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IRS Updates Guidance on Employee Retention Credit

The IRS has released [Notice 2021-23](#), which amplifies guidance in Notice 2021-20 that discusses the employee retention credit. (See our prior coverage [here](#).) The employee retention credit was first provided for under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act, part of the Consolidated Appropriations Act, 2021). Notice 2021-23 specifically addresses amendments made by the Relief Act, which were effective beginning on Jan. 1, 2021. For the first and second calendar quarters of 2021, the employee retention credit equals 70 percent of qualified wages (including allocable qualified health plan expenses) that an eligible employer pays in a calendar quarter. The amount of qualified wages (including allocable qualified health plan expenses) with respect to any employee that may be taken into account under section 2301(a) of the CARES Act is limited to \$10,000 for any calendar quarter; thus, the maximum credit for qualified wages (including allocable qualified health plan expenses) paid to an employee is \$7,000 for each of the first and second calendar quarters in 2021 (for a total of \$14,000).

Notice 2021-20 continues to apply to all employee retention credits for calendar quarters in 2020. As amplified by Notice 2021-23, the applicable provisions of Notice 2021-20 addressing rules that were not changed by section 207 of the Relief Act continue to apply to employee retention credits for the first and second calendar quarters of 2021. The employee retention credit governed by Section 3134 of the Internal Revenue Code of 1986, as amended (Code) will be addressed in future guidance.

IRS Provides Guidance on Temporary 100% Food and Beverage Deduction

The IRS has released [Notice 2021-25](#), which provides guidance regarding the temporary 100-percent deduction for expenses that are paid or incurred after Dec. 31, 2020, and before Jan. 1, 2023, for food or beverages provided by a restaurant. The notice explains when the temporary 100% deduction applies and when the 50% limitation continues to apply for purposes of Section 274 of the Code, as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (part of the Consolidated Appropriations Act, 2021). (See our prior coverage [here](#).)

IRS Provides Relief for Late Filing of Forms 1042 and 1042-S for Certain Dividend Equivalent Payments

The IRS has updated its [FAQs](#) on FATCA to provide relief for late filing of Forms 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, and late withholding with respect to such forms for 2020 and 2021 for dividend equivalent payments. A withholding agent will not be subject to interest, penalties, or additions to tax with respect to a dividend equivalent payment made with respect to a derivative referencing a partnership provided that the withholding agent withholds and reports on Form 1042 and Form 1042-S with respect to the payment by Sept. 15, 2021 (for the 2020 calendar year) or Sept. 15, 2022 (for the 2021 calendar year). In a case in which a withholding agent withholds after March 15 of the subsequent year, the withholding agent should file a Form 1042 (if the dividend equivalent payments are the only payments reportable for the year) or an amended Form 1042 by Sept. 15, 2021, or Sept. 15, 2022 (as applicable), and write "Dividend Equivalent—Partnership" in the top center portion of the 2020 or 2021 Form

1042. The withholding agent should also file Form(s) 1042-S or amended Form(s) 1042-S by the applicable date noted above with respect to the dividend equivalent payment. Finally, when depositing the tax withheld for a dividend equivalent payment made in 2020 or 2021, the withholding agent must designate the payment as being made for the applicable calendar year in accordance with the instructions to Form 1042.

IRS Releases Practice Unit on FTC Carryback and Carryover

The IRS has released a [practice unit](#) on the foreign tax credit (FTC) and the carryback and/or carryover of unused foreign tax. A taxpayer who pays qualifying income taxes to a foreign country on income earned from abroad may claim those taxes as a deduction or an FTC to mitigate the effect of double taxation. There is a limit on the FTC a taxpayer can take each year. A taxpayer in an excess credit position for a given year is allowed to carry over the excess of its foreign taxes paid or accrued for the year over the foreign tax credit limitation for the year. A taxpayer may carryback its excess one year and carryforward ten years.

IRS Releases Practice Unit on Liquidating Distributions of a Partner's Interest in a Partnership

The IRS has released a [practice unit](#) on the treatment of liquidating distributions of a partner's interest in a partnership and the extent of the partner's recognition of gain or loss on such distribution.

PA DOR Provides Guidance on Employee Retention Credit for PA Income Tax Purposes

On its [website](#), the Pennsylvania Department of Revenue (PA DOR) has issued guidance regarding the employee retention credit under the CARES Act. It states that any reduction to the wage expense for federal tax purposes that is a result of a credit against taxes withheld from the employee would be deductible for Pennsylvania Personal Income Tax purposes. Any reduction to the wage expense for federal tax purposes that is a result of



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a credit against the employer's (taxpayer's) own FICA liability would not be deductible for Pennsylvania Personal Income Tax purposes.

PA DOR Revises Realty Transfer Tax Application for Refund Bulletin

The PA DOR has revised its [Realty Transfer Tax Bulletin 2010-01](#), which covers the application for refund procedure. An application for refund, filed on form REV-1651 "Application for Refund Pennsylvania Realty Transfer Tax," is an informal, administrative process for requesting a refund of overpayments of Realty Transfer Tax to correct simple or non-complex issues such as duplicate payments, mathematical errors, clerical errors, or exemptions clear on the face of the deed transferring the property. An application for refund does not replace the petition for refund process, nor does it toll any statute of limitation for filing a petition for refund. An application must be filed within the same period as required for the filing of a petition for refund. The bulletin also covers what types of applications should not be submitted.