SJWT 2022
Hot Topics: Part 1

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Employee Retention Tax Credit: IRS Notice 2021-49

- This Notice revised regulations related to the Employee Retention Tax Credits (ERTC).

- The American Rescue Plan originally extended the ERTC for wages paid after June 30, 2021 through December 31, 2021.

- Notice 2021-49 ended the ERTC for wages paid during the 4th quarter of 2021 (except for Recovery Start-up Businesses).

ERTC: Recovery Start-up Business

- Section 3134(c)(5) of the Code defines a “recovery startup business” as an employer (i) that began carrying on any trade or business after February 15, 2020, (ii) for which the average annual gross receipts of the employer (as determined under rules similar to the rules under section 448(c)(3) of the Code) for the 3-taxable-year period ending with the taxable year that precedes the calendar quarter for which the credit is determined does not exceed $1,000,000, and (iii) that is not otherwise an eligible employer due to a full or partial suspension of operations or a decline in gross receipts.

ERTC: Payments to Related Individuals

- Wages paid to employees with the following relationship to a majority owner of a corporation or a partnership or any other entity are not qualified wages:
  - A child or a descendent of a child
  - A brother, sister, stepbrother or stepsister
  - The father or mother, or any ancestor of either
  - A stepfather or stepmother
  - A niece or a nephew

ERTC: Payments to Related Individuals

- An aunt or uncle
- A son-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.
- An individual (other than a spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household

ERTC’s are Taxable

- Unlike PPP Loans, EIDL Advances and other CARES Act programs, the ERTC’s are taxable income.

- Notice 2021-49 states that the ERTC’s MUST be reported as income in the year that the wages were paid and NOT when the entity received the refund

Amending Forms 941

- Businesses that were eligible to claim the ERTC can still file Form 941-X, to claim the tax credits.
- There is a 3 year statute of limitation, from the original due date of Form 941, to file the amended return.
- Form 941-X can be filed for Q2, Q3 & Q4 of 2020 and Q1, Q2 & Q3 of 2021.
- Recovery Start-up business can also file for Q4 of 2021; if not claimed on the original Form 941

ERTC: Amending Forms 941

- Qualified wages paid under the Family First Corona Response Act, that were paid between April 1, 2020 – September 30, 2021 are eligible for reimbursement.

- Amended returns can still be filed to claim these overlooked credits.

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Cryptocurrency Issues

- The 2021 Form 1040 asks "did you receive, sell, exchange, or otherwise **dispose** of any financial interest in any virtual currency?". The 2019 and 2020 forms used slightly different language, asking "did you receive, sell, send, exchange, or otherwise **acquire** any financial interest in any virtual currency?"

- This change comports with an IRS analysis that focuses on dispositions of cryptocurrency as taxable events.

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Cryptocurrency Issues

- A transaction involving virtual currency includes:
  - The receipt or transfer of virtual currency for free (without providing any consideration), including from an airdrop or hard fork;
  - An exchange of virtual currency for goods or services
  - A sale of virtual currency; and
  - An exchange of virtual currency for other property, including for another virtual currency.

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Cryptocurrency Issues

- The same Form 1099 Reporting Requirements also apply to payments made in virtual currency.
- Payments made in virtual currency are also subject to the same backup withholding requirements. For the years 2018 – 2025, the withholding rate is 28%

Cryptocurrency Issues

- The IRS has initiated several cryptocurrency compliance and enforcement efforts, including Operation Hidden Treasure, a joint effort of the IRS civil office of fraud enforcement and criminal investigation unit to search for unreported crypto-related income and fraud. Operation Hidden Treasure is expected to train agents and use independent contractors to examine blockchains for signs of tax evasion and fraud.

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Cryptocurrency Issues

- The IRS has been willing to use a John Doe summons to get information about virtual currency transactions. Unlike a regular summons, a John Doe summons is not issued to get information about a specific taxpayer; it is issued to a third party to obtain information about multiple taxpayers whose identities are unknown

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Cryptocurrency Issues

- Notice 2022-3 Issued on 1/4/2022, indicates that the following has been added to the list of items that the IRS Will Not be issuing advanced rulings:

- *Determination of Amount of and Recognition of Gain or Loss; Transfers of Securities Under Certain Agreements*. Whether a taxpayer recognizes gain or loss on the transfer of virtual currency in exchange for a contractual obligation that requires the return of identical virtual currency to the taxpayer or on the transfer of identical virtual currency to the taxpayer in satisfaction of the contractual obligation.

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Remote Work

- Remote work continues to be commonplace amid the coronavirus pandemic.
- This has sped up the trend of increased teleworking.
- Remote work is often appealing to employees who want more flexibility.
- Remote work can also offer tax advantages alongside reduced housing and transportation costs.
- Many remote workers can save on taxes by relocating to low-tax states.
- Taxation of remote workers is still a new and developing issue.

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Remote Work & the Convenience Rule

- Workers pay income tax to their state of residence.
- This can offer great advantages to the city dwellers moving to suburban or rural areas.
- They can take advantage of their company's work-from-home policy and relocate to a low tax state.
- Example, if a taxpayer who lives and works in a state with high individual income tax rate,opts to work remotely from Wyoming, where there is no state income tax, the taxpayer avoids the income tax altogether.
- As remote work becomes more popular and taxpayers migrate, states are seeking ways to recoup that lost revenue.

Remote Work & the Convenience Rule

- Instead of saving on taxes, some remote workers will end up paying taxes in two states instead of one, possibly doubling their tax burden.

- Remote workers whose companies are based in in seven states will incur a tax liability in their state of residence as well as in the state in which their company is located due to convenience rules. These include Arkansas, Connecticut, Delaware, Massachusetts, Nebraska, New York, and Pennsylvania.

- In these states, the worker can not ever step foot in the state where their company office is located to generate this tax liability.

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Tax Deductions for Remote Workers

- The Tax Cut and Jobs Act of 2017 has hurt many employees who were forced to set up a home office with very little notice.
- This act took disallows employees of all miscellaneous itemized deductions.
- Including items like a desk and monitor used for work purposes.
- Remote contract workers and remote self-employed workers can still take advantage of these deductions for items used solely for business purposes.

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Remote Workers and Travel

- Employees have taken advantage of the new flexibility by working from family homes or heading out on a road trip, working along the way.
- Individuals can face an additional liability even if they only worked from a certain state for a limited time, depending on the state's laws.
- The taxpayer becomes a resident of both states and states are unlikely to offer a credit.

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