

Eastern Association of College and University Business Officers

Tax Update

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Current Tax Issues for Colleges and Universities

Discussion Topics

- College and University Compliance Checks and Audits
- IRS employment tax audits
- Key Changes to 2009 Form 990
- Healthcare Reform Act – Key Tax Provisions
- Cell phones
- Hiring Incentives to Restore Employment (HIRE) Act
- State and local tax developments
- IRS governance check sheet
- Uncertain tax position disclosure
- Breakthrough in resident FICA refund claims
- Other developments

Colleges and Universities- IRS Compliance Check and Audit Activity

- Starting at the end of 2008, approximately 400 U.S. colleges and universities received a 33-page compliance check questionnaire from the IRS as part of the agency's focused effort to study key areas in the tax-exempt community.
- The college and university questionnaire focused on unrelated business income, endowments, governance and executive compensation practices.
- Questionnaires were sent to a cross-section of small, mid-sized and large private and public four-year colleges and institutions.
- An interim report on the IRS' findings will be released.

Colleges and Universities- IRS Compliance Check and Audit Activity

- In August 2009, the IRS started examinations at approximately 40 colleges and universities that had received the initial questionnaires.
- Key focus areas for these examinations include
 - Executive compensation
 - Unrelated business income
 - Expense allocations
 - Loss activities

Employment tax audits

- New IRS National Research Program will measure reporting compliance with employment taxes
- Focus on worker classification (independent contractor vs. employee), accountable plans, fringe benefits
- Began in late 2009
- IRS hired approximately 200 new agents and plans to conduct tax audits of 6,000 companies
- IRS TE/GE has indicated it will conduct 500 exams of tax-exempt organizations

Key changes to 2009 Form 990 and instructions

- **Schedule H for hospitals** all parts now mandatory including disclosures on charity care, community building activities, bad debt, collection practices, joint ventures, and supplemental information.
- **Schedule K for tax-exempt bonds** all parts now mandatory for bond issued after 12/31/2002 including private business use questions and calculations, and arbitrage.
- Schedule F – Required reporting for foreign investment activities (even if reported on the FBAR)
- Financial statement audit question has been split into two questions: consolidated and separate audit.
- Reporting a donor as “anonymous” is not permitted if name known.

Healthcare Reform – Selected Tax Provisions

- Expansion of information reporting requirements
- Disclosure of value of employer-provided health insurance to employees on Form W-2
- Additional hospital insurance tax on high-income taxpayers
- Employer penalties relating to coverage requirements
- Excise tax on high-cost “Cadillac” health plans
- Medical device excise tax

New Section 501(r) for Hospitals (Could new requirements for Colleges and Universities be on the horizon?)

- New requirements for hospitals to maintain exemption from federal income tax under IRC section 501(c)(3)
 - Community health needs assessment requirement
 - Financial assistance policy requirement
 - Limitations on patient charges
 - Limitations on collection actions
- Requires IRS to review at least once every three years the community benefit activities of each hospital
- Required annual reporting by Secretary of Treasury on information with respect to private tax-exempt, taxable, and government owned hospitals (and trend reporting by 5 years)

Cell phones

- Treatment under section 280F as “listed property”
 - Employee must keep log distinguishing between personal and business use or full value must be included in taxable wages
- In June 2009, IRS put forth new proposals for taxation of cell phones:
 - “Safe harbor” method - consider 25% of use personal
 - Minimal personal use - small number of minutes will be considered personal use and not taxed
 - Statistical sampling method - IRS to look at methods organizations currently use
- President Obama (through the White House’s budget proposal) now supports repeal of the cell phone listed property inclusion along with Treasury and IRS
- April 14, 2010 – House bill to remove cell phones from listed property

Hiring Incentives to Restore Employment (HIRE) Act

- New tax benefits to encourage employers to hire and retain new workers
- Payroll tax exemption
 - Exemption from employers 6.2% share of Social Security tax on all wages paid to “qualified employees” from March 19, 2010 – December 31, 2010
 - Employee 6.2% share and employee and employer share of Medicare tax still apply
 - Claimed on Form 941 beginning with the second quarter of 2010
 - Relief for 1Q wages paid through March 31 claimed as a credit on the 2Q return rather than a refund

Hiring Incentives to Restore Employment (HIRE) Act

- Qualified Employee
 - Individuals who begin employment with a qualified employer after Feb. 3, 2010 and before January 1, 2011 who
 - During 60 day period ending on date employment begins have been unemployed or employed less than 40 hours
 - Are not family members of or related to the employer
 - Employee certification required – Form W-11 can be used for this purpose (released April 7, 2010)

Hiring Incentives to Restore Employment (HIRE) Act

- Qualified Employer
 - Includes taxable businesses and tax-exempt organizations
 - Public colleges and universities can qualify (although federal, state, or local government employers generally do not)
- Certain limitations apply, including that payroll tax exemption does not apply to an employee hired to replace an existing worker unless the existing worker terminated employment voluntarily or was terminated for cause.
- New general business credit if employee remains for 52 weeks
 - Relationship to a taxable activity (for a tax-exempt entity)
 - Lesser of \$1,000 or 6.2% of wages paid

State and Local Tax Developments

- Pennsylvania Tax Amnesty Program
 - First program in 14 years (only second time such a program has been offered)
 - Runs between April 26 and June 18
 - Waives 100% of penalties and 50% of interest with payment of delinquent taxes
 - All taxes administered by PA DOR are eligible (including sales tax and employer withholding)
 - Intended to generate \$191 million
 - 5% non-participation penalty

State and Local Tax Developments

- City of Philadelphia Tax Amnesty Program
 - Runs between May 3 and June 25
 - Waives 100% of penalties and 50% of interest with payment of delinquent taxes
 - Nearly all City of Philadelphia taxes are eligible
 - Applies to taxes due between Feb. 1986 and June 2009 (with limited exceptions)

State and Local Tax Developments

- In March 2010, Illinois Supreme Court held that Provena Covenant Medical Center did not provide enough charity care to qualify for state property exemption.
 - A plurality opinion, so not binding precedent
 - Ill. hospitals will likely approach the legislature to clarify
 - Senator Grassley (R-IA), U.S. Senate Committee on Finance Ranking Member, considered the ruling yet more evidence that there is "no discernable difference between the operations of taxable and tax-exempt hospitals."
 - Could this decision increase the focus on property tax exemption for colleges and universities as well?

State and Local Tax Developments

- Focus of states and cities in looking for additional sources of revenue and questioning whether exempt entities are doing enough to justify exempt status
 - City of Philadelphia – proposed regulation to expand the reach of the business privilege tax to nonprofits
 - City of Pittsburgh – proposed tuition tax
 - Rhode Island General Assembly leaders are considering a plan to eliminate the sales tax exemption for most or all of the state's nonprofit organizations
 - PILOTs / SILOTs

IRS governance check sheet

- To be used by EO Revenue Agents in examinations of section 501(c)(3) organizations, including hospitals
- Asks for more detailed information regarding governance than what is requested on Form 990 - for example:
 - Did the full Board and/or a committee review Form 990 before filing?
 - Did an independent accountant issue a management letter? If yes, how was the letter reviewed by the Board and what action was taken?
- Indicative of IRS's continued focus on "good governance"
- IRS will use data collected in a long-term study of the relationship between governance practices and tax compliance.

Proposed IRS disclosure of uncertain tax positions

- IRS has proposed that most taxpayers file information statements with their tax returns to disclose uncertain tax positions.
 - Will be first required as a 2010 tax return attachment
 - Public comment period runs through June 1, 2010
- “Uncertain tax position” includes a position for which the taxpayer must establish a reserve under relevant accounting standards
- IRS recently released a draft schedule and instructions for corporations
- Note for tax-exempt organizations: FIN 48 footnote disclosure is already required on Form 990, Schedule D.

Breakthrough in medical resident FICA refund cases

- Recent taxpayer wins prompt IRS to honor claims on “pre-reg” years (IRS Announcement of March 2, 2010)
- For institutions with valid claims pending, IRS will honor FICA tax refund claims for periods before April 1, 2005 when new regulations became effective
- IRS promises detailed procedures for refunds within 90 days of announcement (should be by end of May)
- Expect the need to perfect existing refund claims including obtaining residents’ consent to participate
- Filing protective claims for “post-reg” years

Other developments

- Expanded NOL carryback rules for a taxable year ending after 12/31/2007 and beginning before 1/1/2010
- Report of Foreign Bank and Financial Accounts (FBAR) – Announcement and Proposed Regulations
- Tax-exempt bond audit activity
- Grassley proposals to Health Reform Act (not accepted):
 - Code provision requiring the reporting of governance and management information to the IRS
 - Remove the rebuttable presumption of reasonableness

Questions

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