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IRS Issues Guidance on Termination of Employee Retention Credit

Tax Planning & Structuring

As discussed in [our previous article](#), the Infrastructure Investment and Jobs Act (IIAJ) passed last month retroactively terminated the employer retention tax credit for wages paid after September 30, 2021, except for wages paid by employers that qualify as recovery startup businesses¹.

This week, the IRS issued [guidance](#) for employers who paid wages in the fourth quarter of 2021, either received an advance payment of the credit for those wages or reduced employment tax deposits in anticipation of receiving the credit for that quarter, and are now ineligible for the credit due to its retroactive termination.

Under the guidance, employers that received an advance payment of the credit for wages paid in the fourth quarter of 2021 (and that are not recovery startup businesses) can avoid failure to pay penalties if they repay the amount of the advance by the due date of their applicable employment tax returns that includes the fourth quarter of 2021.

The guidance also provides rules for an employer that reduced employment tax deposits anticipating the credit (and that is not a recovery startup business).

Businesses have only two weeks to follow these rules before penalties will result. However, an employer that does not qualify for relief under the guidance may reply to a penalty notice with an explanation, and the IRS will consider reasonable cause relief.

If your company received an advance payment of the credit for fourth quarter 2021 wages or reduced employment tax deposits in anticipation of receiving the credit for the fourth quarter of 2021, and it is now ineligible for the credit for the fourth quarter of 2021, please contact one of the attorneys in [Gould & Ratner's Tax Planning Practice](#) if you have any questions about how you may be able to avoid penalties under the guidance.

¹A recovery startup business for this purpose is defined as a business that (1) began operating after February 15, 2020, and (2) has average annual gross receipts of less than \$1 million