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Dear Client:

Congress recently passed the Infrastructure Investment and Jobs Act (the Act), a \$1 trillion infrastructure bill. The Act contains some important tax provisions, including the early termination of the COVID-19-related employee retention credit, modifications to certain Tax Court filing rules, and new broker information reporting requirements for digital asset transactions.

A summary of the Act's key tax provisions follows.

## **Early Termination of Employee Retention Credit**

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted the employee retention credit (ERC) which allows eligible employers to take a credit against certain employment taxes. Originally, the credit related to employment taxes paid on a percentage of qualified wages paid after March 12, 2020, and before December 31, 2020. That termination date was later extended to July 1, 2021, by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (which also made several other changes to the ERC). The American Rescue Plan Act of 2021 extended the ERC to wages paid after June 30, 2021, and before January 1, 2022.

The Act terminates the ERC early so that it does not apply to wages paid after September 30, 2021, unless the employer qualifies as a recovery startup business. For a recovery startup business, the ERC continues to apply to wages paid before January 1, 2022. A recovery startup business refers to any employer that: (1) began carrying on a trade or business after February 15, 2020; (2) for which the average annual gross receipts for the 3-tax-year period ending with the tax year preceding the calendar quarter for which the credit is determined does not exceed \$1 million; and (3) with respect to any calendar quarter, was not subject to a government-ordered shutdown or a significant decline in gross receipts.

Due to the early termination of the ERC, employers (other than recovery startup businesses) that reduced employment tax deposits and/or received an advance payment of the credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, after September 30, 2021, will have to repay those amounts.

## **Modifications to Tax Court Filing and Tax-Related Deadlines**

When there is either a federally declared disaster, a terroristic action, or a military action, the Treasury Secretary can postpone certain tax-related deadlines. In 2020, Congress added a mandatory minimum extension period of 60 days for taxpayers affected by federally declared disasters, regardless of whether the Treasury Secretary exercised his or her discretion to postpone a deadline. The Act clarifies the legislative intent of that provision by stating (1) when the automatic extension ends, (2) what required acts are postponed, (3) the location of a qualifying disaster, and (4) how to proceed when there are declarations relating to multiple disasters.

The performance of certain tax-related acts can be postponed by reason of service in combat zones or contingency operations. The Act clarifies that all Tax Court petitions receive this postponement treatment and further provides that the time for the government to file an erroneous refund suit against a taxpayer is also postponed under this provision.

The Act also provides a tolling period for the time for filing a Tax Court petition when a "filing location" is inaccessible or otherwise unavailable to the general public on the date a petition is due. Under this provision, taxpayers have an additional 14 days to file a Tax Court petition after the Tax Court reopens from such period of inaccessibility. For these purposes a "filing location" includes (1) the office of the clerk of the Tax Court, and (2) any online portal made available by the Tax Court for electronic filing of petitions (i.e., the Tax Court's DAWSON e-filing system).

In addition, the Act adds "a significant fire" to the list of events that result in the postponement of certain federal deadlines, and defines a "significant fire" as any fire with respect to which assistance is provided under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

## **Modification of Tax Treatment of Contributions to the Capital of a Corporation**

Contributions to the capital of a corporation, whether in the form of money or property, are generally excludable from the gross income of the corporation. In 2017, the Tax Cuts and Jobs Act (TCJA) added a rule which provides that the term "contributions to capital" does not apply to (1) any contribution in aid of construction or any other contribution as a customer or potential customer, and (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such). In effect, the TCJA made state and local government incentives to corporations taxable income to the corporation.

The Act revises the TCJA rule for contributions to the capital of a corporation to provide a special rule for water and sewerage disposal utilities. Under this new rule, which applies to contributions made after December 31, 2020, the term "contribution to the capital of the taxpayer" includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if: (1) such amount is (i) a contribution in aid of construction, or (ii) a contribution to the capital of such utility by a governmental entity providing for the protection, preservation, or enhancement of drinking water or sewerage disposal services; (2) in the case of a contribution in aid of construction which is property other than water or sewerage disposal facilities, such amount meets certain requirements specified in the Code; and (3) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for rate-making purposes.

## **New Information Reporting Requirements for Cryptocurrency and Other Digital Assets**

Any person doing business as a broker is required to file annual information returns on Form 1099-B, Proceeds from Broker and Barter Exchange Transactions, to report certain information about their customers to the IRS, such as the customer's identity, the gross proceeds from sales of securities for such customer, and for "covered securities," cost basis information. Brokers are also required to furnish the same information reported to the IRS to their customers by February 15 of the year following the calendar year for which the Form 1099-B is required to be filed.

The Act expands the Form 1099-B reporting and furnishing requirements to include cryptocurrency and other digital asset transactions, beginning with returns required to be filed and statements required to be furnished in 2024 for transactions occurring in calendar year 2023. Specifically, the Act revises the definition of a broker to include any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. Such broker is required under the Act to file a return showing the name and address of each customer, with such details regarding gross proceeds and such other information as the IRS may require with respect to such business. The Act defines "digital asset" as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the IRS.

## **Changes Relating to Minimum Funding Standards for Single-Employer Defined Benefit Pension Plans**

The Act changes the rules relating to minimum funding standards for single-employer defined benefit pension plans by amending (1) a table relating to segment rates used to determine the shortfall amortization installments with respect to minimum funding standards for single-employer defined benefit pension plans, and (2) a table in the Employee Retirement Income Security Act of 1974. These amendments apply with respect to plan years beginning after December 31, 2021.

## **Inclusion of Qualified Broadband Projects and Qualified Carbon Dioxide Capture Facilities in Private Activity Bonds**

The Act adds qualified broadband projects and qualified carbon dioxide capture facilities to the list of exempt facility bonds. The amendments relating to qualified broadband projects apply to obligations issued in calendar years beginning after the date the Act is signed into law. The amendments relating to qualified carbon dioxide capture facilities apply to obligations issued after December 31, 2021.

## Grants for Energy-Efficiency Materials Installed in a Nonprofit Building

The Act authorizes up to \$200,000 in grants to individual nonprofit organizations for the purchase of energy-efficiency materials, the installation of which results in a reduction in use of energy or fuel. For this purpose, the term "energy-efficient material" includes a roof or lighting system or component of the system; a window; a door, including a security door; and a heating, ventilation, or air conditioning system or component of the system (including insulation and wiring and plumbing improvements needed to serve a more efficient system). The term "nonprofit building" means a building operated and owned by an organization that is described in Code Sec. 501(c)(3) and is exempt from tax under Code Sec. 501(a).

In determining whether to award a grant, the following performance-based criteria will be applied: the energy savings achieved; the cost effectiveness of the use of energy-efficiency materials; an effective plan for evaluation, measurement, and verification of energy savings; and the financial need of the applicant.

Please let me know if you have questions or would like to meet to discuss the ramifications of the Act's various provisions on your tax situation.

Sincerely,

Reilly, Creppage & Co., Inc.

A handwritten signature in cursive script that reads "Reilly, Creppage & Co., Inc." The signature is written in black ink and is positioned below the typed name.