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Insurance Company Information Reporting and Withholding Update

March 2005

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I. Employer Issues and Employee Benefits

A. Proposed Regulation Excludes from Wages Payments Made Pursuant to a Statute in the Nature of a Workers' Compensation Act

On March 11, 2005, the IRS issued a proposed regulation, which would amend Treas. Reg. § 31.3121(a)(2)-1 with respect to FICA tax and payments made under a workers' compensation law.

For FICA tax purposes, I.R.C. § 3121(a)(2)(A) excludes from wages amounts received under a workers' compensation law. Under the proposed regulation, the term workers' compensation law would include a statute in the nature of a workers' compensation act. However, the term would not include a State temporary disability insurance law, and payments made under such a law would be wages for purposes of FICA tax.

Comments and requests for a public hearing may be submitted to the IRS by June 9, 2005, via mail, hand-delivery, or electronically.

B. IRS Publishes Semi-Annual Terminal Charge and SIFL Mileage Rates

On March 21, 2005, the IRS published Rev. Rul. 2005-14, which provides the terminal charge and standard industry fare level (SIFL) mileage rates for determining the taxable fringe benefit value of noncommercial flights on employer-provided aircraft. The terminal charge and mileage rates apply to flights taken during the period January 1 through June 30, 2005. The terminal charge for this period is \$35.49, and the mileage rates are \$.1942 per mile (up to 500 miles), \$.1480 per mile (501-1500 miles), and \$.1423 per mile (over 1500 miles).

II. Reporting Guidelines and Forms

A. VCP Participating Withholding Agents Subject to Interest on Underpayments of Tax Only

On February 25, 2005, the LMSB Division of the IRS issued a memo, which stated that a withholding agent participating in the Voluntary Compliance Program (VCP) will not be subject to interest on tax not withheld on the due date for filing Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, if documentation subsequently received establishes that the correct amount of tax was withheld on that due date. The memo is in response to Chief Counsel Advice that answered the question whether, in such a situation, withholding agents were subject to

interest under section 5.02(2) of Rev. Proc. 2004-59. Rev. Proc. 2004-59 describes the Section 1441 Voluntary Compliance Program available to certain withholding agents with respect to withholding, payment, and reporting obligations for payments made to foreign persons. The memo further stated that withholding agents participating in the VCP will be subject to interest only on actual underpayments of tax.

B. IRS Announces Corrections to Publication 1220

On February 28, 2005, the IRS published Announcement 2005-14, which provides corrected information for Publication 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically or Magnetically (Rev. September 2004). These corrections, which are typographical in nature, apply to information returns for tax year 2004 filing.

C. Proposed Regulations Would Amend Withholding Rules for U.S. Source Income Paid to Foreign Persons

On March 29, 2005, the IRS issued proposed regulations, which would amend the regulations under I.R.C. §§ 1441 and 1442 relating to income tax withholding on certain U.S. source income paid to foreign persons. The proposed regulations also would amend the regulations under I.R.C. §§ 1461 through 1463 relating to the collection, deposit, refunds, and credits of withheld amounts, as well as the regulations under I.R.C. §§ 6041, 6049, and 6114 relating to information reporting.

The proposed regulations would implement certain changes announced in Notice 2001-4, Notice 2001-11, and Notice 2001-43, as well as the treatment of certain dividends received from regulated investment companies under I.R.C. § 1441, as amended by the American Jobs Creation Act of 2004. Notice 2001-4 addressed the TIN requirement for certain foreign grantor trusts, reporting relief for U.S. payors in U.S. possessions, the use of documentary evidence in possessions of the U.S., and information reporting of foreign source services income. Notice 2001-11 addressed reporting and withholding on payments to financial institutions in U.S. possessions. Notice 2001-43 addressed reporting of treaty-based return positions, and conversion of foreign currency amounts.

Comments may be submitted to the IRS by June 28, 2005, via mail, hand-delivery, or electronically. A public hearing is scheduled for July 13, 2005, at 10:00 a.m. Requests to speak at the hearing, and outlines of topics to be discussed, must be received by June 22, 2005.

III. Other Matters

A. IRS Seeks Nominations for ETAAC

The IRS requests nominations for membership in the Electronic Tax Administration Advisory Committee (ETAAC). The ETAAC researches, analyzes, considers, and makes recommendations on a wide range of electronic tax administration issues. Members include tax practitioners and preparers, transmitters of electronic returns, tax software developers, large and small businesses, employers and payroll service providers, individual taxpayers, financial industry (payers, payment options and best practices), system integrators (technology providers), academic (marketing, sales or technical perspectives), trusts and estates, tax exempt organizations, and state and local governments.

The application deadline is April 29, 2005. Additional information is available at:
www.irs.gov/taxpros/article/0,,id=136216,00.html.

This Update is provided solely for informational purposes and is not intended to furnish legal advice with respect to a reader's particular factual circumstances. For additional information on any of the topics in this Update, please contact Stephanni Hemmi at Scribner, Hall & Thompson, LLP.