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NEWSLETTER

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Upcoming Teleconference Event:

How to Handle Short Sales. March 5, 2013, 10:00-11:30 a.m. Presented in part by Bradford N. Dewan through the National Business Institute. Visit our website (www.mmpph.com) for more information.

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TIME IS RUNNING OUT FOR VOLUNTARY REPORTING OF FOREIGN ACCOUNTS

DeEtte L. Loeffler, J.D., LL.M. Taxation

On January 17, 2013, the U.S. Department of the Treasury and the IRS released final guidance regarding the Foreign Account Tax Compliance Act (FATCA). FATCA was enacted in 2010 as part of the IRS' effort to identify U.S. taxpayers with taxable interests in foreign accounts or entities. The final regulations require foreign financial institutions ("FFIs") and non-financial foreign entities ("NFFIs") to identify and report accounts and assets owned by U.S. taxpayers.

Individual taxpayers are required to self-report the existence of such accounts under the FBAR rules. FBAR (Report of Foreign Bank and Financial Accounts) applies to U.S. taxpayers with financial interests in, or signature authority over, foreign financial accounts, including bank, brokerage, mutual fund, trust, or other types of foreign financial accounts. In 2012, the IRS estimated lost revenue for all tax evasion, including offshore accounts, $385 billion through 2006. Voluntary disclosures under existing tax amnesty programs resulted in over $4 billion in new revenue through 2011, so collection efforts continue.

The FBAR rules require taxpayers to report the existence of foreign accounts on Schedule "B" of their federal income tax returns (Form 1040). Taxpayers must also file a Statement of Specified Foreign Financial Assets (Form 8938) with their income tax returns if they have over $10,000 in such accounts. Finally, taxpayers must report an FBAR by June 30 of each year in which they own or control a foreign account. Failure to make required reporting can lead to significant penalties, including substantial civil and criminal penalties including fines ($10,000 per non-willful violations, and the greater of $100,000 or 50% of the amount per willful violation), and up to 6 years in prison.

Under FATCA, the IRS will issue FFI individual compliance numbers for reporting. Beginning January 1, 2014, FFI's must report accounts owned or controlled by U.S. taxpayers. In addition, FFI's are required to withhold 30% on all payments to account holders and non-participating FFI's who fail to provide certain required information to the FFI. The regulations are over 500 pages long, and include specific guidance for reporting by FFI and NFFI's. Certain types of accounts will be "grandfathered" for reporting purposes. FFI's are not required to report accounts held before January of 2014 by (1) individuals which hold $50,000 or less, or (2) entities which hold $250,000 or less. In addition, small life insurance contracts ($50,000 or less) are exempt from reporting. FFI's are permitted to reply on self-certification by account holders as to their status as U.S. taxpayers. In addition, withholding will not be required on certain foreign pass-through payments, or on gross proceeds from sales or dispositions of property occurring before January 1, 2017.

The IRS has engaged in negotiations with more than 50 countries to adopt new intergovernmental agreements ("IGAs") that remove impediments to reporting by their banks. Seven countries have already signed such IGAs, including Denmark, Ireland, Mexico, Norway, Spain, Switzerland and the United Kingdom, and the IRS anticipates more agreements will be signed in the near future with Argentina, the Cayman Islands, France, Germany, Israel, Italy, Japan, Canada, Finland, Guernsey, Isle of Man, Jersey, the Netherlands and Norway. In addition, financial institutions in several countries have begun making voluntary reports to the IRS.

In November of 2012 the IRS announced it intends to begin prosecuting more cases against non-compliant U.S. taxpayers based on new information it has already received. Taxpayers with foreign accounts or interests in foreign entities are urged to disclose such interests on their annual income tax returns. Those who have not reported such accounts in prior years should strongly consider filing corrected returns in 2013, before the current amnesty program ends. The IRS discourages the practice of "silent disclosures" (i.e., filing for the current year without disclosing the account existed in prior years) and will impose steep penalties for any year it determines should have been reported

Taxpayers will not be permitted to participate in amnesty once the IRS receives information regarding their foreign accounts through other sources, such as FATCA reporting.

IS YOUR PLAN HIPAA COMPLIANT?

DeEtte L. Loeffler, , J.D., LL.M. Taxation

If you last updated your estate plan before 2006, it is likely not HIPPA compliant. Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) in 2006. This act imposed significant new restrictions on the ability of health care providers to disclose a patient's health care and treatment information to third parties. The Act was written, in part, to address a growing lack of privacy for patients due to the storage and dissemination of patient information in electronic media which permitted rapid sharing but also increased risk of dissemination to persons without a right or need to know.

Under HIPAA, health care providers, including hospitals, physicians, medical assistants, dentists, nursing homes, and hospice are prohibited from discussing a patient's medical diagnosis, treatment plan and/or condition or status with anyone other than the patient without the express written permission of the patient. The legislation carries heavy civil and even criminal penalties, and is so broad that it may prevent physicians from sharing information with a spouse, child or other family member when a person is unexpectedly hospitalized or dying.

While hospitals now routinely request HIPAA waivers from patients as part of in-processing for planned medical procedures, waivers often cannot be obtained for victims of accidents or sudden onset illnesses or conditions, such as a stroke or heart attack. As a result, family members and health care agents may experience delays or even be unable to obtain critical information about a loved one's condition, prognosis and treatment options during a crisis. This can be particularly distressing for parents of college age children who become injured or fall ill while away from home, as well as for those with aging parents who experience a life threatening illness.

Fortunately, the solution to this problem is relatively simple. Most states, including California, have enacted statutes allowing patients to waive their privacy rights in part by naming certain people with whom their doctors may discuss their sensitive health care information. California Civil Code Section 56.11 requires the waiver to be in a prescribed format to be effective. Normally, individuals name a spouse, adult children, successor trustees, and those they have named to serve as their agents for health care and/or financial purposes. Such waivers are generally made effective immediately but can be revoked in writing at any time.

If you have not yet obtained a HIPAA waiver, we encourage you to add this valuable tool to your plan. In addition, if you have a dependent adult child, we recommend your child sign such a waiver allowing their treating physicians to speak with you in the event of an accident or serious illness.

If you have any questions or are interested in adding this important planning tool to your plan, we would be happy to assist you.

STATE TAX NEWS: New Tax Bills Introduced

California taxes are expected to rise further in 2013. The Franchise Tax Board is considering imposing a 3.5 cent increase in the gas tax, increasing it to 39 cents per dollar. In addition, State Senator Noreen Evans has proposed a 9.9% oil extraction tax, citing California as the only oil producing state without such a tax. Some tax expenditures have also been proposed. State Senator Ted Gaines (R-Rocklin) introduced three pieces of legislation to exempt homeowners in rural areas from having to pay the fire fee which he opposes as an illegal tax. State Senator Ricardo Lara (D-Los Angeles) introduced a bill that will strip youth organizations (such as the Boy Scouts) of their state tax exempt status if they do not accept homosexual members. State Assemblyman Phil Ting introduced a bill in late February to provide a tax break to couples who receive health care benefits from an employer for a same sex partner and receive reimbursement from the employer for the federal income tax imposed on the benefit (such benefits are currently subject to federal tax as income).

Meanwhile, unfunded pensions remain a problem not yet addressed in the budget.

LEGISLATIVE UPDATE: Still No Deal

February brought continued arguing but no solutions to the budget sequestration issue. On March 1, 2013, the automatic sequestration cuts are set to go into effect. Republicans have proposed a plan to cut spending which President Obama rejected in his State of the Union Address saying "we can't just cut our way to prosperity." House Democrats proposed replacing the sequestration cuts with some of the spending cuts and tax increases proposed as part of the Simpson-Bowles deficit-reduction plan, but Republicans rejected the proposal as another attempt by Democrats to increase taxes.

Planning for the cuts has begun. Acting Treasury Secretary Neal Wolin told Congress the IRS would furlough employees, increasing response times at IRS call and taxpayer assistance centers. On February 26, 2013, ICE released hundreds of "non-violent" illegal aliens. At the local level, the Navy canceled ship deployments, delayed needed maintenance, and cancelled one new ship - costing jobs at local shipyards, while federal civilian workers are slated to begin furloughs on or about April 1, 2013.

If you would like to receive further information regarding the topics in this or past newsletter, or if you would like to let us know any issues or topics you would like to see addressed in future newsletters, please contact us at (619) 239-7777 or newsletter@mmpph.com.

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