HALL ESTILL
ATTORNEYS AT LAW

News & Insights

Hall Estill Tax Attorney David Potts - Early Termination of Employee Retention Credit for Most Employers

December 6, 2021

IRS Notice

The IRS issued Notice 2021-65 on December 6, 2021. Notice 2021-65 provides:

The Infrastructure Investment and Jobs Act amends section 3134 of the Internal Revenue Code to limit the availability of the employee retention credit in the fourth quarter of 2021 to only taxpayers that are recovery startup businesses, as defined in section 3134(c)(5). Therefore, taxpayers that are not recovery startup businesses are not eligible for the employee retention credit for wages paid after September 30, 2021.

Some taxpayers that are no longer eligible to claim the employee retention credit for wages paid after September 30, 2021 may have already reduced their employment tax deposits in anticipation of claiming the employee retention credit for the fourth quarter of 2021. These taxpayers should monitor guidance issued by the IRS to learn if they must take any action regarding these amounts.

Some taxpayers may have already submitted Form 7200 to request an advance payment of the employee retention credit for the fourth quarter of 2021. If the Form 7200 hasn't been processed, the IRS will use the taxpayer's indication of whether it is a recovery startup business (Form 7200, Part 1, line H) as part of its determination regarding whether the Form 7200 claiming the employee retention credit in the fourth quarter of 2021 should be accepted or rejected. If an advance payment of the employee retention credit for the fourth quarter of 2021 was already sent to a taxpayer that is no longer eligible to claim the employee retention credit for the fourth quarter of 2021 because it is not a recovery startup business, the taxpayer will still include that advance payment on the appropriate line of its employment tax return (for example, Form 941, Part 1, line 13h) for the quarter. In this case, the taxpayer may have a balance due when it files that employment tax return. Taxpayers should continue to monitor guidance issued by the IRS to learn if they should take any additional action regarding these amounts.

Attorneys

- David T. Potts