Aurora Financial Services Inc

Tax-Saving Tips

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Save Your Employee Retention Credit

In what clearly must have been a mistake, the IRS issued Notice 2021-49 to deny the employee retention credit (ERC) on the wages paid to most C and S corporation owners.

According to the IRS:

- Your corporation **can qualify** for the ERC on the wages paid to a more than 50 percent owner of an S or C corporation if that owner **does not have** any living brothers and sisters (whether whole- or half-blood), spouse, ancestors, or lineal descendants.
- Your corporation **cannot qualify** for the ERC on the more than 50 percent owner's wages if one of those relatives (other than the spouse) is alive.

Example 1. Tom owns 100 percent of his S corporation, and he has no living relatives. Under this new IRS notice, Tom's corporation can qualify for up to $33,000 in ERC on Tom's wages.

Example 2. John owns 100 percent of his S corporation, but he has one living relative, a two-year-old daughter. John's corporation does not qualify for the ERC. Under the new IRS notice, the two-year-old daughter owns by attribution 100 percent of the S corporation, and the IRS says that John, now a tainted relative, works for her and does not qualify for the ERC.

Whoa, that's not logical!

Also, it may be technically incorrect.

And it's possible that lawmakers will kill this IRS rule.

To Amend or Not to Amend

Let's start with this premise. You are a more than 50 percent owner of a corporation. You thought that your corporation qualified for the ERC. At various times before August 4, 2021, the day when the IRS issued Notice 2021-49, you filed your claim to the ERC for 2020 and the first two quarters of 2021.

As we mentioned, when you filed, you believed (as a more than 50 percent owner of a C or S corporation) that wages paid to you by the corporation qualified for the ERC. We did too.

But then, on August 4, 2021, the IRS issued Notice 2021-49 and said no—you don't qualify. What now? Here's what we think you should do:

1. Wait. Do nothing now. There's no hurry. You have until April 15, 2024, before you have to do anything about your 2020 ERC.

2. Wait. Don't claim the ERC for the more than 50 percent corporate owner for calendar year 2021 quarters 3 and 4 until you have clarification that you qualify. Again, there's no hurry. You can file a Form 941-X anytime within the three-year statute of limitations.

If you are upset by this IRS notice, it's a good idea to communicate that dissatisfaction to your U.S. senators and congressional representatives. For some ideas on what message to convey, here's a sample letter for your use.

Vaccinated? Claim Tax Credits for Your Employees and Yourself

As the nation suffers from the ravages of the super-contagious COVID-19 Delta variant, the federal government desperately wants all American workers and their families to get vaccinated.

If you have employees, you probably feel the same way. Indeed, more and more employers are implementing vaccine mandates—a trend that will likely grow after the FDA gives final approval to the COVID-19 vaccines.

COVID-19 vaccine mandates are highly controversial.

One thing that's not controversial is giving your employees paid time off to get vaccinated and to deal with the possible side effects of vaccination (usually, short-lived flu-like symptoms). The federal government does not require that employers provide such paid time off, but it strongly encourages them to do so. And it's putting its money where its mouth is, by providing fairly generous tax credits to repay employers for the lost employee work time.

You can also collect these credits if your employees take time off to help family and household members get the vaccination and/or recover from its side effects. There's only one thing better than having an employee vaccinated: having an employee's entire family vaccinated.

How big are the credits?

- Employers who give employees paid time off to get vaccinated against COVID-19 and/or recover from the vaccination can collect a sick leave credit of up to $511 per day for 10 days, plus a family leave credit of up to $200 per day for 60 additional days.

- Employers who give employees paid time off to help household members get vaccinated and/or recover from the vaccination can get a sick leave credit for 10 days and family leave credit for 60 days, both capped at $200 per day.

What if you are self-employed and have no employees? You haven't been left out. Similar tax credits are available to self-employed individuals who take time off from work to get vaccinated or who help family or household members do so.

But you must act soon. These sick leave and family leave credits are available only through September 30, 2021.

One more thing: these are refundable tax credits. This means you collect the full amount even if it exceeds your tax liability. Employers can reduce their third-quarter 2021 payroll tax deposits in the amount of their credits. If the credit exceeds these

deposits, employers can get paid the difference in advance by filing IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19.

The documentation requirements for these credits are modest, and you'll have to file a couple of new forms with your 2021 tax return.

IRS Private Letter Rulings: Are They Worth It?

Do you have a question about how to apply the tax law to a potential transaction? Wouldn't it be great if you could get the IRS to give you an answer in advance of filing your tax return?

You may be able to do so by obtaining a private letter ruling (PLR) from the IRS.

You get a PLR by filing a request with the IRS National Office. The IRS is ordinarily bound by the answer it gives a taxpayer in a PLR. But PLRs may not be relied on by other taxpayers.

This sounds great in theory—but in practice, seeking a PLR is usually not a good idea.

There are many reasons why:

- PLRs are expensive. The filing fee is $3,000 for the smallest businesses. Larger businesses must pay as much as $38,000. You'll also need professional help to prepare a detailed PLR request.
- A PLR may not be necessary. The IRS has automatic or simplified methods for obtaining its consent without a PLR for many common situations, including late S corporation elections, late IRA rollovers, and various changes in accounting method.
- PLRs are unavailable for many types of tax questions, including those that (a) are under IRS examination, (b) were clearly answered in the past, or (c) are too fact intensive.
- PLRs can take a long time to obtain—six months or more for complex questions.
- PLRs can backfire. Even if the IRS issues a favorable PLR, you now will be on the agency's radar, which may increase your chances of an audit.

Given all these drawbacks, you should seek a PLR only when a cheaper alternative is unavailable—for example, when you need to do a late IRA rollover and don't qualify for the streamlined IRS procedure.

In some instances, it's wise to seek advance IRS approval of complex transactions involving substantial money. Obtaining a favorable PLR in such a case would assure you the transaction passes IRS muster. But these instances are rare.

Prorated Principal Residence Gain Exclusion Break

Here's good news. IRS regulations allow you to claim a prorated (reduced) gain exclusion—a percentage of the $250,000 or $500,000 exclusion in select circumstances.

The prorated gain exclusion equals the full $250,000 or $500,000 figure (whichever would otherwise apply) multiplied by a fraction.

The **numerator** of this fraction is the shorter of

- the aggregate period of time you owned and used the property as your principal residence during the five-year period ending on the sale date, or

- the period between the last sale for which you claimed an exclusion and the sale date for the home currently being sold.

The **denominator** for this fraction is two years, or the equivalent in months or days.

When you qualify for the prorated exclusion, it might be big enough to shelter the entire gain from the premature sale. But the prorated exclusion loophole is available only when your premature sale is due primarily to

- a change in place of employment,
- health reasons, or
- specified unforeseen circumstances.

Example. You're a married joint-filer. You've owned and used a home as your principal residence for 11 months. Assuming you qualify under one of the conditions listed above, your prorated joint gain exclusion is $229,167 ($500,000 × 11/24). Hopefully that will be enough to avoid any federal income tax hit from the sale.

Premature Sale Due to Employment Change

Per IRS regulations, you're eligible for the prorated gain exclusion privilege whenever a premature home sale is primarily due to a change in place of employment for any qualified individual.

"Qualified individual" means

1. the taxpayer (that would be you),
2. the taxpayer's spouse,
3. any co-owner of the home, or
4. any person whose principal residence is within the taxpayer's household.

In addition, almost any close relative of a person listed above also counts as a qualified individual. And any descendent of the taxpayer's grandparent (such as a first cousin) also counts as a qualified individual.

A premature sale is automatically considered to be primarily due to a change in place of employment if any qualified individual passes the following distance test: the distance between the new place of employment/self-employment and the former residence (the property that is being sold) is at least 50 miles more than the distance between the former place of employment/self-employment and the former residence.

Premature Sale Due to Health Reasons

Per IRS regulations, you are also eligible for the prorated gain exclusion privilege whenever a premature sale is primarily due to health reasons. You pass this test if your move is to

- obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of a qualified individual, or

- obtain or provide medical or personal care for a qualified individual who suffers from a disease, an illness, or an injury.

A premature sale is automatically considered to be primarily for health reasons whenever a doctor recommends a change of residence for reasons of a qualified individual's health (meaning to obtain, provide, or facilitate care, as explained above). If you fail the automatic qualification, your facts and circumstances must indicate that the premature sale was primarily for reasons of a qualified individual's health.

You cannot claim a prorated gain exclusion for a premature sale that is merely beneficial to the general health or well-being of a qualified individual.

Premature Sale Due to Other Unforeseen Circumstances

Per IRS regulations, a premature sale is generally considered to be due to unforeseen circumstances if the primary reason for the sale is the occurrence of an event that you could not have reasonably anticipated before purchasing and occupying the residence.

But a premature sale that is primarily due to a preference for a different residence or an improvement in financial circumstances will not be considered due to unforeseen circumstances, unless the safe-harbor rule applies.

Under the safe-harbor rule, a premature sale is deemed to be due to unforeseen circumstances if any of the following events occur during your ownership and use of the property as your principal residence:

- Involuntary conversion of the residence
- A natural or man-made disaster or acts of war or terrorism resulting in a casualty to the residence
- Death of a qualified individual
- A qualified individual's cessation of employment, making him or her eligible for unemployment compensation
- A qualified individual's change in employment or self-employment status that results in the taxpayer's inability to pay housing costs and reasonable basic living expenses for the taxpayer's household
- A qualified individual's divorce or legal separation under a decree of divorce or separate maintenance
- Multiple births resulting from a single pregnancy of a qualified individual