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## QUARTERLY TAX UPDATE: FOLLOW-UP Q&A

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Thank you for attending another great Spidell's Quarterly Tax Update. The best questions with answers from the webinar are reproduced below. I would like to touch on two other items before we get to the Q&A.

The next Spidell's Quarterly Tax Update is Tuesday, February 8, 2022 where we'll talk about all the latest and greatest tax legislation that sure to be passed by the end of the year.

Thank you and I look forward to seeing you again soon,

Mike Giangrande

Spidell's Federal Tax Editor

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## QUESTIONS AND ANSWERS

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### RETIREMENT, ESTATES, AND TRUSTS

**Question:** Can a surviving spouse rollover an inherited IRA into his or her own IRA account?

**Answer:** Yes, surviving spouse beneficiaries can roll over an inherited IRA into their own IRA. They are the only beneficiary who can do this.

**Question:** Is it true that under the Build Back Better Act making its way through Congress that you will no longer be able to be able to roll over from a traditional to a Roth IRA?

**Answer:** Yes, the Build Back Better Act is proposing to eliminate Roth conversions in some situations, including getting rid of the back door Roth IRA strategy. We need to wait and see how the legislation progresses.

**Question:** Is the estate tax transcript in the decedent's individual tax file?

**Answer:** It should be in the estate's tax transcript.

### EMPLOYEE RETENTION CREDIT (ERC)

#### ERC generally

**Question:** Is the ERC available for 4th quarter 2021?

**Answer:** Yes, but be sure to monitor current legislation. The infrastructure bill that was passed by the Senate and is sitting in the house will limit the ERC in the fourth quarters of 2021 to only Recovery Startup Businesses. This bill has not passed yet, so we'll have to wait and see what happens.

**Question:** Can you still claim the ERC if you otherwise qualify, but you ended up going out of business because of COVID?

**Answer:** Yes, you can still go back and file amended payroll tax returns and claim the credit.

**Question:** How do you claim the ERC for Q1 2020? Is it on the Q2 federal payroll tax return?

**Answer:** Yes. that's exactly how to claim the credit.

**Question:** Does Notice 2021-49 only applies to corps?

**Answer:** No, it applies to all employers.

**Question:** Should gain on sale of asset be included in gross receipts when calculating a reduction in income?

**Answer:** Yes.

**Question:** Can a taxpayer who is winding down business to close at end of year because of health issues and decline in sales from pandemic still claim ERC

**Answer:** Yes.

**Question:** For February 2020 startup business the \$1M Gross receipt is for which year, 2020 or 2021? Is it annual or quarterly?

**Answer:** You need to annualize the gross receipts. Look to section 448(c)(3) when determining \$1M gross receipts for new businesses.

**Question:** Does a Schedule C qualify as a Recovery Start-up business?

**Answer:** Yes, as long as it began doing business after 2/15/2020.

**Question:** Does a Schedule C business with no employees qualify for the ERC?

**Answer:** No. You must have employees.

**Question:** can two partners in a partnership take an ERC?

**Answer:** For themselves? No. They are not employees.

### **ERC majority shareholder issues**

**Question:** For ERC, is a majority shareholder one that owns greater than 50%? So if two shareholders of an S corporation each own 50%, they are not majority shareholders, is that correct?

**Answer:** Correct, but only if they aren't related to each other.

**Question:** Is a spouse a related person for the ERC under IRS Notice 2021-49?

**Answer:** A spouse is not a "related" person. See the second example on page 4, which comes directly from Notice 2021-49

**Question:** Is there any expectation that the majority shareholder part of 2021-49 may be rescinded?

**Answer:** No.

**Question:** If a corporation has shareholders who hold less than 2% of the corporation's stock, can their wages be used to claim the ERC?

**Answer:** Yes, as long as they aren't related to other shareholders and their collective ownership isn't greater than 50%.

**Question:** If I am reading this correctly, if you are married and pay your spouse wages from your corporation, as long as you don't have a shared child together, the spousal wages qualify for ERC? But if there is a child together, the spouse would be treated as an owner?

**Answer:** That's correct. As strange as it sounds, that's the IRS's analysis on the topic.

**Question:** For recovery start-up business ERC, do the majority shareholder rules still apply?

**Answer:** Yes.

**Question:** Does the family attribution rules, 2021-49 go back to the beginning of the ERTC or for the period starting when 2021-49 was issued?

**Answer:** Back to the beginning

## **ERC refund delays**

**Question:** Any idea how long it takes to get the refund from the ERC?

**Answer:** No. We have heard of significant wait times and the IRS has not provided any timelines.

**Question:** Are taxpayers waiting to actually receive the ERC checks before amending their 2020 returns? Many of my clients are hesitant to amend until the checks have been received.

**Answer:** It's a problem. I have clients who amended their 941s and are waiting for large refunds so they can use the cash to pay the additional tax liability created because they had to reduce their wage reduction. It's a big problem with no answers from the IRS.

## SOCIAL SECURITY DEFERRAL

**Question:** Can 100% of the deferral be paid early?

**Answer:** Yes

**Question:** Does the payroll vendor monitor the Social Security repayment of deferral? Is this something the CPA needs to monitor?

**Answer:** Some payroll companies will, but I would not assume that is happening. I would certainly make sure that the client is aware someone needs to be monitoring, so it doesn't slip through the cracks.

**Question:** is this failure to deposit try for the first and second payment also?

**Answer:** Yes, applies to the entire amount.

**Question:** How should self-employed taxpayers go about repaying the deferral? Estimated tax payments?

**Answer:** No, you should use the EFTPS system and make the payment and designate it as a Social Security payment.

## RESEARCH AND DEVELOPMENT

**Question:** Are labor cost (employee and contractors) related to research need to be amortized?

**Answer:** Look to section 174 for the specific R&D expenses that must be amortized. They are detailed in that section.

**Question:** Does IR-2021-203 only apply at the entity level that files form 6765? If a partner receives a K-1 with R&D credit flowing through do they have to comply with IR-2021-203?

**Answer:** The additional requirements are for the taxpayer who files the Form 6765. So, in your scenario, only the entity would have the additional filing requirements.

**Question:** How is the form 6765 R&D credit filed? ex. part of income tax return, part of payroll tax return, other?

**Answer:** Form 6765 is part of the income tax return.

## IRS LETTER 6470 & MATH ERROR AUTHORITY

**Question:** Is there any opportunity to have the 60 days extended?

**Answer:** Not that we are aware of. However, if you believe the IRS is wrong, they are very good at working with you anyway.

**Question:** If the IRS made the correction with the refund, due to incorrect reporting of the RRC do you still have to address the letter?

**Answer:** No.

## FFCRA CREDITS AND FORM 7202

**Question:** Was the April 1, 2021 mid-year reset available to other than self-employed folks?

**Answer:** Yes, it applies to all FFCRA paid sick and family leave. There is no mandate for employers to pay sick and family leave after December 31, 2020, but if they do, they can claim the credit through September 30, 2021.

## PROPOSED LEGISLATION

**Question:** Is the estate tax exemption change still in two tax proposals.

**Answer:** Right now, they are talking about keeping the estate and gift exclusion as a unified exclusion and bringing it back down to \$5M.

**Question:** Is there any proposal in the new federal legislation to remove the SALT limit?

**Answer:** Not right now, but that is a big sticking point for many of the Democratic House members.