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Tax News & Views
Health Care Edition

Supreme Court holds severance payments are FICA wages, reversing Sixth Circuit's Quality Stores decision

On March 25, 2014, the Supreme Court unanimously held in *United States v. Quality Stores, Inc.*, that severance payments were wages subject to Federal Insurance Contribution Act (FICA) tax (*U.S. v. Quality Stores, Inc.*, (Sup Ct 03/25/2014) 113 AFTR 2d 2014-604). The Supreme Court's ruling reverses the Sixth Circuit Court of Appeals decision. The Quality Stores case addressed severance payments made to workers who were involuntarily terminated as part of a Chapter 11 bankruptcy; the payments were not attributable to the rendering of any particular employment services. The Supreme Court concluded that the severance payments fell within Internal Revenue Code (IRC) Section 3121's broad definition of "wages" for FICA tax purposes. The Supreme Court rejected the taxpayer's argument that the payments' tax treatment was altered by a special withholding provision in IRC Section 3402 regarding supplemental unemployment compensation benefits.

The Internal Revenue Service (IRS) is expected to deny refund claims that were based on the lower-court decision. Based upon the Supreme Court ruling, it is expected that payors will consider severance payments as wages for FICA tax purposes going forward.

For additional background information on the case, refer to *Tax News & Views: Health Care Edition – November 2013 issue*.

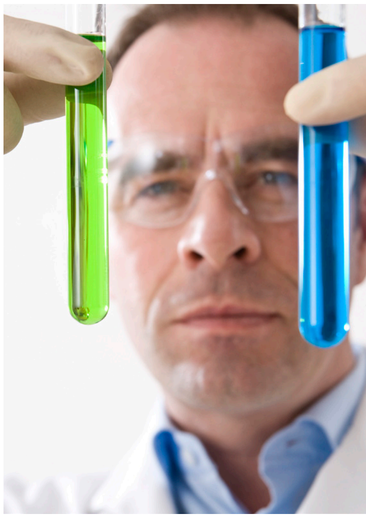
IRS releases draft Form 1023-EZ

As reported in last month's *Tax News & Views: Health Care Edition*, the IRS Tax-Exempt and Government Entities Division is testing a streamlined exemption application process for cases processed by the IRS's exempt organizations (EO) determinations and quality assurance units. The streamlined process is intended to more efficiently and accurately move inventory through the exemption application process. The IRS also developed a new draft Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, intended to make applying for tax-exempt status easier and quicker for smaller organizations. The draft Form 1023-EZ is only three pages, compared to the Form 1023, which is 25 pages, and is expected to take significantly less time to complete than the current form. Organizations will be required to electronically file the form and pay a flat user fee online. Only a fully completed form will be accepted by the e-file system; the IRS expects that this will decrease the number of incomplete applications filed and reduce the number of follow-up questions between the determinations unit and applicants.

The draft instructions indicate that organizations eligible to use Form 1023-EZ must have annual gross receipts of less than $200,000 and total assets of less than $500,000. Certain organizations, including churches, colleges and universities, hospitals, supporting organizations, and foreign organizations, would not be eligible to use Form 1023-EZ. An organization filing Form 1023-EZ would need to attest that its organizing document includes the required purpose and dissolution clauses. The organization must also attest that it will not conduct certain prohibited and restricted activities, such as political and lobbying activity. The IRS intends to release the final Form 1023-EZ in summer 2014; until then, organizations must continue to use the current Form 1023 to apply for exemption.

Exemption application processing moves to Cincinnati

The IRS EO unit is currently undergoing a number of organizational changes. The EO headquarters is moving to Cincinnati, although certain employees in the EO technical unit will remain in Washington, D.C. The EO determinations unit in Cincinnati will be responsible for processing nearly all exemption applications going forward. In the past, certain cases with significant regional or national impact, technical advice cases, and technical assistance cases, were transferred to the EO technical unit in Washington for processing. However, due to the reorganization of the EO unit and in the interest of efficient tax administration, the types of cases transferred to the EO technical unit will now be limited to 1) applications from hospitals subject to requirements under IRC Section 501(r), 2) certain applications under IRC Section 501(c)(4), and 3) technical assistance requests. Professionals in the EO determinations unit will undergo technical



Find it Fast

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training in summer 2014 regarding hospital requirements under 501(r). Once training is completed, the EO determinations unit may process hospital applications in Cincinnati. For additional information, refer to IRS memo TEGE-07-0414-0009.

New Guidance on U.S. person's ownership in PFIC through tax-exempt organizations and accounts

Notice 2014-28 announced that the Department of Treasury ("Treasury") will amend the regulations under IRC Section 1291 to provide guidance concerning the treatment of U.S. persons that own stock of a passive foreign investment company (PFIC) through: an organization or account that is exempt from tax under Section 501(a); a state college or university; a plan described in Section 403(b) or 457(b); an individual retirement plan or annuity; or a qualified tuition program under Section 529 or 530.

Background

Section 521 of the Hiring Incentives to Restore Employment Act of 2010 added Section 1298(f) to the IRC, which instituted an annual Form 8621 reporting requirement for shareholders of PFIC stock that previously had no filing requirement. Under the new Temporary Regulations, taxpayers will be required to make an annual report on Form 8621 with respect to an investment in a PFIC at any time during the taxpayer's taxable year ending on or after December 31, 2013. In addition to those taxpayers that directly own PFIC stock, certain indirect owners will also be required to file Form 8621. Generally, this requirement applies if the taxpayer owns PFIC stock indirectly by holding an interest in one or more foreign entities that own PFIC stock. An exception from filing Form 8621 is established for tax-exempt entities that own PFIC stock, unless the entities would otherwise be taxable on income derived from the PFIC investment under Subchapter F of Subtitle A of the IRC (such as unrelated business income).

Notice 2014-28

Neither the IRC nor the Section 1291 regulations provide specific guidance on the application of Section 1291 to a U.S. person that owns stock of a PFIC through a tax-exempt organization or account, other than an employees' trust described in Section 401(a). While the temporary regulations provided relief from filing Form 8621 for tax-exempt entities, the regulations did not provide specific relief for U.S. persons that may be treated as an indirect owner through a tax-exempt organization or account. Notice 2014-28 states that Treasury and the IRS believe that the application of the PFIC rules to a U.S. person treated as owning PFIC stock through a tax-exempt organization or account would be inconsistent with the tax provisions application to tax-exempt organizations. For example, applying the PFIC rules to a U.S. person that is treated as a shareholder of a PFIC through the U.S. person's ownership of an individual retirement account (IRA) would be inconsistent with the principle of deferred taxation provided by IRAs. Accordingly, Treasury will amend the definition of shareholder in the Section 1291 regulations to provide that a U.S. person that owns PFIC stock through a tax-exempt organization or account is not treated as a shareholder of the PFIC.

IRS denies exempt status to membership organization

In PLR 201411040, the IRS denied exemption under Section 501(c)(6) to a membership organization composed of physicians and other medical professionals where the organization's primary activity was negotiating contracts with commercial managed care companies on behalf of its members. The IRS held that the activity primarily benefits individual members rather than promoting a particular line of business.

The organization's members included physicians, nurse practitioners, physician assistants, podiatrists, certified nurse anesthetists, and certified nurse midwives in more than 100 clinics. Activities of the organization and an allocation of time spent on each activity were stated as: negotiating managed care contracts on behalf of the membership (30%); conducting centralized credentialing process for members (25%); promoting evidence-based medicine and maintaining practice guidelines to help guide medical decision making processes (25%); obtaining discounted rates on malpractice insurance, medical and general office supplies, group dental insurance, legal services, payroll/human resource management services, and technology services (10%); and sponsoring seminars relevant to members, including coding, legal matters, technology, and contract negotiation (10%). Members pay a yearly fee to maintain membership. Revenue is also generated from the performance of credentialing services.

The IRS stated that the performance of particular services by an organization for its members or others is not an exempt activity under Section 501(c)(6) and an organization whose primary activity is performing such particular services is not exempt. The IRS held that the organization's time, expenses, and income are primarily dedicated to or received as payment for the particular services of negotiating contracts with commercial managed care plans on behalf of its members and coordinating of credentialing for its members. Therefore, the organization's principal purpose is to engage in regular business of a kind ordinarily carried on for profit, rather than to promote a line of business. The IRS found that the organization did not improve business conditions in the medical profession and public health areas generally, because it did not improve conditions for all medical professionals; rather the organization is dedicated to maximizing fees for members and providing particular services. As a result, the organization fails to qualify for exemption under Section 501(c)(6).

Did you know?

IRS releases FATCA FAQs

The IRS has updated a list of frequently asked questions (FAQs) regarding Foreign Account Tax Compliance Act (FATCA). Updated topics include Responsible Officers, Qualified Intermediaries, Withholding Foreign Partnerships, and Withholding Foreign Trusts.

New 2014 Form W-8BEN-E

The IRS has released the new 2014 Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities).* The form includes information required by FATCA. Organizations making payments to foreign entities may be required to file or obtain such form as part of their withholding and reporting process.

Updates to Exempt Organization Select Check

The IRS updated *Exempt Organization Select Check*, an online tool that allows users to search for an exempt organization and check certain information about its federal tax status and filings. Wording changes were made throughout the application, most notably changing Tax Deductible Contributions to Tax Deductible Charitable Contributions. For organizations that had an automatic revocation of exemption, Select Check reports the revocation date and the revocation posting date. The tool has been updated to also now report the exemption reinstatement date.

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Health Reform. The health reform bills (HR3590 and HR4872) are now law and will trigger sweeping changes and disruptions – some rather quickly and some over many years. The industry is asking, "What now?" At Deloitte, we continue to explore and debate the specific questions facing the industry, and we look forward to helping our clients find and implement the appropriate answers for their organizations. To learn more, visit Health Care Solutions on the Deloitte website.

Health Care Regulation. With quality in the spotlight on a national level, hospitals across the country are renewing their commitment to confirming that their services meet the core measures for quality set by the government and that internal controls are in place to help determine that the collection and reporting of quality data is accurate, complete, and compliant with government reporting requirements. The financial and operational impacts of regulation and legislative oversight in the life sciences and health care industries are pervasive and constantly changing. @Regulatory is a monthly publication that apprises readers of the latest regulatory, legislative, and other public policy developments affecting life sciences and health care organizations. Visit @Regulatory on the Deloitte website.

Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.

Financial Executives

Data Analytics and Workforce Strategies: New Insights for Tax Efficiency and Performance Improvement *May 5, 2:00 PM ET*

Organizations are finding new ways to apply data analytics for informed decision making to drive desired business outcomes. How can finance executives use analytics in global talent, rewards, and employment tax programs to create value across the business? We'll discuss:

- Ways analytics may drive effective decision-making and new insights into an organization.
- Leveraging analytics to identify, manage, and mitigate tax risks, including effective ways to understand and view potential tax exposures.
- Identifying potential tax efficiencies through tax planning and compliance associated with global talent, rewards, and employment tax programs.

Learn how leading organizations are deploying data analytics to create value in their workforce strategies

Register or View Archive

Data Analytics and Corporate Investigations: The Evolution from Magnifying Glass to Digital Laboratory *May 14, 2:00 PM ET*

Virtually all crime scenes contain physical evidence – or fragments of the story – that skilled investigators can piece together to tell the story and help bring justice. A potential risk to businesses is that these crimes – or financial frauds and corruption – are increasingly being committed with advanced technologies within an ever-increasing sea of data. We'll discuss:

- How the evolving landscape of big data, social media, mobile computing, and the cloud can impact corporate investigations.
- Application of advanced analytics, tools, and techniques to help reconstruct events.
- Case studies and application demonstrations from the field.

Learn how data analytics tools can be used to conduct effective corporate investigations in the digital era.

Register or View Archive

Risk Intelligent Social Business: Governing Social Media to Protect Reputation *May 22, 2:00 PM ET*

As companies increase their use of social media, it's important to identify and monitor potential risks. Where should executives focus when assessing organizational risks tied to social media activities, and what oversight is needed as use of social media tools grow? We'll discuss:

- How to identify risks such as data leakage, reputation damage, and regulatory issues.
- Effective practices for social media governance, including leveraging internal audit capabilities.
- Consequences of ineffective or incomplete social media monitoring, including brand-damaging negative publicity or regulatory violations.

Learn more about the top areas of social media risk and real strategies you can put in place to mitigate potential issues.

Register or View Archive

CFOs and Globalization: The Call for Chief Frontier Officers *June 18, 3:00 PM ET*

Globalization is adding new complexities as companies extend beyond low-cost manufacturing locations into new consumer markets. Why are CFOs emerging as point leaders, what are realities of their new role, and what skills will make them effective Chief Frontier Officers? We'll discuss:

- Translating global ambitions into practical realities – extending the finance function to address financing, investment, operations, and valuation.
- Capabilities CFOs can leverage in this new role, including oversight of enterprise data, insights into investment decisions, analytics, and enterprise performance management.
- Enhanced skills CFOs need, including curiosity, capacity for surprise, courage, character, and collaboration.

Learn about the expanding role of CFOs as the nature of globalization evolves.

Register or View Archive

Cyber-resilience Enterprises: Insuring a Virtual Reality *June 19, 2:00 PM ET*

Cyber-insurance is a key cyber-defense employed by many businesses to help assure stakeholders that the company is addressing certain compliance risks. What are important considerations when you purchase such insurance? We'll discuss:

- Considerations for linking cyber threats back to insurance coverage and understanding the nature of likely financial losses.
- Strategies for quantifying potential financial exposures and probable losses based on recent data breach experiences.
- Cyber Incident Response – what to look for in this table stakes coverage and Cyber Incident Response's importance as part of an enterprise's cyber resiliency.

Learn about the role of cyber-insurance in addressing cyber-risk and how to become a more cyber-resilient organization.

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Financial Executives (cont'd)

***Compliance Leading Practices and Insights** June 26, 2:00 PM ET*
In an era of increasing regulatory scrutiny in the U.S. and other countries, corporate compliance programs and activities are rapidly evolving. What emerging risks and trends are compliance executives focused on today?
We'll discuss:

- New trends related to companies' compliance structures, their cultures, and their key emerging compliance risks.
- Operations-related challenges, including the use of performance metrics and compliance tools and technologies.
- Insights from CCOs and other compliance executives into unique aspects of their compliance programs and other risk mitigation initiatives.

Hear results from a recent Compliance Week compliance survey and learn ways to help refresh your company's compliance program and activities.

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Industries

***The Journey to High-Quality Health Care: New Business Models Emerge** June 10, 1:00 PM ET*
With high-quality patient and family experiences a central focus of health reform, business models across the industry are changing. How can health care consumers benefit from the shift to innovation and value in the health care industry? We'll discuss:

- How consumers are helping drive the health care industry's pursuit of new innovations in care delivery.
- New ways in which employers are sharing costs with employees and providing incentives to encourage cost-saving decisions.
- Retail capabilities that could drive the health plan and provider markets of the future.

Explore the move away from traditional health care business models toward innovative approaches that focus high-quality care tailored to consumers

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Tax Executives

***Business Traveler Management and Tax Compliance: Data Analytics Can Lighten the Load** May 12, 2:00 PM ET*
HR department use of workforce analytics is growing, but it can be hard to prioritize where to apply it. Could management of business traveler populations be a particularly ripe opportunity? We'll discuss:

- An overview of workforce analytics and an end-to-end look at where businesses can potentially leverage it.
- Common tax-related challenges of business travel and how analytics may help identify, track, and manage tax compliance requirements.
- Obstacles to getting started, including issues with travel policies, collecting traveler data, predicting potential travel-related tax costs, and documentation for tax examinations.

Learn how workforce analytics may help you proactively manage your business traveler population and related tax obligations.

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***Collaboration Agreements: Do They Make Good Business Sense For Your Company?** May 13, 2:00 PM ET*
Collaboration agreements are used for many purposes, including joining two or more parties for shared knowledge or to leverage a distribution area for added revenue from an existing business. What exactly is a collaboration agreement and what potential considerations and risks could a resulting tax partnership pose for your company? We'll discuss:

- The factors that may create a tax partnership, such as profit sharing and management control.
- IRS administrative guidance in this area.
- The potential federal, state, and international tax consequences of being classified as a tax partnership.

Learn how your business might benefit from entering into a collaboration agreement.

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