



INSIGHT • INNOVATION • EXPERIENCE

College and University 2010 Tax Update

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Agenda

- Introduction
- Form 990
 - 2008 Filing Season Observations
 - 2009 Changes
- IRS Employment Tax Initiative
- New Legislation
 - Patient Protection and Affordable Care Act
 - Hiring Incentives to Restore Employment Act
- Wrap-Up and Questions

2008 Lessons Learned

- 2008 Form 990 proved to be challenging
- Who knows what?
- Relationship Analysis
- Schedule L Analysis
- Know your benefits plans
- Schedule F activities
- Compensation Practices
- Schedule B disclosure

2009 Form 990 Update

- Failure to file Form 990/990-EZ/990-N for three consecutive years will result in revocation of tax-exempt status
 - Student Organizations
 - Booster Clubs
- Enhanced Schedule D trigger questions
- Revised audited financial statement questions



2009 Form 990 Update

- Simplified Schedule L trigger questions
- Schedule O trigger questions
- Modified standard for material diversion of financial assets
- “Another’s website” – clarification of prevailing thought



2009 Form 990 Update

- Compensation Disclosure Clarifications:
 - Compensation payments to a foreign person
 - “Leased employees”
 - Reporting compensation paid by common paymasters and other reporting and payroll agents
- Information technology expenditures guidance



2009 Form 990 Update

- Glossary Definition Revisions
 - **Control** for purposes of determining related orgs
 - Nonprofit Corporation
 - Stock Corporation
 - Partnership or LLC
 - Trust
 - **Related Organization** –related organizations can include nonprofit organizations, stock corporations, partnerships, limited liability companies, trusts, and governmental units and other government entities



2009 Form 990 Update

Schedule F

- Disclosure includes expenses associated with board members travel outside the United States to attend meetings or conferences, etc.
- An organization may have no expenditures reportable on Schedule F even though it is required to report the activity in Part I.

2009 Form 990 Update

Schedule F

- Example: An organization that derives more than \$10,000 of revenue from a foreign activity must report the activity in Part I, even if it incurred no expenditures for that activity



2009 Form 990 Update

Schedule F

- A payment to a foreign government representative or agency located within the United States must be reported on Part II of Schedule F if the payment is a grant over \$5,000
- Payments to U.S. citizens living abroad should be reported in Part III of Schedule F if the organization:
 - Exceeds the \$5,000 threshold
 - The payment is a grant and not compensation and;
 - The recipient was living outside the United States at the time of distribution

2009 Form 990 Update

Schedule K – Tax-Exempt Bonds

- Part II: Proceeds
- Part III: Private Business Use
- Part IV: Arbitrage



2009 Form 990 Update

Schedule L – Grants/Scholarships

- Includes awards to students who are interested persons (O/D/T/KE) by virtue of family relationships
- Names and individual amounts do not have to be reported
- Assistance type (merit, financial aid, etc.) and aggregate scholarship amounts must be disclosed, unless such disclosure violates the Family Educational Rights and Privacy Act

IRS EMPLOYMENT TAX INITIATIVE

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Employment Tax Initiative

- Three-year research project on employment tax compliance issues
- Employment tax audits of at least 6000 employers
- Nonprofit employers have issues that are unique compared to for-profit employers
 - Intermediate Sanctions
 - Automatic Excess Benefit

Employment Tax Initiatives

- Tax reclassification can be costly
 - Back Taxes
 - 15.3% FICA Tax
 - 20.00% Federal Income Tax
 - Up to 6.2% Unemployment Insurance
 - Total = 41.5% of Contractor's Pay
 - Other Penalties
 - Failure to File W-2 or 1099 Form
 - Failure to File Quarterly Returns
 - Failure to Pay Taxes
 - Legal Liabilities if Contractor Files Suit



Employment Tax Initiatives

- Employee vs. Independent Contractor
- IRS Publication 1779 (Revised 8-2008)
- Relevant factors:
 - Behavioral Control
 - Financial Control
 - Relationship of the Parties



Employment Tax Initiatives

Accountable Plan

- The expense must have a business connection
- The expense must be substantiated by the employee
- The employee is required to return all amounts in excess of the substantiated expenses
- Written expense reimbursement policy

Employment Tax Initiatives

Excess Benefit Transactions

- An economic benefit is treated as compensation for income tax purposes and as wages for employment tax purposes, only if the exempt organization providing the benefit clearly indicates its intent to treat the benefit as compensation for services at the time that the benefit was paid
- To clearly indicate such intent, the organization must provide written substantiation that is contemporaneous with the transfer of the particular benefit
- Absent intent, reasonableness is irrelevant

HEALTH CARE REFORM LEGISLATION

Health Care Reform Legislation

- Patient Protection and Affordable Care Act
 - 906 pages
 - \$940 billion
 - \$438 billion in new and higher taxes
 - Deficit reduction of \$143 over ten years
- Beginning in 2010
 - Required coverage of plan participant dependents until 26 years of age
 - Coverage denial due to pre-existing conditions prohibited
 - Plans must eliminate any lifetime limits on benefits
 - Annual HHS review of unreasonable premium increases



Health Care Reform Legislation

- For years beginning after December 31, 2010:
 - Distributions from a HSA, Health FSA or Archer MSA must be used only for qualified medical expenses
 - The penalty for nonqualified HSA or Archer MSA purchases increases from 10% to 20% and 15% to 20% respectively
- For years beginning after December 31, 2012:
 - The annual maximum contribution to a health FSA will be limited to \$2,500/participant, indexed for inflation based on the Consumer Price Index (CPI-U) after 2013

Health Care Reform Legislation

- For tax years beginning after December 31, 2010:
 - The legislation conforms the definition of medical expenses for HSA's, Archer MSA's, health flexible spending arrangements, and health reimbursement arrangements to the definition for medical expenses for itemized deductions (excluding over-the-counter medicines prescribed by a physician).



Summary of Tax Changes

- **2010** – 10% federal excise tax for using indoor tanning facility
- **2013** – Medicare payroll tax increase from 1.45% to 2.35% for couples earning more than \$250,000/year and individuals earning more than \$200,000 /year
- **2013** – New 3.8% Medicare tax on net investment income in excess of threshold amount \$250,000 MFJ/\$200,000 Single
- **2013**– Flexible spending account contributions limited to \$2,500 for medical expenses
- **2013** – Itemized deduction threshold for health care expenses increased from 7.5% to 10% of AGI
- **2018** – 40% excise tax on the portion of employer-sponsored “Cadillac plans” that exceed \$10,200 per year for individuals and \$27,500 for families

PAYROLL TAX CREDIT FOR HIRING NEW WORKERS

New Payroll Tax Credit

- Hiring Incentives to Restore Employment Act (HIRE) enacted March 18, 2010
- Employers who hire unemployed workers between February 3, 2010 and January 1, 2011 may qualify for a 6.2 percent payroll tax credit
- Reduction will have no effect on the employee's future social security benefits

New Payroll Tax Credit

- For each new worker retained for a one year period without a significant decrease in wages, the employer may claim an additional \$1,000 tax credit
- A credit is available in the second quarter of 2010 for applicable wages paid in the first quarter of 2010.
- Each new employee must certify that he/she was not employed more than 40 hours during the 60 day period prior to commencing employment with the qualifying employer

QUESTIONS?

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