



Tax Implications of the New Infrastructure Act



On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act into law. The main purpose of the act is to improve roads, bridges, highways, and internet connections - although, like most legislation, there are several little-known provisions that may seem unrelated to infrastructure.

The act prematurely terminates tax credits offered under the CARES Act, adds new reporting requirements related to cryptocurrency, and reinstates certain superfund excise taxes. Each of these changes has tax implications which we're going to cover in this article.

Employee Retention Credits

Under the CARES Act, businesses with up to 500 employees that experienced a decrease in gross receipts for a quarter in 2021 of 20% or more as compared to the same quarter in 2019 were eligible for the employee retention tax credit. Businesses could also qualify for the credit if their operations were partially or fully suspended by government order due to COVID-19. Qualified employers could claim a fully refundable tax credit of up to \$7,000 for each employee per quarter.

The employee retention credit was originally scheduled to end on January 1, 2022. However, the infrastructure act terminates the ERC three months early, on October 1, 2021, unless the employer qualifies as a Recovery Startup Business, also known as the RSB. To be considered an RSB, the business must have started operating after February 15, 2020, and have no more than \$1 million in average annual gross receipts. RSBs can still earn an employee retention tax credit up to \$50,000 per quarter for the third and fourth quarters of 2021. So unless your business qualifies as an RSB, employee retention credits will not be available for the fourth quarter of 2021.



Cryptocurrency

The infrastructure act increases reporting requirements for digital asset brokers such as digital asset trading platforms and cryptocurrency exchanges. Brokers will now be required to report to the IRS the cost basis of digital asset transactions to non-brokers. A digital asset is any digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology. Cryptocurrencies such as Bitcoin fall into this category and it is possible that NFTs will fall into the category too.

Additionally under the act, cryptocurrency and digital assets will be treated as cash. Thus, individuals in a trade or business that receive more than \$10,000 in a single transaction or in related transactions must report the transaction to the IRS. This will apply to returns filed on or after January 1, 2024. These new requirements do not change the taxable amount of cryptocurrency transactions, only the reporting requirements. The reporting will help digital asset investors see just how much their investment gained or lost over the previous calendar year, but more importantly, will help the government to prevent money laundering and other illegal activity.

Superfund Excise Taxes

Roughly 25 years ago, superfund excise taxes were imposed on chemicals, both those that are imported and produced domestically. The infrastructure act will reinstate these taxes from July 1, 2022, through December 31, 2031, in an effort to address pollution and improve the public health of communities near Superfund sites. Not only will these taxes be reinstated, but the new tax rate per ton on listed chemicals will double what it was in 1995. The Internal Revenue Code lists the 42 chemicals for which the tax applies, including known carcinogens like benzene, nickel, and cadmium. This portion of the bill only applies to manufacturers, producers, or importers of the taxable chemicals.



Final Thoughts

This document is meant to provide an overview of the tax-related provisions of the Infrastructure Investment and Jobs Act and is not a substitute for discussing the provisions with one of our expert advisors. If you would like to discuss how these provisions affect your unique situation, please contact our office.



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Heard, McElroy & Vestal

Shreveport Location:

333 Texas Street, Suite 1525

Shreveport, Louisiana 71101

Monroe Location:

2808 Kilpatrick Boulevard

Monroe, Louisiana 71201



Shreveport - (318) 429-1525

Monroe - (318) 338-3108



hmv@hmvcpa.com



www.hmvcpa.com