



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-109077-21]

RIN 1545-BQ08

Recapture of Excess Employment Tax Credits under the American Relief Plan Act of 2021

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations pursuant to the regulatory authority granted under sections 3131, 3132, and 3134 of the Internal Revenue Code, added by sections 9641 and 9651 of the American Rescue Plan Act of 2021, to prescribe regulations as may be necessary for recapturing the benefit of the employment tax credits provided under these sections when necessary and to prevent the avoidance of the purposes of the limitations under these sections. These proposed regulations affect businesses and tax-exempt organizations, as well as certain governmental entities, that claim the paid sick leave credit and the paid family leave credit under sections 3131 and 3132, respectively, and that claim the employee retention credit under section 3134. The text of those temporary regulations serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-109077-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-109077-21), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

Requests for a public hearing must be submitted as prescribed in the **Comments and Requests for a Public Hearing** section.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, NaLee Park at (202) 317-6879; concerning submissions of comments and/or requests for a public hearing, Regina Johnson at (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Taxes and Collection of Income at the Source Regulations (26 CFR part 31) under sections 3131, 3132, and 3134 of the Internal Revenue Code (Code) pursuant to the regulatory authority granted under these sections to prescribe regulations as may be necessary for recapturing the benefit of the employment tax credits provided under these sections when necessary and to prevent the avoidance of the purposes of the limitations under these sections. Consistent with

this authority, these proposed regulations authorize the assessment of erroneous refunds of the credits paid under sections 3131, 3132 (including any increases in those credits under section 3133), and 3134. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

The Office of Management and Budget's Office of Information and Regulatory Analysis has determined that these regulations are not significant and not subject to review under section 6(b) of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because these proposed regulations impose no compliance burden on any business entities, including small entities. Although these proposed regulations will apply to all employers eligible for the credits under sections 3131, 3132, and 3134, including small businesses and tax-exempt organizations with fewer than 500 employees as well as certain governmental employers, and therefore are likely to affect a substantial number of small entities, the economic impact will not be significant. These proposed regulations do not affect the employer's employment tax reporting or the necessary information to substantiate entitlement to the credits. Rather, these proposed regulations merely implement the statutory authority granted under sections 3131(g), 3132 (g), 3134(j), and 3134(m) that authorize the Service to assess, reconcile, and recapture any portion of the credits erroneously paid or refunded in excess of the actual amount allowed as if those amounts were taxes imposed under section 3111(b) (the Hospital Insurance tax (Medicare tax)), and so much of the taxes imposed under section 3221(a) (the Railroad Retirement Tax Act Tier 1 tax) as are attributable to the rate in effect under section 3111(b), as applicable, subject to

assessment and administrative collection procedures. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact these regulations would have on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a hearing are strongly encouraged to be submitted electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is NaLee Park, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding entries for §§31.3131-1, 31.3132-1, and 31.3134-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

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Section 31.3131-1 also issued under 26 U.S.C. 3131(g).

Section 31.3132-1 also issued under 26 U.S.C. 3132(g).

Section 31.3134-1 also issued under 26 U.S.C. 3134(m)(3).

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Par. 2. Section 31.3131-1 is added to read as follows:

§31.3131-1 Recapture of credits.

[The text of proposed §31.3131-1 is the same as the text of §31.3131-1T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 31.3132-1 is added to read as follows:

§31.3132-1 Recapture of credits.

[The text of proposed §31.3132-1 is the same as the text of §31.3132-1T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 31.3134-1 is added to read as follows:

§31.3134-1 Recapture of credits.

[The text of proposed §31.3134-1 is the same as the text of §31.3134-1T published elsewhere in this issue of the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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