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The Patient Protection and Affordable Health Care Act

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Introduction

It is official. The Patient Protection and Affordable Health Care Act has passed Congress and was signed by the President on March 23, 2010. The law changes the entire paradigm behind healthcare and even changes some tax rules. While the law has passed and is now the rule of the land, The Center graciously reminds those reading this report that we do not take a position of endorsing the rule, nor opposing it. We write this report to inform the business community of what has changed in both healthcare and the tax consequences that will now affect closely-held business owners.

Rules on Preexisting Conditions

Starting in 2014, insurance companies will no longer be able to deny coverage to adults for preexisting conditions. Within the next 6 months, children under the age of 27, whose parents are purchasing insurance for them, will no longer be denied health coverage. Those with health considerations (or have children with) ailments such as epilepsy, cystic fibrosis, epilepsy, and a whole range of genetic and age-related diseases will gain the right to be covered.

Healthcare Exchanges

Currently, healthcare insurers and consumers are limited as to where and how they can buy and sell health insurance. Under the new law, "healthcare exchanges" will be created by the states allowing more flexibility as to how, who, and the means in which healthcare insurance can be purchased. While the exact mechanics of the healthcare exchanges remain to be seen, they are predicted to increase competition in the insurance marketplace and make healthcare insurance more affordable to consumers.

Individual Mandate

With the new law comes an obligation for all individuals to be insured. Those individuals who refuse to get coverage will face a fine of up to $695 per year to a maximum of $2,085 per family per year or 2.5% of the household income over the amount subject to income tax, whichever is greater. The penalty is being phased in as follows: 2014 - $95 or 1%, 2015 - $325 or 2%, 2016 - $695 or 2.5%. Continued on page 2

A CASE STUDY

The Tax Court found that a retired law firm partner's guaranteed payments were reportable as ordinary income, not as a capital gain. In the case, the taxpayer was an equity partner of a law firm. Each equity partner was entitled to specific amount of Schedule C Unit payments beginning three years after their 68th birthday. The Tax Court found these units to be awarded equally to each partner.

The size of the partner's interest in the firm or the firm's income had no bearing on the Schedule C Unit payments. These payments were not a part of the partner's respective shares of partnership income or partnership property and were not reflected in the partner's respective capital accounts. The court further found these payments were intended to be treated as retirement benefits.

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Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy Advisors Group, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy Advisors Group, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.

The penalty then increases after 2016 based on a cost of living adjustment. For some, it may be less expensive to pay the fine as opposed to purchasing health insurance. However, be aware that the $695 penalty is a penalty by means of the Internal Revenue Code. In other words, the penalty must be paid or such individuals will face the IRS.

Investment Income

For those families making above $250,000, investment income will be subject to an additional 3.8% tax. This tax begins in 2012.

Credit for Small Businesses

Employers with, 1) 25 employees or less full-time employees, 2) average compensation of $50,000 or less, and 3) pay at least half of the health insurance coverage are eligible for a tax credit.

During tax years 2010, 2011, 2012, and 2013 employers will receive a 35% tax credit (in addition to a tax deduction for the premiums paid less the tax credit). In 2014 and 2015, the tax credit increases to 50%. After 2013, the credit is only available for 2 more years and only if the insurance is purchased from an insurance exchange.

On the other hand, if the employer has 10 or fewer employees, their average compensation must be less than $25,000 in order for the employer to qualify for the credit. Furthermore, their credit is 25% for 2010, 2011, 2012, and 2013. For 2014 and 2015, the credit increases to 35%

Conclusion

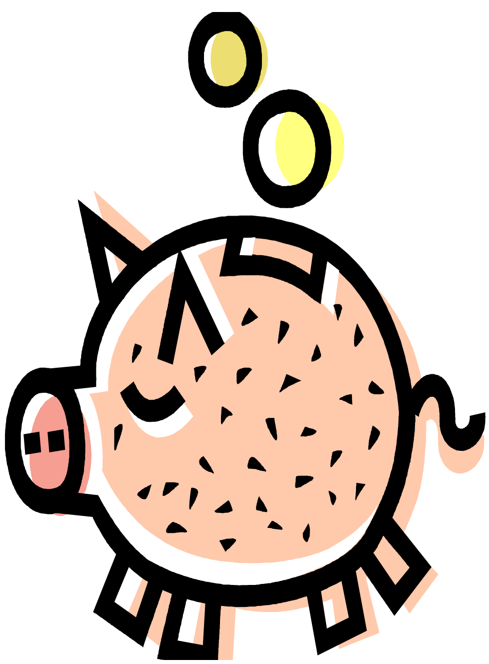
The healthcare bill has now become law. Not only are there incentives for small businesses to cover employees and new opportunities for individuals to obtain health insurance, a whole host of tax issues have surfaced. Just to name a few, business succession and exit planning will be affected because of the new capital gains rates. C Corporations with retained earnings should at least consider accelerating their payouts to avoid the increased taxes on dividends (2012). Along with these issues, many others exist in the tax world as a result of this law.

The Center routinely advises and acts as a consult for those engaging in succession and exit planning. Please contact the professionals at The Center for all of your tax needs regarding the tax law changes and challenges that it presents. If you want to receive a more detailed explanation of the law, contact The Center.

Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

A CASE STUDY CONTINUED:

Editor's Comment: The Internal Revenue Code provides that payments for a partner's interest in a partnership may be those representing the recipient's distributive share of partnership income, those deemed to be guaranteed payments and those in exchange for the partner's interest in partnership property. To gain the beneficial capital gains tax rate this type of income, proper planning will be needed so the payments can be classified as exchanged for the partner's interest in partnership property.



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Points of Interest

- **The Patient Protection and Affordable Health Care Act passed Congress and was signed by the President on March 23, 2010.**
- **With the new law comes an obligation for all individuals to be insured. Those individuals who refuse to get coverage will face a fine of up to $695.**
- **Not only are there incentives for small businesses to cover employees and new opportunities for individuals to obtain health insurance, a whole host of tax issues have surfaced.**

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Is This the Right Time To Sell or Acquire a Business?

Mike Ertel, CBI/ M&AMI/ CM&AA

Most economists seem to be in agreement that the US economy has turned the corner and is making slow but steady progress every month towards a full recovery.

As of this writing, the possibility still exists that some external shock could push us into a double bottomed recession, and it will still be another 6-8 months before there's any official announcement that the Great Recession is over, but the consensus seems to be growing that the worst is behind us..

I was privileged this past month to attend a webinar by Tatum LLC in which one of the presenters cited research showing that acquisitions made in the early phases of an economic recovery -- such as the one we're in now -- were by far the most successful and most productive, averaging 3 times the return on investment of acquisitions made at all other points in the economic cycle.

This suggests -- and my own anecdotal evidence supports -- that savvy buyers are already actively looking for fairly priced acquisitions. It also strongly suggests that this would be an excellent time to be actively selling your business if recent financial history and future prospects support your asking price.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at mertel@legacyadvisorsgroup.com

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Frequently Asked Questions…

Q: I have just now realized that I have made a mistake on my tax return for 2009. What can or should I do to correct the discrepancy?

A: If the mistake is a simple mathematical calculation, the IRS will usually make the correction during the processing of the return whether the mistake is in your favor or not. On the other hand, if the mistake results in a substantial omission or from missing a credit or deduction, it is more appropriate to file an amended tax return. Amended tax returns are filed on Form 1040X.

Q: So far, we haven't heard much on the estate tax or its return. Is there any news on the state of the estate tax?

A: Unfortunately, no. Congress, thus far, has failed to act in any meaningful manner regarding the estate tax. As a result the future of the estate tax, and whether the estate tax will be retroactive to the beginning of 2010 is still uncertain. As a result, any estate going to probate this year could be held liable for potential estate taxes.

Q: I have paid personal expenses from my company accounts. Do I have to include this amount in my income?

A: The amount paid for personal amounts should be included as business income and because they are not business expenses, they should not be written off. Above all, it is highly recommended that personal expenses not be paid out of company accounts as it makes record keeping more difficult and also opens possible legal problems in the future in the event of a lawsuit.