Lally&Co.
CPAs and Business Advisors

The EVERGREEN

Quarterly Journal for Clients & Friends

Spring 2021 – Volume XXXIV

This Issue:

- **President Biden's "Made In America" Tax Plan and Two Recently Introduced Tax Plans**
- **Monthly Child Tax Credit Payments**
- **Guidance on Temporary Full Deduction for Business Meals**
- **Guidance for Claiming Employee Retention Credit**
- **IRS Begins Correcting Tax Returns for Unemployment**

The Evergreen. Always Growing.

Like the evergreen tree, Lally & Co. is always growing. With the support and loyalty of our clients and friends we have grown into a firm of 47 individuals serving clients in many diverse fields. Our growth gives us the ability to better serve our clients and provide effective solutions to their needs. If you have questions about your business or personal tax situation, please contact us. We welcome your call and are always looking for ways to better serve you.

Contact our office or visit our website for more information.

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Dear Clients and Friends,

Spring has arrived and with it came the end of another "busy" season. We would like to extend our sincere gratitude for the trust you have invested in us. Our clients and referral sources are the reason we had one of our busiest and most successful tax seasons. It would not have happened without you.

As you read through *The Evergreen*, please do not hesitate to contact us if you have questions regarding an article or your business or personal tax situation. We would be happy to hear from you! This and past issues of *The Evergreen* are available on our website at http://lallycpas.com/newsletters/.

President Biden's "Made in America" Tax Plan and Two Recently Introduced Tax Plans

On March 31, 2021, President Biden announced his "Made in America" Tax Plan. The "Made in America" Tax Plan proposes tax increases on many corporations and businesses with international operations. This plan could raise over $2 trillion in taxes/revenue over the next 15 years.

The "Made in America" Tax Plan includes the following corporate tax proposals:

- Raising the corporate tax rate from 21% to 28%,
- an increase in the taxes imposed on a domestic global intangible low-taxed income (GILTI) by:
  - raising the minimum rate of 10.5% to 21%,
  - calculating GILTI on a country-by-country basis,
- strengthening the global minimum tax for U.S. multinational corporations,
- reducing the expense deduction that U.S. companies can claim when offshoring jobs and providing tax credits to U.S. companies to support onshore jobs,

(Continued on Page 2)

- repealing the "Foreign Derived Intangible Income" provisions of the Tax Cuts and Jobs Act,
- enacting a 15% minimum tax on the book income of large companies that report high profits, but have little taxable income,
- eliminating subsidies, tax preferences, and special tax credits for the fossil fuel industry,
- and increasing enforcement by ensuring that the Internal Revenue Service has the resources it needs.

In addition to the "Made in America" Tax Plan, Senate Democrats have released two other tax plans: "For the 99.5%" Act and the Sensible Taxation and Equity Promotions Act of 2021 (the "STEP" Act).

On March 25, 2021, "For the 99.5%" Act was introduced. This Act proposes dramatic and historic changes to the current estate and gift tax regime. If passed, the proposed changes would be effective as of January 1, 2022.

"For the 99.5% Act" includes the following estate and gift tax proposals:

- Reduces the estate tax and generation-skipping transfer (GST) tax exemptions to $3,500,000 from $11,700,000,
- reduces the lifetime gift tax exemption to $1,000,000 from $11,700,000,
- raises the estate tax maximum rate from 40% by creating new estate tax rate brackets as follows:
    - 45% for taxable estates between $3,500,000 - $10,000,000
    - 50% for taxable estates between $10,000,000 - $50,000,000
    - 55% for taxable estates between $50,000,000- $1,000,000,000
    - 65% for taxable estates above $1,000,000,000
- increases the Generation Skipping Trust tax rate to 65%,
- decreases the annual gifting exemption from $15,000 per donee per year to $10,000,
- eliminates valuation discounts for nonbusiness assets, such as family-owned limited liability companies funded with investment assets,
- limits "dynastic" trusts that are intended to go on for multiple generations by requiring the trust to terminate for estate tax purposes after 50 years,
- requires a 10-year minimum term for grantor retained annuity trusts (GRATs),
- requires that GRATs have a remainder interest of the greater of (i) 25% of the amount contributed to the trust, or (ii) $500,000, but not more than the fair market value of the property contributed to the trust,
- eliminates what are commonly referred to as "Defective Grantor Trusts" by adding a provision to the Internal Revenue Code stating that a trust funded by a grantor after the date of the legislation is considered owned by the grantor for both income and estate tax purposes.

Finally, on March 29, 2021, the "STEP" Act was introduced. The "STEP" Act targets assets with built in gain or loss and includes a number of proposals which look to fundamentally change the estate planning process. Highlights include:

- Elimination of the "step up/step down" in basis to fair market value at death and the elimination of "carryover" basis on gifts effective January 1, 2021,

(Continued on Page 3)

- The gain on appreciated assets is realized upon transfer by gift, in trust (including transfers during the taxpayer's lifetime) and a transfer at death,
- individuals are provided a $100,000 annual exclusion for transfers of assets with unrealized gain,
- individuals are provided a $1 million exclusion from taxation for unrealized gains at death, reduced dollar-for-dollar by the cumulative amount of any transfers in excess of the $100,000 annual exclusion,
- provides that, every 21 years, assets held in non-grantor trusts are taxed on unrealized gains,
- allows taxpayers to pay the tax for illiquid assets over a 15-year period

While neither of these proposals are law, there appears to be momentum for changes to the current estate, gift, and GST tax regime. Taxpayers should discuss these issues with their tax advisors and estate planning attorney in the event they ultimately become law.

Monthly Child Tax Credit Payments

The Biden administration announced on May 17th that roughly 39 million families will begin receiving monthly child tax credit payments starting July 15th. These payments are part of the expanded child tax credit program in the American Rescue Plan.

The IRS will start delivering monthly payments of $300 per child under the age of 6 and $250 per child 6 or older for those who qualify. The maximum enhanced child tax credit is $3,600 for children under 6 and $3,000 for those between 6 and 17. These payments will be deposited in most families' bank accounts on or around the 15th of every month and will run through December 15, 2021. The administration has worked to streamline the payment process, having learned from its experience with the stimulus check payments.

The full credit is available to married couples filing jointly with adjusted gross income less than $150,000 or $75,000 for individuals. The credit will phase out for married couples earning $170,000 filing jointly and individuals earning $95,000. Taxpayers above the threshold will still be eligible for the regular child tax credit, which is $2,000 per child under the age of 17 for families making less than $200,000 or $400,000 for married couples.

Families can opt out of receiving the monthly payments through an IRS portal. Those who opt out will not receive the monthly payments but will receive the full credit for which they are eligible when they file their 2021 tax return.

Guidance on Temporary Full Deduction for Business Meals

The IRS provided guidance related to the temporary 100-percent deduction for business meals provided by a restaurant. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (P.L. 116-260) temporarily increased the deduction from 50 percent to 100 percent for a business's restaurant food and beverage expenses for 2021 and 2022. All other food and beverage expenses are still subject to the 50 percent deduction limitation unless some other exception applies.

Restaurants Defined
According to IRS guidance, a restaurant is a business that prepares and sells food or beverages to retail customers for immediate consumption. Note that the food and beverages do not need to be consumed on the premises for the 100-percent deduction to apply.

(Continued on Page 4)

Restaurants are not businesses that predominantly sell pre-packaged food or beverages that are intended for later consumption.

Food or beverages purchased from such businesses are still subject to the 50-percent deduction limitation.

Examples of businesses that are not restaurants include grocery stores, specialty food stores, liquor stores, drug stores, convenience stores, newsstands, vending machines, or kiosks.

Restaurants are also not eating facilities located at an employer's business that provide meals that are excluded from the employees' gross income under Code Sec. 119, or that are considered a de minimis fringe under Code Sec. 132(e)(2). This also applies to eating facilities on the employer's premises that are operated by a third party with regard to Reg. §1.132-7(a)(3).

Effective Date
This IRS guidance is effective for food and beverages purchases made after December 31, 2020, and before January 1, 2023.

Guidance for Claiming Employee Retention Credit for First and Second Quarters in 2021

The IRS has issued guidance for employers claiming the employee retention credit under Act Sec. 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), as modified by Act Secs. 206 and 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) (Division EE of P.L. 116-260), for the first and second calendar quarters in 2021. The guidance amplifies previous guidance which addressed amendments made by section 206 of the Relief Act for calendar quarters in 2020.

In general, eligible employers can claim a refundable employee retention credit against the employer share of Social Security tax equal to 70 percent of the qualified wages they pay to employees after December 31, 2020, through June 30, 2021. Qualified wages are limited to $10,000 per employee per calendar quarter in 2021. Thus, the maximum employee retention credit available is $7,000 per employee per calendar quarter, for a total of $14,000 for the first two calendar quarters of 2021.

For calendar quarters beginning after 2020, an employer is generally eligible for the credit if it was carrying on a trade or business during the calendar quarter for which the credit is determined, and either (1) had operations that were fully or partially suspended during the calendar quarter due to governmental orders limiting commerce, travel, or group meetings due to COVID-19,

or (2) experienced a decline in gross receipts for the calendar quarter when compared to the same quarter in 2019.

The guidance explains changes made to the employee retention credit for the first two calendar quarters of 2021, including:

- the increase in the maximum credit amount,
- the expansion of the types of employers that may be eligible to claim the credit,
- modifications to the gross receipts test,
- revisions to the definition of qualified wages, and
- new restrictions on the ability of eligible employers to request an advance payment of the credit.

The guidance does not address the employee retention credit provided by Code Sec. 3134, enacted by the American Rescue Plan Act of 2021, for wages paid after June 30, 2021, and before January 1, 2022.

(Continued on Page 5)

Firm Announcements

Steven J. LaFrance joined the Firm's Tax Department in February as an Associate.

Matthew J. Henderson, CPA and his wife, Carlye, became first time parents to baby girl, Penelope Capri Henderson, on April 9th 2021.

Brandon J. Niznik married his fiancé, Brooke Callaghan, on May 8th, 2021.

Important Dates

June 15, 2021 – 2021 2nd Quarter Estimated Tax Payments Due

The IRS will address Code Sec. 3134 in future guidance.

Highlights of some of the items addressed in the guidance are summarized below.

Eligible Employers
While the employee retention credit is not available to most governmental employers, it is available to tax-exempt organizations described in Code Sec. 501(c)(1), and to any governmental entity that is a college or university or whose principal purpose is providing medical or hospital care. For this purpose, a college or university means an educational organization as defined in Code Sec. 170(b)(1)(A)(ii) and Reg. §1.170A-9(c)(1). An entity that has the principal purpose or function of providing medical or hospital care means an entity that has the principal purpose or function of providing medical or hospital care within the meaning of Code Sec. 170(b)(1)(A)(iii) and Reg. §1.170A-9(d)(1).

Decline in Gross Receipts
One way an employer can be eligible for the credit is if it experienced a decline in gross receipts. Whether an employer is an eligible employer based on a decline in gross receipts is determined separately for each calendar quarter, and is based on an 80 percent threshold compared to the same calendar quarter in 2019.

If an employer did not exist as of the beginning of the first calendar quarter of 2019, the employer generally determines whether the decline in gross receipts test is met in the first calendar quarter of 2021 by comparing its gross receipts in that quarter of 2021 to its gross receipts in the first calendar quarter of 2020. If an employer did not exist as of the beginning of the second calendar quarter of 2019, the employer generally determines whether the test is met in the second calendar quarter of 2021 by comparing its gross receipts in that quarter of 2021 to its gross receipts in the second calendar quarter of 2020. An employer may also elect to use an alternative quarter to calculate gross receipts.

Eligible employers must maintain documentation to support the determination of the decline in gross receipts, including which calendar quarter an eligible employer elects to use in measuring the decline.

Qualified Wages
Whether wage payments by an eligible employer will be considered qualified wages depend, in part, on the average number of full-time employees an eligible employer employed during 2019. For the first and second calendar quarters of 2021, large eligible employers are those whose average number

(Continued on Page 6)

of full-time employees during 2019 was greater than 500.

For these employers, qualified wages are wages paid to an employee for time that the employee is not working for the reasons the credit is allowed.

Small eligible employers are those whose average number of full-time employees during 2019 was 500 or less. For these employers, qualified wages are the wages paid an employee whether the employee is working or not working for the reasons the credit is allowed.

An employer may not claim a credit under Code Secs. 41, 45A, 45P, 45S, 51, or 1396 with qualified wages for which it claims the employee retention credit, but it may be able to take a credit under these provisions for wages for which it did not claim an employee retention credit if the particular credit's requirements are met.

Claiming the Credit

Eligible employers may continue to access the employee retention credit for the first and second calendar quarters of 2021 prior to filing their employment tax returns by reducing employment tax deposits in anticipation of the credit. However, advance payment of the employee retention credit is available only to small eligible employers, who may elect to receive an advance payment of not more than 70 percent of the average quarterly wages paid in calendar year 2019.

For this purpose, average quarterly wages generally means the average of wages or compensation determined without regard to the social security wage base, paid in each calendar quarter in 2019. The guidance provides details for calculating average quarterly wages. Small eligible employers that come into existence in 2021 are ineligible to receive advance payment.

IRS Begins Correcting Tax Returns for Unemployment

The Internal Revenue Service will begin issuing refunds this week to eligible taxpayers who paid taxes on 2020 unemployment compensation that the American Rescue Plan later excluded from taxable income.

The IRS identified over 10 million taxpayers who filed their tax returns prior to the American Rescue Plan of 2021 becoming law and is reviewing those tax returns to determine the correct amount of taxable unemployment compensation and tax.

The American Rescue Plan, enacted on March 11, 2021, excludes from income up to $10,200 of unemployment compensation from taxable income. If modified AGI is $150,000 or more, all unemployment compensation is considered taxable income.

The corrections are being made automatically and the IRS anticipates that it will take through the end of summer to review and correct all returns. The IRS will issue refunds resulting from this effort by direct deposit for taxpayers who provided bank account information on their 2020 tax return. If bank information is not available, the refund will be mailed as a paper check. Taxpayers should also expect to receive a notice explaining the corrections made to their return.