

New guidance addresses ERTC changes, business meals deduction, section 965 installment payments

Recently released guidance items from the Treasury Department and Internal Revenue Service explain enhancements to the employee retention tax credit (ERTC) and the deduction for business meals that were enacted late last year in the Consolidated Appropriations Act, 2021 (P.L. 116-260), and clarify the deadline for payments by individuals of a section 965(h) installment payment having an original due date of April 15, 2021.

ERTC

The ERTC, a refundable tax credit against the 6.2 percent employer-side Social Security payroll tax for certain employers carrying on a trade or businesses that either fully or partially suspend operations due to a pandemic-related government order or that sustain a significant pandemic-related decline in gross receipts, was enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) in March of last year. For 2020, the ERTC is available to eligible employers for qualified wages paid after March 12, 2020, and before January 1, 2021. The credit is equal to 50 percent of qualified wages paid, including qualified health plan expenses, for up to \$10,000 per employee in 2020. The maximum credit available for each employee is \$5,000 in 2020.

The Consolidated Appropriations Act, 2021, the omnibus tax-and-spending package signed into law last December 27, extended the ERTC through June 30, 2021, and made a number of enhancements and modifications to the credit that took effect this past January 1. These changes, which the Service explains in Notice 2021-23, include:

URL: <https://www.irs.gov/pub/irs-drop/n-21-23.pdf>

- An increase in the credit rate from 50 percent to 70 percent of qualified wages;
- A reduction in the required year-over-year decline in gross receipts from 50 percent to 20 percent and a new safe harbor allowing employers to use prior-quarter gross receipts to determine eligibility for the credit;
- An increase in the limit on per-employee creditable wages from \$10,000 for the year to \$10,000 for each quarter;
- An increase in the full-time employee threshold for a business to be treated as a “large employer” (and therefore subject to a restrictive standard for determining the qualified wage base) from 100 to 500 employees; and
- Expanded eligibility rules that make the credit available to new employers that were not in existence for all or part of 2019 and to certain governmental employers.

In addition, Notice 2021-23 provides rules for claiming the ERTC, including the circumstances under which an eligible employer may request an advance payment of the credit.

Last year's omnibus measure also made changes to the ERTC that are retroactive to the enactment of the CARES Act. The Service explains these changes in Notice 2021-20, which was released last month. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 12, Mar. 12, 2021.)

[URL: https://www.irs.gov/pub/irs-drop/n-21-20.pdf](https://www.irs.gov/pub/irs-drop/n-21-20.pdf)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210312_5.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210312_5.html)

The IRS has indicated that it will issue separate guidance addressing changes to the ERTC that were enacted last month in the American Rescue Plan Act of 2021 (P.L. 117-2). (For details on those changes, see *Tax News & Views*, Vol. 22, No. 11, Mar. 10, 2021.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210310_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210310_1.html)

Business meals deduction

Treasury and the IRS this week also released Notice 2021-25, which addresses a provision in the 2020 omnibus legislation that permits a 100 percent deduction for business meal food and beverage expenses provided at a restaurant that are paid or incurred beginning January 1, 2021 and before January 1, 2023. The deduction under prior law was limited to 50 percent for those expenses.

[URL: https://www.irs.gov/pub/irs-drop/n-21-25.pdf](https://www.irs.gov/pub/irs-drop/n-21-25.pdf)

The notice explains that under the temporary provision, "restaurants" include businesses that prepare and sell food or beverages to retail customers for immediate on-premises or off-premises consumption. Restaurants do not include businesses that primarily sell prepackaged goods not for immediate consumption, such as grocery stores and convenience stores, however.

The notice also provides that an employer may not treat certain employer-operated eating facilities as restaurants, even if these facilities are operated by a third party under contract with the employer.

Section 965(h) installment payments

In other developments, the Service issued an FAQ on April 6 that clarifies the extension of certain tax filing and payment deadlines announced last month (in Notice 2021-21) to address individuals making a section 965(h) installment payment.

[URL: https://www.irs.gov/newsroom/section-965-installment-payments-for-form-1040-filers-postponed](https://www.irs.gov/newsroom/section-965-installment-payments-for-form-1040-filers-postponed)

[URL: https://www.irs.gov/pub/irs-drop/n-21-21.pdf](https://www.irs.gov/pub/irs-drop/n-21-21.pdf)

Notice 2021-21, which was issued in response to ongoing disruptions resulting from the coronavirus pandemic, provides that the federal income tax filing and payment due date for individuals for the 2020 tax year is automatically extended from April 15, 2021, to May 17, 2021. This relief generally applies to taxpayers with a federal income tax return filed on Form 1040, Form 1040-SR, Form 1040-NR, Form 1040-PR, Form 1040-SS, or Form 1040(SP).

The FAQ provides that an individual's section 965(h) installment payment (if applicable) with an original due date of April 15, 2021 is also postponed to May 17, 2021.

No extension for estimated tax payments

In a separate announcement, the IRS also reminded taxpayers this week that the deadline extensions included in Notice 2021-21 *do not* apply to payments of estimated taxes due on April 15, 2021.

URL: <https://www.irs.gov/newsroom/irs-reminds-taxpayers-to-make-april-15-estimated-tax-payment>

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