

December 22, 2008

From COKALA Tax Group

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2. *Jerri Langer of COKALA appointed to IRS IRPAC advisory committee*
3. *New Form I-9 must be used beginning January 31, 2009*
4. *Form 1099-MISC reporting of garnishments made payable to attorneys*
5. *IRS clarifies where a Form SS-8 determination of worker status fits in the assessment and appeal process*
6. *H-2B foreign worker visa changes proposed in August are adopted as Final Rules*

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1. Tax treaty changes that affecting Bulgaria, Canada, Germany, Iceland

The new protocol to the U.S.-Canada tax treaty, and the new treaties with Bulgaria and Iceland, have entered into force as of December 15. They are generally effective for tax years beginning on or after January 1, 2009, though some provisions have different effective dates. The Canada protocol includes phased-in elimination of source-country withholding on interest. The Bulgaria treaty includes reduced withholding on dividends, interest and royalties, and elimination of source-country withholding on interest paid to financial institutions, and on interest and dividends paid to pension funds. The Iceland treaty includes reduced withholding on certain dividends. If you would like more detailed information about the Canada, Bulgaria or Iceland treaty changes, please contact us.

As treaties are updated, the U.S. seeks to incorporate mandatory binding arbitration of disputes that cannot be resolved by the competent authorities of the two countries within a specific period of time. The U.S. recently announced guidelines for operating three-person arbitration boards under the arbitration provision of the U.S.-Germany tax treaty.

2. Jerri Langer of COKALA appointed to IRS IRPAC advisory committee

Jerri Langer, a Principal member of COKALA tax group, has been appointed to a three-year term on the Information Reporting Program Advisory Committee to the IRS (IRPAC). The IRPAC was established in 1991 under federal law, to work with the IRS on improving elements of the tax information reporting process. This will be Jerri's second term of IRPAC service; she was a member in 1999-2000 and chaired the subcommittee on Legislation and Regulatory Matters. Marianne Couch, also a Principal member of COKALA, served on IRPAC in 2004-2007 and chaired the SB/SE (Small Business and Self-Employed) issues committee.

3. New Form I-9 must be used beginning January 31, 2009

A new version of Form I-9, the U.S. Employment Eligibility Verification document, was issued December 17. Employers must use the new Form I-9 beginning January 31, 2009 (45 days after the date it was published in the Federal Register) for all new hires and to reverify any employee with expiring employment authorization. The previous Form I-9 (dated 06/05/2007) will no longer be valid after January 31, 2009. The new I-9 will be posted at www.uscis.gov but was not yet there at our bulletin deadline time. Printed copies can be ordered from USCIS at 800-870-3676. An advance copy can be seen at <http://edocket.access.gpo.gov/2008/pdf/E8-29874.pdf> (see pages 8 to 13). If you will be dealing with I-9s, read the explanation in question-and-answer format at http://www.uscis.gov/files/article/I9_qa_12dec08.pdf. Among the changes to implement with the new

I-9 are –

- No expired document of identity or employment authorization is acceptable for Form I-9 purposes
- Forms I-688, I-688A and I-688B are not acceptable as List A documentation
- Foreign passports with machine-readable immigrant visas containing an I-551 notation are added as List A documents
- Only documents in the Acceptable Documents list on the new Form I-9 can be accepted, and this applies to both new verifications and reverifications of employees whose previous authorization has expired. An employer may not reverify by completing the update and reverification section of an old version of Form I-9.

4. Form 1099-MISC reporting of garnishments made payable to attorneys

A recent question from a subscriber provides a reminder of the regulatory requirements, and the exception, in reporting garnishment payments as gross proceeds paid to an attorney, on Form 1099-MISC, box 14. The reporting requirement for gross proceeds paid to an attorney or law firm was established in Sec. 6045(f) of the tax code, and the regulations are in CFR Sec. 1.6045-5. Like most Form 1099-MISC reportable payments, the reporting threshold is \$600 for a calendar year. It is always helpful to remember that, since box 14 represents gross proceeds, it reports amounts paid to an attorney or law firm but does not indicate the taxability of those amounts. Sec. 1.6045-5(e) of the regulations requires the reportable attorney to give you a correct Tax Identification Number, although signature of a penalty-of-perjury certification for the TIN is not required.

For gross proceeds that are garnishments made payable to an attorney, the final regulations created one exception. That exception is for payments made to an attorney in the attorney's capacity as a trustee in bankruptcy under Title 11 of the United States Code (regulations Sec. 1.6045-5(c)). This applies to an attorney appointed by a federal court to act as trustee in a federal bankruptcy proceeding. For other types of garnishment payments, if the check is made payable to an attorney it is a reportable gross proceeds payment.

5. IRS clarifies where a Form SS-8 determination of worker status fits in the assessment and appeal process

The Issue Management Resolution System (IMRS) within the IRS acknowledges, looks into, and responds to certain concerns and suggestions submitted by taxpayers and tax professionals. Recently, IMRS clarified the role of Form SS-8 determinations of whether workers are employees or nonemployee contractors. Form SS-8 collects specific information about the relationship between a worker and the entity which pays for the services of the worker, and after reviewing the SS-8, the IRS issues a determination of worker classification. The issue raised to IMRS was that employers or payers would like to have appeal rights when they disagree with a determination issued by the IRS in response to an SS-8 filing.

IMRS explained that either the worker or the payer involved in an SS-8 determination can request an IRS *reconsideration* of that determination. However, the Appeal process is not available to either party at that point because it would be premature; the Form SS-8 is a pre-examination matter that does not, alone, resolve a tax controversy or result in an employment tax adjustment or assessment of employment tax liability.

6. H-2B foreign worker visa changes proposed in August are adopted as Final Rules

New Final Rules will be effective January 18, 2009, for the H-2B visa program in which foreign nationals are authorized for entry to the U.S. for employment for a limited period of time in nonagricultural jobs for which there is a shortage of available U.S. workers. We highlighted these rules in our August 25 bulletin, when they were proposed. These amendments to Department of Homeland Security regulations were created with the aim of reducing fraud, protecting the rights of workers, and providing some flexibility for both employers and workers. Among the changes are –

- Petitioning employers need only specify the number of positions sought, instead of listing the names of specific workers, except where an intended alien worker is already present in the U.S. or is from a country not currently eligible for H-2B participation
- Employers must obtain an approved Department of Labor temporary labor certification in connection with each H-2B petition
- Eligible previous H-2B workers need only spend three months outside the U.S. before re-obtaining H-2B status
- Employers and recruiters are prohibited from charging fees to prospective H-2B workers
- The definition of temporary labor is amended to permit up to three years without demonstrating extraordinary

circumstances

- Employers must notify USCIS (United State Citizenship and Immigration Services) when an H-2B worker fails to show up for work, completes the work more than 30 days ahead of schedule, is terminated from employment, or absconds from the worksite

- A pilot program will require some H-2B workers to exit the U.S. through the same land border point at which they entered, and provide biographic and biometric information at the border.

The complete new Final Rule is published at <http://edocket.access.gpo.gov/2008/E8-300094.htm>. A summary and question-and-answer document can be accessed through the USCIS portal at <http://www.uscis.gov/portal/site/uscis>.

As a COKALA subscriber, you have our support for questions on tax information reporting and tax withholding topics including those mentioned in this bulletin. Please email your questions to clientservice@cokala.com.

Thank you for your business. It is a pleasure to serve you.

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