Infrastructure Investment and Jobs Act

Cross References

• HR 3684

On November 5, 2021, Congress passed the Infrastructure Investment and Jobs Act (HR 3684), which the President is expected to sign into law. The new law addresses provisions related to federal-aid highway, transit, highway safety, motor carrier, research, hazardous materials, and rail programs of the Department of Transportation. Division H – Revenue Provisions, includes a number of amendments to the Internal Revenue Code (IRC). The following is our coverage of the tax provisions contained in the new law.

Employee Retention Credit

The Employee Retention Credit is designed to encourage employers affected by COVID-19 to retain their employees, even though business operations slow down or are temporarily suspended. The credit is a fully refundable tax credit, claimed on the employer's federal employment tax return.

The Consolidated Appropriations Act, 2021 extended the credit for qualified wages to July 1, 2021 and increased the credit rate to 70% for calendar quarters beginning after December 31, 2020. The credit is limited to $10,000 of qualified wages per employee per calendar quarter ($7,000 credit limit per employee per quarter). The American Rescue Plan Act of 2021 extended this provision to wages paid before January 1, 2022.

The American Rescue Plan Act of 2021 also added a new category for recovery startup businesses. If the employer is a recovery startup business, the total credit allowed after applying the above limits for any calendar quarter is $50,000. A recovery startup business is one that began carrying on a trade or business after February 15, 2020 and has average annual gross receipts of $1 million or less during the period the business is in existence.

The new law repeals the Employee Retention Credit for wages paid after September 30, 2021, with the exception of a recovery startup business. Wages paid before January 1, 2022 still qualify for the credit if the eligible employer is a recovery startup business.

Federally Declared Disasters

IRC section 7508A allows the IRS to postpone certain tax deadlines by reason of a Presidentially declared disaster or terroristic or military action. The new law adds by reason of "a significant fire" to this definition.

The new law also clarifies that the term disaster area means an area in which a major disaster occurs for which the President provides financial assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The law also adds provisions to extend the time for filing a petition with the tax court in cases where a filing location is inaccessible or otherwise unavailable to the general public on the date a petition is due.

Contributions to the Capital of a Corporation

Under IRC section 118, gross income does not include any contribution to the capital of a corporation. This exclusion generally does not apply to contributions made by customers, governmental entities, or civic groups.

The new law adds a new exception to contributions that would otherwise be taxable. Gross income does not include contributions to the capital of a corporation that is a regulated public utility which provides water or sewerage disposal services if such contribution is:

- A contribution in aid of construction, or
- A contribution by a governmental entity providing for the protection, preservation, or enhancement of drinking water or sewerage disposal services.

Virtual Currency

Virtual currency is considered a capital asset. Using virtual currency to purchase an item is treated as a capital gain if the fair market value of the item purchased is greater than the cost basis of the virtual currency, or a capital loss if the fair market value of the item purchased is less than the cost basis of the virtual currency.

Under IRC section 6045, brokers are required to report the name and address of each customer and the gross proceeds of broker transactions received by each customer, along with other information required by IRS regulations. A broker is a dealer, a barter exchange, and any other person who (for consideration) regularly acts as a middleman with respect to property or services (other than managing a farm on behalf of another).

The new law adds the following to the definition of a broker: "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person." A digital asset means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified under IRS regulations.

Under IRC section 6050I, any trade or business that receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions) is required to file Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business,* with the IRS within 15 days after the cash is received. Effective for returns required to be filed after December 31, 2023, this $10,000 cash reporting requirement also applies to digital assets as defined under IRC section 6045.

Broadband Projects

Interest earned on state and local bonds is exempt from taxable income under IRC section 103. Private activity bonds are generally not considered exempt, unless they fit the description of qualified private activity bonds under IRC sections 141 and 142. The new law adds qualified broadband projects to the list of exempt facility bonds under IRC section 142(a). A qualified broadband project is one designed to provide broadband service solely to 1 or more census block groups in which more than 50% of residential households did not have access to fixed, terrestrial broadband service before the project.

Carbon Dioxide Capture Facilities

Similar to the provision for qualified broadband projects, the new law adds qualified carbon dioxide capture facilities to the list of exempt facility bonds under IRC section 142(a). A qualified carbon dioxide capture facility is a facility that uses air capture equipment which is:

- Used for the purpose of capture, treatment and purification, compression, transportation, or on-site storage of carbon dioxide produced by the industrial carbon dioxide facility, or
- Integral or functionally related and subordinate to a process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon dioxide and hydrogen for direct use or subsequent chemical or physical conversion.

The credit for carbon oxide sequestration under IRC section 45Q(f) is reduced by a portion of the tax exempt interest from the carbon dioxide capture facility project.

Heavy Vehicle Excise Tax

The heavy vehicle excise tax expiration date under IRC section 4051 is extended from October 1, 2022 to October 1, 2028.