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Insurance Company Information Reporting and Withholding Update

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I. Life Insurance, Annuities, and Qualified Plans

A. 2006 Enrolled Actuaries Blue Book – To Be Available Online

The 2006 Enrolled Actuaries blue book will provide summaries of the questions and answers discussed in preparation for the 2006 Enrolled Actuaries Meeting, held in Washington, D.C. on March 26-29. The questions were presented to staff of the Pension Benefit Guaranty Corporation (PBGC) and are intended to reflect as accurately as possible the statements made by the PBGC representatives. Subjects addressed in the book include:

- standard terminations
- guaranteed benefits
- valuations
- participant notices
- reportable events
- employer reporting, and
- other reporting

The blue book will be available at <http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13190.html>.

II. Employer Issues and Employee Benefits

A. IRS Provides Practical Suggestions to Employers Outsourcing Payroll Responsibilities

In a recent article, the IRS provides practical suggestions to employers outsourcing payroll responsibilities. The IRS reminds employers that the employer is ultimately responsible for the payment of income tax withheld, and both the employer and employee portions of social security and Medicare taxes, irrespective of whether the employer outsources payroll and related tax duties to third-party payroll service providers.

The IRS suggests that employers who outsource payroll responsibilities should consider the following:

- IRS correspondence is sent to the address of record so it is strongly suggested that the address not be changed to that of the payroll service provider as it may significantly limit the employer's ability to be timely informed of tax matters involving their business.

- For the employer's protection, the payroll service provider should be asked if they have a fiduciary bond in place.

The IRS also suggests that these employers utilize the Electronic Federal Tax Payment System (EFTPS):

- Employers should ask the service provider to enroll in and use EFTPS so the employer can confirm payments made on their behalf. EFTPS maintains a business's payment history for 16 months and can be viewed on-line after enrollment.
- Businesses should enroll in EFTPS to make any additional tax payments that their third-party provider is not making on their behalf such as estimated tax payments.
- The IRS recommends employers verify EFTPS payments as part of their bank account reconciliation process.

The EFTPS service is offered free of charge from the U.S. Department of Treasury and enables employers to make and verify federal tax payments electronically 24 hours a day, 7 days a week through the Internet, or by phone. Employers can enroll online at www.eftps.gov, or call EFTPS Customer Service at 1-800-555-4477 for an enrollment form.

B. Final Regulations on Supplemental Wage Withholding Expected by June 30

Final regulations on supplemental wage withholding should be issued by June 30, 2006. On January 4, 2005, the IRS issued proposed regulations (REG-152945-04) amending the optional flat rate income tax withholding rules applicable to supplemental wages paid by an employer to employees. The proposed regulations implement the new, mandatory maximum flat rate income tax withholding requirement set forth in section 904 of the American Jobs Creation Act of 2004 (P.L. 108-357) for supplemental wages in excess of \$1 million dollars paid to an employee during a calendar year.

The proposed regulations have been highly criticized because, although only a small percentage of employees will be subject to the 35 percent withholding, the proposed regulations as drafted would require every employer to change its payroll practices, at considerable cost, to separately track supplemental wage payments for each employee, and to consider payments by other entities in the employer's controlled group and payments made by third-party agents, such as brokers and sick-pay plan administrators.

C. IRS Releases Revised Publication 515

The IRS has released revised Publication 515 (Rev. January 2006), Withholding of Tax on Nonresident Aliens and Foreign Entities. The publication is available on the IRS website at www.irs.gov/pub/irs-pdf/p515.pdf.

III. Reporting Guidelines and Forms

A. IRS Plans to Discontinue Acceptance of Certain Electronic File Formats in Filings of Form 940, Form 941

On March 9, 2006, the IRS announced that it plans to discontinue acceptance of electronically filed Form 940 (Employer's Annual Federal Unemployment (FUTA Tax Return)) and 941 (Employer's Quarterly Federal Tax Return) in the *EDI* and *Proprietary* formats, effective October 29, 2006. The IRS will, however, continue to support the XML (Extensible Markup Language) file format. The IRS cited a decline in use of the formats and increasing maintenance costs as bases for the decision. Email responses to the decision may be directed to Jeanie.S.Yancey@irs.gov.

B. Coalition Urged Withdrawal of Proposed Regulations – Bank Reporting on Nonresident Alien Accounts

The Coalition for Tax Competition, comprised of over 30 organizations, urged withdrawal of proposed regulations (REG-133254-02) that would impose U.S. bank reporting requirements on accounts held by nonresident aliens under section 6049. The proposed regulations call for interest reporting to NRA's who reside in a limited number of countries: Australia, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, or the United Kingdom. The proposed regulations, issued in 2002, replace originally proposed regulations issued in January 2001 which required reporting on bank deposit interest paid to all NRAs, regardless of their residence. Commentators have been highly critical of both sets of proposed regulations.

C. IRS Updates Specifications for Paper Substitutes for Forms W-2c and W-3c

In Rev. Proc. 2006-19, the IRS updated its specifications for the private printing of paper and laser-printed substitutes for Form W-2c, Corrected Wage and Tax Statement, and Form W-3c, Transmittal of Corrected Wage and Tax Statements. This revenue procedure supercedes Rev. Proc. 2003-31.

The updates reflect changes made to Forms W-2c and W-3c, January 2006. The major

changes include:

- The Social Security Administration (SSA) has eliminated the magnetic media filing method after December 31, 2006.
- A separate entry field has been added to box (e) (employee's name) on Form W-2c for employee suffix names such as "Jr." or "Sr."
- Forms W-2c and W-3c can be filed electronically by visiting the SSA's Employer Reporting Instructions and Information website at www.socialsecurity.gov/employer, selecting "Electronically File Your W-2cs", and logging into "Business Services Online."
- Box (c) on Form W-2c is now "Corrected SSN and/or name" and must be checked if the SSN and/or name is being corrected.
- A checkbox in box (c) on Form W-3c for new Form 944 and Form 944-SS has been added. Form 944 and Form 944-SS are new forms that must be filed by certain employers instead of Form 941 or Form 941-SS beginning with calendar year 2006.
- The "Sec. 218" checkbox in box (c) on Form W-3c has been eliminated. State and local governments filing Forms W-2c to report Social Security coverage for employees under a section 218 agreement should write "Section 218 Agreement" in the lower-left corner of box (c) on Form W-3c.

The revenue procedure will also be reproduced as Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c. Publication 1223, last revised May 2003, will only be released for downloading via the IRS website. Major changes to Publication 1223 include:

- Because magnetic media is being eliminated as a filing method, all references to magnetic media were deleted.
- Guidelines were expanded for the laser-print substitute Forms W-2c and W-3c by adding specifications to Section 5.03.
- Information was added about the IRS Enterprise Computing Center's call site for answering questions relating to information

returns.

- Corrected payee statements (Copies B, C, and 2 of Forms W-2c) may be furnished electronically if employees give their consent.

IV. Other Matters

A. Hurricane Katrina Victims Offered Further Tax Relief by IRS

In Notice 2006-20, the IRS announced that deadlines for certain affected taxpayers to file returns and pay certain taxes will be postponed to August 28, 2006. The IRS postponed the deadlines for any tax return or payment with a due date or extended due date on or after August 29, 2005, and on or before August 28, 2006. These deadlines were previously postponed until February 28, 2006. The extension is available only for affected taxpayers in the hardest hit areas of Louisiana, Mississippi, and Alabama.

Additionally, certain others treated as “affected taxpayers” because of Hurricane Katrina may request an additional filing/payment extension of up to six months. Taxpayers requesting the extension should identify themselves by writing “Hurricane Katrina” in red ink at the top of any form or document filed with the IRS, or by calling the IRS disaster hotline at 1-866-562-5227.

Furthermore, the IRS will waive the failure of deposit penalty for deposits required to be made by affected taxpayers on or after August 29, 2005, and before August 28, 2006, if the deposit is made on or before August 28, 2006.

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For additional information on any of the topics in this Update, please contact Lynlee Baker-Garbett at Scribner, Hall & Thompson, LLP.