RFC Client Bulletin – 2015 Year End Tax News

The end of the year has produced a flurry of good news for taxpayers and the final provisions of the ACA going into effect this year has businesses concerns in early January how to file the new healthcare forms for their employees. This bulletin addresses the good and the bad to help you and your business get through another tax filing season.

THE 2015 PATH Act – (Section 179 Expense)

Recently Congress passed and the President signed the Protecting Americans from Tax Hikes Act of 2015 (the 2015 PATH Act). Arguably the most positive tax legislative action taken for small business in years, the Act makes permanent the $500,000 Section 179 expense limit, thus enabling a small business to elect to expense up to $500,000 of investment in new equipment and other qualifying property instead of having to depreciate the cost over a number of years.

In recent years, the $500,000 limit and some other favorable aspects of the election have been extended for a year or two at a time, but sometimes these provisions weren't extended until December, leaving many taxpayers uncertain for most of a tax year as to whether the higher expensing limit and other favorable provisions would be extended. What's worse, the $500,000 limit and other favorable provisions expired again at the end of 2014. Most dramatically, on January 1, 2015, the limit reverted to its old level of $25,000 and the other favorable provisions also lapsed, once again plunging taxpayers into uncertainty. This uncertainty is now over because the recently enacted 2015 PATH Act makes the higher expensing limit and other favorable provisions permanent.

The new law, retroactive to the beginning of calendar year 2015 makes the following items permanent:

1) The expensing of up to $500,000 annually of the cost of qualifying property and the amount of expensing allowed is subject to gradual reduction once the total qualifying property placed in service during the year exceeds $2 million
2) The eligibility to expense most computer software
3) The eligibility to expense qualified real property (certain leasehold building improvements, retail building improvements and restaurant property); and
4) The ability to revoke an election, or change its specifics, without IRS consent

And, for tax years beginning after calendar year 2015, the new law:

1) Indexes both the $500,000 and $2 million for inflation
2) Ends the exclusion from expensing air conditioning and heating units; and
3) Removes the $250,000 cap on qualified real property expensing, the capped expensing nevertheless also had to be applied against the $500,000 limit.

Highway Trust Fund Extension Law

During this past summer Congress passed a Highway Trust Extension Law. On the surface, many of us, including CPAs, were somewhat surprised to find tax law changes hidden in this piece of legislation. These tax law changes are very important changes because there are changes that will create some chaos the first year these changes are in effect. This bulletin will address a few of these changes.

REVISED DUE DATES FOR PARTNERSHIP AND C CORPORATION RETURNS

Beginning next calendar tax year (January 1, 2016 to December 31, 2016), partnership returns will be due March 15. C corporation returns will be due April 15. This change marks a major shift for businesses operating in one of these entity forms. However, these changes have been proposed for several years. The big reason for this shift is the flow of information is now easier for C Corporation returns to file on time. Partnerships and S Corporations (no change from March 15) provide their partners and shareholders a Schedule K-1 in order to report their share of income and loss on their respective returns. By filing partnerships and S corporation returns at the same time, C Corporation and individuals have an opportunity better to prepare their tax returns and file on time.

However, these new rules do not apply to a fiscal year end C corporation whose fiscal year end is June 30. For these corporations, the law does not go into effect until fiscal year beginning July 1, 2026. The purpose of this delay is June 30 corporate returns are due September 15 and the government's year end is September 30. Therefore, Congress wanted these filers to pay their taxes prior to end of the government's fiscal year.

REVISED STATUTORY AUTOMATIC RULES FOR CORPORATIONS AND TRUSTS

Under the current Internal Revenue Code, corporations are granted an automatic three month extension to file corporate returns. However, everyone who understands corporate returns realizes that there is an automatic six month extension to file. This three month automatic extension is indicated in the regulations. To conform the code and the regulations, corporations now have a six month automatic extension. For June 30 year end filers, the automatic period is 7 months for tax years beginning before January 1, 2026. Therefore, June 30 year end filers will have 10 months to file their returns just like any other C corporation filer.

Trusts are still due April 15 for a calendar year trust. However, their extended due date is September 30. Currently the extended period is 5 months for trusts. This period has been extended to 5 ½ months.

ADDITIONAL DETAILS DISCLOSED ON MORTGAGE INFORMATION RETURNS

Currently homeowners with a mortgage receive a statement at year end indicating how much mortgage interest and points are paid to the lender. Additional disclosed details include the amount of the outstanding balance at the beginning of the year, the mortgage origination date and the address of the property which secures the mortgage. This information will allow the IRS to identify taxpayers more easily who deduct mortgage interest that exceeds restrictions. These restrictions are generally a million dollars on acquisition indebtedness and $100,000 on home equity debt. Also, a taxpayer may deduct interest on a principal residence and one other residence. Including the address will allow IRS to identify taxpayers who claim an interest deduction on more than just their principal and secondary residences.

The mortgage reporting requirements will apply to returns required to be made and statements required to be furnished after December 31, 2016.

VETERANS WITH GOVERNMENTAL HEALTH INSURANCE DON'T COUNT FOR DETERMINING APPLICABLE LARGE EMPLOYER STATUS

Under the Affordable Care Act, applicable large employers are subject to an employer shared responsibility penalty if any full time employee is certified to the employer as having bought health insurance through a state exchange with respect to which a tax credit or cost sharing restriction is allowed or paid to the employee, and either the employer fails to offer to its full time employees the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan, or offers its full time employees the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan that either is unaffordable or doesn't provide "minimum value." There are many other complex rules related to this provision (discussed later); however, an applicable large employer is an employer that employs 50 full time equivalent employees.

This new law indicates an employee who has medical coverage under the government's TRICARE or VA health care program are not included in determining whether an employer exceeds 50 full time equivalents.

OTHER MISCELLANEOUS PROVISIONS

FinCEN Form 114 (Report of Foreign Bank and Financial Accounts) is due on June 30 each year with no extensions. Beginning after December 31, 2015 regulations are to be promulgated indicating these forms will be due April 15 with a maximum six month extension.

Provisions are enacted to ensure more consistency between reporting a decedent's estate property values at FMV and the basis the recipient takes in such property.

If an executor has to file a return as a result of the death of a citizen to report the gross estate, then the executor must also furnish statements to beneficiaries and the Service the value of property received as reported on the gross estate return to indicate basis in inherited property.

Increase Safe Harbor Amount for Small Business Taxpayers

The Internal Revenue Code provides several incentives for businesses to invest in property and equipment and receive an automatic tax deduction. One familiar incentive is the Section 179 expense deduction already discussed.

A new incentive became available very recently with the new capitalization regulations. For 2014, a taxpayer could expense any property costing less than $500. This incentive was available to taxpayer who did not have an applicable financial statement and made a proper election on their 2014 income tax return. An applicable financial statement is a financial statement that has been audited by a CPA firm. The $500 amount received much criticism from the AICPA and other associations who thought this amount was too low and would increase administrative burdens on small taxpayers.

Recently, the IRS issued Revenue Notice 2015-82. This notice increases the dollar threshold in the capitalization regulations to $2,500. The notice is effective for expenditures in taxable years beginning after January 1, 2015. However, if a taxpayer uses the $2,500 ceiling for costs incurred in the year 2015, the IRS will not challenge this issue upon an audit. Therefore, taxpayers can expense property that costs $2,500 and not have to depreciate the property.

Health Care Taxes and Compliance for 2015 and 2016

The Affordable Care Act will always be linked to President Obama and his administration. Last year the individual mandate went into effect. For the next two years several provisions will go into effect. The following addresses these basic provisions for employers and their reporting requirements. The three main issues are the shared responsibility payment under the employer mandate provisions, information reporting by certain large employers, and excise tax provisions related to group health plans.

Beginning in 2015, indicated earlier, an applicable large employer may be subject to a shared responsibility payment if either of the following applies:

1) The employer does not offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC), under an eligible employer-sponsored plan.
2) The employer offers its full time employees (and their dependents) the opportunity to enroll in MEC, but it is unaffordable, or does not provide adequate coverage (or minimum value).

The shared responsibility payment is calculated differently for the infraction above. The monthly penalty for not offering health care coverage is equal to the number of full time employees less the first 30 who are waived from the penalty multiplied by $167. The latter penalty is based on whether a full time equivalent employee declines coverage of the employer and obtains a premium assistance credit in the marketplace. The monthly penalty for each employee who receives a premium assistance credit is equal to $250. The latter penalty cannot exceed the former penalty.

There is a safe harbor for determining coverage. If health care coverage is provided to all but 5%, or if greater, five full time equivalents, then the penalty for not offering health care coverage is not assessable for that particular month. For 2015, this percentage is dropped to 30%. Also, for 2015 only, the penalty covers 80 employees as oppose to the first 30 employees.

These penalty provisions apply to large employers, generally an employer with 50 full time equivalent employees. However, for 2015, this definition has been modified for employers with 100 or more full time equivalents. Beginning in 2016, the penalty provision applies to employers with 50-99 full time equivalent employees.

For 2014, large employers have a new information reporting requirement to the Service to report health insurance coverage provided to employees. A large employer for this purpose is any employer with 50 or more equivalent employees. However, Revenue Notice 2013-45 delayed the enactment of this requirement to 2015 but requested voluntary compliance with the reporting provision in 2014. Small employers (employers with less than 50 employees) are exempt from this reporting requirement; however, the insurance company is responsible for reporting the health coverage of these individuals. Also, individuals that purchase health insurance through the marketplace will get information from the marketplace as oppose to the health insurance provider or employer.

The employer will report information on a Form 1095-C. The information necessary to be reported to the Service is as follows:

- The name, address and employer identification number of the large employer
- The name and telephone of the large employer's contact person

- The calendar year for which the information is reported
- A certification as to whether the large employer offered to its employees (and their dependents) the opportunity to enroll in the minimum essential coverage under an eligible employer-sponsored plan, by calendar month.
- The months during the calendar year for which minimum essential coverage under the plan was available.
- Each full time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month.
- The number of full time employees for each month during the calendar year.
- The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan.
- Any other information specified in forms, instructions, or published guidance.

The reporting requirement is met if the employer files with the IRS a Form 1095-C, *Employer Provided Health Insurance Offer and Coverage*, for each full time employee along with Form 1094-C, *Transmittal of Employer-Provided Health Insurance and Coverage Information Return.* Forms 1094-C and 1095-C must be filed with the IRS on or before February 28 (March 31, if filed electronically). A 30 day extension may be granted if employer applies to the IRS in writing and shows good cause. An alternative form to filing a 30 day extension can be made on Form 8809. Similar to W-2s, Form 1095-C must be provided to the employee by February 1, 2016. For this filing season; however, the IRS has already extended the due dates. The new due date to provide an individual with Form 1095 is March 31, 2016. The new date to file these forms with the Service is May 31, 2016.

Penalties may be assessed for failure to file Form 1095-C with the IRS as well as filing a corrected copy to the employee. No penalties may be assessed in 2016 if the employer makes a good faith effort to comply with the provisions. The penalties for each type of failure can range from $30 to $100 with a maximum penalty of $1.5 million. For employers with gross receipts of $5 million or less for the most recent three tax years, the maximum penalty is $500,000.

The final topic is the excise tax on group health care plans. Employers offering group health plans which fail to meet certain requirements may be subject to a $100 a day excise tax for each day these requirements are not met. When the requirements are fully met, the employer is not subject to the tax. Group health plans now must conform to certain market reforms.

The general rule is an employer providing a medical plan covering more than one current employee that fails to comply with the provisions of group health care plans requirements (including Affordable Care Act (ACA) requirements) could be subject to an excise tax up to $100 a day for each day in the noncompliance period with respect to each individual to whom such failure occurs. The requirements both under the Internal Revenue Code and Affordable Care Act are too cumbersome and exhaustive for this update; however, the IRS ruled in Revenue Notice 2013-45 along with Department of Labor Technical Release 2013-03 that health reimbursement arrangement plans (HRA) or employer payment plans violate the ACA requirements unless the employer also provides a qualifying ACA medical plan along with the HRA or the employer payment plan.

Many small employers have discovered in the past decade that having a reimbursable health care plan saves more money than the employer group plan. The major reason for this cost savings is that employees can model their insurance coverage to fit their health care needs thereby saving dollars on health care through individual policies

as opposed to the more expensive business group plans that may need to cover workers both young and old. These group plans likely violate the ACA's minimum essential coverage rules and put the employer at risk for owing the $100 a day excise tax. An S Corporation with more than one shareholder/employee who uses these health care reimbursement arrangement blessed by Revenue Ruling 2008-1 may find themselves having a group plan that violates the ACA provisions and will be subject to the $100 a day excise tax. However, the excise tax will not apply to the S Corporation with a one shareholder/employee.

One avenue for small employers to turn is to have the employees get insurance through the marketplace. However, the marketplace incurred major burdens with design flaws, too much web activity, or other reasons. These burdens have made assessing these potential excise taxes for employers difficult that the administration has delayed assessing these taxes for large employers to the 2015 calendar year. For small employers and S Corporation shareholders, assessing the tax has been delayed further. The conclusions reached in Revenue Notice 2013-54 were reiterated in Revenue Notice 2015-13; however, the notice indicates that small employers will not be assessed the $100 a day excise tax before June 30, 2015. Beginning July 1, 2015, employers who are not large employers may be subject to this excise tax. The new notice also reiterates that S Corporation 2% shareholders can continue to rely on Revenue Notice 2008-1 by including the reimbursed cost of health insurance into the shareholder's W-2 wages and deducting the health insurance as a self-employed medical insurance adjustment to gross income.

Employers who owe these excise taxes above will file Form 8928 and file the return directly with the Service. This return can be extended with the tax due payable on Form 7004. Behind the basic provisions; however, are several layers of regulations issued by three executive branches of government. The Affordable Care Act will continue to evolve and change as regulations, notices, rulings will be issued monthly by these branches.

The calendar year 2015 started with much anxiety for employers with the final implementation of the Affordable Care Act for employers. However, as the 2016 Presidential election is a year away, a businessman and Washington outsider is a front runner with his ability to connect to the American people. Many Americans are upset with the Washington establishment and many in Washington might be concerned with an outsider as President. As a result, the IRS, Congress and the President worked extensively with each other to issue notices and pass legislation that Americans and the Business establishments can celebrate this holiday season.

Should you have any questions regarding this bulletin, please contact us.