ITEMIZED DEDUCTIONS, CONT'D

- **Costs not allowed by a trust in arriving at adjusted gross income:**
  - Costs that would be considered miscellaneous itemized deductions subject to the 2% AGI limit of an individual, and
  - Such costs would commonly or customarily be incurred by a hypothetical individual holding the same property

EXAMPLES OF NONDEDUCTIBLE EXPENSES

- Partnership costs passed through to the partner
- Insurance premiums
- Maintenance and lawn service fees
- Auto registration and insurance cost
- Tax preparation fees for prior year returns
- Most investment advice fees
- Appraisal fees for insurance purposes

EXAMPLES OF DEDUCTIONS THAT ARE ALLOWABLE BY A TRUST IN ARRIVING AT ADJUSTED GROSS INCOME

- Property taxes
- State and local income taxes
- Tax preparation fees (decedent's final Form 1040, Form 1041, and Form 706)
- Investment advisory fees and other additional charges for advice because the property is held in an estate or trust
- Appraisal fees to determine the fair market value of a decedent's assets for preparing an estate tax return

EXCESS DEDUCTIONS ON TERMINATION OF AN ESTATE OR TRUST

- Excess deductions are allowed as items of deduction to the beneficiaries succeeding to the property of the estate or trust
- Excess deductions are allowable only in the year of the beneficiary in which the estate or trust terminates

INTERIM RESULTS
2022 FILING SEASON

TREASURY INSPECTOR GENERAL REPORT

- Backlogs remain high, e.g., 8.4 million individual returns remained to be processed as of the end of 2021
- Staff shortages remain, e.g., as of March 15, 2022, the IRS onboarded 521 submission processing employees, which is 9.5% of its hiring goal of 5,473
- As of March 4, 2022, 35.9 million calls were made to the IRS of which 2.7 million were answered and another 7.4 million handled by automation
- IRS also offers guidance via Instagram, Twitter, and Facebook

TREASURY INSPECTOR GENERAL REPORT – CONT'D

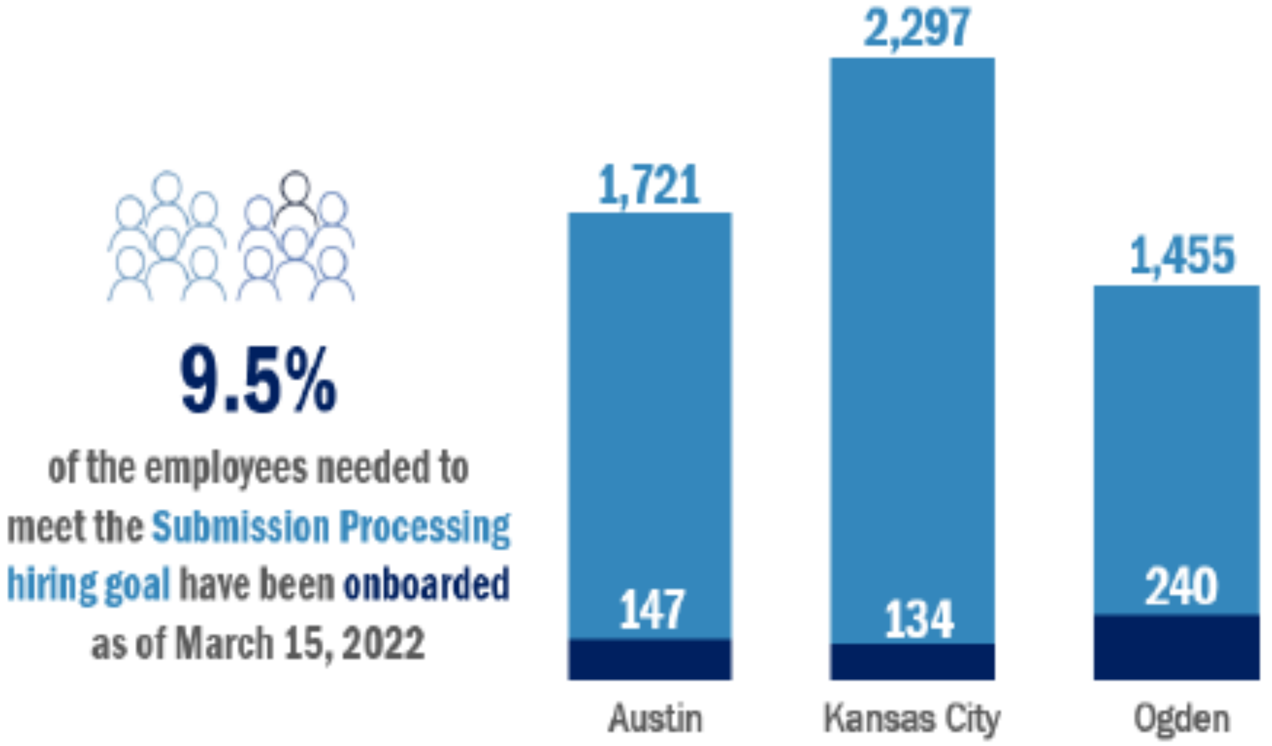
- **Primary law changes affecting the 2022 tax season include the following:**
  - Child and Dependent Care Credit
  - Child Tax Credit
  - Earned Income Credit
  - Premium Tax Credit
  - Recovery Rebate Credit

Treasury inspector General for Tax Administration, Interim Results of the 2022 Filing Season, Report No. 2022-40-035, dated May 2, 2022

ESTIMATES OF WORK REMAINING TO BE PROCESSED

Type of Work Remaining	Week Ending December 31, 2021	Week Ending March 12, 2022
Unopened Mail	0	508,474
Paper Tax Returns	4,708,826	4,498,057
Error Resolution	53,712	977,926
Rejects	422,156	794,979
Unpostables	858,712	695,707
Amended Returns[16]	2,382,901[17]	2,240,207
Source: The IRS's Submission Processing Weekly Inventory Tracking Report for the weeks ending December 31, 2021, and March 12, 2022; IRS-provided weekly inventory levels for the weeks ending December 31, 2021, and March 12, 2022; and the Customer Account Services Form 1040X Consolidated Inventory Report for the weeks ending January 1, 2022, and March 12, 2022.		

HIRING CHALLENGES



Source: TIGTA analysis of IRS Hiring Statistics as of March 15, 2022.

HIRING DIFFICULTIES

Top staffing concerns

Seasonal workforce. *A seasonal workforce does not provide permanent employment or desirable schedules and shifts.*

Competitive pay. *The Submission Processing function has several low-grade clerical positions, such as mail clerks in its Receipt and Control Operations. These employees can find similar entry-level positions in private industry for higher pay.*

Overlapping applications. *Applicants often apply to multiple job openings, reducing the true number of candidates available to fill vacancies.*

Applicants fallout. *Applicants fallout through the process because of their failure to respond or failure to pass a pre-screen suitability for tax compliance and background fingerprinting. Additionally, there are often candidates who do not show up for work after they have been hired.*

On-boarding time. *The length of time it takes to onboard a new employee may be contributing to lower on-boarding numbers.*

Source: TIGTA-generated figure based on IRS concerns.

TAX RETURN ERRORS RESOLVED USING THE FIXERS TOOL

Error Resolution Code	Topic of Error Resolution Code	Description
339	EITC With Schedule EIC	Generates when Total Payments is not equal to Total Payments Computer and all of the following exist: a) the tax period is 202112 or later; b) EIC schedule is present; c) EIC Amount differs from EIC Amount Computer; and d) a math error is present in Balance Due/Overpayment.
340	EITC Without Schedule EIC	Generates when Total Payments is not equal to Total Payments Computer and all of the following exist: a) the tax period is 202112 or later; b) EIC schedule is not present; c) EIC Amount differs from EIC Amount Computer; and d) a math error is present in Balance Due/Overpayment.
345	Refundable CTC	Generates when all of the following exist: a) the tax period is 202112 or later; b) the taxpayer's and computer's amounts for Additional Child Tax Credit are different by * * * 2 * * *; c) Total Payments is not equal to Total Payments Computer; and d) a math error is present.
350	RRC	Generates when all of the following exist: a) the tax period is 202112 or later; b) the taxpayer's and computer's amounts for the RRC are different; c) Total Payments is not equal to Total Payments Computer; and d) a math error is present.
363	Refundable CDCC	Generates when all of the following exist: a) the taxpayer's and the computer's amount for Refundable CDCC are different by * * * 2 * * *; b) the tax period is 202112 or greater; and c) a math error is present.

Source: Internal Revenue Manual sections 3.12.3.28 and 3.12.3.30, revised November 23, 2021.

FRAUDULENT RETURNS

Processing Year	Number of Fraudulent Refund Returns Identified	Number of Fraudulent Refund Returns Stopped	Amount of Fraudulent Refunds Identified	Amount of Fraudulent Refunds Stopped
2021	2,325	1,153	$15,960,050	$12,635,306
2022	76,814	74,711	$817,400,771	$807,903,066

Source: IRS fraudulent tax return statistics for Processing Years 2021 and 2022 as of February 26, 2022.

IDENTITY THEFT

Processing Year	Confirmed Identity Theft Returns
2021	2,499
2022	9,626
Source: IRS fraudulent tax return statistics for Processing Year 2021 (as of March 4, 2021) and Processing Year 2022 (as of March 3, 2022).	

ONLINE TOOLS

Tool	Description	Number of Uses in Processing Year 2021	Number of Uses in Processing Year 2022
Interactive Tax Assistant	A tax law resource that takes taxpayers through a series of questions and provides them with responses to basic tax law questions.	0.6 million	0.5 million
Where's My Refund?	Allows taxpayers to check the status of their refunds using the most up-to-date information available to the IRS.	173.5 million	214.8 million

Source: IRS management information reports.

SOCIAL MEDIA

Social Media Platforms	Number of Followers
YouTube (Views)	26.1 million
IRS2Go (Active Users)	6.7 million
Facebook	629,868
Twitter	439,040
Instagram	92,749
Source: IRS management information reports.	

TOLL-FREE PHONE ANSWERING

Statistic	Filing Season	
	2021	2022
Assistor Calls Answered	4,444,000	2,688,000
Level of Service	27.3%	19.5%
Average Speed of Answer (Minutes)	18	24
Level of Access[30]	29.6%	31.2%
Source: IRS management information reports (as of March 5, 2021, for Calendar Year 2021 and as of March 4, 2022, for Calendar Year 2022).		

NEW DEVELOPMENTS IN 2022

PROPOSED REGULATIONS ON RMD’S

- **Issued on February 23, 2022, under the SECURE Act**
- **Address two important issues relating to RMDs**
  - Delay in RBD to age 72
  - 10 year limit on RMDs after death
- **Planned effective date is January 1, 2022**
- **Distributions taken in 2021 can be based on a “reasonable interpretation of the law”**

REG-105954-20

PROPOSED REGULATIONS ON RMD’S, CONT’D

- **Eligible Designated Beneficiary (“EDB”)**
  - The participant’s surviving spouse
  - The employee’s child who has not yet reached the “age of majority”
  - “Disabled”
  - “Chronically ill”
  - Not more than 10 years younger than the participant

PROPOSED REGULATIONS ON RMD'S, CONT'D

- **Death before RBD:**

BENEFICIARY	DISTRIBUTION PERIOD
Not a "designated beneficiary"	5-year rule
Designated beneficiary, but not an EBD	10-year rule
EBD	Life Expectancy

PROPOSED REGULATIONS ON RMD'S, CONT'D

- **Death after RBD:**

BENEFICIARY	DISTRIBUTION PERIOD
Not a "designated beneficiary"	5-year rule
Designated beneficiary, but not an EBD	Life Expectancy for 10 years with balance distributed in 10^{th} year
EBD	Life Expectancy

PROPOSED REGULATIONS ON RMD’S, CONT’D

- **“Age of Majority” – age 21**
- **“Disability”**
  - Unable to engage in substantial gainful activity
  - A medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration
  - Social Security Administration determination
- **“Chronically ill”**
  - Unable to perform at least two activities of daily living (such as eating, toileting, and dressing) without substantial assistance for a lengthy, indefinite period
  - Plan receives documentation of that status by October 31 of the year following the year of the employee’s death

Note: The determination of disability or chronically ill is made as of the date the employee dies.

PROPOSED REGULATIONS ON RMD'S, CONT'D

Question #4

Facts:

Ed names his nephew, Adam, as beneficiary of his 401(k) account. Ed dies March 2, 2023. Adam is involved in an accident September 15, 2023, and as a result is chronically ill. Is Adam an EDB?

***Answer*:**

Adam is not an EDB because he was not chronically ill when Ed died.

Question #5

Facts:

Marie names her daughter, Donna, as beneficiary of her 403(b) account. When Marie dies at age 40, Donna is only 10 years old. At that time, she is not Disabled. However, five years later, Donna becomes disabled. Is Donna an EDB?

Answer:

Donna is an EDB, because she is Marie's child who has not reached the age of majority. Ten years after Donna turns 21, the plan must distribute the entire account to Donna. Had she been disabled when Marie died, Donna would have been able to continue taking distributions throughout her life or life expectancy.

PROPOSED REGULATIONS ON RMD'S, CONT'D

- **Trusts as beneficiaries**
  - Previously, the regulations treated a trust as being, at most, one designated beneficiary, with an age equal to that of the oldest beneficiary of the trust
  - In Private Letter Rulings, the IRS had allowed a more generous policy, particularly with regard to so-called "look-through" trusts
  - The Proposal codifies those trust rules, and thereby expands available estate planning techniques
  - If a trust satisfies the look-through rules, then the beneficiaries of the trust are considered designated beneficiaries

PROPOSED REGULATIONS ON RMD'S, CONT'D

- **50% penalty tax relief**
  - Penalty applies if a participant or beneficiary does not take an RMD
  - RMD rules require the participant or his/her estate to take an RMD for the year of death in the same manner as if the participant lived until the end of the year—i.e., by December 31 of the year of death
  - Proposed regs would waive the penalty provided that beneficiary takes the RMD no later than his or her tax return due date (with extensions)

PROPOSED CLAWBACK REGS

- TCJA doubled the estate and gift tax exemption from $5 million to $10 million, inflation adjusted until Jan. 1, 2026
- However, it wasn't clear under TCJA what happens if the taxpayer makes gifts while the higher exemption is in place and then dies after the higher exemption sunsets and the exemption is lower
- Reg. 20.2010-1(c)(1), published November 26, 2019, provided relief from the "clawback"
- Proposed regs released April 26, 2022, would exclude certain transactions from the anti-clawback rules

REG-118913-21

PROPOSED CLAWBACK REGS, CONT'D

- **Proposed Regs would exclude:**
  - Transfers where the donor retains a life estate or other powers or interests described in Sections 2035 through 2038 and Sec. 2042, including gifts made within three years of death and life insurance policies with reversionary interests
  - Enforceable gifts of promissory notes if the promissory note has not yet been paid
  - Gifts of interests in family partnerships and LLCs under Sec. 2701 where the senior generation maintains a preferred equity interest
  - Gifts of interests in trusts, including GRATs and QPRTs, subject to the special valuation rules of Sec. 2702
  - The relinquishment of an interest involving any of the above transactions within eighteen months of the donor's death

PROPOSED CLAWBACK REGS, CONT'D

Question #6

Facts:

Rob makes a completed gift of a promissory note in the amount of $9,000,000 on January 1, 2022. The promissory note is Rob's only lifetime gift, and it remains unpaid as of the date of Rob's death on January 1, 2026, at which time the lifetime exemption amount for estate tax purposes has been adjusted to $6,800,000. Is the note includible in Rob's estate?

Answer:

The note is treated as includible in Rob's gross estate, and the anti-clawback rules do not apply to the original gift of the note in 2022. As a result, Rob's estate tax is calculated using the reduced $6,800,000 lifetime exemption amount.

PROPOSED CLAWBACK REGS, CONT'D

- **Two exceptions to the proposed regs:**
  - Transfers where the portion subject to gift tax is less than 5% of the total value of the transfer
  - Relinquishments of interests that are triggered by either the passage of time or the death of an individual if provided for in the terms of the original instrument effectuating the transfer

CRYPTOCURRENCY

- **DOL Compliance Assistance Release No. 2022-01, dated March 10, 2022**
  - 401(k) plan participant-directed investments in cryptocurrencies
  - “Cautions plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option” to the investment menu of a self-directed 401(k) plan
  - Calls into question the availability of cryptocurrencies through a plan’s brokerage window

ARBITRATION OF ERISA CLAIMS

- **Sixth Circuit has held that claims for breach of fiduciary duty under § 502(a)(2) of ERISA, belong to the plan**
- **Plaintiffs asserting such claims for alleged harm to their individual retirement accounts in defined contribution plans may not be compelled to arbitrate those claims absent the plan's consent**
- **Arbitration clause was contained in the participants' employment agreements**

Hawkins v. Cintas Corporation, No. 21-3156, dated April 27, 2022

OTHER CASES

- **Taxpayer's Husband Can't Avoid Tax Judgments by Hiding Property Under Her Name (state statute of limitations not binding on IRS)**
  - *Boykin v. U.S.*, 2022 PTC 3 (W.D. N.C. 2022)
- **Taxpayer Who Diverted Money to Shell Corporations Is Guilty of Tax Evasion**
  - *U.S. v. Primm*, 2022 PTC 25 (E.D. Mo. 2022)

FACIAL RECOGNITION

- **IRS has announced it will transition away from using a third-party service for facial recognition to help authenticate people creating new online accounts**
- **Transition will occur over the coming weeks in order to prevent larger disruptions to taxpayers during filing season**
- **IRS plans to develop and bring online an additional authentication process that does not involve facial recognition**

IR-2022-27 (2/7/22)

MICHIGAN

PAYCHECK PROTECTION PROGRAM (PPP)

- **The Michigan Department of Treasury has issued a release explaining Michigan's conformity to the federal income tax treatment of loans issued under the federal PPP**
- **Forgiven PPP loans that are excluded from the computation of federal income tax are similarly excluded from the computation of the tax base under both the IIT and CIT**
- **Likewise, business expenses paid for by PPP loans that are deductible at the federal level remain deductible in computing the Michigan tax base under the IIT and CIT**

Notice: Treatment of Paycheck Protection Program (PPP) Loans Under the Michigan Income Tax Act, Mich. Dept. Treas., 04/19/2021

ELECTIVE FLOW-THROUGH ENTITY TAX

- Effective for tax years beginning January 1, 2021
- Allows an FTE to elect into and pay an income tax on business activity within the state
- Permits an FTE to leverage federal income tax benefits for their owners without any loss in state tax revenue
- Largely prompted by TCJA's $10,000 limit on the deduction for state and local taxes
- Generally applies to S corporations and entities taxed as partnerships

PA 135 of 2021

ELECTIVE FLOW-THROUGH ENTITY TAX, CONT'D

- TCJA imposes a $10,000 limit on individual taxpayer returns for deduction of state and local taxes
- The cap is not applicable to C corporations or other business entities, which means that it particularly impacts pass-through business entities and their individual owners
- Owners of pass-through entities may be liable for state and local taxes in every state where their business derives income but may only claim a federal deduction for up to $10,000 of all such state-level taxes paid
- In states with a FTE tax, a pass-through entity elects to pay state-level taxes at the entity level, rather than passing on the full tax liability to individual owners, with a state tax credit going to individual owners for state taxes paid by the entity
- The entity, which is not subject to the SALT cap, may claim a federal Section 164 business expense deduction
- The owners of the FTE may claim deductions for up to $10,000 for other state taxes paid on their individual returns, e.g., residential property taxes or state income taxes on other sources of income.

ELECTIVE FLOW-THROUGH ENTITY TAX, CONT'D

- **Election**
  - Must be made by the 15th day of the 3rd month of the FTE's tax year
  - For a calendar year FTE, that means March 15th
  - Once made, it is irrevocable for 3 years
- **FTE must file annual business return through MTO**
  - May communicate tax payments eligible for credits and required adjustments to members in any reasonable manner, including separate statements attached to Schedule K-1
- **Due to late passage of law and lack of adequate time to incorporate the changes in tax preparation software, members had to claim the credit by paper filing their 2021 MI-1040 or MI-1041 and attaching the Schedule K-1 or other information**

ELECTIVE FLOW-THROUGH ENTITY TAX, CONT'D

- **FTE will be taxed on its Michigan "business income tax base"**
  - Relies on amounts determined under federal law, subject to special Michigan adjustments
  - Intent of adjustments is to align the FTE tax base with that of its individual owners
- **Examples**
  - Modifications to tax base are similar to those reported by individuals on their Michigan Schedule 1
  - The tax base is sourced to Michigan using the same sales apportionment rules applicable to business income received by individuals
  - Tax rate is the same, i.e., 4.25%
- **Only the income allocable to owners or members who are individuals, fiduciaries (i.e., estates or trusts), and flow-through entities will be subject to the FTE tax**

ELECTIVE FLOW-THROUGH ENTITY TAX, CONT'D

- **An electing FTE will generate special adjustments that must be reported on each member's return**
- **E.g., a refundable state income tax credit**
  - Equal to the member's allocable share of FTE tax paid by the FTE on or before the 15th day of the 3rd month following the end of the FTE's tax year
  - A late payment of tax remains eligible for the credit, but only in the member's following tax year

CITY OF DETROIT

FAQ'S ON DETROIT INCOME TAX FOR TELECOMMUTING AND COVID STIMULUS PAYMENTS

- **The FAQs clarify that:**

  - Wages earned by a resident of Detroit, who is working from home (telecommuting) for a company in another city are taxable by Detroit; and

  - Wages earned by a nonresident of Detroit, who is working from home (telecommuting) at a location outside of the city, are not taxable by Detroit

- **The FAQs detail how a nonresident of Detroit who earned income while both in the city and outside the city should file, and what documentation is required for a nonresident to allocate telecommuting wages to nontaxable income**

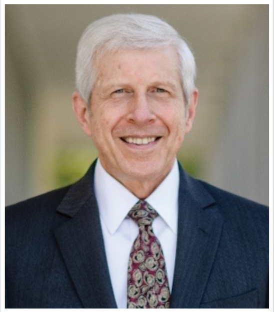
FAQ'S ON DETROIT INCOME TAX FOR TELECOMMUTING AND COVID STIMULUS PAYMENTS CONT'D

- **The FAQs also note that the COVID-19 stimulus payments are not considered income and therefore not included in federal adjusted gross income (AGI) which is used to determine a taxpayer's taxable income for their Form 5118 (*City Resident Income Tax Return*).**
- **They should also not be included when calculating taxable income on Form 5119 (*City of Detroit Nonresident Income Tax Return*) or Form 5120 (*City of Detroit Part-Year Resident Income Tax Return*)**

City Income Taxes and Telecommuting FAQ, Mich. Dept. Treas., 02/01/2021

Maddin Hauser
Attorneys and Counselors

THANK YOU



William E. Sigler

(248) 827-1865 Phone

(248) 359-6165 Fax

wsigler@maddinhauser.com

Maddin, Hauser, Roth & Heller, P.C.
28400 Northwestern Hwy. Southfield, MI 48034
p (248) 354-4030   f (248) 354-1422   maddinhauser.com