

FRANZEN & FRANZEN, LLP

CERTIFIED PUBLIC ACCOUNTANTS

July 18, 2013 – Important 2013 Second Quarter Federal Tax Developments

During the second quarter of 2013, there were many important federal tax developments. Below are highlights of some of the more significant developments. As always, give our office a call or email if you have any questions.

DOMA

On June 26, the U.S. Supreme Court struck down as unconstitutional Section 3 of the *Defense of Marriage Act* (DOMA). Section 3 had defined marriage for federal purposes as a union of one man and one woman. The rules and regulations of the IRS and other federal agencies reflected Section 3. For example, the IRS prohibited same-sex married couples from filing their tax returns as married filing jointly. Immediately after the Supreme Court's decision, President Obama instructed all federal agencies to revise their rules and regulations. The IRS indicated that it would act quickly to issue guidance but has not given a timetable. In the meantime, many taxpayers and employers have questions about the scope of the Supreme Court's ruling. In the employee benefits area, the IRS is expected to provide guidance on the rules for spousal coverage under employer-provided health plans, survivor benefits, COBRA coverage, and more.

Employer mandate

In a major development for employers, the Obama administration announced that it is postponing until 2015 the so-called employer mandate under the *Patient Protection and Affordable Care Act* (PPACA). The PPACA generally requires applicable large employers (defined as businesses with 50 or more employees) that do not offer health insurance to their employees that meets certain minimum standards to pay a penalty, called employer shared responsibility payments. The administration explained that it had heard from many employers that expressed concern about the complexity of the rules. As a result, these payments will not apply for 2014, the administration explained.

The IRS held a hearing on proposed employer mandate regulations in April. Many business and industry representatives asked the IRS to clarify who is a full-time employee, to what extent seasonal and part-time employees are covered, and how a proposed look-back measurement period would operate.

Tax reform

In April, President Obama unveiled numerous tax reform recommendations as part of his fiscal year (FY) 2014 federal budget proposal. Many of the President's recommendations would affect higher income individuals, such as his proposal to reduce the value of certain deductions and exclusions for individuals in the 33, 35 or 39.6 percent tax brackets. President Obama also proposed to raise the maximum federal estate tax rate after 2017, create a temporary tax credit for employers that increase payrolls through new hiring, permanently enhance small business expensing, establish a new tax credit for advance technology vehicles, and more.

In related news, the leaders of the House and Senate tax writing committees are discussing ways to reform and simplify the Tax Code. Sen. Max Baucus, D-Montana, and Rep. Dave Camp, R-Mich., are undertaking a series of nationwide town hall meetings to promote tax reform. The Senate Finance Committee and the House Ways and Means Committee have also published several discussion drafts about tax reform.

Exempt organizations

The IRS received a grilling in Congress after it was discovered that the agency had improperly scrutinized applications for tax-exempt status from certain groups. The Senate Finance Committee and several House committees held hearings (with more hearings likely) into the IRS's oversight of tax-exempt organizations. President Obama requested that the IRS's acting commissioner resign and the President appointed a temporary leader, who submitted a 30-day report in June.

Broker reporting

The IRS issued final regulations on broker reporting of debt instruments and options. The Tax Code generally requires that brokers report the basis of debt instruments and options that they sell on behalf of customers. The IRS provided phased-in effective dates and other measures to help relieve the burden on brokers: generally January 1, 2014 for less complex debt instruments, options and securities future contracts and a January 1, 2016 start date for more complex instruments.

Qualified stock distributions

The IRS issued final regulations under Code Sec. 336(e) allowing taxpayers to elect to treat the sale, exchange or distribution of at least 80 percent (by vote and value) of a corporation's stock (a qualified stock disposition) as a deemed disposition of the corporation's underlying assets. The final regulations generally track proposed regulations issued in 2008.

Premium assistance tax credit

Beginning in 2014, qualified taxpayers may be eligible for a tax credit (the Code Sec. 36B credit) to help offset the cost of health insurance obtained through an Affordable Insurance Exchange. In May, the IRS clarified minimum value for purposes of the credit and explained how the credit will interact with wellness programs. In June, the IRS issued guidance on how Exchanges will report the credit to the agency.

Wellness programs

Many employers have wellness programs to encourage employees to maintain healthy lifestyles. In June, the IRS issued final regulations to clarify the requirements for wellness programs under the *Patient Protection and Affordable Care Act* (PPACA). The final regulations describe the standards for various types of wellness programs and generally apply to plan years beginning on or after January 1, 2014.

S corporations

IRS Chief Counsel concluded in a technical advice memorandum that two trusts did not materially participate in the activities of two S corporations. Although an individual who was special trustee was

also president and participating shareholder of the corporation, the IRS declined to attribute the activities of the president/shareholder to the trust.

International

The U.S., the United Kingdom and Australia agreed in May to share tax information involving companies and trusts holding offshore assets of taxpayers in their respective jurisdictions. The IRS explained that the initiative is part of a larger effort by the three countries to combat tax evasion.

In related news, the U.S. continues to sign agreements with foreign jurisdictions to implement the *Foreign Account Tax Compliance Act* (FATCA). In June, the U.S. and Japan signed an intergovernmental agreement under which certain foreign financial institutions will report account information directly to the IRS.

Expanded VCSP closes

The IRS's expanded Voluntary Compliance Settlement Program (VCSP) closed after June 30, 2013. The expanded VCSP was intended to encourage employers that did not meet all of the requirements of the regular VCSP to nonetheless come forward and voluntarily reclassify workers as employees. The regular VCSP, however, remains open.

Vehicle FMV

The IRS issued the maximum fair market value (FMV) amounts that designate the proper valuation rule for employees calculating fringe benefit income from employer-provided automobiles, trucks and vans first made available for personal use in 2013. Taxpayers with employer-provided vehicles within the designated FMV amounts may apply the vehicle cents-per-mile rule or fleet average valuation rule, as appropriate. The 2013 maximum FMVs reflect little change from 2012.

Tip compliance programs

The IRS announced that it intends to update two voluntary tip compliance agreements with employers under the Tip Rate Determination/Education Program (TRDEP). The agreements, the IRS explained, are designed to encourage and enhance tax compliance among tipped employees.

Divorce

The Tax Court found that a noncustodial parent who did not attach a proper dependency exemption release to his return from the custodial parent was not entitled to claim a deduction. The Tax Court rejected the taxpayer's argument that the divorce decree between him and his ex-wife should control and not the Tax Code.

IRAs

The IRS agreed to waive the 60-day IRA rollover rule for a spouse whose husband withdrew funds from her account to pay his gambling debts without her consent or knowledge. The wife had only discovered the missing funds after the 60-day rollover period had expired.

IRS operations

The IRS announced in April that it had scheduled five employee furlough days because of sequestration (across-the-board spending cuts) under the *Budget Control Act of 2011*. The IRS closed on May 24, June 14, and July 5 and is scheduled to close on July 22 and August 30. The IRS indicated that more furlough days may be necessary before the end of FY 2013.

If you have any questions about how these or any other federal tax developments may impact you or your business, please contact our office.