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TAX LAW UPDATE

Affordable Care Act (“ACA”)

The ACA generally requires individuals to have health insurance or to pay a fee (or penalty, fine, tax or individual responsibility payment) for not having coverage. The penalty for not having coverage became effective for 2014 and increases for 2015. The penalty for 2015 is the higher of \$325 per person (\$162.50 per child under 18, up to \$975 per family) or 2% of yearly household income. The maximum penalty is the national average premium for a Bronze level plan.

The recently decided U.S. Supreme Court case of *King v. Burwell* ruled that the premium tax credits for qualifying taxpayers who purchase plans through the health care marketplace apply to both federal exchanges and state established exchanges. Premium tax credits are generally available to individuals and families with incomes between 100% and 400% of the federal poverty line for their family size – but only for plans purchased through the health care marketplace. While an advanced credit is used to reduce the monthly premiums for such taxpayers, the actual credit is calculated on their tax return for the year. If the estimated advance credit exceeds the actual credit, the difference must be repaid as part of the tax return.

The ACA employer mandate becomes effective for 2015. Applicable large employers (generally those with 50 or more full-time (including full-time equivalent) employees must either offer affordable minimum essential coverage or pay a penalty. Both large and small employers may have to report the value of health insurance coverage on the employee’s W-2.

The ACA also imposed a number of restrictions, including a prohibition on employer payment arrangements. Under an employer payment arrangement, the employer reimburses employees for premiums they pay on their individual health insurance

policies. Under the ACA, however, such employer payment arrangements are deemed to violate the market reform provisions, and potentially subject the employer to penalty of \$100 per day per employee. If you still have such an arrangement, it should be stopped.

Other rules, exclusions and exceptions also may apply to ACA issues.

Affordable Care Impact on your Tax Return

You or your tax preparer will need to determine: (i) whether you and your dependents had qualifying coverage for the entire year, (ii) whether you or your dependents were exempt from the ACA coverage requirements for any portion of the year, (iii) any penalty for not having coverage, and (iv) any applicable premium tax credit. You may need to provide evidence of coverage, together with any tax forms related to health insurance that may have been received.

Part of the funding scheme for the ACA included an additional 0.9% medicare tax on wages and earned income for high earners (more than \$200,000 for an individual or \$250,000 for joint filers) and the 3.8% net investment income tax (“NIIT”) on the investment income of high earners. Both taxes continue to apply. Note that NIIT applies to Trusts with net undistributed income of more than \$12,150. Again, additional rules may apply.

Expired Tax Extenders

For a number of years, Congress has been allowing popular tax provisions to expire only to later extend the provisions. Usually, the extensions are for a year at a time. In December 2014, Congress passed a bill to extend more than 50 expired tax provisions but only through 2014. The “tax extenders” include such important

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provisions as 50% bonus depreciation, increased section 179 expensing from \$25,000 to \$500,000, reduction in the S corporation recognition period for built-in gains, allowing tax-free distributions from individual retirement accounts for charitable purposes, and various other accelerated depreciation provisions, credits and deductions. While Congress considered tax extenders earlier in 2015, including the possibility of making some of the provisions permanent, at this time the provisions have not been extended for 2015.

No More Estate Tax Closing Letters

Even though few estates pay federal estate taxes with the current \$5,430,000 exemption amount, more federal estate

tax returns are being filed. The reason for the increased number of filings is portability.

Portability allows the unused federal estate tax exemption of a decedent to be used by the surviving spouse. However, to claim the right to the unused exemption, a federal estate tax return must be filed for the decedent. In the past, IRS always issued a “closing letter” when it finished its examination of an estate tax return. Now, due to the increase in filings, the IRS has decided to stop issuing the closing letters.



IRS Circular 230 Disclosure: In accordance with IRS regulations, please be advised that to the extent this communication contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed in this newsletter.

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CONGRATULATIONS, CLARENCE CUNNINGHAM!

Congratulations are in order for the father of one of our partners. The National 4-H Council notified Clarence Cunningham that he will be inducted into the National 4-H Hall of Fame. The official ceremony will be held October 9, 2015, in Chevy Chase, Maryland at the National 4-H Center. He is only the seventh person from Ohio inducted into the Hall of Fame, joining A.B. Graham, Bea Cleveland, John Mount, Robert L. Evans, Charles Lifer, and James Marquand.



DID YOU KNOW ... ABOUT ARBITRATION?

Did you know that most contracts for the sale of grain require arbitration as the format for dispute resolution?

Arbitration is an alternative form of dispute resolution where an arbitrator (or arbitrators) hear and decide a matter outside of the court system. Litigation through the court system in Ohio can often take from one to two years between the point in time a complaint is filed and a judgment is obtained. An appeal of a court judgment can sometimes add years to the life of a case. As part of that process, the parties conduct discovery, which entails an exchange of written questions and

document requests that are usually followed up with depositions to gather testimony. It is not uncommon for this process to cost tens of thousands of dollars, depending on the complexity of a case.

In an arbitration, the process can be shortened (or eliminated entirely), avoiding discovery related costs and obtaining a judgment in a much shorter time frame, usually six months to a year. After a judgment is obtained in arbitration, most courts will recognize those judgments and enforce them in their respective jurisdiction. If you have any questions regarding the arbitration process, please contact our office for more information.

GOVERNMENT CANNOT USE AGRICULTURAL MARKETING ORDERS TO TAKE PERSONAL PROPERTY WITHOUT JUST COMPENSATION (HORNE ET AL. V. U.S. DEPARTMENT OF AGRICULTURE)

In a ruling that has implications far beyond the raisins at issue in the case, the U.S. Supreme Court on June 22 found that the Fifth Amendment to the U.S. Constitution prevents the federal government from using marketing orders (and presumably other tactics) to take personal property (raisins) without just compensation. The Court rejected a lower court ruling and the federal government's position that personal property is afforded less protection under the Takings Clause than real property.

The case arose out of marketing orders promulgated by the U.S. Secretary of Agriculture and the federally-appointed Raisin Administrative Committee. The marketing orders required growers to set aside a certain percentage of their raisin crop for the federal government, free of charge. In one of the years at issue in the case, Marvin and Laura Horne were required, but refused, to set aside 47% of their raisin crop for the federal government under the marketing orders. The U.S. Department of Agriculture fined the Hornes the fair market value of the raisins and assessed additional civil penalties for their failure to comply with the marketing orders.

Chief Justice Roberts wrote the majority opinion, stating the "Government has a categorical duty to pay just compensation when it takes your car,

just as when it takes your home." The Constitution "protects 'private property' without any distinction between different types." The Chief Justice pointed out that this principle "goes back at least 800 years to Magna Carta."

Notably, the Court also rejected the federal government's argument that the reserve requirement imposed by the marketing orders was not an unconstitutional taking of property, because "if raisin growers don't like it, they can plant different crops." The Court acknowledged that selling produce in interstate commerce could be subject to "reasonable government regulation." However, taking the raisins (the Court called them "a healthy snack") was a taking that must be compensated.

Justice Thomas concurred in full with the majority opinion in the case but also pointed out the U.S. Constitution "prohibits the government from taking private property except 'for public use' even when it offers 'just compensation.'" He noted that the government's conduct in taking the raisins may not have even been "for public use," because the federal government "takes the raisins of citizens and, among other things, gives them away or sells them to exporters, foreign importers, and foreign governments."

The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice, as there are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.

IN MEMORIAM

It is with sadness and shock that we announce the loss of our friend and business colleague, George Crockett, who died on June 12, 2015. George was frequently in our office with clients and sometimes stopped in just to talk. We will miss him. His life provided a great example in keeping the interests of others more important than his own. His son, Rob Crockett, will be continuing the family business.



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