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TaxPolicyMemo

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IMA

A newsletter of the Illinois Manufacturers' Association *December 14, 2011*

BRIEFLY

McGladrey's Year-end Tax Planning Guide
McGladrey's Tax Planning Guide offers topical year-end and year-round tax planning help. This Guide provides an overview on income, investing and charitable giving to retirement and estate planning, all updated with 2010's many tax law changes. To view and use, visit http://www.web-taxguide.net/McGladrey/?elq=0ac1ad2b11f84ab6bdb06316de7c7727.

Calculate the tax burden of new federal health care laws
The Tax Foundation has created a new online calculator for tracking the tax burden created by the Patient Protection and Affordable Care Act, signed into law by President Obama in March 2010. The coverage provisions in the health care bill cost $788 billion in new spending over the next decade. This is paid for by $511 billion in cuts elsewhere, as well as $420 billion in new taxes.

In addition to the Health Care Tax Calculator, available at http://interactive.taxfoundation.org/healthcare/, the Tax Foundation provides several other online data tools for consumers, taxpayers, and policymakers to examine the effects of taxes at the federal, state, and local level. Try the searchable database of property taxes by county, or the marginal tax rates calculator and graph, and the state-to-state migration data tool, all of which can be found online at http://interactive.taxfoundation.org/About/.

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Illinois House and Senate pass tax relief legislation

On Tuesday, December 13, the Illinois Senate followed Monday's bipartisan vote in the Illinois House of Representatives and passed a $340 million tax relief package supported by the Illinois Manufacturers' Association. The final agreement included two provisions sought by the IMA including an extension of the Research & Development tax credit and partial reinstatement of the Net Operating Loss deduction. Governor Quinn has pledged to sign the measure into law.

The tax package was contained in two separate pieces of legislation. The first, SB 397 contained the business tax relief while the second bill, SB 400, included tax benefits for individuals.

SB 397, sponsored by Rep. John Bradley and Sen. Toi Hutchinson, the respective chairs of the House and Senate Revenue Committees, contained the following pieces: (1) Five-year extension of the Research & Development Credit with a five-year carry forward that is retroactive to January 2, 2011; (2) reinstatement of the Net Operating Loss provision effective on January 1, 2012 with a $100,000 cap; (3) increase in the Estate Tax deduction from $2 million to $4 million over two years; (4) apportionment rule change for the Chicago Mercantile Exchange; (5) EDGE tax credit for Sears and Champion Laboratories; (6) new independent tax tribunal to hear contested cases with the Department of Revenue; (7) 5-year extension of all sunsets and credits set to expire in 2011-13 which includes an employer credit for hiring veterans; and (8) a new pre-Broadway theatre tax credit limited to an annual $2 million cap.

SB 397 passed the House on a vote of 81-28-7, followed by a Senate vote of 44-9-0.

SB 400, sponsored by Majority Leader Barbara Currie and Sen. Hutchinson, increased the Earned Income Tax Credit for low-income families from five to 10 percent over a two-year phase in period. Additionally, this bill increases the personal exemption from $2,000 to $2,050 with additional annual increases tied to the Consumer Price Index.

SB 400 passed the House on a vote of 67-49-0 with a Senate vote of 48-4-0.

While not a perfect bill, the IMA applauds President John Cullerton, Speaker Michael J. Madigan, Senate Republican Leader Christine Radogno, House Republican Leader Tom Cross, House Revenue Chairman John Bradley, Senate Revenue Chairman Toi Hutchinson, Revenue Spokesman David Harris, and all members of the General Assembly who supported this tax package.

The IMA will continue working on further reform of the tax code including a reduction in income tax rates, permanent extension of the R & D credit, full reinstatement of the NOL provision and extension of Enterprise Zones.

IRS explains tax treatment of employer-provided cell phones

The Small Business Jobs Act of 2010 (the Act) removed cell phones from the definition of listed property for taxable years beginning after Dec. 31, 2009. (See http://mcgladrey.com/Tax-Services/Small-Business-Jobs-Act-of-2010-Changes-and-Likely-Impacts-of-the-Legislation). As a result, the additional substantiation requirements normally applicable to listed property no longer apply to cell phones for taxable years beginning after Dec. 31, 2009. However, this removal did not otherwise alter the requirement that an employer-provided cell phone is a fringe benefit, the value of which must be included in the employee's gross income unless an exclusion applies or the cell phone may be treated as an excludible fringe benefit. (See IRC section 132.) Thus, with the removal of cell phones from listed property under section 280F, a related issue that arose was whether the value of employer-provided cell phones constitutes wages or gross income to the employee if there is personal use of the cell phone.

Prior to the Act, when cell phones were treated as listed property, they were subject to strict substantiation documentation requirements that tracked the business versus personal use of the property. Due to the fact that many companies were not able to obtain and track the level of documentation required for cell phones treated as listed property, many companies who paid 100 percent of the cell phone costs for employees entered into arrangements with IRS exam teams to include a percentage of the cell phone cost in an employee's Form W-2 as a taxable fringe benefit (generally anywhere from 10 to 20 percent). Once cell phones were de-listed from section 280F, it was unclear whether companies could now deduct 100 percent of cell phone costs as an ordinary and necessary business expense under section 162 without including any amount in an employee's wages, based on the position that any personal use by employees was de minimis. (See IRC section 132(e).)The IRS has now answered these questions with the issuance of Notice 2011-72 (http://www.irs.gov/pub/irs-drop/n-11-72.pdf) providing much needed guidance on the tax treatment of employer-provided cell phones.

The IRS notes that many employers provide their employees with cell phones primarily for noncompensatory business reasons, further providing that the value of the business use of an employer-provided cell phone is excludable from an employee's income as a working condition fringe, to the extent that, if the employee paid for the use of the cell phone himself, such payment would be allowable as a deductible business expense.

Notice 2011-72 states that an employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer's business (other than providing compensation to the employee) for providing a cell phone, and provides the following examples of possible substantial noncompensatory business reasons:

- an employer's need to contact an employee at all times for work-related emergencies;
- the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office; and
- the employee's need to speak with clients located in other time zones at times outside of the employee's normal work day.

Alternatively, Notice 2011-72 states that substantial noncompensatory business reasons do not include cell phones provided:

- to promote employee morale or good will;
- to attract prospective employees; and
- as a means of furnishing additional compensation to employees.

In Notice 2011-72, the IRS favorably states that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, it will be nontaxable to the employee as a working condition fringe benefit (See IRC section 132(d).) (the value of which is excludable from the employee's income), and recordkeeping of business use will not be required. In addition, the IRS will treat the value of any personal use of a cell phone provided by the employer primarily for noncompensatory business purposes as excludable from the employee's income as a de minimis fringe benefit.

The long-awaited issuance of Notice 2011-72 is welcome guidance for employers, and with an effective date applicable to any use of an employer-provided cell phone occurring after Dec. 31, 2009, it should resolve any pending issues under exam with respect to personal use of employer-provided cell phones (i.e., agents should not require documentation supporting the level of personal use by employees of cell phones provided for substantial noncompensatory business reasons, and correspondingly should not require employers to treat any such amounts as taxable fringe benefits).

Source: McGladrey. Author Natalie Tucker, director, Washington National Tax, McGladrey, may be reached by email at Natalie.Tucker@mcgladrey.com.

Comparing the presidential candidates' tax plans

How does Mitt Romney compare to Ron Paul on taxes? Does Newt Gingrich have a savvier plan than Michele Bachmann? With the new Presidential Candidate Tax Plan Comparison http://www.taxfoundation.org/candidates12 from the Tax Foundation, you can look at the tax policies of presidential candidates side-by-side and evaluate for yourself.

With the upcoming 2012 presidential election, tax policy is on voters' minds more than ever. Taxes are one of the central issues in any national election, and it is important for the public to understand candidates' general views toward tax policy as well as their positions on specific issues. The online Presidential Candidate Tax Plan Comparison outlines the candidates' positions on the most important tax questions of this election.

"It can be a challenge for individual voters to wade through candidate statements, news reports and attacks from opponents when trying to figure out how the candidates compare on the issues," said Tax Foundation economist Will McBride. "Our Presidential Candidate Tax Plan Comparison tool gives voters the information they need to make apples-to-apples comparisons on where all of the candidates stand on tax policy."

Ten presidential candidates were evaluated on six different parameters of tax policy: individual income tax rates, the corporate income tax, the estate tax, payroll taxes, the alternative minimum tax, and taxes on capital gains and dividends.

Data was collected from candidate questionnaires, campaign statements and other publicly available information. Sources for all of the listed policy positions are cited and linked to, so users can easily have the opportunity to research the candidates more thoroughly.

Information is included on the following candidates for President: Michelle Bachmann, Herman Cain (campaign currently suspended), Newt Gingrich, Jon Huntsman, Gary Johnson, Ron Paul, Rick Perry, Buddy Roemer, Mitt Romney, and Rick Santorum. As candidates leave the campaign during the primary process, details of the plans they advocated will remain online for comparison purposes.

Source: The Tax Foundation

What do the top 1% really pay in taxes?

Income declines for top earners, while effective tax rates creep up

The income earned by the top one percent of Americans has declined for the second year in a row while their average tax rate has increased, according to a new Tax Foundation study. The average federal tax rate for those reporting at least $343,927 in income has increased from 22.5 percent in 2007 to 24.0 percent in 2009, while the average income for the top one percent has declined from $1.4 million to $1 million over the same period.

The Tax Foundation's analysis is based on new data from the Internal Revenue Service on individual income taxes, reporting on calendar year 2009. The amount of individual income tax paid steeply declined by $166 billion, twice the decline from 2007 to 2008. Nationally, average effective income tax rates were at their lowest levels since the IRS began tracking them in 1986. The average tax rate for returns with a positive liability went from 12.2 percent in 2008 to 11.1 percent in 2009.

"During a time of economic downturn, we expect to see significant changes in both total income reported and the share of taxes paid by those with the highest incomes," said Logan. "Unlike middle-income wage-earners whose incomes and tax liabilities are fairly steady, high-income people tend to realize significant capital gains that fluctuate wildly with the economy, causing their income tax liabilities to fluctuate as well."

In 2009, the top one percent of tax returns earned 16.9 percent of adjusted gross income and paid 36.7 percent of all federal individual income taxes. In 2008 those figures were 20.0 percent and 38.0 percent, respectively. Each year from 2005 to 2007, the top one percent's constantly growing share of income earned and taxes paid set a record. The 2008 reversal of this trend continued in 2009.

The study also takes a look at the very highest earners, the top 0.1 percent of tax returns, which the IRS only began singling out in recent years. In 2009, those 138,000 tax returns accounted for nearly 7.8 percent of adjusted gross income earned (down from almost 10 percent in 2008), and they paid around 17 percent of the nation's federal individual income taxes (down from 18.5 percent percent in 2008).

"The very highest income group — the top one-tenth of one percent — actually has a lower average effective income tax rate than the rest of the top one percent of returns because these extremely high-income returns are more likely to have income from capital gains and dividends, which are typically taxed at lower rates," said Logan. "It's worth pointing out that in the case of capital gains and dividends, however, income derived from these sources has already been taxed once by the corporate income tax, which is not included in the current study, meaning the average effective tax rate numbers can be somewhat misleading."

Tax Foundation Fiscal Fact No. 285, "Summary of Latest Federal Individual Income Tax Data," by economist David S. Logan is available online at http://www.taxfoundation.org/news/show/250.html.

IRS 2012 standard mileage rates

The Internal Revenue Service has issued the 2012 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2012, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 55.5 cents per mile for business miles driven;
- 23 cents per mile driven for medical or moving purposes; and
- 14 cents per mile driven in service of charitable organizations.

The rate for business miles driven is unchanged from the mid-year adjustment that became effective on July 1, 2011. The medical and moving rate has been reduced by 0.5 cents per mile.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. Independent contractor Runzheimer International conducted the study.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle.

These and other requirements for a taxpayer to use a standard mileage rate to calculate the amount of a deductible business, moving, medical or charitable expense are in Rev. Proc. 2010-51, available at http://www.irs.gov/pub/irs-drop/rp-10-51.pdf.

Notice 2012-01, available at http://www.irs.gov/pub/irs-drop/n-12-01.pdf. contains additional information.

DATES OF NOTE

For information on IMA or IMA-MIT events, visit http://www.ima-net.org/calendar.cfm and http://www.ima-net.org/MIT/open.cfm or contact Janie Stanley at 800-875-4462, ext. 3020, email jstanley@ima-net.org

December 20, 2011
Effective Presentation Skills — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–5:00 pm

Learn the key skills, techniques and methods that will help you create memorable presentations delivered with power and passion. For more information or to register, visit http://www.ima-net.org/dec-20-mit-effective-presentat.

January 18, 2012
IMA Breakfast Briefing: The Obama Labor Board and It's Impact on Manufacturers
Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am

The Obama Labor Board is attempting a fundamental re-examination of the legal framework for labor-management relations in the United States. Manufacturers are being impacted, union and non-union workplaces alike. Learn about the evolving new direction of the NLRB and its Obama majority. Presenters from Chicago-based law firm Vedder Price PC will discuss and answer questions. For more information or to register, visit http://www.ima-net.org/ima-breakfast-briefing-011812/.

January 25, 2012
Essential Leadership Skills for Front Line Managers & Supervisors
DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am-5:00 pm

Today's business environment requires strong leadership; leaders who can do more with less, meet the ever increasing demands of the customer as well as inspire their followers to give "110 percent" during this period of uncertainty and economic challenges. The reality is most front line managers and supervisors are individuals who have been promoted from within their organizations based on strong performance and/or technical expertise. For more information, or to register, visit http://www.ima-net.org/jan25-mit-event-essential/.

February 23, 2012
IMA Breakfast Briefing: Gaining Supply Chain Advantages through Superior Payment Practices, Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am

Roberta Tamburrino, VP, Transportation Solutions Sales for U.S. Bank, will discuss topics such as: Supply chain challenges for 2012 and beyond – focus on payment challenges; New payment models that drive cost savings and process efficiencies; and How best practices in payment can result in improved carrier relationships, lower overall costs (including rates) and better business intelligence. For more information or to register, visit http://www.ima-net.org/feb23-2012-breakfastbriefing-s/.