TTAA Legislative Update

November 14, 2022

IRS Provides Tax Inflation Adjustments for Tax Year 2023

The Internal Revenue Service today announced the tax year 2023 annual inflation adjustments for more than 60 tax provisions, including the tax rate schedules and other tax changes. Revenue Procedure 2022-38 provides details about these annual adjustments.

Highlights of changes in Revenue Procedure 2021-38:

The tax year 2023 adjustments described below generally apply to tax returns filed in 2024.
The tax items for tax year 2023 of greatest interest to most taxpayers include the following dollar amounts:

1. The standard deduction for married couples filing jointly for tax year 2023 rises to $27,700 up $1,800 from the prior year. For single taxpayers and married individuals filing separately, the standard deduction rises to $13,850 for 2023, up $900, and for heads of households, the standard deduction will be $20,800 for tax year 2023, up $1,400 from the amount for tax year 2022.
2. Marginal Rates: For tax year 2023, the top tax rate remains 37% for individual single taxpayers with incomes greater than $578,125 ($693,750 for married couples filing jointly).

The other rates are:

- 35% for incomes over $231,250 ($462,500 for married couples filing jointly);
- 32% for incomes over $182,100 ($364,200 for married couples filing jointly);
- 24% for incomes over $95,375 ($190,750 for married couples filing jointly);
- 22% for incomes over $44,725 ($89,450 for married couples filing jointly);
- 12% for incomes over $11,000 ($22,000 for married couples filing jointly).

1. The lowest rate is 10% for incomes of single individuals with incomes of $11,000 or less ($22,000 for married couples filing jointly).
2. The Alternative Minimum Tax exemption amount for tax year 2023 is $81,300 and begins to phase out at $578,150 ($126,500 for married couples filing jointly for whom the exemption begins to phase out at $1,156,300). The 2022 exemption amount was $75,900 and began to phase out at $539,900 ($118,100 for married couples filing jointly for whom the exemption began to phase out at $1,079,800).
3. The tax year 2023 maximum Earned Income Tax Credit amount is $7,430 for qualifying taxpayers who have three or more qualifying children, up from $6,935 for tax year 2022. The revenue procedure contains a table providing maximum EITC amount for other categories, income thresholds and phase-outs.

4. For tax year 2023, the monthly limitation for the qualified transportation fringe benefit and the monthly limitation for qualified parking increases to $300, up $20 from the limit for 2022.
5. For the taxable years beginning in 2023, the dollar limitation for employee salary reductions for contributions to health flexible spending arrangements increases to $3,050. For cafeteria plans that permit the carryover of unused amounts, the maximum carryover amount is $610, an increase of $40 from taxable years beginning in 2022.
6. For tax year 2023, participants who have self-only coverage in a Medical Savings Account, the plan must have an annual deductible that is not less than $2,650, up $200 from tax year 2022; but not more than $3,950, an increase of $250 from tax year 2022. For self-only coverage, the maximum out-of-pocket expense amount is $5,300, up $350 from 2022. For tax year 2023, for family coverage, the annual deductible is not less than $5,300, up from $4,950 for 2022; however, the deductible cannot be more than $7,900, up $500 from the limit for tax year 2022. For family coverage, the out-of-pocket expense limit is $9,650 for tax year 2023, an increase of $600 from tax year 2022.
7. For tax year 2023, the foreign earned income exclusion is $120,000 up from $112,000 for tax year 2022.
8. Estates of decedents who die during 2023 have a basic exclusion amount of $12,920,000, up from a total of $12,060,000 for estates of decedents who died in 2022.
9. The annual exclusion for gifts increases to $17,000 for calendar year 2023, up from $16,000 for calendar year 2021.
10. The maximum credit allowed for adoptions for tax year 2023 is the amount of qualified adoption expenses up to $15,950, up from $14,890 for 2022

Items unaffected by indexing:
By statute, certain items that were indexed for inflation in the past are currently not adjusted.

1. The personal exemption for tax year 2023 remains at 0, as it was for 2022, this elimination of the personal exemption was a provision in the Tax Cuts and Jobs Act.
2. For 2023, as in 2022, 2021, 2020, 2019 and 2018, there is no limitation on itemized deductions, as that limitation was eliminated by the Tax Cuts and Jobs Act.
3. The modified adjusted gross income amount used by joint filers to determine the reduction in the Lifetime Learning Credit provided in § 25A(d)(2) is not adjusted for inflation for taxable years beginning after December 31, 2020. The Lifetime Learning Credit is phased out for taxpayers with modified adjusted gross income in excess of $80,000 ($160,000 for joint returns).

Employers Warned to Beware of Third Parties Promoting Improper Employee Retention Credit Claims

The Internal Revenue Service warned employers to be wary of third parties who are advising them to claim the Employee Retention Credit (ERC) when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for and computation of the credit.

These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.
If the business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

Businesses are encouraged to be cautious of advertised schemes and direct solicitations promising tax savings that are too good to be true. Taxpayers are always responsible for the information reported on their tax returns. Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.

What is the ERC?

The ERC is a refundable tax credit designed for businesses who continued paying employees while shutdown due to the COVID-19 pandemic or had significant declines in gross receipts from March 13, 2020, to Dec. 31, 2021. Eligible taxpayers can claim the ERC on an original or amended employment tax return for a period within those dates.

To be eligible for the ERC, employers must have:

1. sustained a full or partial suspension of operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 during 2020 or the first three quarters of 2021,
2. experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021, or
3. qualified as a recovery startup business for the third or fourth quarters of 2021.

As a reminder, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021. Additionally, for any quarter, eligible employers cannot claim the ERC on wages that were reported as payroll costs in obtaining PPP loan forgiveness or that were used to claim certain other tax credits.

To report tax-related illegal activities relating to ERC claims, submit Form 3949-A, Information Referral. You should also report instances of fraud and IRS-related phishing attempts to the Treasury Inspector General for Tax Administration at 800-366-4484.

Go to IRS.gov to learn more about eligibility requirements and how to claim the Employee Retention Credit :

1. For qualified wages paid after March 12, 2020, and before Jan. 1, 2021 – Notice 2021-20, Notice 2021-49, and Revenue Procedure 2021-33
2. For qualified wages paid after Dec. 31, 2020, and before July 1, 2021 – Notice 2021-23, Notice 2021-49 and Revenue Procedure 2021-33
3. For qualified wages paid after June 30, 2021, and before Oct. 1, 2021 – Notice 2021-49 and Revenue Procedure 2021-33
4. For qualified wages paid after Sept. 30, 2021, and before Jan. 1, 2022 – Notice 2021-49 and Notice 2021-65

Additional Information

1. Employee Retention Credit - 2020 vs 2021 Comparison Chart | Internal Revenue Service (irs.gov)
2. Form 941-X Instructions (April 2022 Revision) – for use in conjunction with Form 941 Instructions from relevant calendar quarter
3. Form 941 Instructions (December 2021 Revision)
4. Form 941 Instructions (2020 Revisions)
5. Form 943, 943-X, 944, 944-X, CT-1 and CT-1-X Instructions

Pronouns and Gender Identity in the Workplace

- In June 2020, the U.S. Supreme Court held that Title VII's "because of sex" terminology prohibits sexual orientation and gender identity discrimination in employment. The specific holding of that case was that an employee may not be fired or subject to other adverse employment actions based on the employee's sexual orientation or gender identity status.

- In June 2021 and March 2022, the U.S. Equal Employment Opportunity Commission (EEOC) issued Guidance for employers extending the U.S. Supreme Court's decision to "correlated conduct", such as the use of employee preferred pronouns, dress code policies, bathroom policies, etc. **However, a federal district court has now blocked enforcement of that Guidance.**

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