

# NJWT 2022 Hot Topics

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## Advanced Child Tax Credit Payments

- Credit Increase & Phaseout
  - Child Tax Credit of \$3,000 per child – under 18
  - Credit increased to \$3,600 for child under 6
  
- The credit increase is reduced by \$50 for each \$1,000 increase in AGI or fraction thereof, over:
  - \$150,000 for MFJ or Surviving Spouse
  - \$112,500 for a HOH
  - \$ 75,000 for Single or MJS



## Advanced Child Tax Credit Payments

- This reduction in the credit amount is itself limited to the lesser of:
  - the increased credit amount of \$1,000 for each qualifying child (\$1,600 for a child under six); or
  - five percent of the applicable phase-out range (IRC §24(i)(4)(C), as added by the American Rescue Act).



## Advanced Child Tax Credit Payments

- The applicable phase-out range is the taxpayer's phase-out threshold for the pre-2021 credit (\$400,000 for joint returns, and \$200,000 for other taxpayers), minus the applicable phase-out threshold for the increased credit ([IRC §24\(i\)\(4\)\(C\)\(iii\)](#)),

## Advanced Child Tax Credit Payments

- For tax years beginning in 2021, 17-year old children now qualify for the CTC, as added by the American Rescue Act.
- *Compliance Note:* Taxpayers may elect out of the advance **payments** and instead claim the full amount of their child tax credits on their 2021 tax returns (IRC §7527A(c)(1), as added by the American Rescue Act).

# Child Tax Credit Background

- A qualifying child is generally:
  1. must be the taxpayer's child (including a stepchild, adopted child, or foster child) or sibling (brother, sister, stepbrother, or stepsister), or a descendant of the taxpayer's child or sibling;
  2. must be under age 17 at the end of the tax year;
  3. must be a U.S. citizen, national, or resident;
  4. must live with the taxpayer for more than half of the year;
  5. cannot provide over half of his or her own support for the year;
  6. cannot file a joint return for the year other than to claim a refund; and
  7. must be claimed as the taxpayer's dependent.



## Effective Date

- These provisions are effective for the tax year beginning after December 31, 2020, and before January 1, 2022. However, the provision for advance **payments** of the **child tax credit** is effective beginning on July 1, 2021 and before December 31, 2021.



## R&D Tax Credits

- On October 15, 2021, the Office of Chief Counsel issued Memorandum 20214101F, related to Research & Development Claims for Refund. The new requirements took effect on January 10, 2022.



## New Requirements

- Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.
  
- For each business component:
  - Identify all research activities performed;
  - Identify all individuals who performed each research activity; and
  - Identify all the information each individual sought to discover.

## New Requirements - Continued

- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year (this may be done using Form 6765, Credit for Increasing Research Activities).

## New Requirements - Continued

- A taxpayer must provide a declaration signed under the penalties of perjury verifying that the facts provided are accurate. In most cases, the signature on Forms 1040X or 1120X serves this function. Additionally, a taxpayer should provide the facts in a written statement rather than through the production of documents. However, if a taxpayer provides documents, including a credit study, the taxpayer must specify the exact page(s) that supports a specific fact. A mere volume of documents will not suffice to meet a taxpayer's obligation.

## New Requirements - Continued

- For the statute of limitations for credit or refund claims, there are no statutory provisions specific to I.R.C. § 41 research credit claims. Generally, taxpayers may be entitled to a credit or refund only if they have filed a valid claim within three years of the date the Form 1040 or Form 1120 was filed or two years from the time the tax was paid, whichever period expires later. The amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim equal to three years plus any extension of time for filing the return.

## New Requirements - Continued

- Refund claims may be made on either **original** returns **or amended returns**. This memorandum is directed at the specificity requirement of the Treasury Regulations, and how taxpayers may meet the requirement

## IRS Notice 2021-49

- This Notice revised regulations related to the Employee Retention Tax Credits (ERTC).
- The American Rescue Plan originally extended the ERTC for wages paid after June 30, 2021 through December 31, 2021.
- Notice 2021-49 ended the ERTC for wages paid during the 4<sup>th</sup> quarter of 2021 (except for Recovery Start-up Businesses).

## Recovery Start-up Business

- [Section 3134\(c\)\(5\)](#) of the Code defines a “recovery startup business” as an employer (i) that began carrying on any trade or business after February 15, 2020, (ii) for which the average annual gross receipts of the employer (as determined under rules similar to the rules under [section 448\(c\)\(3\)](#) of the Code) for the 3-taxable-year period ending with the taxable year that precedes the calendar quarter for which the credit is determined does not exceed \$1,000,000, and (iii) that is not otherwise an eligible employer due to a full or partial suspension of operations or a decline in gross receipts.

## Payments to Related Individuals

- Wages paid to employees with the following relationship to a majority owner of a corporation or a partnership or any other entity are not qualified wages:
  - A child or a descendent of a child
  - A brother, sister, stepbrother or stepsister
  - The father or mother, or any ancestor of either
  - A stepfather or stepmother
  - A niece or a nephew



## Payments to Related Individuals

- An aunt or uncle
- A son-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.
- An individual (other than a spouse, determined without regard to [section 7703](#), of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household

## ERTC's are Taxable

- Unlike PPP Loans, EIDL Advances and other CARES Act programs, the ERTC's are taxable income.
- Notice 2021-49 states that the ERTC's **MUST** be reported as income in the year that the wages were paid and **NOT** when the entity received the refund

## Amending Forms 941

- Businesses that were eligible to claim the ERTC can still file Form 941-X, to claim the tax credits.
- There is a 3 year statute of limitation, from the original due date of Form 941, to file the amended return.
- Form 941-X can be filed for Q2, Q3 & Q4 of 2020 and Q1, Q2 & Q3 of 2021.
- Recovery Start-up business can also file for Q4 of 2021; if not claimed on the original Form 941

## Amending Forms 941

- Qualified wages paid under the Family First Corona Response Act, that were paid between April 1, 2020 – September 30, 2021 are eligible for reimbursement.
- Amended returns can still be filed to claim these overlooked credits.

## Non-Taxable CARES Act Benefits

- The following benefits are not taxable income:
  - PPP1 & PPP2 Loans that were forgiven
  - EIDL Advance
  - SVOG Program
  - SBA Loan Payments



# Reporting Non-Taxable Income

- Schedule C Filers – not reported
- Partnerships – Schedule M-1, Line 6a

22 Total liabilities and capital . . . . .			
<b>Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return</b>			
Note: The partnership may be required to file Schedule M-3. See instructions.			
1	Net income (loss) per books . . . . .		6
2	Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):
3	Guaranteed payments (other than health insurance) . . . . .		a
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 21 (itemize):		Tax-exempt interest \$
a	Depreciation \$		
b	Travel and entertainment \$		7
5	Add lines 1 through 4 . . . . .		Deductions included on Schedule K, lines 1 through 13d, and 21, not charged against book income this year (itemize):
			a
			Depreciation \$
			8
			Add lines 6 and 7 . . . . .
			9
			Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5
<b>Schedule M-2 Analysis of Partners' Capital Accounts</b>			
1	Balance at beginning of year		a
2	Contributions		Partners' Contributions



# Reporting Non-Taxable Income

- Corporations – Schedule M-1 Line 7

20 Total liabilities and shareholders' equity . . . . .			
<b>Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return</b>			
<b>Note:</b> The corporation may be required to file Schedule M-3. See instructions.			
1	Net income (loss) per books . . . . .		7
2	Federal income tax per books . . . . .		Income recorded on books this year
3	Excess of capital losses over capital gains . . . . .		not included on this return (itemize):
4	Income subject to tax not recorded on books this year (itemize):		Tax-exempt interest \$
5	Expenses recorded on books this year not deducted on this return (itemize):		
a	Depreciation . . . . . \$		8
b	Charitable contributions . . . . . \$		Deductions on this return not charged
c	Travel and entertainment . . . . . \$		against book income this year (itemize):
6	Add lines 1 through 5 . . . . .		a
			Depreciation . . . . . \$
			b
			Charitable contributions \$
			9
			Add lines 7 and 8 . . . . .
			10
			Income (page 1, line 28)—line 6 less line 9

**Schedule M-2 Analysis of Unappropriated Retained Earnings per Book (Schedule L, Line 25)**



# Reporting Non-Taxable Income

- S-Corporations – Schedule M-1, Line 5a

Form 1120-S (2021)

Page 5

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return**

Note: The corporation may be required to file Schedule M-3. See instructions.

<p><b>1</b> Net income (loss) per books . . . . .</p> <p><b>2</b> Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize) .....</p> <p><b>3</b> Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 16f (itemize):</p> <p><b>a</b> Depreciation \$ .....</p> <p><b>b</b> Travel and entertainment \$ .....</p> <p><b>4</b> Add lines 1 through 3 . . . . .</p>	<p><b>5</b> Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize):</p> <p><b>a</b> Tax-exempt interest \$ .....</p> <p><b>6</b> Deductions included on Schedule K, lines 1 through 12 and 16f, not charged against book income this year (itemize):</p> <p><b>a</b> Depreciation \$ .....</p> <p><b>7</b> Add lines 5 and 6 . . . . .</p> <p><b>8</b> Income (loss) (Schedule K, line 18). Subtract line 7 from line 4 . . . . .</p>
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**Schedule M-2 Analysis of Accumulated Adjustments Account Shareholders' Undistributed Taxable Income**





# Form 1065 Reporting Changes

- **Line 7. Other Income (Loss)**
  - Enter any other trade or business income
  - (loss) not included on lines 1a through 6. List the type and amount of income on an attached statement. Examples of other income include the following.
    - 9. The amount of payroll tax credit taken by an employer for qualified paid sick leave and qualified paid family leave under sections 7001 and 7003 of the Families First Coronavirus Response Act.
    - 10. The amount of self-employment tax credit taken by a self-employed individual for qualified sick leave equivalent and family leave equivalent under Sections 7002 and 7004 of the Families First Coronavirus Response Act.
  
- **Other Credits**
  - This applies to the R&D Tax Credit and any other credits that are based on wage amounts.

## Form 1120-S Reporting Changes

- Line 5. Other Income (Loss) Enter any other trade or business income (loss) not included on lines 1a through 4. List the type and amount of income on an attached statement. Examples of other income include the following:
  - Any credit for qualified sick and family leave wages (both the nonrefundable and refundable portions) allowed for any calendar quarter(s) on the corporation's employment tax return(s) must be included in gross income for the tax year that includes the last day of the calendar quarter in which the credit is allowed.

## Cryptocurrency Issues

- The [2021 Form 1040](#) asks “did you receive, sell, exchange, or otherwise **dispose** of any financial interest in any virtual currency?”. The 2019 and 2020 forms used slightly different language, asking “did you receive, sell, send, exchange, or otherwise **acquire** any financial interest in any virtual currency?”
- This change comports with an IRS analysis that focuses on dispositions of cryptocurrency as taxable events.

## Cryptocurrency Issues

- A transaction involving virtual currency includes:
  - • The receipt or transfer of virtual currency for free (without providing any consideration), including from an airdrop or hard fork;
  - An exchange of virtual currency for goods or services
  - A sale of virtual currency; and
  - An exchange of virtual currency for other property, including for another virtual currency.

## Cryptocurrency Issues

- The same Form 1099 Reporting Requirements also apply to payments made in virtual currency.
- Payments made in virtual currency are also subject to the same backup withholding requirements. For the years 2018 – 2025, the withholding rate is 28%

## Cryptocurrency Issues

- The IRS has initiated several [cryptocurrency compliance and enforcement efforts](#), including Operation Hidden Treasure, a joint effort of the IRS civil office of fraud enforcement and criminal investigation unit to search for unreported crypto-related income and fraud. Operation Hidden Treasure is expected to train agents and use independent contractors to examine blockchains for signs of tax evasion and fraud.

## Cryptocurrency Issues

- The IRS has been willing to use a John Doe summons to get information about virtual currency transactions. Unlike a regular summons, a **John Doe summons** is not issued to get information about a specific taxpayer; it is issued to a third party to obtain information about multiple taxpayers whose identities are unknown

## Cryptocurrency Issues

- Notice 2022-3 Issued on 1/4/2022, indicates that following has been added to the list of items that the IRS **Will Not be issuing advanced rulings:**
- *Determination of Amount of and Recognition of Gain or Loss; Transfers of Securities Under Certain Agreements.* Whether a taxpayer recognizes gain or loss on the transfer of virtual currency in exchange for a contractual obligation that requires the return of identical virtual currency to the taxpayer or on the transfer of identical virtual currency to the taxpayer in satisfaction of the contractual obligation.



## IR 2022-06

- The IRS Updated the FAQ's for the 2020 Recovery Rebate Credit [FS-2022-02](#)
- This updated FAQ includes changes to the information for Topic F: Finding the First and Second Economic Impact Payment Amounts to Calculate the 2020 Recovery Rebate Credit:
  - Question 4, Topic F: updated
  - Questions 8, 9 & 10, Topic F: added
- These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible.

