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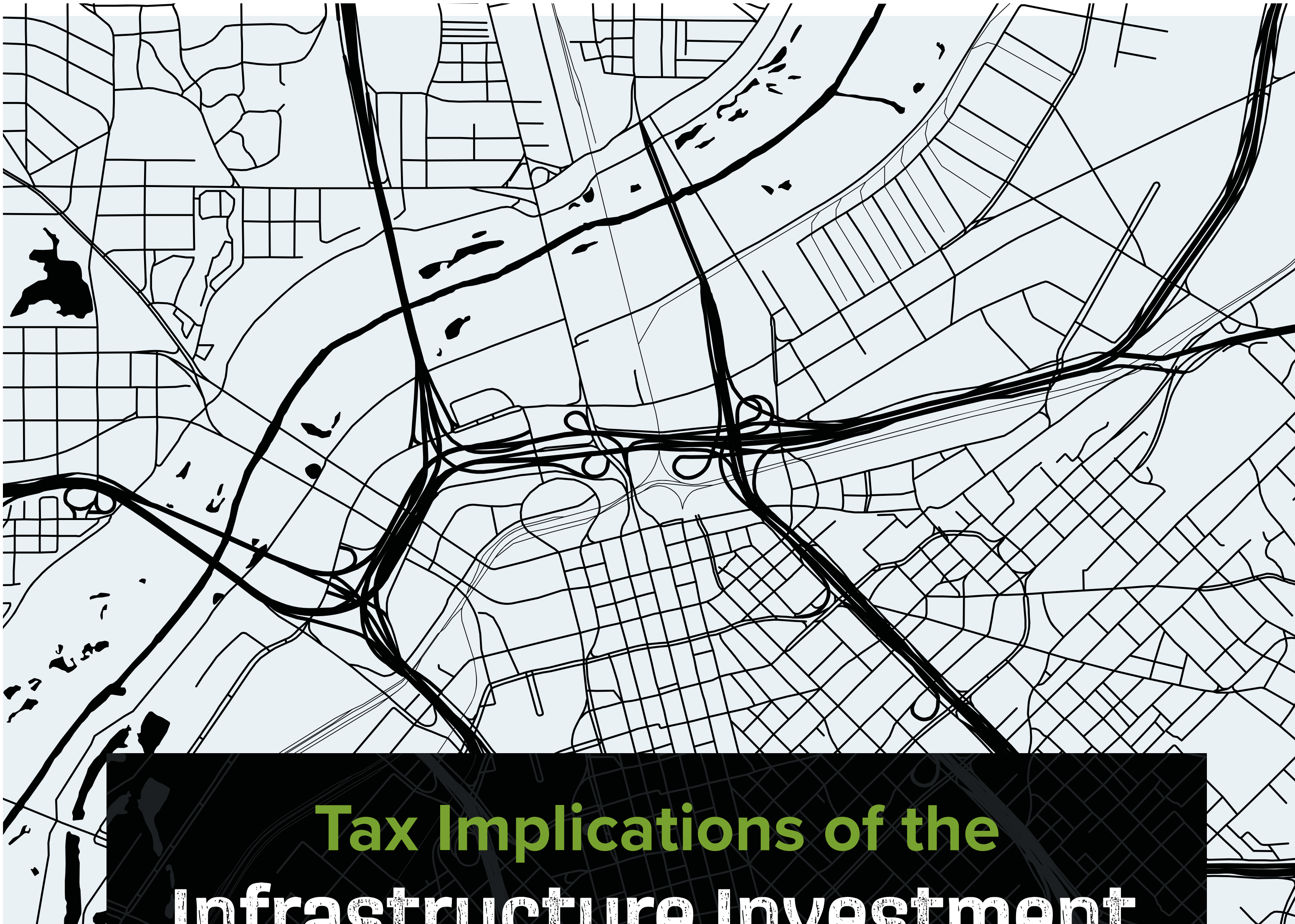

Tax Implications of the Infrastructure Investment and Jobs Act

By: Michelle Freeman, CPA, Ed.D.

On Nov. 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act into law. The purpose of this legislation is evident in its name as it encompasses funding for “roads, bridges, railroads, airports, public transportation, access to broadband internet, and clean water” (Stradling, 2021). The revenue to support the $1.2 trillion Act will mainly result from “repurposing COVID-19 relief funds and unused unemployment benefits, delaying a Medicare rebate, and enacting stronger cryptocurrency reporting requirements" (Stradling, 2021). Although there are few provisions in this Act that will affect the average taxpayer, there are some that tax preparers should note.

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Cryptocurrency Brokers Beware

Congress plans to fund much of the Infrastructure Investment and Jobs Act by focusing in on the "cryptocurrency reporting requirements in an effort to stem underreporting of cryptocurrency transactions" (Luscombe, 2021). The Act places cryptocurrency assets into the IRC officially for the first time (they were previously only addressed in IRS notices, FAQs and revenue rulings), and it paves the way for the IRS to calculate gains and losses more accurately on cryptocurrency transactions (Pedersen, 2021). The cryptocurrency reporting and following tax on gains and losses should generate approximately $28 billion in taxes over the next 10 years, according to the Joint Committee on Taxation (Legislative update: House passes bipartisan infrastructure bill with tax provisions, completing congressional action, 2021). The cryptocurrency reporting requirement goes into effect for transactions on or after Jan. 1, 2023 (Pedersen, 2021).

The Act is somewhat vague as to whom the reporting requirements affect and how those affected will get the information they need to report. The Act extends the definition of a broker to "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person" (Blair, Pisareva and Provenzano, 2021). If this definition includes requirements for "stakers, validators, miners and developers," it is troublesome in their ability to access the reporting information now required (Pedersen, 2021). However, some CPAs expect the Treasury to interpret the term "effectuating transfers to exclude those mentioned above and to apply to U.S. or non-U.S. brokers" (Pedersen, 2021).

The Act also treats cryptocurrency assets as cash "for the purpose of requiring trade or businesses to report to the IRS on Form 8300, Report of Cash Payments over $10,000 Received in a Trade or Business, when they receive more than $10,000 in one transaction" (Pedersen, 2021). Surprisingly, "wash sales" rules on cryptocurrency escaped this Act, but some expect they will appear in the pending Build Back Better legislation (Blair et al., 2021).

Employee Retention Credit Users Beware

During the pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020. This Act included the Employee Retention Tax Credit to help offset costs of retaining employees for purposes of both payroll and health insurance (Blair et al., 2021). The credit was fully refundable. Although the American Rescue Plan Act of 2021 extended the credit to Dec. 31, 2021, the Infrastructure Act eliminates it retroactively after Sept. 30, 2021 (Luscombe, 2021). Considering that President Biden signed this Act into law on Nov. 15, 2021, the retroactive change may cause some employers who depended or planned on the credit some angst. The only exception to the early termination is for eligible recovery startup businesses who began operations after Feb. 15, 2020, and had gross receipts of less than $1 million (Blair et al., 2021). If the business qualifies as a recovery startup business with the above definition, it can continue to use the credit through Dec. 31, 2021.

The IRS recently issued guidance on how to deal with the retroactive repeal of the credit back to Sept. 30, 2021. If a business paid wages after Sept. 30, 2021, and received an advance payment of the Employee Retention Credit on those wages, it needs to repay those amounts by the due dates of the applicable employment tax returns according to IRS Notice 2021-65 (Hood, 2021). Tax preparers should educate their clients on the revocation of the credit after Sept. 30, 2021. They should also examine their tax clients' records to ensure they have been taking advantage of this credit through Sept. 30, 2021, and advise them to amend returns if they have not (Pedersen, 2021).

Superfund Excise Taxes – Oil and Gas Companies Beware

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) enacted excise taxes on petroleum and chemical companies since 1980 in order to pay for EPA cleanups of hazardous waste sites (Blair et al., 2021). These excise taxes, known as the "Superfund," expired in 1995. The Infrastructure Investment and Jobs Act resurrects these taxes beginning July 1, 2022, through Dec. 31, 2031 (Blair et al., 2021). The tax "reimposes a per-ton tax on the sale of certain chemicals and sets the amount per chemical, ranging from 44 cents per ton on potassium hydroxide to $9.74 per ton on benzene, butane, and other chemicals that are common in fuels and industrial products" (Blair et al., 2021). However, the threshold for the amount of chemical that must be present in a product before it is taxed is reduced from 50 percent to 20 percent (Blair et al., 2021). This reduced threshold means the tax will now apply to many more products. Although the Joint Committee on Taxation believes that the excise taxes will raise about $14.45 billion over the next 10 years, the oil and chemical industries warn that "the reinstated taxes will ultimately be passed on to American consumers" (Blair et al., 2021).

Employer-Sponsored Retirement Plans

The American Rescue Plan Act allowed employers to reduce minimum funding to retirement plans to 10 percent (previously 60 percent) through 2030. The Infrastructure Act extends this 10 percent level of funding through 2035 (Blair et al., 2021). The decrease in employer minimum funding should increase tax revenue projections to help fund the Act's costs.

Water and Sewer Utilities

The 2017 Tax Cuts and Jobs Act disallowed "regulated public utilities set up as corporations" from receiving tax-exempt contributions (Blair et al., 2021). The Infrastructure Act reverses this law and now allows them to "receive tax-free contributions to fund the construction of drinking water or sewage disposal facilities" in hopes that it will "stimulate new infrastructure investments with respect to drinking water and sewage disposal enhancements" (Blair et al., 2021).

Private Activity Bonds

The Act also gives tax incentives to help infrastructure through expanding and creating new tax-exempt bonds. State governments can now issue $30 billion (up from a maximum of $15 billion) in "tax-exempt highway or surface freight transfer facility bonds" (Blair et al., 2021). In addition, the Act provides for tax-exempt bonds for 1) "funding carbon capture and direct air capture technologies projects" and 2) "funding broadband deployment in rural areas where a majority of households do not have access to broadband" (Blair et al., 2021).

Excise Taxes

In 1956, the Highway Trust Fund (HTF) established highway taxes to help the government fund interstate highway construction. The Infrastructure Act extends these excise taxes through 2028 (Blair et al., 2021).

Disaster Relief

The Act amends the definition of a disaster and modifies the automatic extension of certain deadlines for taxpayers affected by federally declared disasters (Nevius and Tysiac, 2021).

Tax Deadlines

Individuals serving in combat zones have more types of tax deadlines extended (Luscombe, 2021).

Build Back Better Act Still Pending

Although the tax effects on individuals are minimal in the Infrastructure Investment and Jobs Act, the Build Back Better Act proposes several items that could affect individual tax bills. This proposed legislation coming in at a cost of approximately $1.75 trillion to $2 trillion includes changes for family care, Medicare, estate and gift taxes, clean energy credits and much more (Stradling, 2021). Although the Senate is currently debating the bill, Wall Street economists believe some version of the bill will become law (Franck, 2021). Stay tuned for what tax impact the Build Back Better Act will have on taxpayers and preparers.

About the Author

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