



PPC

Five-Minute Tax Briefing[®]
August 24, 2021
No. 2021-16

Highlights

2021 Vehicle Depreciation Limits: The IRS has released the Section 280F depreciation deduction limits for passenger autos (including trucks and vans) first placed in service during 2021. For passenger autos acquired after 9/27/17, placed in service during 2021, and subject to bonus depreciation under IRC Sec. 168(k), the depreciation limits are \$18,200 for the first year, \$16,400 for the second year, \$9,800 for the third year, and \$5,860 for each succeeding year. For passenger autos placed in service during 2021 that are not subject to Section 168(k) bonus depreciation, the depreciation limits are \$10,200 for the first year, \$16,400 for the second year, \$9,800 for the third year, and \$5,860 for each succeeding year. The IRS also has released the lease inclusion amounts for lessees of passenger autos first leased in 2021. Rev. Proc. 2021-31 .

Additional Guidance for Employers Claiming the Employee Retention Credit: The Employee Retention Credit (ERC) under IRC Sec. 3134 was enacted by Section 9651 of the American Rescue Plan Act of 2021 (ARPA) that provides a credit for qualified wages. The IRS has issued further guidance on the ERC, amplifying guidance provided in Notices 2021-20 and 2021-23. Changes include, among other things, (1) making the credit available to eligible employers that pay qualified wages after 6/30/21 and before 1/1/22, (2) expanding the definition of *eligible employer* to include "recovery startup businesses," (3) modifying the definition of *qualified wages* for "severely financial distressed employers," and (4) providing that the ERC does not apply to qualified wages taken into account as payroll costs in connection with a shuttered venue grant. Also, guidance is

provided on several miscellaneous issues with respect to the ERC for both 2020 and 2021. News Release IR-2021-165 and Notice 2021-49.

Employee Retention Credit Gross Receipts Safe Harbor: The IRS has released guidance providing a safe harbor that permits a taxpayer to consistently exclude certain items from gross receipts for determining eligibility to claim the Employee Retention Credit (ERC) for wages paid after 3/12/20 and before 1/1/22 under Section 2301 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The safe harbor items are: (1) the amount of the forgiveness of a Paycheck Protection Program (PPP) loan; (2) Shuttered Venue Operators Grants under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act; and (3) Restaurant Revitalization Grants under the American Rescue Plan Act of 2021 (ARPA). An employer is not required to apply this safe harbor, and the safe harbor does not permit the exclusion of these amounts from gross receipts for any other federal tax purpose. News Release IR-2021-167 and Rev. Proc. 2021-33, amplifying Notices 2021-20, 2021-23, and 2021-49.

Other Current Releases

Applicable Federal Rates for September: The Section 7520 rate for September 2021 is 1.0%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2021-16):

	Annual	Semiannual	Quarterly	Monthly
Short-term (≤ 3 years)	0.17%	0.17%	0.17%	0.17%
Mid-term (> 3 years but ≤ 9 years)	0.86%	0.86%	0.86%	0.86%
Long-term (> 9 years)	1.73%	1.72%	1.72%	1.71%

Income Tax—Enhanced Oil Recovery Credit: IRC Sec. 43(a) provides that for purposes of IRC Sec. 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15% of the taxpayer's qualified enhanced oil recovery costs for such taxable year. The credit is phased out in any tax year in which the reference price for the preceding calendar year exceeds \$28 (as adjusted) by at least \$6. Because the reference price for the 2020 calendar year (\$37.07) does not exceed \$28 multiplied by the inflation adjustment factor for the 2020 calendar year (\$28 multiplied by 1.7849 = \$49.9772), the enhanced oil recovery credit for qualified costs paid or incurred in 2021 is determined without regard to the phase-out for crude oil price increases. Notice 2021-47.

Income Tax—Original Issue Discount on Pooled Credit Card Receivables: The IRS allows the use of a safe harbor method also known as the *proportional method* in Rev. Proc. 2013-26 for computing Original Issue Discount (OID) accruals on a pool of credit card receivables under IRC Sec. 1272(a)(6). The IRS has issued updated guidance to reflect changes made to the treatment of certain credit card fees under IRC Sec. 451(b) by the Tax Cuts and Jobs Act (TCJA). Under Rev. Proc 2013-26, as modified by Rev. Proc. 2021-35, a taxpayer that wants to use the *proportional method* for calculating OID accruals on a pool of credit card receivables under IRC Sec. 1272(a)(6) may treat as OID only fees or charges that are not subject to the timing rules of Reg. 1.451-3 (for

example, promotional discount) and certain amounts that would not otherwise be treated as OID (for example, market discount or bond premium). Rev. Proc. 2021-35 .

Income Tax—Relief for Certain Employers Claiming the Work Opportunity Tax Credit: The IRS has provided a 28-day extension of the deadline for employers claiming the Work Opportunity Tax Credit (WOTC) to submit a request to a designated local agency to certify that an employee hired between 1/1/21 and 10/8/21, is a designated community resident or a qualified summer youth employee. To be certified as a designated community resident or a qualified summer youth employee under the WOTC, an employee must have a principal place of residence within an Empowerment Zone where the employee continuously resides. All Empowerment Zone designations were extended from 12/31/20 to 12/31/25. This transition relief allows employers to submit Form 8850 (Pre-Screening Notice and Certification Request for the Work Opportunity Credit) for these employees until 11/8/21. News Release IR-2021-168 and Notice 2021-43.

IRS—Extrinsic Evidence Not Allowed When Envelope Lacks Postmark: The *deemed delivery rule* provides that a postmark date is deemed to be the date of delivery to the IRS. In *McCaffery* , Mr. McCaffery declared that he mailed his 2013 amended return on a day when it would have been deemed timely, if it had been postmarked. A stamp on the envelope appeared to read "sold on 4/17/17," but the envelope had a partly legible postmark. The Court of Federal Claims has held that when an envelope does not contain a postmark, the taxpayer cannot use extrinsic evidence to prove when they mailed it. This is contrary to Reg. 301.7502-1(c)(1)(iii) , which states that if the postmark on the envelope is made by the USPS but is not legible, then the person required to file the document or make the payment has the burden of proving the date that the postmark was made. [*McCaffery* , 128 AFTR 2d 2021-XXXX, (Ct. Fed. Cl.)]

IRS—Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates:The IRS has provided updates on the corporate bond monthly yield curve, the corresponding spot segment rates for August 2021 used under IRC Sec. 417(e)(3)(D) , the 24-month average segment rates applicable for August 2021, as reflected by the application of IRC Sec. 430(h)(2), the 30-year Treasury rates under IRC Sec. 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, and the 30-year Treasury weighted average rate under IRC Sec. 431(c)(6)(E)(ii)(I) . In addition, the IRS has provided 24-month average segment rates for earlier periods for plan years beginning in 2020 and 2021, determined under IRC Sec. 430(h)(2)(C)(iv) reflecting the modifications made by Sec. 9706(a) of the American Rescue Plan Act of 2021 (ARPA). Notice 2021-50.

Procedure—Sample Conservation Easement Language: In a Chief Counsel Advice (CCA), the IRS has provided sample conservation easement deed language that, the IRS says, will generally not cause a deed to violate the enforceability in perpetuity requirements of IRC Secs. 170(h)(2)(C) and 170(h)(5)(A) . In the past, donors have been denied a charitable deduction when the deed granting a conservation easement contains language that violates these perpetuity rules upon the easement's extinguishment. The CCA points out, a conservation easement fails to satisfy the requirements of IRC Sec. 170(h) if the deed contains language subtracting the value of post-

donation improvements or the post-donation increase in value of the property attributable to improvements from the donee's extinguishment proceeds. The CCA says that "language in a conservation easement deed that closely adheres to the language of Reg. 1.170A-14(g)(6)(ii) generally will not cause a deed to violate the enforceability in perpetuity requirements." CCA 202130014 .

© 2021 Thomson Reuters/PPC. All rights reserved.

END OF DOCUMENT -

© 2021 Thomson Reuters/Tax & Accounting. All Rights Reserved.