

On November 15, 2021, the President signed into law H.R. 3684 - *Infrastructure Investment and Jobs Act* (IIJA). In general, this legislation authorizes funds for federal-aid highways, highway safety programs and transit programs, and for several other purposes, but it also contains the following key tax provisions.

Business Provision:

Termination of employee retention credit (ERC) for employers subject to closure due to COVID-19. (Section 80604)

The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act; P.L. 116-136) created the ERC, a refundable payroll tax credit. For 2020, eligible employers who paid qualified wages after March 12, 2020, and before Jan. 1, 2021, are eligible for a refundable credit equal to 50% of qualified wages paid.

The *Consolidated Appropriations Act, 2021* (CAA; P.L. 116-260) extended the ERC to qualified wages paid before July 1, 2021 and modified the ERC by increasing the credit to 70% of qualified wages.

The *American Rescue Plan Act of 2021* (ARP Act; P.L. 117-2) extended the ERC for wages paid after June 30, 2021, and before Jan. 1, 2022. The ARP also included recovery startup businesses in the definition of an eligible employer, but the credit allowed for any quarter cannot exceed \$50,000 for a recovery start-up business.

The *Infrastructure Investment and Jobs Act* (IIJA; P.L. 117-58) modified the ERC eligibility dates and the definition of recovery startup businesses. The IIJA states the ERC applies to wages an eligible employer pays after June 30, 2021, and before Oct. 1, 2021 (third quarter). If the business is a recovery startup business, the ERC applies to wages an eligible employer pays after June 30, 2021 and before Jan. 1, 2022 (third and fourth quarters) [§3134, as amended by Act. Section 80604]. In effect the IIJA terminated the ERC early except for recovery startup businesses.

The IIJA also modified the definition of recovery startup businesses to remove the requirement that a recovery startup business cannot be subject to a suspension under a government order or have experienced a significant decline in gross receipts for the calendar quarter.

The IIJA states a recovery startup business is any employer meeting all of the following:

- It began carrying on any trade or business after Feb. 15, 2020
- Its average annual gross receipts for the three-taxable-year period ending with the taxable year that precedes the calendar quarter for which the ERC is determined does not exceed \$1 million

With the exception of recovery startup businesses, wages paid after Sept. 30, 2021, are not eligible for the ERC. Due to the late passage of this legislation, it is anticipated the IRS will issue guidance regarding penalty relief for businesses that did not make timely payroll deposits in anticipation of being able to claim the ERC for the fourth quarter 2021 and provide a method for payment of unpaid employment taxes. Businesses that were not making payroll fourth quarter payroll deposits due to expecting the ERC should begin making deposits again and stay tuned for possible guidance on penalty relief.

Effective date: Calendar quarters beginning after Sept. 30, 2021.

Individual Provisions:

Modification of automatic extension of certain deadlines for taxpayers affected by federally declared disasters (Section 80501)

Prior to the IIJA, for qualified taxpayers impacted by federally declared disasters, a mandatory 60-day deadline extension period applies beginning on the earliest date specified in the declaration and ending 60 days after the latest incident date in the declaration [§7508A(d)(1)]. This extension is in addition to or in conjunction with the up-to-one-year discretionary extension period the IRS may provide under §7508A(a).

The IIJA modifies the following:

- When the automatic extension ends
- Which required acts are postponed
- Definition of disaster area
- How to handle multiple declarations relating to a disaster area

When the automatic extension ends

Section 7508A(d)(1) is amended and states that in determining the automatic extension period, the ending date is 60 days after the later of:

- The earliest incident date specified in the declaration, or
- The date such declaration was issued [§7508A(d)(1)(B)]

Which required acts are postponed

The IIJA explains the time-sensitive acts that are postponed. The IIJA provides that the 60-day mandatory extension period is disregarded in determining, in respect of any tax liability of a qualified taxpayer, whether any acts described in §7508(a)(1)(A) through §7508(a)(1)(F) were performed within the time prescribed, without regard to extension under any other provision of the Internal Revenue Code for periods after the date determined under §7508A(d)(1)(B).

The following acts are included:

- Filing any return of income, estate, gift, employment or excise tax
- Payment of any income, estate, gift, employment or excise tax or any installment or any other liability to the United States with respect to those taxes
- Filing a petition with the Tax Court or filing a notice of appeal from a decision of the Tax Court
- Allowance of a credit or a refund of any tax
- Filing a claim for credit or refund of any tax
- Bringing suit upon any such claim for credit or refund

Definition of disaster area

Prior to the IIJA, the disaster area was defined under §165(i)(5) as the area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act). A federally declared disaster includes both a major disaster declared under section 401 of the Stafford Act and an emergency declared under section 501 of the Stafford Act.

The disaster area now refers to an area for which the President **provides** financial assistance under section 408 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (42 U.S.C. 5174).

Multiple declarations

The IIJA added this new provision, which applies when there are multiple declarations relating to a disaster area. For purposes of the automatic extension period, if multiple declarations relating to a disaster area are issued within a 60-day period, a separate period is determined under §7508A(d)(1) with respect to each such declaration [§7508A(d)(6)].

Effective date: Applicable to federally declared disasters declared after the date the IIJA was enacted.

Modification of rules for postponing certain acts for service in a combat zone or contingency operation (Section 80502)

Certain individuals are entitled to a combat zone extension. The period of extension applies to certain tax-related acts that are listed in §7508(a)(1). These acts include filing returns, paying tax and filing Tax Court petitions to name a few. This extension applies to individuals who are:

- Serving in the Armed Forces or in support of the Armed Forces, in a combat zone
- Deployed outside the U.S. and away from a permanent duty station while participating in a contingency operation or
- Hospitalized due to injury received while serving under either of the above

In addition to filing a petition with the Tax Court, the IIJA adds the act of filing a notice of appeal from a Tax Court decision. The language “filing a petition with the Tax Court” in the IIJA does not contain any limitations or modifiers, and so it is inferred the extension would cover any petition with the Tax Court. Any petition would cover such items as a petition to redetermine deficiency, petition for declaratory judgment, petition to review the determination at a collection due process hearing and others. The IIJA also adds the act of bringing suit by the U.S. to recover an erroneous refund.

Effective date: Any period for performing an act that has not expired before the date the IIJA was enacted.

Authority to postpone certain tax deadlines due to significant fires (Section 80504)

Under §7508A(a) the IRS can suspend filing and payment requirements for taxpayers affected by federally declared disasters, or terroristic or military actions.

The IIJA amends §7508A to add significant fire to the list of events that allow the IRS to suspend filing and payment requirements.

A significant fire is any fire for which assistance is provided under section 420 of the *Robert T Stafford Disaster Relief and Emergency Assistance Act*.

Effective date: Applicable to fires for which assistance is provided after the date the IIJA was enacted.

Information Reporting Provisions:

Information reporting for brokers and digital assets (Section 80603)

The IIJA adds new information reporting requirements for brokers and digital assets regarding the following:

- Sales of digital assets
- Broker-to-broker transfers of covered securities, including digital assets
- Broker transfers of digital assets not otherwise subject to reporting
- Digital assets treated as cash

Sales of digital assets

Currently, brokers (dealers) must file Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, showing the name and address of each customer, with details regarding gross proceeds and other information the IRS may require with respect to such business [§6045(a)]. Additional information must be reported as well for covered securities, including the cost or other basis (adjusted basis) of such security [§6045(g)]. A covered security is any specified security acquired after a certain date, and a specified security most commonly includes any share of stock in a corporation. For example, a covered security includes stock acquired for cash after 2010 [§6045(g)(3)].

The IIJA requires brokers to report sales of digital assets, including the adjusted basis of such assets, on information returns and statements furnished to customers.

- The definition of a broker is expanded to include any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person [§6045(c)(1)(D)].
- The term specified security is expanded to include any digital asset acquired after 2022 [§6045(g)(3)(B)(iv)].
- The term digital asset means any digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the IRS [§6045(g)(3)(D)].

Effective date: For returns required to be filed, and statements required to be furnished, after Dec. 31, 2023.

Broker-to-broker transfers of covered securities, including digital assets

Before 2024, any broker transferring custody of a security that is a covered security to another broker must give the other broker a written transfer statement including specific information required in the regulations, such as the type of security and the security's adjusted basis and original acquisition date [§6045A(a)].

The IIJA requires any broker as defined in §6045(c)(1) transferring custody of a covered security as defined in §6045(g)(3), including a digital asset as defined in §6045(g)(3)(D), to another broker to give the other broker a written transfer statement including the same information required before 2024.

Effective date: For statements required to be furnished after Dec. 31, 2023.

Broker transfers of digital assets not otherwise subject to reporting

The IIJA requires any broker, with respect to any transfer (that is not part of a sale or exchange executed by such broker) during a calendar year of a covered security that is a digital asset as defined in §6045(g)(3)(D) from an account maintained by such broker to an account that is not maintained by another broker, to file a return for such calendar year (in a form determined by the IRS) reporting the information otherwise required to be furnished in a transfer statement under §6045A(a).

Effective date: For returns required to be filed, and statements required to be furnished, after Dec. 31, 2023.

Digital assets treated as cash

Currently, each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business* [§6050I(a)].

The IIJA expands the term cash to include any digital asset as defined in §6045(g)(3)(D) [§6050I(d)((3))]. Thus, taxpayers will be required to file Form 8300 if they receive a digital asset in the course of their trade or business that is more than the \$10,000 filing requirement.

Effective date: For returns required to be filed, and statements required to be furnished, after Dec. 31, 2023.

Other Tax Provisions:

There are some other tax provisions in the new legislation, including but not limited to:

- Extension of interest rate stabilization for single-employer defined benefit plans (Section 80602)
- Extension of various highway-related taxes (Section 80102)
- Extension and modification of certain superfund excise taxes (Section 80201)
- Expansion of private activity bonds for qualified broadband projects (Section 80401)
- Tolling of time for filing a petition with the tax court (Section 80503)

For more information regarding these provisions and others, review the entire [bill](#).