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## Insurance Company Information Reporting and Withholding Update

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## I. Employer Issues and Employee Benefits

### A. IRS Releases Revenue Procedure Detailing Maximum Values for Employer-Provided Vehicles

In Revenue Procedure 2005-48, the IRS announced that employer-provided vehicles first made available to employees for personal use in 2005 may not exceed specified maximum values in order for the employer to utilize certain valuation rules. The value of the personal use of the vehicle must be included in the employee's income. The revenue procedure states the maximum value for the vehicle cents-per-mile valuation rule or the fleet-average valuation rule. The maximum values under the vehicle cents-per-mile rule is \$14,800 for a passenger automobile and \$16,300 for a truck or van. Under the fleet-average valuation rule, the maximum value is \$19,600 for a passenger automobile and \$21,300 for a truck or van. If the value exceeds the maximum, the employer may use the general valuation rules of Treas. Reg. § 1.61-21(b), the automobile lease valuation rules of Treas. Reg. § 1.61-21(d) or the commuting valuation rule of Treas. Reg. § 1.61-2(f).

### B. IRS Releases Notice 931 - Deposit Requirements for Employment Taxes

The IRS recently released Notice 931, *Deposit Requirements for Employment Taxes*, which was revised in February 2005. The notice states that there are two deposit schedules, either monthly or semiweekly, that will be used to determine when social security and Medicare taxes and withheld income tax shall be deposited. A deposit schedule must be elected prior to the beginning of each calendar year and shall be determined based on total tax liability during a specified lookback period. The current lookback period is the calendar year preceding the previous year. The notice stresses that the deposit schedule is not determined on the basis of when employees are paid.

All employers should make electronic deposits of all depository taxes through the Electronic Federal Tax Payment System in 2005 if (a) total depository taxes exceeded \$200,000 in 2003 or (b) the employer was required to utilize the Electronic Federal Tax Payment System in 2004. Failure to use the electronic deposit system if you are required to do so may result in a 10% penalty. The notice also includes technical details relating to timing and accuracy of deposits.

C. Treasury Inspector General for Tax Administration Reports that IRS needs Comprehensive Strategy to Combat Employment Tax Noncompliance

The Treasury Inspector General for Tax Administration (“TIGTA”) issued a report on August 17, 2005, which noted that noncompliance has led to over \$70 billion in uncollected employment taxes for 2004. This figure is in large part due to the underpayment of employment taxes by self-employed individuals. It is estimated that self-employed individuals underpaid their employment taxes by \$56 billion.

The report focused on the need for the IRS to establish more effective strategies to combat employment tax noncompliance by developing better enforcement methods and efficiently utilizing two existing tools: the combined annual wage reporting program and agency examination practices. TIGTA felt that the IRS examination procedures were woefully lacking, especially concerning Forms 941, on which businesses list income and losses. TIGTA notes that Forms 941 represent a “significant portion of Federal revenues.”

## II. Employee Business Expenses

A. Revenue Ruling 2005-52 Details Requirements for Accountable and Nonaccountable Plans

The IRS examined a situation in Revenue Ruling 2005-52 where an employer required all employees to purchase and maintain tools needed to perform repair and maintenance services. The employer paid each employee a tool allowance in addition to their hourly wages for expenses incurred in connection with purchasing and maintaining the tools. The allowance was based on combination of various data, but not on the actual expense of purchasing and maintaining the tools.

The Service held that “[a]n amount paid by an employer to an employee to cover expenses incurred by the employee in the course of employment can be excluded from the employee’s income and wages *only* if a particular Code section provides an exclusion for such amount or if the amount is paid under an accountable plan.” (Emphasis added.) An expense reimbursement arrangement will be included in income as a nonaccountable plan if it does not meet the requirements of §62(c) and the corresponding regulations which state that there must be a business connection, there must be substantiation of the expense and the employee must return the excess of any substantiated expenses. Each requirement must be satisfied independently.

Since the employer did not require his employees to provide any substantiation of expenses incurred for the purchase and maintenance of the required tools, the IRS held that the tool allowance was to be included in the employees' income.

### III. Other Matters

#### A. IRS Issues a Tax Guide for Retirees

The IRS released Publication 4190, *Tax Guide for the Retiree*, which is written in a frequently asked questions format. The guide begins with a question regarding the difference in reporting retirement income versus income earned prior to retirement. Other topics explained include what types of income are taxable and reasons that pensions and social security may be taxed.

#### B. Treasury and IRS Release Priority Guidance Plan for 2005-2006

The Internal Revenue Service and the Department of Treasury have released the Priority Guidance Plan for 2005-2006, which contains 254 projects that will be the subject of formal guidance affecting tax law over the next year. These projects are expected to be completed by June 2006. Projects for the upcoming year include:

- final regulations on flat rate supplemental wage withholding;
- final regulations under § 3402(f) relating to Form W-4;
- guidance on the taxation of certain annuity contracts under § 72;
- guidance on the qualification of certain arrangements as insurance;
- guidance on the taxation of variable contracts as described in § 817(d);
- regulations under §§ 6662A, 6662, and 6664 regarding accuracy-related penalties relating to understatements; and
- guidance necessary to facilitate electronic tax administration.

*IRS Circular 230 Disclosure:*

This memorandum is provided solely for informational purposes and is not intended to furnish legal advice with respect to the reader's particular factual circumstances. In accordance with § 10.35 of IRS Circular 230 requirements, you are advised that any discussion of tax issues in this memorandum is not intended or written to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code or to promote, market or recommend to another party any transaction or matter addressed herein. The persuasiveness of this memorandum with regard to the tax issues in question and a taxpayer's good faith reliance on the memorandum will be determined under applicable provisions of the law and regulations (§ 10.35(f)).