May 2015

Tax Digest

A periodic newsletter highlighting developments of interest to today's companies on the move.

EVENTS

More tax events and webcasts

FEDERAL

FASB proposes one-year deferral of new revenue recognition standard

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At its April 1, 2015, meeting, the Financial Accounting Standards Board (FASB) voted to propose a deferral of the effective date of the new revenue recognition standard. The proposed deferral would provide companies an additional year to implement the new revenue recognition standard. For public companies reporting on a generally accepted accounting principles (GAAP) basis, the new standard would be effective for fiscal years and interim periods within those fiscal years beginning after Dec. 15, 2017. Private companies using GAAP would be required to apply the new standard for fiscal years beginning after Dec. 15, 2018, and interim periods within fiscal years beginning after Dec. 15, 2019. However, public and private companies would be allowed to early-adopt the standard for fiscal years beginning after Dec. 15, 2016. The proposed delay is due in part to efforts by the FASB and the International Accounting Standards Board to clarify certain areas of the converged revenue recognition standard that are causing implementation problems for some financial statement preparers (e.g., intellectual property and identifying performance obligations). The FASB plans to issue a proposed Accounting Standards Update on the deferral of the effective date with a 30-day comment period. Companies with concerns about implementing the standard should take advantage of the comment period to express their concerns.

Tax identity theft remains a top priority for the IRS

Patti Burquest, Principal, Washington National Tax
Bob Adams, Partner, Washington National Tax

Protecting the tax identities of your clients, customers and employees is a business imperative. Data breaches and information thefts are announced with increasing regularity. The IRS reports that stopping identity theft and refund fraud is a top priority as it continues to expand its efforts to protect taxpayers and help those whose tax identities have been stolen or misused. In fiscal year 2014, the IRS initiated 1,063 identity theft related investigations, resulting in 748 individuals being convicted of crimes. This is only the tip of the identity theft iceberg. Tax identity thefts are increasing because identity thieves are using more sophisticated ways to obtain identity information. Individuals who believe they may have been subject to tax identity theft should report that to the IRS (using Form 14039) and request the issuance of an Identity Protection PIN (IP PIN) to use when filing Form 1040. Companies that use Social Security numbers (SSNs) to identify their clients, patients or customers should consider other methods of identification, including truncated SSNs or alphanumeric identifiers.

Affordable Care Act information reporting requirements

Jill Harris, Director, Washington National Tax
Bill O'Malley, Director, Washington National Tax

Employers face new information reporting responsibilities under the Affordable Care Act starting with the 2015 calendar year. Employer-sponsored health plans of all sizes will need to tell the IRS about employees and family members enrolled in the plans. Insurers will be responsible for reporting this information to the IRS for insured plans, but employers will be responsible for reporting this information for self-insured plans. In addition, employers with at least 50 full-time employees (including full-time equivalent employees) must report to the IRS (1) whether they offered full-time employees, their spouses and dependents minimum essential coverage, and (2) whether the coverage offered was affordable and provided minimum value. The IRS developed new forms and systems for reporting this information, patterned after the Form W-2 reporting system. Consequently, information for the 2015 calendar year will need to be provided to employees by Jan. 31, 2016, and filed with the IRS by Feb. 28, 2016 (March 31 if filed electronically). Employers should take action now to ensure their internal systems will be able to collect the needed data.

Proper estate planning must include a review of beneficiary designations

Charles Schultz, Partner, Washington National Tax

The review and updating of beneficiary designations represent important parts of the estate planning process. Assets passing via a beneficiary designation, such as life insurance proceeds and qualified retirement accounts, should be reviewed periodically to ensure that the designations follow the intended estate plan. There are some important points to consider. First, a blank beneficiary designation results in the asset passing to the estate and potentially being subject to probate. If the intent is to pass the asset through the estate plan, such as pursuant to the provisions of a living trust, the owner should designate a living trust as the beneficiary to avoid the delay and expense of probate. Second, designations should include a primary beneficiary and a secondary beneficiary in case the primary beneficiary predeceases the account holder. Naming multiple beneficiaries requires careful planning. For example, if a son and a daughter are named as the primary beneficiaries, what happens if the son predeceases the grantor? Does his share pass to his spouse and children, or does his balance pass to the other primary beneficiary–the daughter? It is important to clearly state what is desired. Third, if the designated beneficiary is a child or incompetent, he or she cannot directly inherit such assets. An attorney can help determine whether a trust would be suitable to hold assets for a beneficiary's benefit. Finally, major life events, such as divorce, family acrimony or the death of a beneficiary, require an update of beneficiary designations to ensure that the designations continue to reflect the grantor's wishes.

INTERNATIONAL

Foreign retirement accounts can represent a tax trap

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Ramon Camacho, Principal, Washington National Tax

In today's multinational corporate environment, business executives commonly have a foreign-based retirement account. Many foreign countries have mandatory employee retirement schemes, even for employees on temporary assignment. U.S.-based retirement plans, such as 401(k)s and IRAs, have become commonplace and may lead those with foreign retirement accounts to believe foreign retirement plans function like U.S. plans. However, only U.S. retirement plans that meet strict plan qualification rules receive tax benefits like deferral of current income. The vast majority of foreign plans cannot meet U.S. requirements, resulting in possible current U.S. income tax or reporting for U.S. persons who participate in these plans. In addition, a foreign plan may be treated as a foreign trust for U.S. tax purposes and thus be subject to annual reporting under the special rules that apply to foreign trusts. In many cases, U.S. income tax treaties provide special rules that may reduce or eliminate

U.S. taxation of income from a foreign retirement arrangement. However, each treaty has different rules, and not every foreign retirement arrangement will qualify for benefits under a treaty. Thus, if you have a foreign retirement account, it is imperative to consult with your tax advisor to determine whether income from the plan (including inside build-up or growth) is currently taxable or reportable in the United States.

Is international tax reform coming down the pike?

Ramon Camacho, Principal, Washington National Tax
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With highway funding set to run out at the end of May, the likelihood of Congress enacting some degree of international tax reform has risen. House Ways and Means and Senate Finance Committee staffs have informally expressed optimism that a deal involving the use of repatriated offshore earnings to fund infrastructure spending may be reached. According to one staffer, the chance of larger tax reform ultimately hinges on actions taken by the Treasury. Danielle Rolfes, international tax counsel for the Treasury, has indicated in recent informal statements that the Treasury's interest in international tax reform is high, suggesting that a workable proposal may be on the way. With U.S. corporations holding an estimated $2 trillion in untaxed offshore earnings, a repatriation deal to lure earnings back into the United States seems like a reasonable starting point. Taxpayers may be able to mitigate the tax impact of repatriating through proper planning. For example, a thorough analysis of earnings and profits or transfer pricing policies can reveal ways to reduce the portion of repatriated earnings that would actually result in tax. This type of planning would be helpful even if Congress passes a reduced rate for repatriated earnings. Thus, taxpayers with offshore earnings should carefully consider the effects of potential planning in assessing the impact of repatriating earnings.

STATE AND LOCAL

Idaho enacts use tax exemption for free employee food and beverages

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On April 2, 2015, Idaho enacted a law that creates a use tax exemption for prepared food and beverages provided by a retailer to its employees at no charge if the retailer sells prepared food or beverages in its normal course of business. Because this act included an emergency declaration provision, this exemption was effective immediately upon passage. Accordingly, retailers that sell prepared food or beverages in the normal course of business, such as restaurants and businesses with on-site cafeterias, and provide employees with meals at no charge should (1) review their use tax remittance policies, (2) consider whether this new exemption applies, and (3) implement necessary system changes to prevent use tax overpayment.

Virginia creates single sales factor incentive for data centers

Jonathan Weinberg, Director, McLean, Virginia

On March 10, 2015, Virginia enacted a law under which the state will allow qualified taxpayers with enterprise data center operations to use a more heavily weighted sales factor to apportion income for tax years beginning on or after July 1, 2016, through June 30, 2017, and a single sales factor apportionment formula for tax years beginning on or after July 1, 2017. To qualify for this special apportionment regime, a taxpayer must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after July 1, 2015, to make a new capital investment of at least $150 million in an enterprise data center within the state. Although this particular opportunity is open to all taxpayers, it highlights an emerging trend in which taxpayers are negotiating narrowly applicable state tax legislative change in exchange for investment.

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