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Final regulations: Recapture of excess employment tax credits under COVID-19 legislation

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9978) under sections 3111, 3131, 3132, 3134, and 3221 of the Code issued under the authority granted by the “Families First Coronavirus Response Act,” the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), and the “American Rescue Plan Act of 2021.”

The [final regulations](#) [PDF 240 KB]—effective today, July 24, 2023—authorize the assessment of any erroneous refund of the tax credits paid under:

- Sections 7001 and 7003 of the “Families First Coronavirus Response Act” (including any increases in those credits under section 7005 thereof)
- Section 2301 of the CARES Act
- Sections 3131, 3132 (including any increases in those credits under section 3133), and 3134 of the Code

Summary

- Temporary regulations (T.D. 9904) issued in July 2020 amended the Employment Tax Regulations under sections 3111 and 3221 to provide for the recapture of erroneous refunds of the paid sick and family leave credits under the “Families First Coronavirus Response Act” and erroneous refunds of the employee retention credit (ERC) under the CARES Act. The temporary regulations served as the text of proposed regulations. Read [TaxNewsFlash](#). After consideration, the proposed regulations are adopted with “a minor modification,” and the corresponding temporary regulations are removed.
- Temporary regulations (T.D. 9953) issued in September 2021 amended the Employment Tax Regulations under sections 3131 through 3134 to provide for the recapture of erroneous refunds of the paid sick and family leave credits and ERC under the “American Rescue Plan Act of 2021.” The temporary regulations served as text of proposed regulations. Read [TaxNewsFlash](#). The proposed regulations are adopted “with a minor modification,” and the corresponding temporary regulations are removed.

Accordingly, today’s final regulations amend the Employment Tax Regulations by finalizing the regulations under sections 3111, 3131, 3132, 3134, and 3221 of the Code.

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