TaxBrief

Keeping you informed Fall 2023

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As 2023 wraps up, it's a good time to look at recent changes to the tax laws and regulations that could impact your personal and business taxes for 2023 and beyond. If you have any questions or need additional information, please feel free to reach out to us.

IRS seeks reporting of digital asset sales

Regulations proposed by the IRS this summer would require brokers to report the sale or exchange of digital assets by customers to the agency beginning in 2025. Under current law, taxpayers owe tax on gains and may be entitled to deduct losses on digital assets when sold, but for many taxpayers it is difficult and costly to calculate their gains. A new Form 1099-DA, issued by brokers, will help these taxpayers determine whether they owe taxes. Entities that would be required to issue Forms 1099-DA include digital asset trading platforms, digital asset payment processors and certain digital asset-hosted wallet providers. The proposed regulations would also require "real estate reporting persons" to report digital assets used in the purchase of real estate. Real estate reporting persons would include real estate brokers, title companies, closing attorneys and mortgage lenders.

Employee retention credit scams still common

The employee retention credit (ERC) was a COVID-era tax benefit Congress enacted to help businesses that kept paying their employees during pandemic-related business disruptions. While the ERC helped many businesses weather the pandemic, confusion over how the program worked and who was eligible for the credit resulted in unscrupulous promoters pushing ineligible companies to claim the credit. Because the ERC can still be claimed retroactively, many of these scammers are still active and pushing unwary businesses to claim credits in return for a fee of up to 25% of the claimed credit. Unfortunately, if the IRS discovers that an ineligible employer has claimed the credit, it is the business that is required to repay the credit, plus interest and penalties.

Due to the high number of potentially ineligible claims it is receiving, the IRS is warning businesses to be on the lookout for aggressive promoters misleading taxpayers about their eligibility. There are specific requirements for claiming the ERC, and many companies do not qualify. If you are approached with an offer to help you claim the credit, please reach out to us before filing any documents with the IRS. We understand your tax situation and can help you determine whether you are actually eligible. If you are not eligible, we can help you avoid paying large upfront fees to unscrupulous promoters and perhaps having to repay the IRS.

IRS moratorium on ERC claims

Because the agency is receiving an enormous number of ERC claims from potentially ineligible businesses, the IRS has stopped processing new claims until at least Jan. 1, 2024. The moratorium will allow the IRS to scrutinize the claims it is receiving and ensure that it is not paying the credit to ineligible businesses. This is leading to slower IRS processing times for the claims it has already received, even those that are deemed legitimate. While the IRS had been processing ERC claims within 90 days, it now will take at least 180 days to do so — longer if a claim faces additional review.

Process for withdrawing ERC claims

The IRS has introduced a withdrawal process for some employers who have already filed claims but have yet to receive a refund. This process will allow taxpayers who believe they were pressured or misled into filing claims for the ERC to withdraw their claims while the IRS is still processing them. Withdrawn claims will be treated as never having been filed, so taxpayers who withdraw their ERC claims won't be punished for having filed. This should help prevent those who fear they are ineligible for the ERC from receiving refunds they would need to repay. However, the IRS said taxpayers who willfully filed fraudulent ERC claims will not be exempt from criminal prosecution even if they withdraw their claims.

New rule allows for rollover of 529 accounts to Roth IRAs

Tax-advantaged educational savings accounts, also known as 529 plans, provide a way for parents to help their children or other family members save for college or to pay other educational expenses. However, not every beneficiary uses the full amount they paid into the plan. Beginning in 2024, the SECURE 2.0 Act allows beneficiaries to roll over unused funds into a Roth IRA without having to pay a penalty. However, there is a lifetime limit of $35,000 per beneficiary and the 529 account must have been open for at least 15 years. The rollover amount cannot exceed the beneficiary's annual IRA contribution limit.

IRS warns of fake charities soliciting donations

The IRS is reporting that scammers are taking advantage of the large numbers of recent natural disasters and international conflicts to fraudulently solicit donations to help victims. In addition to lining the pockets of criminals, donating to these fraudulent charities can get you in trouble with the IRS if you try to claim a deduction that ends up being disallowed. The best way to keep from being a victim of this kind of fraud is to check with the Tax-Exempt Organization Search tool on the IRS's website. Using the tool will both ensure that you are donating to a legitimate charity and that you will be allowed to deduct the donation.

IRS stepping up enforcement for high-income individuals

Using the extra funding it received in the 2022 *Inflation Reduction Act*, the IRS is moving forward with its plans to prioritize enforcement efforts against high-income earners, partnerships, large corporations and promoters abusing U.S. tax laws. The agency is touting this increased enforcement as part of its efforts to restore fairness to the U.S. tax system and will focus its efforts on taxpayers with more than $1 million in income and more than $250,000 in recognized tax debt.

Banks warned of payroll tax evasion in construction

FinCEN and the IRS have been reaching out to financial institutions about a concerning rise in state and federal payroll tax evasion and workers' compensation in the construction industry. The agencies explained that these institutions need to be aware of the issue because the schemes are conducted using banks and check-cashing services. FinCEN and the IRS are reminding financial institutions that they are required to file suspicious activity reports if they suspect, or have reason to suspect, that the institution is being used to facilitate criminal activities.

Website allows for dealer transfers of clean vehicle credits

The IRS is allowing dealers and sellers of clean vehicles to register to use the agency's new online tool that will allow their customers to claim or transfer their credits for the purchase of a new or previously owned clean vehicle. Beginning in 2024, taxpayers in specified situations will be allowed to claim their clean vehicle credit at the point of sale and transfer it to eligible entities, i.e., dealerships. Clean vehicle sellers and licensed dealers must use the tool to claim or transfer the credit on behalf of a buyer. Once the credit is transferred, it will need to be reconciled on the tax return filed for the year it takes place.

Beneficial ownership reporting for new businesses begins in 2024

The 2021 *Corporate Transparency Act* requires U.S. businesses to report their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). The reports require companies to provide identifying information about individuals who directly or indirectly own or control them. While existing companies will not need to file BOI reports until 2025, businesses created or registered after Jan. 1, 2024, will have 90 days to file their report. The 90-day countdown begins at the time the company receives actual notice that its creation or registration is effective, or when the state provides public notice of its creation or registration, whichever is earlier.

While the reporting requirements have yet to take effect, FinCEN is already receiving reports of scams targeting businesses that are required to submit BOI reports. These scams usually involve official-looking letters or emails asking the recipient to respond by scanning an included QR code or clicking on a web link. FinCEN is asking that recipients not respond to these messages. FinCEN added that it can't accept any BOI ownership reports before Jan. 1, 2024.

Additional questions or concerns?

If you have any questions about how the items in this newsletter or any other tax matter could impact you or your business, please feel free to contact us. We understand that taxes can be confusing and complicated. We're here to help.