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BAD IRS NOTICES ISSUED

In September, the IRS mailed Letter 6002 to taxpayers who filed tax year 2014 and/or 2015 returns that did not report healthcare coverage. These taxpayers were also silent in tax year 2016. Letter 6002 asked the taxpayer to file an amended return to either report full-year coverage, claim a coverage exemption, or report a shared responsibility payment.

The IRS inadvertently mailed Letter 6002 to as many as 130,000 taxpayers who did, in fact, properly report an exemption in Part 1 of Form 8965 (used, for example, by members of certain religious sects, including the Amish). The IRS advises those who receive a Letter 6002 and did file Form 8965 with their tax return to claim an exemption from the shared responsibility payment, to disregard the notice. They are apologizing for the inconvenience caused by the error.

The IRS has updated irs.gov with the following instructions, reinforcing this message:

No further action is necessary if you received Letter 6002 and claimed a health coverage exemption on Form 8965 when you filed your 2014 or 2015 tax return. You do not need to file Form 1040X, Amended U.S. Individual Income Tax Return for this reason. We apologize for any inconvenience.

Individuals who may have received an erroneous Letter 6002 include those claiming an exemption granted by the Marketplace in the following categories:

- Members of certain religious sects—The Marketplace determined that you are a member of a recognized religious sect.
- Ineligible for Medicaid based on a state's decision not to expand Medicaid coverage—The Marketplace found that you would have been determined ineligible for Medicaid solely because the state in which you resided didn't participate in Medicaid expansion under the Affordable Care Act.
- General hardship—The Marketplace determined that you experienced a hardship that prevented you from obtaining coverage under a qualified health plan.
- Coverage considered unaffordable based on projected income—The Marketplace determined that you didn't have access to coverage that is considered affordable based on your projected household income.
- Unable to renew existing coverage—The Marketplace determined that you were notified that your health insurance policy was not renewable and you considered the other plans available to be unaffordable.
- Certain Medicaid programs that are not minimum essential coverage—The Marketplace determined that you were (1) enrolled in Medicaid coverage provided to a pregnant woman that is not recognized as minimum essential coverage; (2) enrolled in Medicaid coverage provided to a medically needy individual (also known as Spenddown Medicaid or Share-of-Cost Medicaid) exceeds the amount collected in any one of the three that is not recognized as minimum essential coverage; or (3) enrolled in Medicaid coverage provided to a medically needy individual and were without coverage for other months because the spend-down had not been met.

- Love is the most important thing in the world, but baseball is pretty good, too. – Yogi Berra

TRUMP SIGNS EO ON HEALTHCARE

President Trump signed an executive order (EO) on October 12 entitled Promoting Healthcare Choice and Competition Across the United States. Sen. Rand Paul, R-Ky., who has often been at odds with Republicans on health care, spoke at the signing, calling the EO the "biggest free market reform of health care in a generation." The EO states that it seeks to improve choice and competition in the health insurance marketplace by prioritizing three areas for change: association health plans (AHPs); short-term, limited-

duration insurance (STLDI); and health reimbursement arrangements (HRAs).

The EO, among other things, aims to expand employers' ability to use tax-advantaged HRAs for their employees' health care needs. "HRAs are employer-funded accounts that reimburse employees for healthcare expenses, including deductibles and copayments. The IRS does not count funds contributed to an HRA as taxable income," the EO notes.

The Patient Protection and Affordable Care Act (ACA) places limits on the use of HRAs for health insurance, such as restricting their use for the payment of health insurance premiums. "They were previously popular among small businesses that wanted to reimburse their employees' expenses, rather than offer group plans," according to the EO.

The EO also direct that changes be made to allow AHPs to be offered across state lines, with more limited and, therefore, likely less expensive coverage, to small businesses and others who form groups to purchase health insurance. Changes to STLDI would expand the availability of that type of less-costly insurance available to more individuals.

Currently, one-third of all the counties in the U.S. have only a single insurance option and, next year, one half of all counties will have one insurer, and many will have none, according to Trump. In the coming months, the administration plans to take additional measures toward the stated goal of repealing and replacing the ACA, Trump told reporters. "We will continue to pressure Congress to repeal and replace the ACA," he added.

Democratic lawmakers began criticizing the EO immediately after its signing. "Actions like these create extreme uncertainty that will undoubtedly saddle middle class families with higher cost, less coverage and fewer protections," House Ways and Means ranking member Richard Neal, D-Mass., said in a statement. "I hope Republicans will join with Democrats to find bipartisan solutions to further strengthen our healthcare system to bring down costs, strengthen consumer protections and cover more Americans."

Trump recently indicated his intention to work with Democrats on health care, having consistently voiced frustration with Republicans for failing to repeal and replace the ACA. ""I called [Senate Minority Leader] Chuck Schumer, D-N.Y., yesterday to see if [Democrats] want to do a great health care bill. Obamacare is badly broken, big premiums. Who knows!" Trump said in an October 7 tweet.

*- There is no room in baseball for discrimination. It is our national pastime and a game for all. – **Jackie Robinson***

EXTENSION FOR DROUGHT-STRICKEN FARMS

The IRS has provided a one-year extension of the replacement period for farmers and ranchers who were forced to sell livestock due to drought. Accordingly, farmers and ranchers in the listed areas whose drought sale replacement period was scheduled to expire at the end of the tax year will have until the first tax year ending after a drought-free year for the applicable region to replace their livestock. The extension of the replacement period generally applies to capital gains realized by eligible farmers and ranchers on sales of livestock held for draft, dairy or breeding purposes. Sales of other livestock, such as those raised for slaughter, or held for sporting purposes and poultry are not eligible.

The relief applies to any farm located in a county, parish, city or district listed, or contiguous to a county listed, as suffering from exceptional, extreme or severe drought conditions by the National Drought Mitigation Center (NDMC) during any weekly period between September 1, 2016 and August 31, 2017. All or part of 42 states and the District of Columbia are listed. Because the normal drought sale replacement period is four years, the extension immediately impacts drought sales that occurred during 2013. But because of previous drought-related extensions affecting some of these localities, the replacement periods for some drought sales before 2013 are also affected. Additional extensions will be granted if severe drought conditions persist.

*- Baseball was, is and always will be the best game in the world. – **Babe Ruth***

PROPOSED VALUATION DISCOUNT REGULATIONS WITHDRAWN

On October 17, 2017, the IRS formally withdrew proposed regulations originally proposed on August 2, 2016. These proposed regulations sought to restrict valuation discounts long employed by closely-held family businesses to reduce or eliminate gift, estate, and generation skipping transfer taxes.

At the time they were issued, a Treasury official stated that the proposed regulations "close a tax loophole that certain taxpayers have long used to understate the fair market value of their assets for estate and gift tax purposes." Many critics of the proposed rules argued that the rules would do away with valuation discounts for family-owned businesses and that IRS had exceeded its statutory authority in issuing them.

On April 21, 2017, President Trump issued Executive Order, directing the Secretary of the Treasury to review all significant tax regulations issued on or after January 1, 2016, and determine which ones (1) impose an undue financial burden on U.S. taxpayers, (2) add undue complexity to the Federal Tax laws or (3) exceed the statutory authority of the IRS. On the list for review were the Proposed Regulations under Section 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes. Treasury was directed to propose reforms ranging from "streamlining problematic rule provisions to full repeal."

After receiving comments through August 7, 2017, Treasury has issued its second report to the President on Identifying and Reducing Tax Regulatory Burdens. In this report, Treasury states with respect to the proposed valuation discount regulations, "these proposed regulations should be withdrawn in their entirety. Treasury and the IRS plan to publish a withdrawal of the proposed regulations shortly in the Federal Register."

In support of this decision, the report states:

Treasury and the IRS now believe that the proposed regulations' approach to the problem of artificial valuation discounts is unworkable. In particular, Treasury and the IRS currently agree with commenters that taxpayers, their advisors, the IRS, and the courts would not, as a practical matter, be able to determine the value of an entity interest based on the fanciful assumption of a world where no legal authority exists. Given that uncertainty, it is unclear whether the valuation rules of the proposed regulations would have even succeeded in curtailing artificial valuation discounts. Moreover, merely to reach the conclusion that an entity interest should be valued as if restrictions did not exist, the proposed regulations would have compelled taxpayers to master lengthy and difficult rules on family control and the rights of interest holders. The burden of compliance with the proposed regulations would have been excessive, given the uncertainty of any policy gains. Finally, the proposed regulations could have affected valuation discounts even where discount factors, such as lack of control or lack of a market, were not created artificially as a value-depressing device.

- There are three types of baseball players: Those who make it happen, those who watch it happen and those who wonder what happens. – ***Tommy Lasorda***

TAX COURT RULES SELF-RENTAL NO SUBJECT TO SE TAX

On September 27, the U.S. Tax Court ruled that a Texas farm couple was not liable to pay self-employment tax on rents they received from the S corporation through which they conducted a poultry growing operation. The decision in Martin v. Commissioner adopted the analysis of McNamara v. Commissioner and comes 14 years after the IRS announced its disagreement with that key 8th Circuit case and vowed not to follow the decision.

Background

The taxpayers, who were husband and wife, acted as contract poultry growers for Sanderson Farms, Inc. Although they originally signed their broiler production agreement with Sanderson Farms as individuals, they later formed an S corporation and assigned their responsibilities under the agreement to that entity. The S corporation, CL Farms, Inc., employed the wife to provide bookkeeping services and the husband to provide labor and management services. Nothing in the agreement required the taxpayers to personally perform the duties of grower, and the company hired additional employees.

The taxpayers then entered into a five-year agreement under which CL Farms would rent from the taxpayers their farm, including 176,000 square feet of poultry houses and equipment, in exchange for $1.3 million. This was fair market rent and was consistent with amounts paid by other Sanderson Farm growers for the use of similar premises. The rent was due whether or not CL Farms fulfilled its grower requirements or received sufficient income to pay the rent.

For both 2008 and 2009, the taxpayers reported their rental income from CL Farms as rents, not subject to self-employment tax. The IRS determined that these amounts of $259,000 and $271,000, respectively, were subject to self-employment tax because they constituted net earnings from self-employment.

Parties' Arguments

On one hand, the IRS contended that the rent payments the taxpayers received from CL Farms were subject to self-employment tax because there was an arrangement between the taxpayers and both CL Farms and Sanderson Farms that required the taxpayers to materially participate in the production of agricultural commodities on their farm.

On the other hand, the taxpayers argued that the rent payments were not subject to self-employment tax for two reasons. First, the rent payments were consistent with market rates, and there was no nexus between the lease and either the taxpayers' employment agreement with CL Farms or CL Farms' agreement with Sanderson Farms. Second, the taxpayers alleged that their material participation was not required by either CL Farms' agreement with Sanderson farms or their employment agreements with CL Farms.

Tax Court Ruling
The court sided with the taxpayers and ruled that because the parties stipulated that the taxpayers materially participated in the production of agricultural commodities during the years in issue, the court only needed to decide whether there existed an arrangement sufficient to subject the taxpayers' rental income to self-employment tax.

The court found that the rent payments represented fair market rent and were consistent with amounts paid by other Sanderson Farms growers for the use of similar premises. This, the court found, was sufficient to establish that the agreement stood on its own. Consequently, the burden of production shifted to the IRS to show a nexus between the rents and the agricultural arrangement requiring the taxpayers' material participation.

The court ruled that the IRS failed to show--and the record did not contain sufficient evidence to show--a nexus between the rents and the agricultural arrangement requiring the taxpayers' material participation. The court thus concluded that the rental agreement was separate and distinct from the taxpayers' employment obligations and, therefore, the rental income was not includible in their net self-employment income.

Conclusion
For now, agricultural taxpayers outside of the Eighth Circuit also have a court opinion upon which they can rely to exclude self-rental income from the reach of self-employment tax in certain circumstances. Namely, an agricultural taxpayer who leases property to an entity in which he materially participates should be able to exclude that rental income from self-employment tax liability if (1) rent is at or below fair market value and (2) there is no nexus between the rents paid and the arrangement requiring the taxpayer's material participation.

- You could be a kid for as long as you want when you play baseball – ***Cal Ripken, Jr.***

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