

The Infrastructure Investment and Jobs Act: What Taxpayers Need to Know

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Lawmakers in Washington, D.C., are interested in many things, including opportunities for creating generation-defining legislation. So it was in November that Congress passed a bipartisan infrastructure deal with implications that included changing the end date of the Employee Retention Credit and establishing reporting requirements for cryptocurrency transactions.



The Infrastructure Investment and Jobs Act (H.R. 3684), which was signed into law on the Nov. 15 by President Biden, was originally introduced in the U.S. House of Representatives as the INVEST in America Act. It began as a \$715-billion infrastructure bill to address provisions related to federal-aid highway, transit, highway safety, motor carrier, research, hazardous materials, and rail programs of the Department of Transportation (DOT).

During congressional negotiations, it was expanded to include funding for broadband access, clean water, and electric grid renewal. The revised version, renamed the Infrastructure Investment and Jobs Act, calls for approximately \$1.2 trillion in spending.

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In this singlette, we cover several new tax provisions in H.R. 3684 that may impact you as an individual taxpayer, contractor, or business owner.

New Tax Provisions for Individuals

As a result of the passage of H.R. 3684, the following tax provisions now apply to individual taxpayers:

- Qualified taxpayers impacted by disasters federally declared after Nov. 15, 2021, will receive an automatic 60-day tax filing deadline extension.
- Individuals who are 1) serving in the Armed Forces or in support of the Armed Forces, in a combat zone; 2) are deployed outside the U.S. and away from a permanent duty station while participating in a “contingency operation;” or 3) are hospitalized due to injury received while serving under (1) or (2) above, are entitled to a filing extension. The period of extension applies to certain tax-related acts (such as filing returns, paying tax, and filing Tax Court petitions) by taxpayers or by the government.
- In any case in which a filing location is inaccessible or otherwise unavailable to the general public on the date a Tax Court petition is due, the filing date is extended for the period of inaccessibility plus 14 days.
- The Internal Revenue Service (IRS) has the authority to postpone filing and payment deadlines for taxpayers affected by federally declared disasters or military or terroristic activities.

New Tax Provisions for Businesses

If you're a business owner or manager, we recommend that you become aware of the following tax provisions that apply to businesses:

- The Employee Retention Credit (ERC), created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, ended retroactively – on Sept. 30, 2021, (three months early). Wages paid after Sept. 30, 2021, are eligible for the ERC only if the business qualifies as a *recovery startup business*. (A recovery startup business is one that began operations on or after Feb. 15, 2020.) A recovery startup business is eligible for the credit for wages paid after June 30, 2021, and before Jan. 1, 2022.
- Qualified broadband projects in underserved areas can be financed with tax-exempt facility bonds applied to obligations issued in calendar years beginning after the enactment.

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- State and local bonds issued after Dec. 31, 2021, for qualified carbon dioxide capture facilities are granted tax-exempt (exempt facility) bond status.
- Net proceeds of bonds used for providing qualified highway or surface freight transfer facilities can qualify for tax-exempt status. The new law increased the federal limitation on the amount of such bonds that may be issued (after enactment of the law) to \$30 billion.
- Certain contributions made after Dec. 31, 2021, to a regulated public utility that are not income to a corporation are non-taxable. These contributions include money or property received from any person (not necessarily a shareholder) by a regulated public utility that provides sewerage disposal services or drinking water. That applies if the amount was for contribution in aid of construction or a contribution to the capital of the utility by a governmental entity providing for the preservation, protection, or enhancement of sewerage disposal services or drinking water.

New Tax Provisions Impacting Information Reporting

Certain provisions in the Infrastructure Investment and Jobs Act establish additional reporting requirements for brokers and people engaged in a trade or business:

- Brokers have been required to report to the IRS information about transactions of certain covered securities, including gross proceeds, customer's adjusted basis, and whether the transaction is short or long term. The Infrastructure Investment and Jobs Act adds *digital assets* to the definition of covered securities. Digital assets are any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the IRS (e.g., *cryptocurrency*). This applies to returns and statements required to be filed or furnished after Dec. 31, 2023.
- Brokers that transfer a covered security to another broker are required to furnish to the other broker a written statement with information that allows the broker to meet the basis and holding period requirements.
- A person engaged in a trade or business who receives more than \$10,000 in cash (in one or more transactions) in the course of their trade or business have been required to file an information return with the IRS and provide the payor with a statement. The Infrastructure Investment and Jobs Act adds digital currency to the definition of cash (i.e., *cryptocurrency*). This new provision applies to returns and statements that must be filed or furnished after Dec. 31, 2023.

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New Tax Provision Affecting Pension Plans

Prior to the Infrastructure Investment and Jobs Act, historically low interest rates were creating inflated pension funding obligations – obligations that diverted corporate assets away from business recovery and jobs, thereby reducing federal income tax revenue. The Act extends interest rate smoothing for an extra five years to 2034 for plan years beginning after Dec. 31, 2021.

New Tax Provisions Applying to Excise Taxes

The new law also impacts certain infrastructure and transportation excise taxes:

- Under pre-Act law, several excise fuel taxes – including Highway Trust Fund (HTF) taxes and the Leaking Underground Storage Tank (LUST) trust fund tax – were scheduled to be reduced after Sept. 30, 2022. The new law delays the reductions until after Sept. 30, 2028. For example, gasoline that's taxed at the full 18.3 cent per gallon removal-at-terminal tax rate would be subject to a total federal excise tax of 18.4 cents per gallon through Sept. 30, 2028, (the current 18.3 cent rate, plus the extended 0.1 cent LUST tax rate). Thereafter, the gasoline would be taxed at only 4.3 cents per gallon (the reduced removal-at-terminal tax rate without the 0.1 cent LUST tax, which will expire).
- Under pre-Act law, other various highway-use related excise taxes were scheduled to expire after Sept. 31, 2022, and after Sept. 30, 2023, but the Act has extended those excise taxes (and the exemptions for transit buses and state use) through Sept. 30, 2029.
- The Act also extends the retail truck tax and manufacturer's tire tax (and the exemptions from these taxes for state and local government and nonprofit education organizations) through Sept. 30, 2028. All these extensions are effective retroactively back to Oct. 1, 2021.
- The Act reinstates the excise taxes on certain chemicals under Code Sec. 4661 and imported substances under Code Sec. 4671 through Dec. 31, 2031. These two taxes are effective on July 1, 2022.

Keeping Pace with Changes in the Tax Code

Government responses to the 2020/2021 health pandemic and significant policy shifts in Washington, D.C., have accelerated changes in the tax code over the past couple of years. Understandably, individuals and businesses are struggling to keep up. Having a tax advisor like SWC on hand to guide you through the ever-changing landscape is more important than ever.

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Going it alone may save you a little money in professional fees, but you're likely to lose more money in the form of overpaying your taxes or having to pay penalties and fees for non-compliance. In addition, anything you lose in taxes, penalties, and fees is money you don't have to enjoy your life and invest in your future.

Here at SWC, we strongly encourage you to seek professional financial advice – if not from us, then from other reputable tax and financial planning specialists.

About the Author: *Jennifer Shelton, CPA*, is an accountant at SWC – a San Diego, Calif.-based tax planning and financial strategy advisory firm for small-business owners, real estate investors, and high-net-worth individuals. A graduate of Kansas State University and a member of the Kansas Society of Certified Public Accountants (KSCPA) and the American Institute of Certified Public Accountants (AICPA), Jennifer has more than 15 years of experience in public accounting with a background in taxation and accounting.

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