

# National Tax Advisory

## Newsletter Highlights



### ABOUT US

Prager Metis' National Tax Advisory Group is here to help you interpret and navigate tax changes from international, federal, state and local tax and administration.

Our National Tax Advisory Group of professionals offers a wide breadth of tax knowledge and experience. Our team is uniquely positioned to help you prepare for the impact of tax-related changes affecting your personal and professional world.

The National Tax Advisory Group is a leading resource for clients looking to stay current with tax-related developments. The group also assists with resolving complex tax matters in a wide range of areas, including transaction planning, high-level federal, state and local tax research activities, tax position analysis, Internal Revenue Service (IRS) rulings controversy, and much more.

Our team will help you stay abreast of current tax developments. Prager Metis will be communicating tax alerts regularly through a variety of channels, including newsletters, articles, client briefings and webinars.

### IRS SEEKING TO INCREASE ITS AUDIT RATES FOR HIGHER EARNERS

In a statement release May 26, 2022, the IRS indicated that it is working to boost audit rates for the wealthiest of individual taxpayers. This comes along with an effort by the IRS to hire more staff.

The statement acknowledged that while audit rates had decreased in the past few years, the percentages of audits have doubled for those taxpayers reporting over \$100,000.00 to more than \$10,000,000.00 over the past seven months.

As of May 1, 2022, the statement reported that the audit rates for the tax year 2019 ranged from .4% for those filers reporting Total Positive Income ("TPI") of \$25,000.00 or less to 8.7% for those reporting TPI in excess of \$10,000,000.00.

The IRS uses a "Discriminate Income Function" ("DIF") to determine which returns are potential audit targets: as such, various factors may come into play when the IRS selects a return for audit.

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IRS Seeking to Increase Its Audit Rates for Higher Earners

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## EMPLOYEE RETENTION CREDIT (ERC)

### General/Background

The employee retention tax credit (ERC) was enacted as part of the CARES Act and allows for a refundable tax credit against the employer's share of Social Security employment taxes. This credit may allow for significant tax refund opportunities for eligible taxpayers. Borrowers under the SBA's Paycheck Protection Program (PPP) are eligible to claim the employee retention credit, but may not use the same wages for both PPP loan forgiveness and the ERC.

### 2020 Eligibility and Credit Amount

The employee retention credit is available for eligible wages paid after March 12, 2020. In order to qualify for the credit in 2020, the taxpayer must demonstrate that either: (1) the business operations were fully or partially suspended during at least one calendar quarter during the 2020 tax year due to governmental authority related to the COVID crisis, or (2) the business suffered a decline in its gross receipts of more than 50% in any 2020 quarter, compared to the corresponding quarter in 2019. Once a more than 50% decline in gross receipts has occurred, the credit eligibility continues until the taxpayer's gross receipts return to at least 80% of the gross receipts level for the same 2019 quarter used to determine the gross receipts decline.

The amount of the credit for 2020 is limited to 50% of \$10,000 maximum annual wages, i.e., \$5,000 maximum credit per employee. In addition to wages, health care costs can be included in the amount eligible for the credit, even if the employee had been furloughed. Further, if the taxpayer had more than 100 full time equivalency employees during 2019 (this measurement includes affiliated entities under single employer IRS rules), the taxpayer may only claim a credit for wages paid to those employees who are not providing services due to either business closures under governmental authority or decline in gross receipts.

### 2021 Eligibility and Credit Amount

The ERC was extended through September 30, 2021 with the following computational changes:

For 2021, the credit amount is 70% of up to \$10,000 creditable wages per employee per quarter. As discussed above, for 2020, the credit is based on a 50% x \$10,000 annual wage cap. Further, the gross receipts test is modified for 2021 by requiring a decrease in gross receipts of more than 20% compared to the same quarter in 2019. By election, the taxpayer may elect to satisfy the gross receipts reduction by comparing the immediately preceding quarter to the corresponding quarter in 2019. The 2021 credit eligibility rules retain the full or partial closure eligibility rule associated with governmental authority for 2021. In addition, the large employer rule requiring eligible wages to count only for those employees who are paid not to provide services is raised from more than 100 employees to more than 500 employees.

### Recovery Start Up Business

A new category of eligible business for ERC purposes was introduced into law, effective for the third and fourth quarters of 2021. Thus, if a business does not meet the qualifications due to a more than 20 percent decline in gross receipts, or a partial or full closure due to governmental authority due to COVID, a business that meets the following requirements as a recovery start up business may qualify for ERC purposes. An eligible employer must (1) began carrying on a trade or business after February 15, 2020; (2) average annual gross receipts for the three taxable year period ending with the taxable year preceding the calendar quarter for which the credit is determined must not exceed \$1 million; and (3) the employer does not satisfy the more than 20 percent decline in gross receipts or partial or full closure tests. For purposes of the \$1 million gross receipts test, the rules contain a special aggregation rule for commonly owned businesses. Further, the recovery start up business is subject to a \$50,000 cap per quarter for the ERC credit, i.e., the credit may not exceed \$50,000 for each of the third or further quarters of 2021 (although the Infrastructure legislation terminated the ERC after September 30, 2021, recovery start-up businesses may be eligible for the fourth quarter 2021).

## EMPLOYEE RETENTION CREDIT (ERC)

### Other Relevant Issues

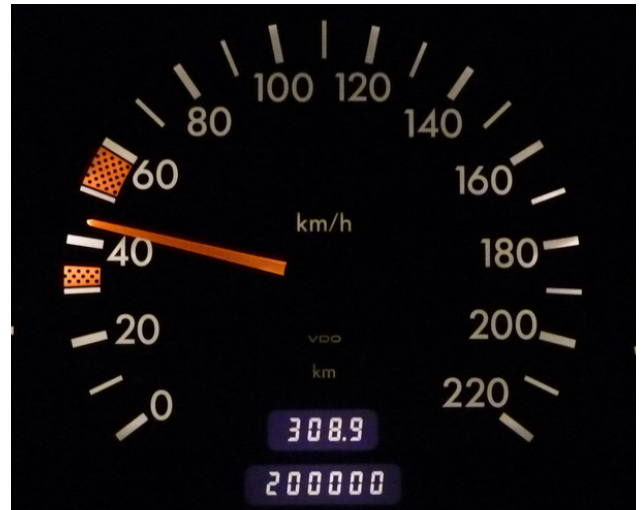
The IRS has indicated that deductions for the portion of employee wages will be non-deductible to the extent of the employee retention credit amount under rules similar to IRC Section 280C (generally applicable to the Work Opportunities tax credit). Refundable tax credits are not required to be included in the taxpayer's gross income. In addition, the new law provides that effective for tax years beginning January 1, 2021, the research tax credit cannot be claimed on the same wages that also qualify for the employee retention credit.

### Next Steps

For those taxpayers who borrowed under the PPP loan program, there may be opportunities to calculate and amend payroll tax returns for 2020 and 2021 if the eligibility tests discussed above are met. The retention credit may not be claimed on the same wages that are used to qualify for PPP loan forgiveness.

## MILEAGE RATE CHANGES

The IRS announced on June 9th that the optional standard mileage rate is increasing by 4 cents for the remaining six months of the year (Announcement 2022-13). Generally, the mileage rate is adjusted once a year. However, due to rising gas prices, the rate adjustment was necessary mid-year per comment from IRS Commissioner Chuck Rettig.



| Purpose        | Rates: 1/1/2022-6/30/2022 | Rates: 7/1/2022-12/31/2022 |
|----------------|---------------------------|----------------------------|
| Business       | 58.5                      | 62.5                       |
| Medical/Moving | 18                        | 22                         |
| Charitable     | 14                        | 14                         |

<https://www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022>

## NEW YORK STATE & CITY PASS-THROUGH ENTITY TAX UPDATE

Recent modifications to the New York State Pass-Through Entity Tax ("NYS PTET") will provide significant tax benefits to eligible participants, which includes S Corporation Shareholders and Partners. The modifications listed below were signed into law on April 9, 2022 (A9009C S8009C) and May 6, 2022 (S8948). These changes are effective for tax years beginning on or after January 1, 2022.

### New York Statement Modifications

1. **NYS PTET Tax Base and Electing S Corporations** – For "electing resident S Corporations" (i.e., one that certifies at the time of its PTET election that all of its shareholders are NYS residents), the base for calculating the NYS PTET will include income from all sources as opposed to only NY sources under prior law. Since this is effective January 1, 2022, for this year only, the certification must be made by March 15, 2023. For an "electing standard S Corporation" (i.e., one that does not certify that all of its shareholders are NYS residents), however, the PTET is based only on NY source income. It should be noted that, if a certification is not made, the S Corporation will be treated as an "electing standard S Corporation."
2. **2022 NYS PTET Election** – The 2022 NYS PTET election needs to be made by September 15, 2022. Under prior law, the election needed to be made by March 15, 2022.
3. **Estimated Tax Payments** – If the PTET election is made on or before March 15, 2022, the March 15, 2022, and June 15, 2022, estimated tax payments must both equal 25% of the required annual payment. If the PTET election is made on or after June 15, 2022, and before September 15, 2022, an estimated tax payment with the PTET election must be made equal to 50% of the required annual payment. If the PTET election is made on September 15, 2022, an estimated tax payment with the PTET election must be made equal to 75% of the required annual payment.
4. **PTET Income Tax Addback** – Retroactive to tax years beginning on or after January 1, 2021, you are not required to add back the NYS PTET deducted in determining Federal Taxable Income to calculate the NYS PTET base. The addback will be reported on the resident's or nonresident's NYS personal income tax return. This amendment clarifies that there is not a double addback.
5. **NYC Pass-Through Entity Tax ("NYC PTET")** – Effective for tax years beginning on or after January 1, 2023, the budget bill created a new Tax Law Article 24-B, which is similar to the NYS PTET.

The annual NYC PTET election may be made by an "eligible city partnership" or an "eligible city resident S Corporation." Once the election is made, it is irrevocable. The election is annual and must be made by March 15th of each applicable tax year (e.g., March 15, 2023, for tax year 2023). An eligible city partnership is defined as a partnership that has a NYS Partnership filing requirement and where at least one partner is a city resident individual. An eligible city resident S Corporation is defined as any NYS S Corporation that has only city resident individual shareholders.

The NYC PTET is imposed at a flat rate of 3.876%, the highest NYC personal income tax rate. The base includes all items of income, gain, loss, or deduction to the extent they are included in the city taxable income of a partner, member, or resident shareholder of the electing city taxpayer. A credit is available to resident partners, members, or shareholders against their personal income tax equal to their direct share of the NYC PTET.

The NYC PTET is in addition to the New York City Unincorporated Business Tax on partnerships and the NYC General Corporation Tax on S Corporations. The NYC PTET estimated tax payments are due March 18th, June 15th, September 15th, and December 15th.



## BUSINESS MEALS DEDUCTION

For years 2021 and 2022, businesses can deduct the full cost of business-related food and beverages purchased from a restaurant. Otherwise, the business meals are generally limited to 50%.

The primary difference between the 100% deduction in 2021 and 2022 and the regular 50% deduction is that the meals must be from restaurants. A restaurant includes businesses that prepare and sell food or beverages to retail customers for immediate on-premises or off-premises consumption. Grocery stores, convenience stores and other businesses that sell primarily pre-packaged goods do not qualify as restaurants.

Additional meals that are 100% deductible include:

- Recreational, social or other activities primarily for the benefit of employees (e.g. holiday party, summer barbecue)
- Meals made available to the general public for advertising or promoting goodwill
- Meals that are reimbursed after being billed separately to a client are 100% deductible by the company but only 50% deductible by the client.
- Generally, meals must meet the following requirements to be deductible:
  - Ordinary and necessary expense,
  - Not lavish or extravagant under the circumstances
  - Business owner or employee must be present
  - Provided to current or potential business customer or business contact

Reminder, entertainment expenses are not deductible. However, meals, food, or beverages purchased at an entertainment event are deductible if they are purchased separately or stated separately on the invoice and meet the other requirements for a deductible meal.

## NATIONAL TAX ADVISORY TEAM

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