Legacy M&A ADVISORS LLC

M & A UPDATE®

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Affording the PPACA in 2014 and Beyond - Part I

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Introduction

As we all know, in 2010 Congress passed The Patient Protection and Affordable Care Act as one of the most sweeping pieces of legislation regarding healthcare in this country. Contained within the PPACA are dozens of provisions including healthcare exchanges, mandates, credits, and rules, rules, rules galore. Of the more well known provisions are the healthcare mandates for both the employer and the employee. Unfortunately, nothing else in the entire rest of the ACA sparks such controversy and fear as the mandates. It doesn't have to be that way for employees or employers. The following will explain the mandates.

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%.

The penalty then increases after 2016 based on a cost of living adjustment. For some individuals, 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 for collection.

Government Tax Credits

In order to pay for the individual mandate for insurance, the federal government is offering tax credits to individuals who are not eligible for Medicare, Medicaid, or are not covered by their employers for health insurance. The tax credits do not become effective until 2014 and are available for individuals and families making between 100% and 400% of the federal poverty guidelines. The current federal poverty level for a family of four is $23,550; therefore 400% of the federal poverty level is $94,200.

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A CASE STUDY

Like-Kind Exchanges

The U.S. Supreme Court has refused to review a case involving like-kind property exchanges. The Ninth Circuit had affirmed a Tax Court decision that denied IRC Sec. 1031 tax-deferred treatment to exchanges of real property. In the case, the taxpayer intended to sell real property at a gain to an unrelated party and buy other property from a related party. The taxpayer used a "qualified intermediary" to accomplish both transactions.

The intermediary bought the first piece of property from the taxpayer and then sold it to the third party. Then the intermediary bought the first piece of property from the taxpayer and then sold it to the third party. The intermediary then used that cash to buy the second piece of property from the related party and sell it to the taxpayer.

The Ninth Circuit held that the transactions were (in form) not between related parties and would not be a nontaxable like-kind exchange. However, the transactions were wrongly structured to avoid the related-party restrictions. Thus, the transactions were denied nontaxable treatment.

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Cover Story

The Employer Mandate

In the new law, there is an implied mandate or requirement that employers provide/offer insurance to employees. There is a dichotomy between employers employing 50 employees or more and those employers employing 49 employees or less. Those employing 50 or more face penalties if their employees elect the government credits for their health insurance purchases. Small businesses employing 49 employees or less are under no such penalties.

Within the law, there are two classes of employers: small and large. Companies such as General Motors, Wal-Mart, and Sears quite easily fall into the large employer designation. Other companies, such as small law firms, dental offices, and medical offices will easily be in the below 50 category. Then, there are companies such as restaurants owned by franchisees that tend to fall between the cracks. These are the firms that face the most confusion and risks.

The Rules

First, one must understand what an employee is under the new law. A **full-time employee** is an employee who works an average of 130 hours per month. This is the "x" variable.

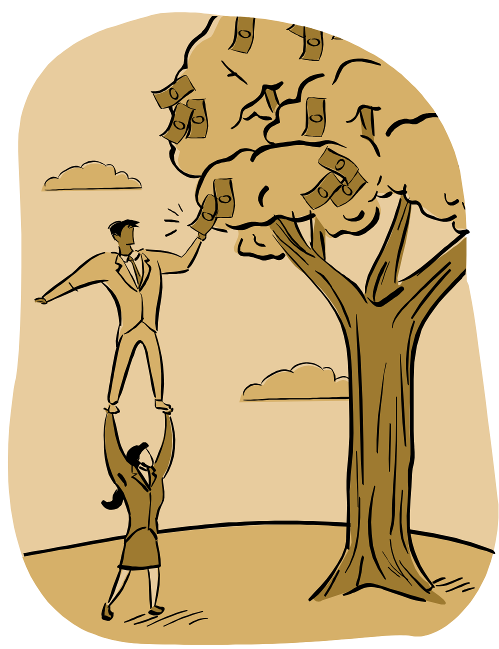
Full Time Equivalent (FTE) employee(s) are all other employees' hours (those working below 30 hours per week) combined (added together) and then divided by 120 hours. The product is always rounded down to the nearest whole integer. This result is the "y" variable. The employer then adds x and y. The sum is the number of employees that the employer employs. If this number is 50 or above, the employer is a large employer. If this sum is 49 or below, the employer is a small employer.

Under the rules, a large employer must offer insurance to all of the employees in the "x" set (full-time employees or those working 30 or more hours per week. If your company does not offer coverage to all full time employees, the penalty is calculated by the number of full-time employees (not FTEs) minus 30, the sum to be multiplied by $2000. In other words, if an employer employs 70 full-time employees as calculated and does not offer insurance, only 40 of those employees would count for the fine. The penalty for the year would be $80,000.

Next month, we will continue in on our exploration of the employer "mandate under the PPACA. Stay tuned…..

Points of Interest

- **Contained within the PPACA are dozens of provisions including healthcare exchanges, mandates, credits, and rules, rules, rules galore.**
- **In the new law, there is an implied mandate or requirement that employers provide/offer insurance to employees.**
- **…. one must understand what an "employee" is under the new law.**



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.

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A CASE STUDY CONTINUED:

Editor's Comment:

IRC Sec. 1031 is a very taxpayer friendly portion of the code as it allows property that is used in a trade or business to be sold without incurring capital gains taxes as long as the property is replaced with a "like-kind" piece of property. If property is exchanged with a related party and then sold within two years, the transaction then loses its tax deferred status. The present case is another illustration of what the IRS call "substance over form". While the form of the transaction may have been with the intermediary, the substance of the transaction was between two related parties.

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Does Your Business Have "Curb Appeal"?

Let's say you're in the market to buy a house and you see one that looks appealing in the ad. What's your first impression? How does it look on the outside? The inside? What about the location? The neighborhood?

Like your house, your business projects an image to potential buyers. When they come to see your business for the first time, your "curb appeal" can attract a buyer to your business—or cause them to walk away. How can you improve your curb appeal? Here's a 3-step plan:

1. Fix Your Leaky Faucets

Perhaps, like many other business owners, you started your business from scratch with one or two employees and now you have 20 people working for you. But do you have the appropriate HR infrastructure in place for that size of a company? Perhaps you even take pride in your informal management style, but it can prove to be a liability when it comes time to sell.

Make sure your human resources policies are at least as well documented as those of the company you hope will buy your business. Some basics to have in place:

- Written policies for employee benefits, travel and expense reimbursement,
- A written policy making it clear you forbid any form of harassment or discrimination,
- A written letter of employment for each staff member,
- A written non-compete agreement for key staff members,
- A written description of your bonus system

2. Assemble Your How-To-Binder

When you go to buy a house, it will give you confidence if the owner has the instruction manuals for the appliances, information on where they were purchased, and who to call if one of them breaks down. Similarly, when a potential buyer looks at your company, he wants to see that you have your business information in order. Documenting your office procedures, core processes, and other intellectual capital can help you attract more bidders and a higher price for your company, while also lowering the chance of the deal falling apart during diligence.

If you want to attract a buyer, your business needs a policy and procedures manual with instructions for basic functions, such as:

- Opening up in the morning and closing down at night,
- Forms and step-by-step instructions for routine tasks,
- Templates for key documents,
- Emergency numbers for service providers,
- Billing procedures for customers,
- How your company is positioned in the market and your marketing tools

3. Document Your Intangibles

Intangibles for house buying might include: Is the house near good schools or daycare? How close is it to shopping, restaurants, recreation, work, etc.? Is it close to public transportation?

Your business also has intangible, often intellectual, assets that a potential buyer needs to be made aware of, such as:

- Any patents, trademarks, service marks, copyrights, etc.,
- Proprietary product formulations you've created,
- Your unique approach to creating and satisfying a new customer

As with selling a house, your company's curb appeal can go a long way toward closing a deal.

If you know of someone who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation, have them contact me directly at 813.299.7862, or mertel@lmaallc.com

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Frequently Asked Questions…

Q: Can the section 179 expenses be carried forward into future years if all of the deduction cannot be used in the current year?

A: Yes, 179 expenses can be carried forward if enough income is not present to be used in the current year.

Q: What should I do if I made a mistake on my tax return that I have already filed?

A: It depends on the kind of mistake that you made. Most mathematical errors are caught in the processing of the tax return itself, thus the IRS will recalculate the 1040 and will send you the proper return based on the recalculation, so you don't have to do anything in that instance. If you did not attach a required schedule, the IRS will contact you and ask for the missing information. If you did not report all your income or did not claim a credit, you should file an amended or corrected return using Form 1040X (PDF), Amended U.S. Individual Income Tax Return.

Q: My business is in arrears on its payments. What is my best course of action?

A: There is no one standard answer for this situation. With that said, generally it is best to not ignore the obligations in which you may be in default of. Calling the creditor, being forthright, and knowing your rights are tantamount to survival and recovery in the process. If a creditor does not know you're willing to work with them, they have no choice but to pursue other legal options against you.