

February 15, 2010

From COKALA Tax Group

Here is your eBulletin for this week from the world of tax information reporting and tax withholding.

1. Tax law change proposals – more items to watch

1a – Foreign Account Tax Compliance provisions could be used as an offset to new job-creation subsidies

1b – Administration proposal would create new information reporting requirement for life insurance payers

1c – Congressional Research Service gives Congress notes on potential changes in RMDs and early withdrawal penalties

1a. Foreign Account Tax Compliance provisions could be used as an offset to new job-creation subsidies

Last week the Senate Finance Committee Chairman Sen. Baucus (Democrat) and Ranking Member Sen. Grassley (Republican) jointly announced a draft of legislation titled the Hiring Incentives to Restore Employment (HIRE) Act, which includes payroll tax exemptions and a new tax credit as incentives for employers to hire certain unemployed workers, plus the provisions of the Foreign Account Tax Compliance Act (FATCA) which we have discussed in previous bulletins, plus “Extenders” to restore numerous federal tax provisions that expired at the end of 2009 (see our December 14 bulletin), plus extension of the 65-percent premium subsidy for COBRA health insurance continuation for certain unemployed workers, plus other economic incentive and investment provisions. The bipartisan nature of this announcement makes the FATCA legislation appear still a viable item.

The following day, Senate Majority Leader Reid used an existing bill, already before the Senate, as the vehicle for substitute language that would enact the hiring incentives and three other pieces of the Baucus-Grassley bill, and could use FATCA as an offsetting tax revenue-raiser. Reid’s bill left out the extender provisions and other parts of the Baucus-Grassley legislation. Remember that the FATCA legislation, though primarily concerned with cross-border transactions and relationships in the financial industry, also carries new requirements that would affect payers on contracts and invoices in the corporate, non-financial-industry area.

FYI, the Reid bill business tax incentives for job creation are, first, an exemption from Social Security payroll taxes (the employer’s 6.2 percent up to the FICA cap) for every worker hired in 2010 who had been unemployed for at least 60 days, and second, an additional \$1,000 income tax credit on the employer’s 2011 income tax return for every new employee retained for 52 weeks. The other measures in the job-creation category are additional billions of dollars for infrastructure projects under the highway trust fund; expansion of the Build America Bond program for state and local financing of infrastructure projects; and extension of I.R.C. Sec. 179 expensing rules through 2010 under which certain businesses can take certain capital expenditures as regular expenses instead of depreciating the cost over time.

1b – Administration proposal would create new information reporting requirement for life insurance payers

One proposal in the Green Book of tax proposals for the Obama administration’s fiscal 2011 federal budget, which we did not fit into our list last week, would affect life insurance companies. The proposal would require an insurance company, upon the payment of any policy benefits to a person or entity who had purchased an interest in a life insurance contract with a death benefit of \$500,000 or more, to report the gross benefit payment, the TIN of the buyer, and the insurance company’s estimate of the buyer’s basis, to the IRS and to the payee. The insurance company would obtain some of its information from a companion requirement that a person or

entity who purchased an interest in such a life insurance contract must report the purchase price, the TIN of the buyer and seller, the issuer and policy number, to the IRS, to the insurance company that issued the policy, and to the seller.

This proposal stems from Treasury Department concerns that persons who invest in such purchases of life insurance contracts may structure transactions for tax avoidance. Revenue Rulings 2009-13 and 2009-14, issued in May of 2009, clarified rules on gain and ordinary income that apply in situations of the sale of a life insurance contract (see our May 4, 2009, bulletin or news archive).

1c – Congressional Research Service gives Congress notes on potential changes in RMDs and early withdrawal penalties

The Congressional Research Service, a federal research service for the Congress, recently furnished a report that highlighted the range of suggestions made by lawmakers to change aspects of the current system of Required Minimum Distributions and early withdrawal penalties associated with Individual Retirement Accounts and defined contribution retirement plans, as a means of easing economic hardship for individuals whose retirement account value has been reduced due to the severe economic recession. The list of potential changes included

- Suspending the RMD requirement through 2010 (it was suspended for 2009)
- Suspending the RMD requirement through 2012
- Eliminating the RMD requirement
- Raising the age at which RMDs must first be taken
- Suspending or eliminating the 10 percent early withdrawal penalty for some or all of the following persons:

- Unemployed workers
- Public safety employees who retire before age 55
- Individuals affected by natural disasters
- Homeowners at risk of mortgage foreclosure
- Individuals who receive a hardship distribution from a retirement plan
- Individuals who have qualified adoption expenses.

These are all just proposals at present, made by a various members of Congress, and not moving quickly, as you may recall in regard to the RMD 2010 suspension proposal which was introduced in a bill prior to the end of 2009.

As a Cokala subscriber, you have our support for questions about these and other tax information reporting and tax withholding issues. Please send your questions to clientservice@cokala.com.

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

COKALA Tax Information Reporting Solutions, LLC

phone 734.629.5155

www.cokala.com