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FOS NEWS - *Our clients come first*

Editor: Diane Slomowitz

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THE AFFORDABLE CARE ACT AND YOU

By Peter J. White

A lot has been made about the passage of the Patient Protection and Affordable Care Act between the Supreme Court decision and President Obama's reelection. The law has a pervasive reach. Below are some of the impacts that it will have in the current year and going forward.

Individuals

- Insurance companies can no longer drop an individual when he/she gets sick just because the individual made a mistake on the coverage application.
- Parents can insure children under age 26 if the policy allows for dependent coverage.
- Starting in 2014, if an employer does not offer insurance, employees will be able to buy insurance directly from the Health Insurance Marketplace, which will provide affordable insurance plans.
- If an individual has been uninsured for at least six months and he/she has been denied health insurance because of a pre-existing condition, that individual may be able to get health insurance through the Pre-Existing Condition Insurance Plan.

Small Businesses

- If a business has 25 or fewer employees, pays average annual wages below $50,000 and provides health insurance, it may qualify for a small business tax credit of up to 35% to offset the cost of insurance.
- Starting in 2014, the small business tax credit goes up to 50% for qualifying businesses.
- In 2014, small businesses with fewer than 100 employees can shop in an Affordable Insurance Exchange as a way to purchase affordable benefit plans.
- Employers with fewer than 50 employees are exempt from paying the assessment if their employees get health insurance through an Affordable Insurance Exchange.

Taxes

- Beginning this year, a 3.8 percent net investment income tax goes into effect for individuals who have net investment income and meet certain modified adjusted gross income thresholds: $200,000 for single and $250,000 for married filing jointly.
- A new additional 0.9 percent Medicare tax also goes into effect this year. The tax applies to an individual's wages that exceeds a threshold amount: $200,000 for single and $250,000 for married filing jointly.

With all the changes that have occurred and are scheduled to occur in the next couple of years, it is important to have a good understanding of the Patient Protection and Affordable Care Act. FOS attorneys are well equipped to provide you with the necessary guidance on this law.

FOS ON THE MOVE

FOS shareholder Fran Hughes will present "Social Media in the Workplace" on March 15, 2013. The presentation is part of the Marquette University Law School's Annual Traveling CLE Program, in Phoenix, Arizona.

FOS shareholder Matt O'Neill will moderate the program "How to Handle a Rambo Opposing Counsel or a Challenging Judge," presented to the Thomas E. Fairchild American Inns of Court on March 14, 2013. The Inns of Court is an association of lawyers, judges, and other legal professionals, with a special emphasis on mentoring younger members of the legal profession.

FOS shareholder Al Young presented "Introduction to Estate Planning" to the accounting firm Radke & Schlesner S.C. on January 23, 2013. Also on February 13, 2013 he presented "Why Do Estate Planning?" to the Milwaukee Networking Club.

SEPARATION AGREEMENTS AND OLDER WORKERS

By Francis J. Hughes

Your sales team is underperforming, so you've decided to cut the 5 employees with the worst records. Or, your employer is undergoing reorganization, and you've heard that your department is going to be downsized by 10%. Even though employment may be "at will," employers often offer separation agreements to departing employees. Those employees get some payment or benefits, in exchange for a release of claims against the employer.

Simple enough, right? Not if the business has 20 or more employees, terminates more than one employee, and any one of the terminated employees is 40 years old or older.

The Older Workers Benefit Protection Act (OWBPA) is a federal law enacted to strengthen the Age Discrimination in Employment Act (ADEA).

Failure to comply with the OWBPA requirements can invalidate an employee release or waiver in a separation agreement, and lead to an investigation by the Equal Employment Opportunity Commission.

So, what must a separation agreement include under the OWBPA? To be in compliance, the agreement must:

- Specifically refer to the ADEA;
- Identify the "decisional unit" from which employees were chosen so that terminated employees can determine if younger employees were retained over older employees; and
- Identify the job titles and ages of all employees who were selected to be terminated <u>and</u> job titles and ages of all employees who were not selected.

The OWBPA also mandates that employees must have 45 days to consider a separation agreement, and that employers advise the employee to consult an attorney.

These and other statutory requirements are intended to allow employees to make an informed decision about whether to sign a separation agreement.

The requirements for enforceable separation agreements involving older workers are complex when terminating one employee, and more complex when terminating multiple employees.

FOS attorneys can make sure that you comply with your obligations under federal law and ensure that, if you issue separation pay, your agreement is enforced.

2013 TAX PLANNING - - ALREADY?

By Gregory J. Ricci

As you begin to contemplate preparing your 2012 tax returns, it is never too early to begin planning for your 2013 tax returns. There are significant changes on the horizon for 2013, not only as a result of the taxes found in the Affordable Care Act, but also as a result of the recently passed 2012 American Taxpayer Relief Act.

The Affordable Care Act gives us two new taxes with which to contend. The first is a 0.9% Medicare tax on wages and self-employment income above $250,000 for married persons filing jointly, $200,000 for single persons and $125,000 for married persons filing separately. The tax applies to any income that is subject to the Medicare tax. Dual income couples need to be aware that the 0.9% additional Medicare Tax can apply to them even if neither earns more than $250,000 in wages if the couple's combined wages exceed $250,000. (A similar issue can arise where an individual works more than one job.) A couple in this position could be in for a nasty surprises (e.g. additional taxes and penalties) when filing their 2013 tax returns if changes are not made in the amount they have withheld.

The second Affordable Care Act tax is the 3.8% Net Investment Income Tax that applies to the lesser of net investment income or modified adjusted gross income exceeding $250,000 for married persons filing jointly, $200,000 for single persons and $125,000 for married persons filing separately.

Investment income that is subject to this tax includes taxable interest, dividends, rents and royalties, capital gains, and passive income such as S corporation income or partnership income where the taxpayer does not materially participate in the operations. Municipal bond interest, distributions from individual retirement accounts and distributions from retirement plans are not subject to the 3.8% Net Investment Income Tax.

Among the tax increases found in the 2012 American Taxpayer Relief Act are the following:

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MEET OUR STAFF

Lila Wittig-Graser

You have talked to her for years. Whether you need information from your file, your attorney's schedule, lists of services offered at the courthouse, she always has the answer. But who is she?

Lila Wittig-Graser has been an FOS legal assistant for 22 years. She has worked with all FOS attorneys, keeping the attorneys on schedule, on track and organized. Lila helps FOS provide the efficient, quality legal services you deserve.

Next time you're in the office, say hello to Lila.

PRACTICE CORNER - - TRADEMARKS

By Laurna A. Jozwiak

Shakespeare once famously wrote "What's in a name?" As business owners know, a lot. And competitors' products or services that try to capitalize on that name are not nearly as sweet as your own.

Recognizing the importance of protecting a business's brand, identity and reputation, in today's business climate, FOS is growing its trademark practice to help clients identify, maintain and preserve these important assets.

Who should consider registering their trademarks? Any business that sells products or offers services using a specific name or logo.

Why do I need to register my mark? To provide nationwide notice, of your claim to the mark, to provide evidence that you own the mark, and to protect your opportunity to enforce your rights to the mark through the Patent and Trademark Office.

How can the FOS Trademark team help you with your marks?

- "Clear" your mark to make sure it is available for registration
- Submit your registration
- Prosecute and defend trademark oppositions, cancellations and appeals
- Manage important deadlines and filing requirements
- Defend against infringing uses of your trademarks
- Negotiate trademark licenses and transfers

To discuss how to better protect your trademarks, contact Laurna Jozwiak at lajozwiak@foslaw.com.

2013 Tax Planning

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- The maximum tax rate on long term capital gains and qualified dividends has been increased from 15% to 20%. If the Net Investment Income Tax applies, the maximum tax rate for long term capital gains and dividends is increased to 23.8%.
- A 39.6% marginal tax rate applies to taxable income in excess of $450,000 for married couples filing jointly, $400,000 for single individuals, and $225,000 for married individuals filing separately. These amounts are to be adjusted for inflation.
- The personal exemption that a taxpayer can claim for themselves, their spouses and their dependents is phased out at adjusted gross income in excess of $300,000 for married couples filing jointly, $250,000 for single individuals, and $150,000 for married couples filing separately. The personal exemptions are phased out at a rate of 2% for every $2,500 earned above the threshold amounts.
- Itemized deductions are also phased out for single individuals with $250,000 of adjusted gross income, and married individuals with $300,000 of adjusted gross income. The total itemized deductions are reduced by 3% of the amount by which a taxpayer's adjusted gross income exceeds the threshold amounts. Total itemized deductions can be reduced by up to 80% depending upon one's adjusted gross income.

There is some good news on the tax front from the 2012 American Taxpayer Relief Act. Under the Act, the $500,000 Section 179 expense limitation has been extended to 2013, as has 50% bonus depreciation for property placed in service during 2013.

Also, it is still possible for individuals over age 70 1/2 to make up to $100,000 of charitable contributions from their individual retirement accounts in 2013 on a tax free basis if the contributions are made direct from the individual retirement account to the charity.

It may be too late to take steps to save on 2012 taxes, but there is no time like the present to begin 2013 tax planning.

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Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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ESTATE PLANNING AFTER THE TAX RELIEF ACT

By Allan T. Young

On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012 and the country avoided falling off the fiscal cliff. The Act contains important transfer tax provisions.

Whereas the estate tax, gift tax and generation skipping tax exclusions were scheduled to revert to $1 million on January 1st, they are now set at $5,250,000 per person and are indexed for inflation. Also, portability of the estate tax exclusion is now permanent. What does this mean for you?

For married clients with estates less than $10.5 million, the estate plan can be simplified. Funding a Family Trust at the first death is no longer necessary in order to use the estate tax exclusion of the first to die.

Instead, all assets can be left to the surviving spouse. At the death of the surviving spouse, the estate tax exclusions of both spouses can be used to protect assets from the estate tax.

For clients who purchased life insurance to pay the estate tax, the need for the life insurance should be reevaluated.

Perhaps the life insurance can be cancelled. Perhaps it should be retained or restructured to meet other family needs or desires.

If you have an older trust agreement that requires funding a Family Trust at the first death or if you obtained life insurance to pay the estate tax, now is the time to review your plan.

QUESTIONS?
CALL US
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OR EMAIL US info@foslaw.com

Tax Day is Almost Here!

Taxes are due on April 15th this year.

FOS FUN FACTS

FOS' 14 lawyers have practiced a total of 377 years.

FOS' five staff members have worked at FOS a total of 95 years.

This experience and expertise ensures FOS' continuing ability to provide top notch client services.