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SUMMER NEWSLETTER (FOR THE QUARTER ENDED JUNE 30, 2010)

The following is a summary of recent tax developments that may affect you, your family, your investments and your livelihood. Please call me for more information on any of these developments and what steps you should implement to take advantage of favorable developments and to minimize the impact of those that are unfavorable.

IRAs AND REQUIRED MINIMUM DISTRIBUTIONS

Traditional individual retirement accounts (IRAs) (but not Roth IRAs) are subject to the same minimum distribution rules (RMD) as qualified employer retirement plans. This means that distributions to the owner or beneficiary of a traditional IRA must begin no later than April 1 following the calendar year in which the owner reaches age 70 ½. The required minimum distribution is calculated using the owner's expected remaining life. No RMDs were required for the 2009 calendar year but are for 2010. A few special rules affecting RMDs are discussed below:

- A surviving spouse may elect to treat an inherited traditional IRA as his or her own by having the account redesignated as an account belonging to the surviving spouse as owner rather than beneficiary.
- A nonspouse beneficiary who inherits an IRA cannot treat it as his or her own account but must take RMDs determined under the rules applicable to beneficiaries receiving distributions from a qualified plan. When a nonspouse beneficiary receives a lump sum distribution from an IRA, that person may not rollover that distribution into another IRA and the distribution is taxed as ordinary income to that person.
- If an individual is required to receive an RMD from more than one traditional IRA in a calendar year, the amount of the minimum distribution from each IRA must be calculated separately and the separate amounts totaled. However, the total may be withdrawn from one or more of the IRAs in whatever amounts the individual chooses.

Significant penalties are assessed by the IRS for premature withdrawals and withdrawals of less than the required minimum distribution. Please contact me if you are thinking of withdrawing from your IRA or if you want to make sure your RMD is sufficient to avoid penalties.

DEADLINE EXTENDED FOR CLOSING HOME PURCHASE TO QUALIFY FOR HOMEBUYER CREDIT

Relief has been provided to taxpayers who couldn't meet a key June 30, 2010, closing date for qualifying for the homebuyer credit. As a general rule, both the regular first-time homebuyer credit of \$8,000 and the reduced credit of \$6,500 for long-term residents generally expired for homes purchased after April 30, 2010. However, if a written binding contract to purchase a principal residence was entered into before May 1, 2010, the credit could be claimed if the purchase was closed before July 1, 2010. Under the relief measure, if a written binding contract to purchase a principal residence was entered into before May 1, 2010, the credit may be claimed if the purchase is closed before October 1, 2010. Thus, this extension allows homebuyers who signed a contract no later than April 30th deadline to complete their closing by the end of September.

GUIDANCE ADDRESSES TAX BREAKS FOR HIRING NEW EMPLOYEES

Employers are exempted from paying the employer 6.2% share of social security taxes on wages paid in 2010 to newly hired qualified individuals. These are workers who: (1) begin employment with the employer after February 3, 2010 and before January 1, 2011, (2) certify by signed affidavit, under penalties of perjury, that they haven't been employed for more than 40 hours during the 60-day period ending on the date the individual begins employment with the qualified employer; (3) do not replace other employees of the employer (unless those employees left voluntarily or for cause), and (4) aren't related to the employer under special definitions. The payroll tax relief applies only for wages paid from March 19, 2010 through December 31, 2010.

Employers may qualify for an up-to-\$1,000 tax credit for retaining qualified individuals. The workers must be employed by the employer for a period of not less than 52 consecutive weeks, and their wages for such employment during the last 26 weeks of the period must equal at least 80% of the wages for the first 26 weeks of the period.

The IRS has issued guidance on these tax breaks in the form of frequently asked questions. They carry valuable information on subjects such as the scope of the exemption, how it interacts with other tax breaks, and when an employer must receive the employee's certification of former unemployment status. For example, the IRS explains that the exemption and credit can be claimed for a new employee replacing a downsized employee.

DETAILED GUIDANCE RELEASED ON NEW SMALL BUSINESS HEALTH CARE CREDIT

The IRS has issued detailed guidance on the small employer health insurance credit created by the recently enacted health reform legislation. Under the new law, effective for tax years beginning after December 31, 2009, an eligible small employer (ESE) may claim a tax credit for nonelective contributions to purchase health insurance for its employees. An ESE is an employer with no more than 25 full-time equivalent employees (FTEs) employed during its tax year, and whose employees have annual full-time equivalent wages that average no more than \$50,000. However, the full credit is available only to an employer with 10 or fewer FTEs and whose employees have average annual full-time equivalent wages from the employer of not more than \$25,000. The new guidance adopts a liberal approach to the new

law's requirements, including three alternative methods for figuring total hours of service (important for determining how many FTEs an employer has), and also explains how small employers claim the credit if their state provides a credit or subsidy for employee health coverage. The IRS has released a state-by-state table of average health insurance premiums for the small group market for the 2010 tax year. The table is needed to calculate the credit for this year.

GUIDANCE ISSUED ON NEW UNDER-AGE-27 RULE FOR HEALTH COVERAGE OF CHILDREN

The IRS has issued guidance on the tax treatment of health coverage for children under age 27 under the new health reform law. The new under-age-27 rule, which went into effect March 30, 2010, applies broadly to employer-provided coverage or reimbursements, cafeteria plans, flexible spending arrangements (FSAs), health reimbursement arrangement (HRAs), voluntary employees' beneficiary associations (VEBAs) and the above the line deduction for a self-employed individual's medical care insurance costs.

INFORMATION REPORTING CHANGE IN THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

In general, information returns (Form 1099MISC) must be made by every payor engaged in a trade or business who makes payments of \$600 or more in any tax year to another payee in the course of the payor's trade or business. The information returns must be filed with the IRS and corresponding statements sent to each payee. For payments made after December 31, 2011, the Patient Protection and Affordable Care Act amends the Internal Revenue Code Section 6041 by (1) adding payments of "amounts in consideration for property" and "gross proceeds" to the list of payments subject to reporting and (2) defining the term "person" to include nonexempt corporations so that payments to corporations that are not tax-exempt would be subject to information reporting beginning in 2012. For example, if you buy a lap-top computer for your business from Dell and it costs \$600, you would have to issue a Form 1099MISC to Dell for the total of all purchases you make from that company for the year.

Business purchases made with payment cards will be exempt from this information reporting requirement. There will be expanded payor responsibilities for obtaining payee tax identification numbers (TINs) and backup withholding when TINs are not available.

EMPLOYERS SHOULD USE BOTH THE E-VERIFY AND THE SOCIAL SECURITY NUMBER VERIFICATION SERVICE

E-Verify is a free Internet-based system that is operated by the Department of Homeland Security (DHS) in partnership with Social Security System (SSA). It allows participating employers to electronically verify that their new hires are authorized to work in the United States by comparing information on Form I-9, Employment Eligibility Verification, with federal government databases. The Social Security Number Verification Service (SSNVS) is a free Internet-based system operated by the SSA that allows an employer to confirm whether an employee's name and Social Security Number (SSN) match the SSA's records. Both systems should be accessed in the processing of a new employee to determine the correctness of the employee's Social Security Number (SSN).

INCLUSION OF COST OF EMPLOYER-SPONSORED HEALTH COVERAGE ON FORM W-2

The Patient Protection and Affordable Care Act includes a provision to require the reporting of the value of employer sponsored health insurance as a separate item on the Form W-2 beginning in 2011. This fringe benefit is currently exempt from income, social security and Medicare taxes in 2010 and future years but has been mentioned frequently by politicians of both parties as needing to be subject to these taxes. There is information on the Internet that indicates that employer sponsored health insurance is now includible in taxable income. As of the date of this newsletter, that is not correct.

BUSH TAX CUTS TO SUNSET IN 2011 WITH LITTLE INDICATION THAT CONGRESS WILL EXTEND THEM

Absent legislative action, automatic sunset provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) will reset a host of critically important tax provisions to their pre-EGTRRA level. With fewer days on its calendar, and unfinished business on the extenders and small business tax relief, concern is growing about when and how Congress will deal with the EGTRRA sunset problem. Among the tax provisions affected are the following:

- **Expensing.** Under the current law, the Code Sec. 179 expensing limit for tax years beginning in 2010 is \$250,000 and the maximum expensing amount is reduced (but not below zero) by the amount by which the cost of expensing eligible property placed in service exceeds \$800,000. Beginning in 2011, these amounts are to revert to \$25,000 and \$200,000 respectively. Off-the-shelf computer software is expensing eligible property but only if placed in service prior to 2011.
- **Individual tax rates.** Under current rules, the first slice of taxable income is taxed at 10%, and the second slice at 15%. The size of the 15% tax bracket for married taxpayers filing joint returns is twice the 15% tax bracket for individual filers. The top four tax brackets are 25%, 28%, 33% and 35%. Beginning in 2011, the 10% bracket disappears and that income will be taxed at 15%. Also, the size of the 15% bracket for married taxpayers filing joint will be 167% of the 15% tax bracket for individual filers. The top four brackets will be 28%, 31%, 36% and 39.6%.
- **Capital gains.** Under current rules, most long-term capital gain is taxed at a maximum rate of 15%. If the long-term gain would otherwise be taxed at a rate below 25%, if it were ordinary income, it is taxed at a zero percent rate. Qualified dividends are taxed to noncorporate shareholders at the same rates that apply to long-term capital gains. Beginning in 2011, long-term capital gains will be taxed at a maximum rate of 20% and all dividends will be taxed at ordinary income rates.
- **Estate tax.** Eliminated in 2010, the estate tax returns in 2011 at a rate of 55% and a \$1 million exemption. Expect action reducing the tax rate and increasing the exemption since most members of Congress would have estates in excess of \$1 million.

WITHHOLDING ON CONTRACTOR PAYMENTS FROM GOVERNMENTAL ENTITIES

Originally effective for 2011 but deferred to 2012, the 2005 Tax Increase Prevention and Reconciliation Act (TIPRA), requires that the federal, state and local governments withhold 3% of payments to any contractor performing work for them. The amounts could then be claimed by the contractor on its tax return for the year. The House of Representatives actually voted to repeal this provision of TIPRA earlier this year and there is significant opposition to it from various trade groups.

SELF EMPLOYMENT TAX ON S-CORPORATIONS

The American Jobs and Closing Tax Loopholes Act (AJCTLA) of 2010 passed the House of Representatives in May and is being debated in the Senate. AJCTLA includes a provision (Section 413) that affects the self-employment tax treatment of certain small business set up as S-corporations. This new provision would require that certain S-corporation owners be subject to self-employment tax on their share of distributable profits in excess of salary paid for services. Limited partnerships would also be affected by this provision. Currently, distributable profits are not subject to self-employment tax. A bill was introduced in June in the Senate to remove this section from AJCTLA.

FLORIDA TAX AMNESTY

Florida taxpayers who owe unpaid state taxes can save money and clear up tax liabilities by going online to learn more about Florida's 2010 tax amnesty beginning July 1 and running through September 30. Tax amnesty information, including a Tax Information Publication and Tax Amnesty form is available on the website at www.myflorida.com/dor/amnesty.