Egblc Legal Report

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New year brings tax law changes

by Gary R. Gehlbach

On Jan. 2, 2013, while vacationing in Hawaii, President Barack Obama signed the American Taxpayer Relief Act of 2012. A number of changes were made to the Internal Revenue Code that affect income tax but, contrary to many prognosticators' predictions, the federal estate tax did not substantially change but rather was made permanent.

The salient provisions of the Act concern a wide variety of taxes.

Federal Income Tax

- The maximum rate is 39.6% for married couples with taxable income in excess of $450,000 and for single taxpayers with taxable income in excess of $400,000.
- An additional Medicare surtax of 0.9% will be assessed to married couples with earnings in excess of $250,000 and singles with earnings in excess of $200,000.
- An additional Medicare surtax of 3.8% on net investment income will be assessed to married couples with taxable

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Etemadi joins EGBLC

EGBLC is pleased to announce that Sannaz Etemadi has joined the firm as an associate.

Sannaz, a Dixon native, graduated from the University of Dayton Law School in 2012. In law school, she received three excellence awards for earning the highest grades in her class and was a student leader in implementing online learning into the law school's curriculum. Before law school, Sannaz earned her bachelor's degree in political science from the University of Minnesota-Twin Cities.

Sannaz is fluent in Persian and proficient in Spanish and joins the firm with experience in immigration law. In addition to practicing immigration law, she will concentrate her practice in estate planning and real estate.

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Regulations offer employers guidance on health care reform

by Douglas E. Lee

The U.S. Treasury Department on Jan. 2, 2013, released proposed regulations intended to assist employers in understanding the 2014 requirement to offer affordable minimum essential health coverage to their employees. The proposed regulations provide both helpful detail and a few surprises.

Generally, the Patient Protection and Affordable Care Act requires "large" employers, beginning in 2014, to offer comprehensive and affordable health care coverage to full-time employees and their dependents. A "large" employer is one that employs at least 50 full-time and full-time equivalent employees.

If a large employer fails to offer the required health care coverage to its full-time employees and at least one of the employees is later certified as receiving a premium tax credit or cost-sharing reduction toward the coverage purchased through a state-

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Health care . . .

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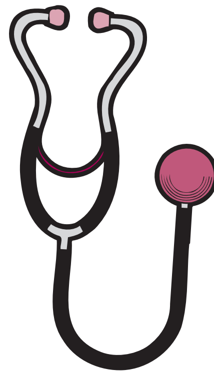

based health insurance exchange, the employer is subject to a penalty equal to $167 per month ($2,000 per year) times the number of full-time employees (not counting the first 30 full-time employees).

If a large employer offers the required coverage but the coverage either is not affordable or fails to provide sufficient value and one or more of the employees is certified as receiving a premium tax credit or cost-sharing reduction toward the coverage purchased through an exchange, the employer is subject to a penalty equal to $250 per month ($3,000 per year) for each full-time employee who is certified as having received the tax credit or reduction. This penalty, however, may not exceed the penalty the employer would have been assessed had it failed to offer the insurance.

Some of the clarifications and details provided by the proposed regulations include:

- Except in a few instances, partners in a partnership will not be considered "employees," either for purposes of determining whether an employer is a large employer or for determining whether an employer has offered coverage to all of its full-time employees;
- employees are considered full-time if and when they have, on average, 30 or more "hours of service" per week. An "hour of service" includes all hours for which an employee is paid or entitled to be paid, including hours for vacation, paid time off, short-term disability, paid holidays and paid leaves of absence and
- when calculating "hours of service" for a non-hourly worker, an employer can count actual hours of service, use a days-worked equivalency method or use a weeks-worked equivalency method, unless either of the equivalency methods would substantially understate the hours worked and cause an employee otherwise considered full-time to not be classified as full-time.

Some of the surprises include:

- An employer's coverage need not be offered to spouses of full-time employees, as the proposed regulations define "dependent" only as a child of the employee who has not attained age 26;
- group health plans that have been operating on a fiscal year basis since at least Dec. 27, 2012, and cover a reasonable percentage of an employer's workforce will be treated as complying with the new employer mandate under special transitional rules, at least until the plan's fiscal year ends in 2014 and
- employers may use a transitional rule in 2013 that permits them to apply a look-back period of less than 12 full months when determining whether they have 50 full-time/full-time equivalent employees.

All employers required to provide insurance exchange information

by Douglas E. Lee

Employers working to understand the coverage requirements of the Patient Protection and Affordable Care Act should not forget their obligation to provide a notice to all employees regarding the state's health insurance exchange. This obligation applies to all employers, not just those the Act deems "large." Fortunately for employers, the agencies implementing the Act have extended the March 1, 2013, deadline for providing the notice.

A new deadline has not been set, but the U.S. Department of Labor expects it to be in the late summer or fall of 2013. Obviously, no Illinois employer can provide a notice until Illinois establishes its exchange.

As currently contemplated, the notice must inform employees about the exchange and its services, provide contact information regarding the exchange and inform employees that if they purchase qualified health plan coverage through the exchange, they could lose employer contributions that might be excludable from federal income taxes. If an employer's plan pays less than 60% of covered costs, the notice also must inform employees of the potential for premium tax credits and cost-sharing reductions for coverage purchased through the exchange.

The Department of Labor is expected to provide model notice language in the next few months.

'Deferred Action' can benefit immigrants, employers

by Sannaz Etemadi

On June 15, 2012, the federal government announced that it would offer "deferred action" to immigrants who were brought into the U.S. as children and meet other criteria. When an immigrant is granted deferred action, the Department of Homeland Security has determined the individual to be a low priority for immigration enforcement and, through an exercise of prosecutorial discretion, has decided not to seek deportation or other sanctions against the individual.

An applicant may request deferred action if he or she: came to the U.S. before his or her 16th birthday; was under the age of 31 and had no valid immigration status on June 15, 2012; has continuously resided in the U.S. since June 15, 2007; is currently in school, graduated from high school, obtained a GED or was honorably discharged from the Armed Forces; has not been convicted of a felony, a "significant" misdemeanor or three or more other misdemeanors and does not otherwise pose a threat to national security or public safety.

If an applicant meets these criteria and demonstrates an economic necessity for employment, U.S. Citizenship and Immigration Services will issue an Employment Authorization Document ("EAD"). The economic necessity is determined from the applicant's perspective. Deferred action and the associated EAD last two years and are subject to renewal.

All U.S. employers must complete and retain a Form I-9, Employment Eligibility Verification, for each individual they hire for employment. An EAD is one of the documents an individual can provide to establish employment eligibility.

The Immigration and Nationality Act prohibits employers from discriminating in the Form I-9 process against work-authorized individuals based on their national origin or, under certain circumstances, their citizenship or immigration status. Therefore, if a recipient of deferred action presents an EAD, an employer should accept it. The employer should determine, however, whether the EAD card is current, reasonably appears to be genuine and relates to the deferred action recipient presenting the card.

When an EAD expires, the employer must re-verify eligibility using Section 3 of the Form I-9 to ensure that the employee is still authorized to work. If the two-year period lapses and the employee has not renewed his or her EAD, the employee will no longer be eligible to work and must be terminated.

Taxes . . .

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income in excess of $250,000 and singles with taxable income in excess of $200,000.

- Capital gains and dividends remain tax-free for taxpayers in the 10% and 15% tax brackets.
- For taxpayers in the 25% tax bracket (including gains and dividends), a 15% tax will apply to long-term capital gains and to dividends. For taxpayers in the 39.6% bracket, the tax will be 20%. The 3.8% Medicare surtax might also apply.

Deductions

- For single taxpayers, the standard deduction is $6,100 for 2013 ($7,600 if the taxpayer is over age 65).
- For married couples, the standard deduction for 2013 is $12,200. If one spouse of a married couple is over age 65, the standard deduction is $13,400. If both spouses are over age 65, the standard deduction is $14,600.
- Itemized deductions are phased out for singles with Adjusted Gross Income ("AGI") in excess of $250,000 and married couples with AGI over $300,000.

Personal Exemptions

- Personal exemptions are reduced by 2% for each $2,500 of adjusted gross income in excess of $250,000 for single taxpayers and $300,000 for married couples.
- Personal exemptions are totally eliminated when AGI exceeds $372,500 for singles and $422,500 for married couples.

Gift and Estate Tax

- The gift tax annual exclusion has been increased for 2013 from $13,000 to $14,000 per person.
- The federal estate tax exemption for persons dying in 2013 is $5,250,000, an increase from $5,120,000 in 2012. The Illinois estate tax exemption has been increased to $4 million, an increase from $3.5 million in 2012.
- The federal estate tax rate is 40% for persons dying in 2013, an increase from 35%.
- The Illinois estate tax credit remains in effect, thus reducing the federal estate tax by the amount of the Illinois estate tax.
- The Illinois estate tax is a function of the federal estate tax, so that the Illinois estate tax cannot be determined without knowing the amount of the federal estate tax, which cannot be determined without knowing the amount of the Illinois estate tax.

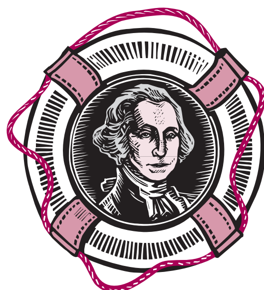
Fiscal cliff law extends non-taxability of debt forgiveness

by David W. Badger

Homeowners facing foreclosure or otherwise owing more than their homes are worth received a bit of good news in the fiscal cliff legislation signed into law on Jan. 2, 2013.

Among the dozens of other provisions in the law, the legislation extended the Mortgage Debt Relief Act through Dec. 31, 2013. Originally enacted in 2007, the Act excludes forgiveness of mortgage debt from taxable income.

Forgiveness of mortgage debt most often arises when a lender agrees to a short sale, that is, a sale of a residence that does not generate proceeds sufficient to pay off the mortgage. Debt forgiveness also can occur when a lender agrees to accept a deed to a residence in lieu of proceeding with a foreclosure.



Before Congress passed the Act in the midst of the housing crisis, a homeowner benefitting from debt forgiveness was required to include the amount of the forgiven debt in his or her income and to pay taxes on it. Under the Act, a seller of a principal residence is able to exclude the amount of debt forgiven from his or her taxable income.

Neither the Act nor its extension changes the obligation of a lender to report the amount of debt forgiveness through the issuance of a Form 1099. Under the Act, the taxpayer bears the burden of establishing his or her entitlement to the exclusion, through the filing of a Form 982.

In Print and At the Podium

Mrs. Foulker was named one of two Volunteers of the Year for the 2012 United Way of Lee County campaign . . . **Mr. Lee** recently was elected Treasurer of the Board of Directors of KSB Hospital . . . **Mrs. Heeg** was reappointed to the panel of private trustees maintained by the U.S. Trustee for the Northern District of Illinois, Western Division . . . **Mrs. Considine** has been reappointed to new terms of the Boards of Directors of Dixon Habitat for Humanity and the United Way of Lee County . . . In **Mr. Lee**'s most recent commentary for the web site of the First Amendment Center, www.firstamendmentcenter.org, he discussed the religious freedom implications of the Illinois Attorney General's decision not to appeal an Illinois appellate court ruling protecting two pharmacies that had refused to dispense "morning-after" contraception pills . . . **Mrs. Considine** has been elected Second Vice-President of the Dixon Area Chamber of Commerce & Industry . . . **Mrs. Considine** recently attended the Illinois Municipal League Conference.

Deals and Decisions

Mr. Gehlbach assisted several clients in making multi-million dollar gifts in the latter part of 2012, anticipating that Congress would likely significantly reduce the lifetime gift tax exemption . . . **Mrs. Foulker** assisted clients in completing a related adoption for three children . . . **Mr. Gehlbach** handled dozens of farm sales in December and was a first-hand witness to the sudden rise in farmland values . . . **Mr. Lee** is representing a petitioner seeking special use permits for a large wind farm in Lee County. The hearing on the petition so far has involved 27 sessions before the Lee County Zoning Board of Appeals . . . **Mrs. Heeg** continues to represent clients in saving their homes through bankruptcy payment plans . . . **Mr. Lee** has assisted several local banks in negotiating short sales with customers, obtaining deeds in lieu of foreclosures and completing foreclosures on residential and commercial properties . . . **Mr. Lee** has represented a client that has acquired interests in other businesses through purchases, management agreements and options to purchase . . . As Trustee, **Mrs. Heeg** recently collected and liquidated debtors' assets in three cases, providing creditors distributions ranging between 41% and 100% of their claims . . . A client represented by **Mr. Lee** obtained a judgment from a U.S. district court judge that a relative and co-trustee breached his fiduciary duty to the client.