PITTSBURGH ▪ COLUMBUS

OnPoint

A publication of Schneider Downs & Co., Inc.

SCHNEIDER DOWNS

INSIGHT ▪ INNOVATION ▪ EXPERIENCE

Fall 2012 ▪ Volume 30 ▪ Issue 4

>> IN THIS ISSUE CONTENTS

1 Pennsylvania Tax Reform Code Changes
1 Key Tax Dates
2 Time is Running Out!
3 Fiduciary Planning for the New Medicare Surtax on Estates and Trusts
4 Wealth Management: Quarterly Column
5 Around Schneider Downs
5 New Hires
5 Benefit Plan Due Dates
6 Professional News

KEY TAX DATES

October

31

Employers' Taxes. Employers of nonagricultural and nonhousehold employees must file return on Form 941 to report income tax withholding and FICA taxes for the third quarter of 2012.

December

17

Estimated Tax. Payment of last installment of 2012 estimated tax by calendar-year corporations.

January

15

Estimated Tax. Final installment of 2012 estimated tax by individuals, trusts and estates.

See Page 5 for additional key dates

PENNSYLVANIA TAX REFORM CODE CHANGES

by Allen W. Wassel, State and Local Tax Senior

As part of the 2012-13 Commonwealth of Pennsylvania budget, Governor Tom Corbett signed House Bill 761, which amended several sections of Pennsylvania's Tax Reform Code of 1971. Here are some of the highlights:

- Joint personal income tax return filing will be permitted in the year of a spouse's death and in cases where both spouses die during the same year.
- Family farm transfers between family members will be excluded from inheritance tax and realty transfer tax.
- Payers of amounts due under oil and gas leases will be required to issue a form 1099-MISC to non-corporate recipients of such payments, and penalties will be imposed for non/fraudulent filing.
- All business income shall be apportioned utilizing the single sales factor method for taxable years beginning after December 31, 2012.
- An automatic extension of time to file a Pennsylvania corporate income tax return will be granted to taxpayers who have received an extension of time to file their federal income tax return.
- The time frame for reporting adjustments to federal taxable income as changed or corrected by the Commission of the Internal Revenue or by any other agency or court of the United States will be increased from 30 days to six months.
- Taxpayers will be permitted to file a petition for review of tax adjustment not resulting in an increase in liability. The petition may include a request for review of the department's adjustment of a tax item if the adjustment did not result in a tax increase in the year of the adjustment but may increase the tax due in a subsequent year. The petition must be filed within 90 days of the mailing date of the department's notice of adjustment.
- Several tax credit programs will be expanded and/or created, including:
  - » The Educational Improvement Tax Credit
  - » The Job Creation Tax Credit
  - » The Neighborhood Assistance Tax Credit
  - » The Film Tax Credit
  - » The Research and Development Tax Credit
  - » The Historic Preservation Tax Credit and Community-Based Services Tax Credit
  - » The Resource Manufacturing Tax Credit

If you have any questions on how these new changes may affect you in the coming year, please consult with your state and local tax professional.

ALLEN W. WASSEL
TAX ADVISORS
Manager

TOP STORY

TIME IS RUNNING OUT!

by Joel M. Rosenthal, Business Advisors Shareholder

Whether you are buying a company or selling your company, time is running out to get your deal done by the end of the year. With so much uncertainty in both the political arena and with the tax law, the economic consequences are very difficult to predict. If you are planning to close a transaction by year-end to avoid these uncertainties, then you need to be under a letter of intent soon.

From a seller's perspective, the most pressing economic need to close a deal will be dependent on whether or not the capital gains rates or even the ordinary gains rates are raised and your expectations of the likelihood of possible increases. In a closed-door meeting I attended earlier this year in Washington as part of a private equity summit, several "people of influence" expressed their opinion that capital gains rates will go up no matter who is in the White House. Keep in mind, they did not want to go on the record. Assuming that this is true, there is a significant reason to close the deal before year-end on both the selling and buying side because the price/cost is going up. Also, if this is true, there will be a rush to close every deal by December 31, 2012.

This rush will cause a drain on both internal and external resources. Good deals are done patiently and are well-planned-out. A time frame of 90 days may seem long, but it is realistic. A realistic deal should proceed in steps, some concurrent, some sequentially. The following are some items to consider when planning a deal:

- Sales and marketing review and diligence need to be coordinated.
- Operational diligence may require several visits and interviews of the seller.
- Engineering may need time to evaluate complex processes and product specifications.
- Legal review of contracts and leases may take additional time if assignments are required.
- Intellectual property evaluations may take longer as their complexity increases.
- Drafting of the APA involves many iterations and negotiations.
- Financial diligence needs to be planned to fit the deal. This includes information requests, visits, follow-up questions, reporting and negotiations based on the findings.
- Tax diligence can involve multistate or multinational complications.
- Tax structuring and allocations need to be put in place.
- Post-transaction implementation needs to be in place on day one. This could involve transition agreements that complicate deals.
- Financing and capital needs have to be addressed.

These are just a few things to consider when putting together a deal, and if not properly executed, may kill a deal or result in an unstable post-transaction environment. Rushing through any of these steps may blow up on the back end.

You want to make sure you are getting the best external resources, such as attorneys and consultants, to help with your deal. As we get closer to year-end, the best of the best may be booked. So, the sooner you're on board before year-end, the better.

In addition, something many companies from both a selling and buying side overlook is the drain on internal resources. As your employees and management focus on the deal, the less they are focused on the day-to-day operations of their companies. People become fatigued, and important details can fall through the cracks.

Now is the time to get serious about getting those deals closed. If you are selling, identify the potential buyers or engage a professional. Start preparing the items those potential buyers will request. Determine how much you will sell the company for and determine the tax consequences, so you know your net proceeds.

If you are buying, narrow your list to your top targets and begin to arrange appropriate financing. Put your team in place and have them on alert.

Don't let the clock run out! If you need any assistance with buying a company or selling your company, please contact Joel Rosenthal CPA, CVA at (412) 697-5387 or jrosenthal@schneiderdowns.com.

JOEL M. ROSENTHAL
BUSINESS ADVISORS
Shareholder

OnPoint is a publication of Schneider Downs & Co., Inc. The matters highlighted in this newsletter are presented in broad, general terms and, accordingly, cannot be applied without consideration of all of the circumstances. The firm will provide additional details on matters discussed in this newsletter upon request, and will be pleased to discuss with clients or their attorneys the possible effects of these matters in specific situations.

FEATURE ARTICLE

FIDUCIARY PLANNING FOR THE NEW MEDICARE SURTAX ON TRUSTS AND ESTATES

by Melanie M. LaSota, Director of Estate and Trust Tax Services and Michael Darpino, Estate and Trust Tax Services Senior

On June 28, 2012, the United States Supreme Court upheld the constitutionality of key provisions of the Patient Protection and Affordable Care Act (PPACA) by a 5-4 decision. The PPACA legislation, as amended by the Health Care and Education Reconciliation Act of 2010 (HCERA), represents the broadest regulatory overhaul to the American healthcare system since the 1965 Medicare reforms and will have ramifications for patients, insurers and taxpayers.

PPACA provides a framework of incentives, penalties and mandates intended to increase access to health insurance coverage and reduce the costs of healthcare. Although the centerpieces of the legislation will not take effect until 2014, a Medicare surtax on investment income intended to defray anticipated costs will commence with respect to tax years beginning after December 31, 2012. The surtax will impact individuals, trusts and estates with incomes that exceed specified thresholds.

In the case of individuals, the 3.8% surtax will apply to the lesser of (1) net investment income for the tax year, or (2) the amount by which the taxpayer's modified adjusted gross income (MAGI) exceeds the threshold amount. The threshold amounts are $200,000 for single taxpayers and $250,000 for married taxpayers filing joint returns.

As a general rule, net investment income refers to income received from assets such as stocks, bonds, mutual funds, and other assets held for investment purposes. It includes interest, dividends, rents, royalties, annuity distributions and net capital gains derived from the disposition of property. Net investment income does not include income from wages or self-employment, distributions from IRAs or qualified plans, or income from tax-exempt bonds.

Special rules apply to income from a trade or business and the proceeds from the disposition of a partnership or S corporation. In the case of trade or business income, such income will be subject to the surtax if the taxpayer's involvement in such trade or business is deemed a passive activity. Material participation in the business, which is needed to avoid classification as a passive activity, is determined on a facts and circumstances basis and requires regular, continuous and substantial involvement in the business on an ongoing basis throughout the tax year. In the case of the disposition of an interest in a partnership or S corporation, only the gain attributable to the sale of passive assets will be subject to the surtax.

Ambiguity arises in defining the scope of the surtax due to the language of the statute. For example, the Medicare surtax applies to income from passive activities as defined by Internal Revenue Code §469, which generally includes all rental income generated by an owner not considered a real estate professional. Under an exception found in the Regulations, such income may be reclassified as active if the property is rented for use in a trade or business activity in which the taxpayer materially participates. The new legislation is silent as to whether such income maintains active classification for purposes of exclusion from the Medicaid surtax threshold amounts. Practitioners must thus wade through gray areas until formal guidance is issued to shape the parameters of the law.

For now, the statutory language provides sufficient clarity to illustrate the application of the surtax to situations frequently encountered by individuals and fiduciaries. For example, assume that a single taxpayer earns $250,000 of taxable interest and no other income. In this basic scenario, the 3.8% surtax would apply to $50,000, which is the amount by which the taxpayer's MAGI exceeds the applicable threshold amount. By contrast, if the taxpayer earned $250,000 in wages rather than interest, the surtax would not apply because wages are excluded from the definition of "net investment income."

The Medicare surtax will apply to trusts and estates to the extent of the lower of (1) the entity's undistributed net investment income for the taxable year, or (2) the excess of the entity's adjusted gross income over the dollar amount at which the entity's highest income tax bracket begins. Note that tax brackets for estates and trusts are far more compressed than those for individuals, and top rates are reached at much lower income levels. In 2013, an estate or trust will be taxed at the entity's highest marginal rate on income that exceeds $12,000. Accordingly, without proper planning, estates and trusts will be particularly vulnerable to the surtax.

To illustrate, assume that a trust has $250,000 of taxable interest and no other income, and makes no distributions. In this scenario, the surtax would apply to $238,000 of income, the amount by which the trust's adjusted gross income exceeds the applicable $12,000 threshold. Accordingly, the trust would pay a surtax of approximately $9,000. By contrast, a married couple with the same amount and character of income would pay no surtax.

This disparity between the surtax payable from an individual and that from an estate or trust illustrates the need for judicious planning on behalf of fiduciaries. The following strategies assist trustees and personal representatives in minimizing the impact of the legislation.

First, subject to restrictions in the will or trust document, the surtax may be reduced or eliminated at the entity level by the careful timing of distributions. Trusts and estates follow a set of income tax rules whereby income that is distributed to beneficiaries during the tax year is taxed to such beneficiaries, and income retained by the entity is taxed at the entity level. By making distributions during the tax year, fiduciaries may be able to shift investment income from the trust or estate to the individual beneficiaries, where it may be shielded from surtax by means of the individual's higher threshold. In addition, if the governing document permits non-pro rata allocations, a fiduciary may be able to distribute disproportionate amounts of net investment income to less-affluent beneficiaries who fall below applicable MAGI thresholds.

In the case of estates, executors may be able to minimize the surtax by selecting a fiscal tax year that terminates just before the effective date of the surtax. Although trusts are required to operate on a calendar-year basis, executors of estates are free to select any tax year ending on any of the 12 month-end dates

Continued

MEDICARE SURTAX *Continued from Page 3*

following the decedent's death. To illustrate, assume that a decedent passed away on July 15, 2012. Under the above rule, the decedent's executor may select a fiscal year ending on the last day of any month through June 30, 2013. By selecting a fiscal year ending in November, the executor will immunize any income earned through November 30, 2013 from the surtax because the tax applies only with respect to tax years beginning after December 31, 2012.

Furthermore, wills and trust documents often grant fiduciaries broad latitude to invest managed property for the benefit of the beneficiaries. Executors and trustees afforded this discretion may reduce an entity's exposure to the surtax by converting assets that generate net investment income into assets that generate exempt income. For example, interest-bearing money market deposits could be invested in municipal bonds, the income from which is not considered net investment income.

As a final consideration, some trust instruments grant fiduciaries the authority to terminate a trust early if the value of trust assets becomes too small to justify the costs of administration or if termination is in the best interest of the beneficiaries. In cases where all trust beneficiaries are competent adults, and termination of the trust would not defeat a material purpose of the grantor in creating the trust, a fiduciary may wish to consider exercising such authority and distributing the assets outright to the beneficiaries if such termination would avoid unnecessary taxation.

The healthcare debate continues despite the apparent finality of the Supreme Court decision. Republicans in both chambers of Congress have vowed to nullify the ruling by repealing PPACA in its entirety. Their ability to do so will ultimately depend upon the outcome of the November election. Until the dust has settled, practitioners and fiduciaries are encouraged to prepare for the possibility that healthcare reform and the Medicare surtax are here to stay.

IRC §1411, as added by Public Law 111 – 152.
IRC §469 and Reg. §1.469-2(f)(6).

Q & A

Schneider Downs Wealth Management Advisors, LP
Quarterly Column

Redefining Retirement Plan Success

by Jeffery A. Acheson, Partner, Schneider Downs Wealth Management Advisors, LP - Retirement Plan Solutions

For many Americans, the reward for a lifetime of work is the promise of the "Golden Years." Unfortunately for many, the route currently being traveled will not lead to that proverbial destination. What is needed is that familiar GPS message often heard while traveling: "Recalculating Route."

This necessary recalculation is validated by the Employee Benefit Research Institute's 2010 year-end database report, which showed:

- Average Retirement Account Balance $60,329[1]
- Median Retirement Account Balance $17,686[1]
- 17% of balances > $100,000[1]
- 39.2% of balances < $10,000[1]

Other recent studies found that:

- **Only 14% of people say that they are very confident they will have enough money to live comfortably in retirement.**
  - ✓ Down 9% since 2002[2]
- One of Americans' biggest economic fears is not having enough savings for retirement.
  - ✓ 92% of people think there is a retirement crisis in America[2]

And according to U.S. Senate, Health, Education Labor & Pensions Chairman, Tom Harkin (D-IA), in his study titled The Retirement Crisis and a Plan to Solve It:

- 50% of all Americans have TOTAL SAVINGS of less than $10,000[2]
- The gross retirement income deficit - the difference between what people have saved for retirement and what they should have at this point - is calculated to be…$6.6 trillion[2]

Consider the following as a mathematical benchmark on your travels. **For every $1,000 of gross monthly pre-tax retirement income desired over and above Social Security, you would need a beginning nest egg balance of approximately $155,000.** This calculation assumes a 25-year pay-out period, a consistent 6% rate-of-return and the intent to spend the nest egg over 25 years. When you compare and contrast this number with the statistics stated earlier in this article, the need for "Recalculating Routes" becomes painfully apparent.

Employers can help employees recalculate a positive outcome by focusing sponsored retirement plans on seven attributes and best practices. These seven steps will combat the mediocre characteristics of many 401(k) and 403(b) plans in place today, which have: mediocre overall participation; low salary deferral rates; inadequate investment diversification within participant accounts; murky fee disclosure by service providers; and an overwhelming number of investment options.

The following seven attributes and best practices are already found in the most successful employer-sponsored retirement plans and can be incorporated into yours:

1. A Retirement Income Mindset
2. A Thoughtfully Designed Plan Menu
3. Best-of-Breed Investments
4. Appropriate Participant Diversification
5. Effective Employee Education
6. High Participation Rates
7. High Contribution Rates

Where should a plan sponsor start? First,

Continued on Page 5

SDNEWS

RETIREMENT PLAN SYSTEMS

Continued from Page 4

engage a professional with expertise in such matters and evaluate your existing plan by asking the following questions:

- "How does our plan compare to other plans?"
- "Is our plan considered a savings plan or a retirement plan?"
- "How do we measure plan success?"
- "What can we do to facilitate positive participant outcomes?"

Then, develop an action plan that starts with a friendly voice stating: "Recalculating Route."

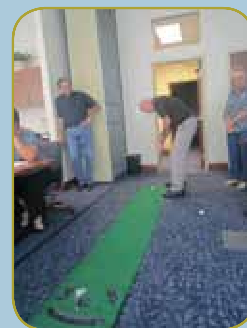
For information about how SDWMA can help you recalculate your retirement plan route, contact Jeff Acheson (jacheson@schneiderdowns.com) or Karl Kunkle (kkunkle@schneiderdowns.com).

Footnotes
[1] Employee Benefit Research Institute No. 366 (see www.ebri.org Issue Brief) by the Employee Benefit Research Institute, December 2011
[2] The Retirement Crisis and a Plan to Solve It, by Chairman Tom Harkin, The Retirement Crisis; see www.help.senate.gov , July 2012

Congratulations to Schneider Downs Wealth Management Advisors, LP for being ranked as the 24th-largest accounting firm-based financial planning firm in the United States according to *Accounting Today*.

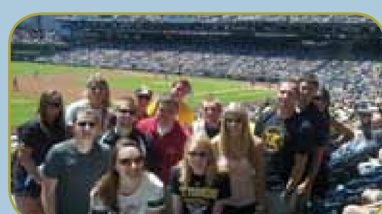
Around Schneider Downs


Nancy Bromall was honored at the annual shareholder retreat. Nancy retired in June. We thank her greatly for all her contributions to the firm.


Chris Norwood demonstrates his putting skills as the champion of the Schneider Downs Olympics golf tournament to help benefit the United Way.


Schneider Downs represented at the Riverlife Party at the Pier. Pictured are Brenda and Ed Friel, Heidi and John Popies, Andrea Croft and Lauren Craig.


George Adams and Ed Friel ventured below Earth's surface into a coal mine with employees from Rosebud Mining.


Before starting this fall, most of our 2012 class of new hires enjoyed a Pittsburgh Pirates baseball game.


Kurt Herdman and his children enjoyed the rides at this year's Pittsburgh office picnic at Kennywood.

New Hires

Our people are our greatest strength. We welcome our April, May and June new hires:

Rachael L. Frye
Michael W. Gannon
Bridget E. Meacham
Karen L. Ranieri
Benjamin T. Tarney

WELCOME

CALENDAR - BENEFIT PLAN DUE DATES

Forms 5500, Annual Return/Report of Employee Benefit Plan.

Year-End	Due Date	With 5558 Extension
2/29	10/1/12	12/17/12
3/31	10/31/12	1/15/13
4/30	11/30/12	2/15/13

Processing of corrective distributions relative to failed 401(k) ADP/401(m) ACP discrimination testing, so as to avoid a 10% employer-imposed excise tax.

Year-End	Due Date
6/30	9/17/12
7/31	10/15/12
8/31	11/15/12

Fall 2012 ▪ Volume 30 ▪ Issue 4

ONPOINT

Schneider Downs

1133 Penn Avenue
Pittsburgh, PA 15222-4205
TEL 412.697.5200
FAX 412.261.4876

Huntington Center, Suite 2100
41 South High Street
Columbus, OH 43215-6102
TEL 614.586.7200
FAX 614.621.4062

www.schneiderdowns.com

twitter
@Schneider_Downs

Interested in receiving email updates?

Are you on our email list? Schneider Downs frequently issues email messages with news, information and updates on topics that are important to our clients' industries. If you would like to receive periodic updates via email, please visit www.schneiderdowns.com and click on Subscription. We'll be sure to keep in touch.

PROFESSIONAL NEWS

Melanie M. LaSota, Director of Estate and Trust Tax Services, attended the American Bar Association conference on international estate planning in Toronto, Canada.

Edward R. Friel, Audit Shareholder, was elected President of the Board of Directors of Catholic Charities of Pittsburgh. Ed also attended the Marcellus Midstream Conference in Pittsburgh in March and the ACG Pittsburgh Corporate Growth Conference in March.

Patrick F. Kerns, Audit Manager, was elected President of the Duquesne University Young Alumni Council. He also now serves on the Duquesne University Alumni Board of Governors.

Kurt D. Herdman, Senior Audit Manager, was appointed Treasurer of the Crossroads Foundation.

Jason M. Lumpkin, Pension and Benefits Senior Manager, earned his American Society of Pension Professionals and Actuaries (ASPPA) credential.

Theodore M. Pettko, Audit Shareholder, was elected Vice President of the Council of Petroleum Accountants Societies (COPAS). Ted was also quoted in the *Pittsburgh Business Times* article, "Changes in standards could shine light on pension plans."

Mary D. Richter, Tax Shareholder, expanded her role with ACHIEVA by joining the parent board. She has also been named Chair of the Audit Committee of the ACHIEVA family of companies.

Jason M. Reljac, Technology Manager and **Tina M. Hudak**, Technology Senior, presented "Technology Trends" to the Pennsylvania American Payroll Association conference in October.

Steven D. Thompson, Audit Shareholder, **James B. Yard**, Internal Audit and Risk Advisory Shareholder, **Eric M. Wright**, Technology Shareholder and **Daniel J. Desko**, Internal Audit and Risk Advisory Manager, attended the Pennsylvania Association of Community Bankers (PACB) annual convention in Vail, CO. Eric presented on the topic of 10 internal controls every organization should have in place.

Donald R. Owens, Internal Audit and Risk Advisory Services Shareholder, presented at The Institute of Internal Auditors Pittsburgh Chapter Fraud Forum.

Donald B. Applegarth, Audit Shareholder, **Michael A. Renzelman**, Audit Shareholder and **Brian C. O'Brien**, Audit Shareholder, attended the AICPA National Advanced Accounting and Auditing Technical Symposium (NAATS) in July.

Kenneth A. Rowles, retired former Co-Managing Shareholder, is a member of the Board of Trustees of the Cummer Museum of Art and Gardens in Jacksonville, FL. He serves on the Audit and Finance and the Strategic Planning Committees of the Board. Ken is also on a committee for the Jacksonville Family Foundation that evaluates proposals for grants that promote the arts in St. Augustine. He and Gail live in St. Augustine, and they are the University of Pittsburgh alumni representatives for Northeastern Florida.

Daniel J. Desko, Internal Audit and Risk Advisory Manager, was quoted in an *Internal Auditor* magazine article about social media.

Todd J. Lucas, Senior Audit Manager, recently joined the Board and Finance Committee of Youthworks, Inc.