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Bipartisan Infrastructure Deal Reached Without Tax Increases

On June 24, 2021, the White House announced that it had reached a deal with a bipartisan group of moderate Senators on an infrastructure deal. The announced deal includes $973 billion in spending over five years, with $579 billion in new spending.

It is unclear how far-reaching bipartisan support for the deal is, but assuming all Democrats in the Senate support the plan, it will need five GOP votes in addition to the five members of the bipartisan group that struck the deal to overcome a filibuster. Beyond that, House Speaker Nancy Pelosi and President Biden both declared that a reconciliation bill, only needing a simple majority in the Senate, would have to be passed in tandem in order to move forward on the infrastructure deal. Biden subsequently clarified his comments in a statement on June 26, 2021, stating that he intended to pursue passage of the bipartisan plan and that it was not his intent to issue a veto threat with respect to the plan.

"Physical" Infrastructure

In March, President Biden released the details of his proposed American Jobs Plan. The proposal came in with a $2 trillion price tag, and included funding for traditional infrastructure projects, such as roads, bridges, and utilities. However, the plan also included funding for projects related to education, job training, and health care, which the President likened to infrastructure due to their importance to society and the welfare of Americans.

While details of the bipartisan detail were still coming in at the time of this writing, the proposal appears to only provide funding for the traditional infrastructure parts of the proposal, so called "physical infrastructure." The $579 billion is pretty evenly split between transportation projects (including roads, bridges, airports, and electric vehicle infrastructure) and utilities (including water, power, and broadband infrastructure).

"Human" Infrastructure

Members of the progressive wing of the Democratic party have long insisted that they will not support a deal that includes what has been called "human Infrastructure," which includes those nontraditional portions of the American Jobs Plan left out of the bipartisan deal, as well as many of the provisions of President Biden's proposed American Families Plan meant to help middle and lower income taxpayers.

Paying for the Deal

The infrastructure provisions in the American Jobs Plan were proposed to be paid for through an increase in the corporate tax rate as well as improved IRS enforcement to close the "tax gap" (the difference in the amount of taxes that should be collected and are actually collected). The Tax Cuts and Jobs Act of 2017 reduced the corporate tax rate to a flat 21-percent. GOP leadership in the Senate drew a "red line" at any legislation that would roll back any provision of the landmark 2017 tax legislation. Thus, no bipartisan deal would be reached that would see an increase in the corporate rate.

Again, while details are unclear at this time, the bipartisan deal does not appear to include any increases to taxes, including the corporate rate. Some proposed increasing the gas tax, but President Biden said the spending would not be paid for with such an increase. Instead, the cost of the deal seems to be funded largely through the closure of the tax gap due to increased, and improved, IRS enforcement, as well as a redirection of some unused emergency federal funding.

IRS Announces New Online Tools to Help Taxpayers Manage Child Tax Credit Payments

IR-2021-130; IR-2021-133

The IRS has announced the launch of two new online tools to help families verify, manage and monitor monthly payments of child tax credits under the American Rescue Plan Act (ARP) (P.L. 117-2). These are in addition to the Non-filer Sign-up tool announced last week, which helps families register for child tax credits. The tools are both available through the Update Portal at https://www.irs.gov/credits-deductions/child-tax-credit-update-portal.

The Treasury and IRS have urged taxpayers to use a special online tool to determine eligibility for the Child Tax Credit (CTC) and the special monthly advance payments beginning on July 15. The new CTC Eligibility Assistant is interactive and easy to use. It is particularly useful to those who do not normally file a federal tax return and have not yet filed either a 2019 or 2020 return.

"This new tool provides an important first step to help people understand if they qualify for the CTC, which is especially important for those who don't normally file a tax return," said IRS Commissioner Chuck Rettig. "The eligibility assistant works in concert with other features on IRS.gov to help people receive this important credit. The IRS is working hard to deliver the expanded Child Tax Credit, and we will be rolling out additional help for taxpayers in the near future. Where possible, please help us help others by distributing CTC information in your communities," he added.

The CTC Eligibility Assistant does not request any personally-identifiable information for any family member. The tool can be found at https://www.irs.gov/credits-deductions/advance-child-tax-credit-eligibility-assistant.

In addition to verification of their eligibility, the Update Portal allows a taxpayer to unenroll from receiving monthly payments, in order to receive a lump sum. The tool can be found at https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021. The unenroll feature is helpful to families that no longer qualify for the child tax credit or believe they will not qualify when they file their 2021 return. This could happen if:

- their income in 2021 is too high to qualify for the credit;
- someone else (an ex-spouse or another family member, for example) qualifies to claim their child or children as dependents in 2021; or
- their main home was outside of the United States for more than half of 2021.

Further, future versions and new features of the tool are planned for the summer and fall. These updates will allow taxpayers to view their payment history, adjust bank account information or mailing addresses. In general, these payments will go to families who:

- filed either a 2019 or 2020 federal income tax return;
- used the Non-Filers tool register for an Economic Impact Payment; or
- registered for the advance child tax credit using the new Non-filer Sign-up tool.

Next, eligible families will receive advance payments, either by direct deposit or check. Each payment will be up to $300 per month for each child under age six and up to $250 per month for each child ages six through 17. Filing soon will ensure that the IRS has taxpayers' most current bank account information and key details about qualifying family members. This includes individuals who do not normally file tax returns, including families experiencing homelessness and individuals in undeserved groups.

The IRS also announced pertinent child tax credit changes. The ARP raised the maximum child tax credit to $3,600 for children under the age of six and to $3,000 per child for children ages six through 17. Finally, the IRS urged community groups, non-profits, associations, education organizations and taxpayers with connections to individuals with children to share this critical information about the child tax credit as well as other important benefits.

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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IRS and Community Partners Provide Tax Assistance

The IRS has partnered with non-profit organizations and others in 12 cities to help eligible families file a 2020 return or register for the monthly Advance Child Tax Credit (ACTC) payments using the new Non-filer Sign-up Tool. The special events will take place on June 25-26 and July 9-10, 2021. Events will be held in Atlanta; New York; Detroit; Houston; Los Angeles; Las Vegas; Miami; Milwaukee; Philadelphia; Phoenix; St. Louis; and Washington.

The tool also helps individuals register for the $1,400 third round of Economic Impact Payments (EIPs) and claim the Recovery Rebate Credit for any amount they may have missed. The first monthly payments of the expanded and new ACTC from the American Rescue Plan (ARP) (P.L. 117-2) will be made in July. Eligible taxpayers will receive a payment of up to $300 per month for each child under age 6, and up to $250 per month for each child ages 6 to 17. The dates for the ACTC payments are July 15, August 13, September 15, October 15, November 15 and December 15.

IR-2021-132

Basis Reduction Required in Year of Sale for Discharge of Qualified Real Property Business Debt

R.S. Hussey, 156 TC —, No. 12, Dec. 61,887

An individual who sold properties at a loss in 2012 and whose qualified real property business debt was discharged as a result, was required to reduce his basis in the properties in 2012, not 2013.

Discharge of Debt Income Exception for Qualified Real Property Business Debt

The amount of a taxpayer's debt that is discharged is generally includible in income. The discharge of qualified real property business debt may be excluded from income if the taxpayer's basis in depreciable real property is reduced by the amount of the debt discharge (Code Sec. 108(a)(1)(D) and (c)(1)).

A basis reduction occurs only to the extent that the taxpayer's aggregate basis in depreciable real property equals or exceeds the amount of debt discharged (Code Sec. 108(c)(2)(B)). The taxpayer's aggregate basis exceeded the amount of qualified real property business debt in the year he sold the properties, 2012.

Under the general rule for debt discharge, the basis reduction occurs in the year following the discharge (Code Sec. 1017(a)). However, the basis reduction for discharge of qualified real property business debt occurs in the same year as the sale of the property (Code Sec. 1017(b)(3)(F)(iii)).

Year of Basis Adjustment

The dispute involved the year for which the basis reductions must be made for the properties sold in 2012. The taxpayer contended that the basis reductions should be made for 2013. According to the IRS they should have been made for 2012.

The court found that because in 2012 the taxpayer (1) received a discharge of qualified real property business debt; and (2) sold properties the bases of which were used to show he had aggregated bases that exceed the discharge amount, he was required to reduce his bases in the disposed properties immediately before the sales of those properties in 2012, not in 2013. Therefore, his reported bases for the properties sold in 2012 should have reflected these reductions, and any remaining reductions should have been reflected in the bases of his remaining properties for 2013.

The court dismissed the taxpayer's argument that because the aggregated bases in his remaining properties (i.e., the unsold properties) in 2012 exceeded the discharged amount, he did not need to reduce his bases until the following year, because the relevant Internal Revenue Code provisions do not refer to "remaining basis after sale."

No Debt Discharge Related to 2013 Property Sales

The taxpayer sold additional properties at a loss in 2013; however the court found there was no debt discharge, and thus no related debt discharge income for the year. Among other things, the court noted that the bank issued a Form 1099-C for the 2012 debt discharge, but did not issue a Form 1099-C in 2013.

Physical Presence Relief Extended for Participant Elections

Notice 2021-40

The IRS has extended the temporary relief provided in Notice 2021-3, I.R.B. 2021-2, 316 from the physical presence requirement in Reg. §1.401(a)-21(d)(6) for participant elections required to be witnessed by a plan representative or a notary public. The extension of relief is provided in response to the continuing COVID-19 pandemic and to permit consideration of stakeholder comments provided pursuant to this notice and Notice 2021-3. Accordingly, the IRS provided a 12-month extension, till June 30, 2022.

Comments Requested

Further, the Treasury and IRS requested comments on whether permanent guidance modifying the physical presence requirement should be issued. Specifically, the Treasury Department and the IRS request comments regarding: (1) how the temporary removal of the physical presence requirement for participant elections required to be witnessed by a plan representative or a notary public has affected costs and burdens for all parties (for example, participants, spouses, and plans) and whether there are costs and burdens associated with the physical presence requirement that support modifying the requirement on a permanent basis; (2) whether there is evidence that the temporary removal of the physical presence requirement has resulted in fraud, spousal coercion, or other abuse, and how, if the physical presence requirement is permanently modified, increased fraud, spousal coercion, or other abuse may be likely to result from that modification; (3) how participant elections are being witnessed, or are expected to be witnessed, as the COVID-19 pandemic abates (for example, whether the availability of in-person notarization has returned, or is expected to return, to pre-COVID-19 pandemic levels); (4) if guidance permanently modifying the physical presence requirement is issued, what procedures should be established to provide the same safeguards for participant elections as are provided through the physical presence requirement; and (5) if guidance permanently modifying the physical presence requirement is issued, whether the guidance should establish procedures for witnessing by plan representatives that are different from procedures for witnessing by notaries.

Comments should be submitted in writing by September 30, 2021 and should include a reference to Notice 2021-40. Alternatively, comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2021-40 in the search field on the regulations.gov homepage to find this notice and submit comments). Moreover, comments may be mailed to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2021-40), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington D.C.20044. All commenters are strongly encouraged to submit public comments electronically. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

Effect on Other Documents

Notice 2021-3, I.R.B. 2021-2, 316 is modified.

IRS Recommends Nonacquiescence in Professional Employer Organization Case

AOD-2021-3

The IRS will not acquiesce to an appeals court holding in *Trinet Group, Inc. v. United States*, CA-11, 2020-2 USTC ¶50,179. The taxpayer was the successor-in-interest of a professional employer organization (P1). The IRS noted in the nonacquiescence to the holdings that P1, rather than its clients, had "control of the payment of wages." Moreover, P1 was the statutory employer under Code Sec. 3401(d). The appeals court had further ruled that P1 was the statutory employer entitled to claim Federal Insurance Contributions Act (FICA) tip credit as a result of the aforementioned.

The Service noted that by disregarding the Congressional intent and creating a new test heavily focused on the parties' contractual language, the court significantly broadened the scope of the exception in Code Sec. 3401(d)(1), largely circumventing the principle that an employer may not simply delegate or contract away its taxing responsibilities. Moreover, the court did not accurately depict the relationship between P1 and its clients and relied heavily on P1's use of the automated clearing house (ACH) debit payment method as support for its view that it had taken on financial risk, and therefore was in control of the payment of wages. The IRS emphasized that even applying the standard set forth by the appeals circuit, P1 should not be a Code Sec. 3401(d)(1) statutory employer with respect to the payments sent by wire transfer or certified check because there was no financial risk and no control by P1 with respect to those payments. The IRS continued to take the position that an entity is not in control of the payment of wages if the payment of wages is contingent upon, or proximately related to, the entity having received funds from the common law employer.

IRS Issues Requirements for Substitute Forms

Rev. Proc. 2021-22; Rev. Proc. 2021-27

The IRS has provided general rules and specifications for reproducing paper and computer-generated substitutes for Form 941, Employer's Quarterly Federal Tax Return; Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors; Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations; Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers; and Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities.

This revenue procedure will be reproduced as the next revision of IRS Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.

Rev. Proc. 2020-31, I.R.B. 2020-27, 12, is superseded.

The IRS has also provided the specifications for the private printing of red-ink substitutes for the 2021 revisions of information returns, preparing acceptable substitutes of the official forms, and using official or acceptable substitute forms to furnish information to recipients. The procedures cover Forms 1096, 1097-BTC, 1098 series, 1099 series, 3921, 3922, 5498 series, W-2G and 1042-S. Further, the procedures outline the official specifications for a form or statement to be acceptable. This procedure will be reproduced as the next revision of IRS Publication 1179, General Rules and Specifications for Substitute Forms and Schedules.

Rev. Proc. 2020-35, I.R.B. 2020-29, 82, is superseded.

Tennessee Disaster Notice Updated

A May 13, 2021 notice granting relief to victims of severe storms, straight-line winds, tornadoes and flooding that began on March 25, 2021, in parts of Tennessee was updated by the IRS on June 22, 2021, to include Marion County.

Tennessee Disaster Relief Notice (TN-2021-01)

Routine Request Exception Applicable to Church Large Employer

IRS Advice Memorandum AM 2021-003

The IRS Chief Counsel ruled that when sent to a church applicable large employer, Letter 226-J is a routine request under Reg. §301.7611-1, Q&A-4. The letter was an initial communication with an applicable large employer (ALE) necessary for the ALE to know that they may have a tax obligation. It also provides a preliminary employer shared responsibility payment (ESRP) that is calculated from the ALE's own information reporting.

The letter asked an ALE whether the information in the Letter 226-J was correct, so the IRS could mechanically process, or finalize the preliminary calculation of a liability. The IRS asked the church to confirm the accuracy of the information in the Letter 226-J, with both processes culminating with mechanical processing of the return or the information from the Letter 226-J process.

ETAAC 2021 Annual Report Issued

IR-2021-131

The Electronic Tax Administration Advisory Committee (ETAAC) presented its 2021 annual report to Congress. ETAAC's 10 recommendations in 2021 revolve around two broad areas: (1) prevention of identity theft; and (2) refund fraud. Further, the report groups the recommendations into two sections: (1) recommendations to Congress involving the IRS budget, information return filing and federal data-sharing; and (2) recommendations to the IRS grouped around electronic filing and cybersecurity. The 2021 report is available at https://www.irs.gov/pub/irs-pdf/p3415.pdf.

The ETAAC is a public forum whose members work closely with the Security Summit, a joint effort of the IRS, state tax administrators and the nation's tax industry established in 2015 to fight tax-related identity theft and cybercrime. At the ETAAC's annual meeting, IRS Commissioner Chuck Rettig and IRS leaders thanked six members of the committee ending their terms this year. ETAAC members represent various segments of the tax community, including individual and business taxpayers, tax professionals and preparers, tax software developers, payroll service providers, the financial industry and state and local governments.

TTB Continues Exemptions for Hand Sanitizer Production During COVID-19 Pandemic

Public Guidance, TTB G 2020-1C, Alcohol and Tobacco Tax and Trade Bureau, June 22, 2021

The exemptions authorized under TTB's prior guidance are extended through September 30, 2021.

The guidance allows tax-free ethanol to be used to produce hand sanitizer if it is denatured according to TTB regulations and Food and Drug Administration (FDA) guidance.

Also, alcohol (denatured or not) may be delivered tax-free to state and local governments for non-beverage purposes. Additionally, alcohol may be delivered tax-free to hospitals, blood banks, sanitariums, certain pathological laboratories, nonprofit clinics, and qualifying educational institutions, if not for resale or use in the manufacture of any product for sale.

Certain TTB formula approvals for the manufacture of hand sanitizer are temporarily waived and certain permit requirements are expedited.

TAX BRIEFS

Additions to Tax

The IRS was not allowed to collect tax deficiencies from an individual with respect to his tax delinquencies for six tax years at issue since they were fully paid via restitution payments. Further, the IRS's motion for summary judgment was granted.

Ervin, TC, Dec. 61,886(M)

Collection Due Process

An appeals court affirmed the decision to deny a married couple a new hearing because an IRS revenue officer (RO) included attorney meeting correspondence in the administrative file. The statements regarding the uncooperative nature of the taxpayer's attorney could be included in file because they were made by the revenue officer contemporaneously as a part of his job function.

Stewart, CA-8, 2021-1 USTC ¶50,167

Exclusion of Gain

The government's motion for granting partial summary judgment in a case involving a married couple and their tax liabilities related to the sales of their homes was denied. The question whether the taxpayers were entitled to exclude a part of the gain from the sale of their first home was held to be a genuine issue of material fact.

Forte, DC Utah, 2021-1 USTC ¶50,169

GILTI

The IRS Large Business and International (LB&I) has issued a new Practice Unit, Concepts of Global Intangible Low-Taxed Income (GILTI) Under IRC 951A. Practice Units provide IRS staff with explanations of general tax concepts, as well as information on specific types of transactions. Practice Units are not official pronouncements of law or directives and cannot be used, relied upon or cited as such.

Practice Units can be found at https://www.irs.gov/businesses/corporations/practice-units.

Involuntary Conversions

The reimbursement and acceleration payments received by two entities (taxpayers) involved compulsory or involuntary conversion of relevant assets under Code Sec. 1033. Next, the IRS ruled that the FCC Order's release constituted the date of the beginning of threat or imminence of requisition or condemnation of relevant assets. The FCC Order constituted written notice to the taxpayers of the intent to reassign a portion of spectrum usage rights, resulting in the involuntary conversion of relevant assets.

Further, reimbursement or acceleration payments is eligible for nonrecognition of gain, to the extent such amounts do not exceed the cost of property similar or related in service or use to the relevant assets, or otherwise used to provide broadcast services over North America. Finally, the New Multi-Band Satellites constituted eligible replacement property.

IRS Letter Ruling 202125006

IRAs

The representative of a decedent's trust was not allowed to transfer an Individual Retirement Account's (IRA's) assets currently held in the non-IRA account into an inherited IRA for the benefit of the trust. Upon the decedent's death, the IRA became an inherited IRA for the benefit of the trust. The assets in an inherited IRA for the benefit of a trust are not permitted to be rolled over under Code Sec. 408(d)(3). The only permitted method of transferring assets from an inherited IRA to another inherited IRA is via a trustee-to-trustee transfer, which requires a direct transfer from one IRA to another IRA. Therefore, once the assets have been distributed from an inherited IRA, there is no permitted method of transferring them back into an IRA. In this case, the assets of the IRA were transferred to a non-IRA account. Accordingly, the assets may not now be transferred to an IRA account. Further, Code Sec. 408(d) provides that, except with respect to investment in the contract, assets distributed out of an inherited IRA are included in gross income. Accordingly, the trust was required to include in gross income, the year in which the distribution from IRA occurred, any portion of the amounts transferred from IRA that was not investment in the contract. Lastly, the trust was not allowed to transfer the IRA's assets currently held in the non-IRA account into any IRA account.

IRS Letter Ruling 202125007

Small Business Stock

An entity was engaged in a qualified trade or business under Code Sec. 1202(e)(3). The taxpayer, a domestic C corporation, was in the business of manufacturing a class of products as prescribed by third-party health care providers. The taxpayer employed specialists that worked on the prescriptions referred by health care providers to evaluate, measure, design, fabricate, manufacture, adjust, fit and service certain type of products from the referred individuals. Further, the taxpayer's revenue was generated by the sale of these products. The sales generally consist of reimbursements from insurance companies, hospital systems and patients. The IRS stated that while the products produced by the taxpayer were associated with the health are industry, for the purposes of Code Sec. 1202(e)(2), the taxpayer was not in the trade or business (1) involving the performance of services in the field of health, or (2) where the principle asset of the trade or business was the reputation or skill of one or more of its employees.

IRS Letter Ruling 202125004