As expected, congress has approved the tax increase prevention act of 2014 (H.R. 5771). The new law extends the so-called “tax extenders” retroactively for one year through 2014.
Included is the section 179, absent congressional action, the dollar limit for code section 179 expensing was $25,000.00 for 2014 with an investment limit of $200,000.00.
With the enhancement, code section 179 allows taxpayers to immediately deduct, rather than gradually depreciate, the cost of qualified assets, subject to certain limitations. The extender package sets the code section 179 dollar limit at $500,000.00 for 2014 with a 2Million investment limit.
Affordable Care Act

• When preparing individual or business tax returns we will all have to address the new health care rules in the Patient Protection and Affordable Care Act (PPACA).

• We have to draw the line between taxes, insurance and legal advice.
Consider the following client request:

• A client approaches a CPA about reclassifying workers as independent contractors to qualify as a small employer and avoid PPACA–related penalties. While an aspect of worker classification is tax-related, the definition of an employee often differs for employment tax and PPACA purposes. In this case, an attorney with experience in tax and employment law should assist the client.
The Individual Mandate

(IRC 5000A)

Everyone must have coverage-
Beginning Jan 1, 2014, nonexempt
individuals must either maintain
“minimum essential health
coverage” for themselves and their
dependents or pay a “shared
responsibility payment”.

The Individual Mandate

• The rules apply to individuals of all ages, including senior citizens and children.

• The person who claims the child as a dependent for federal income tax purposes is responsible for paying for the insurance if the dependent does not have coverage or an exemption.
The individual’s basic decision:

- Have no insurance - then a tax and pay your own health care costs.
- Have insurance-then pay a premium (unless 100% employer provided) and pay for co-pays and deductibles.
Who may choose no insurance?

• If the tax penalty is less than the insurance premium, persons may elect to be uninsured.

• If the tax penalty is greater than the insurance premium, persons may elect to be insured.
EXEMPTIONS:
(certificate from the exchange needed)

• There are several exemptions from the requirement to maintain minimum health coverage including those for:
EXEMPTIONS:
• Members of recognized religious sects opposed to accepting health care insurance due to religious beliefs.
• Members of health care sharing ministries where members share ethical or religious beliefs.
EXEMPTIONS:

• Persons not U.S. citizens or U.S. nationals.
• Incarcerated individuals
• Indian tribe members
• Persons whose income is below the income tax return filing threshold
• Persons whose premium for self-only coverage exceeds 8% of their household income.
Some persons will be technically subject to the requirement to maintain minimum essential health coverage, but will be exempt from the penalty for noncompliance, such as:
• Individuals unable to afford coverage because the health insurance premiums exceed 8% of their household income

• When household income is being determined, a taxpayer’s family includes the taxpayer, the taxpayer’s spouse and all dependents who must file an income tax return.
• Taxpayers with household income below the income tax filing threshold (10,150 single; 20,300 for MFJ, 3950 MFS for 2014)
  – Persons not required to file a tax return for a year are automatically exempt from owing a penalty for that year.
• Hardship cases (14 have been approved)
• Ex. Homeless, evicted or been evicted, experienced domestic violence.
• Persons residing outside the United States.
• Dependents, since the person claiming them as such is the responsible party
• Note that the spouse is not considered a “dependent” for purposes of these rules.
• An individual is exempt from the requirement to have minimal essential health coverage if the coverage gap is a continuous period of less than three months.
Tax Penalty for not having health care coverage:

- The IRS administers the penalty
- It is treated as an additional amount of federal tax owed
- However, IRS enforcement provisions are limited.
- Non-compliance with the requirement to have health care coverage is not subject to criminal or civil penalties.
Tax Penalty for not having health care coverage:

• This penalty may not be collected by the use of liens or other seizures authorized for the collection of taxes.

• No interest on an unpaid penalty will accrue.
The employer Mandate
Code Section 4980H

• The Obama administration has announced that many of the requirements set forth in the Employer Mandate have been postponed from an effective date of 2014 to a partially effective date of 2015 and a fully effective date 2016.
Employer Obligations

• PPACA requires that all large employers provide employees, and their dependents, the opportunity to enroll in a health care plan.
Employer Obligations

• To be considered a large employer, a business must employee, at a minimum, 50 full-time equivalent employees.

• The determination of the 50-employees threshold is made on a calendar year basis, using the employee count from the preceding calendar year.

• This includes counting all employees in a control group.
Employer Obligations

• Certain individuals are not treated as employees, including:
  • *Sole-proprietorships
  • *Partners in a partnership
  • *2% or more shareholders
  • *Real estate agents and direct sellers
Employer Obligations

• A full time employee is one who works 30 or more hours a week for each month or provides 130 hours a month service.

• After all full-time employees have been counted, a business must then determine how many full-time equivalent exits.

• This has the effect of converting part time workers to full time equivalents for purposes of applying the large employer test.
Example:

• A business has 25 employees who work 80 hours a month and 30 employees who work full-time. First, an employer must calculate the total amount of part-time hours on a monthly basis (25x80=2000).

• Then the employer must divide by 120 to get the amount of full-time equivalents (2000/120=16.67)=16 full-time equivalents.
Example:

Full time employees = 30
Full time equivalents = 16

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46.

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Total full time employees and full time equivalents = 46.
Example:

- Although there are a total of 55 employees on the payroll, this business is not considered a large employer under PPACA for the following year. Remember, however that an employer needs to test this on an annual basis with the prior year’s results guiding the following year’s applicability.
Example:

• Same example as above except that the company has 20 full time employees and 6 part-time employees who work 60 hours per month. The company does not have to offer health insurance as it is not a “large employer”. It is not close to 50 employees. It only issues 26 W-2 Forms.
New Employer reporting requirements:

• Employers providing minimum essential coverage must report to the IRS annually with information about the coverage offered, beginning in 2015
New Employer reporting requirements:

• Large employers with at least 50 full-time equivalent employees must annually file additional information pertaining to full fulfillment of employer responsibility beginning in 2015
New Employer reporting requirements:

• Beginning in 2015, large employers will have certain reporting requirements with respect to their full-time employees.
Credit for small employer health insurance premiums.

• Eligible small employers that are not non-profit organizations may claim a tax credit if they pay at least 50% of the cost of employee health coverage and purchase their coverage through a Small Business Health Options Program (SHOP) exchange (code section 45R).
Credit for small employer health insurance premiums.

• An eligible small employer is one that has no more than 25 full-time equivalent employees (FTEs), and the average annual wages of its FTEs do not exceed an amount equal to twice a set dollar amount, which is adjusted annually for inflation for tax years starting in 2014. This dollar amount is $25,000.00; as adjusted for inflation for 2014, it is $25,400.00. Final regulations clarify some rules related to this credit.
Questions and answers:

• Does a business owner reimburse employees for individual policies?

– Notice 2013-54 provides that such a practice by a business owner creates a very serious problem for the owner ...
Questions and answers:

• If the company involved has at least two employee participants, even if the plan is not considered discriminatory, it fails to meet the maximum lifetime benefit requirement, is deemed a disqualified group health plan, and is subject to penalty under IRC section 4980D. It appears that Section 105 medical reimbursement plans to pay an employee’s health insurance is not permitted by these provisions.
Questions and answers:

• What is the penalty?
  – $100.00 per day, per participant.

• Sole proprietors without employees are not subject to the penalty, and neither are sole subchapter S shareholders without employees.
PLANNING STRATEGIES:

• Keep the number of full-time employees below 50 or reduce the hours of as many employees as possible below 30 hours per week.

• Some business that have large headcounts, have tried to reduce their headcount by outsourcing certain services.
PLANNING STRATEGIES:

• Hire an independent company to perform certain services so that the employer will not need as many employees as were required before the change in structure and services.
SECTION 71

• Despite agreement between spouses that payments would be tax alimony, court finds child based contingency causes payment to fail to be tax alimony.


[Appealable, barring stipulation to the contrary, to CA-8.—CCH.]

[ Code Sec. 71]
Deductions: Alimony: Child support.—

An individual’s payments to his ex-spouse were child support rather than alimony, and so not deductible by the taxpayer. The "spousal maintenance" payments were made pursuant to a divorce decree, and the obligation terminated on the death of either party, the remarriage of the taxpayer’s ex-spouse, or the graduation from high school of the youngest child. Since the payments were subject to contingencies involving a child, they must be considered to be child support, which is not deductible. The intent of the parties, the existence of a separate child support obligation in the decree, and language in the decree saying that the taxpayer could deduct the payments were irrelevant to the requirements of the plain language of the statute.—CCH.
SECTION 71

- Penalties, civil: Accuracy-related penalty: Substantial understatement: Reasonable cause: Reliance on professional.—

- An individual’s deduction for alimony was disallowed, but he was not liable for an accuracy-related penalty. The amount of understatement of tax was substantial, but the taxpayer reasonably and in good faith relied on his CPA, who prepared his return. There was no evidence that the CPA was incompetent or inexperienced, and the taxpayer was not required to second-guess his CPA’s advice.—CCH.
SECTION 152

• Fact mother named custodial parent in divorce decree not relevant to dependency exemption when child spend more nights with father.
SECTION 152

- custodial parent is defined as “the parent having custody for the greater portion of the calendar year.” See sec. 152(e)(4)(A). The regulations similarly provide that the custodial parent is the “parent with whom the child resides for the greater number of nights during the calendar year”. Sec. 1.152-4(d)(1), Income Tax Regs.
SECTION 152

- According to the regulations, a child is treated as residing with a parent for a night if: (1) the child sleeps at the residence of the parent or (2) if the child sleeps in the company of the parent when the child does not sleep at a parent’s residence. Sec. 1.152-4(d)(1)(i) and (ii), Income Tax Regs. Because Ashley resided with petitioner at her grandmother’s house more than half of 2010, petitioner was the custodial parent and was not required to attach a written declaration to his return note. Pro se.
SECTION 163

• Equitable ownership not demonstrated, taxpayer denied deductions related to property titled in her sister’s name.

• Citation Luciano-Salas v. Commissioner, T.C. summary Opinion 2014-76.
SECTION 163

• Failure to record mortgage on loan from relative fatal to home mortgage interest deduction.

• Citation DeFrancis & Gross v. Commissioner, T.C. Summary Opinion 2013-88.
SECTION 6013

• Taxpayer not entitled to joint filing status when wife refuses to sign any document for the federal government.

• Citation: Salzer v. Commissioner, T.C. Summary Opinion 2014-59
SECTION 162

• Insufficient funds in bank account found to block deduction of bonus paid officer who endorsed check back to corporation.

• Citation: Vanney Associates, Inc. v. Commissioner, T.C. Memo 2014-184
SECTION 162

• Tax preparer’s expenses to hide from her clients “so she could function “not found to be deductible business expenses.

• Citation: Linzy v. Commissioner, T.C. Memo 2013-219
Significant changes to offer in compromise program

In May of 2012, the IRS published new guidelines for its offer in compromise program, and thereby significantly more taxpayers will qualify for OIC relief under these new procedures.
HIGHLIGHTS:

• Twelve months, not forty eight months, is the multiplier for future value of income for cash offers paid in five months or less.

• Twenty four months, not sixty months, is the multiplier for future value of income for deferred offers. A deferred offer is any offer that is not paid in five months or less.
HIGHLIGHTS:

• IRS no longer forces the taxpayer to offer every dollar he or she has. IRS allows $1,000.00 plus allowable monthly living expenses to be subtracted from the computation.

• Taxpayers are allowed an additional $3,450.00 in equity in up to 2 cars per household, used for production of income, or health & welfare of family.
HIGHLIGHTS:

• Autos with greater than 75,000 miles or six years old are allowed an additional $200.00 per month of operating expense.

• Minimum payments allowed for post-secondary student loans secured by federal government. (payment must actually being made).

• Delinquent state taxes allowed, but not much. Complex formula.
HIGHLIGHTS:

• Miscellaneous: Minimum payments on credit cards are now allowed and also bank fees.

• Dissipated assets no longer included in calculating a taxpayer’s reasonable collection potential. However, it will be included if it can be shown that the asset was disposed of within 6 months before or after the tax assessment in an attempt to avoid paying the taxes.
Six year rule for repayment of tax liability

• In cases where taxpayers cannot full pay and do not meet the criteria for a streamline agreement, they may still qualify for the six year rule. The timeframe for this rule was increased in 2012 from 5 years to six years.
Six year rule for repayment of tax liability

- The six year rule allows for payment of living expenses that exceed the Collection Financial Standards, and allow for expenses, as long as the tax liability, including penalty and interest, can be fully paid in 6 years.
Six year rule for repayment of tax liability

• Taxpayers are required to provide financial information in these cases, but do not have to provide substantiation of reasonable expenses.
Severance payments constitute “wages” subject to FICA tax.

UNITED STATES v. QUALITY STORES, INC. et al
134 S.Ct. 1395
Does a state that provides a credit for state income taxes, but not for county income taxes violate the United States Constitution’s commerce clause?

- COMPTROLLER OF THE TREASURY OF MARYLAND v. BRIAN WYNNE
- Docket Number 13-485
- No official cite as of yet. Case will be heard by the Supreme Court in 2015.
Interpretation for the 10 factors used to determine whether or not a partnership disguised sale exists as per Treasury Regulation Section 1.707-3(b)(2).

- GATEWAY HOTEL PARTNERS, LLC v. COMMISSIONER
- T.C. Memo 2014-5
- ROUTE 231, LLC v. COMMISSIONER
- T.C. Memo 2014-30
Implementation of the 9 Factors under Treasury Regulation Section 1.183-2(b) for determining whether an entity is engaged with a profit motive or a hobby motive. Also, who has the burden of production regarding the accuracy-related penalty under IRC Section 6662?

• MEL A. ANNUZZI AND JEAN L. ANNUZZI v. COMMISSIONER
• T.C. Memo 2014-233
• RAYMOND PRICE iii AND LYNN M. PRICE v. COMMISSIONER
• T.C. Memo 2014-253
Real estate professional
determination under IRC Section 469(c)(7).

• BILL LEWIS, SR. AND JOCELYN IRENE KNOWLES-LEWIS V. COMMISSIONER
• T.C. Summary Opinion 2014-112
• HOWARD C. CANTOR AND PATRICIA M. ALLEN v. COMMISSIONER
• T.C. Summary Opinion 2014-103
Theft loss under IRC Section 165 and Bad Debt Loss under IRC Section 166 denied.

• DELBERT M. BUNCH AND ERNESTINE L. BUNCH v. COMMISSIONER

• T.C. Memo 2014-177
Method of accounting, the all events test, and contingent liabilities (economic performance).

• GIANT EAGLE, INC. v. COMMISSIONER
• T.C. Memo 2014-146
State law affects on a conservation easement deduction.

• PATRICK J. WACHTER AND LOUISE M. WACHTER v COMMISSIONER

• MICHAEL E. WACHTER AND KELLY A. WACHTER V. COMMISSIONER

• 142 T.C. No. 7
No reasonable cause exception for the accuracy-related 200% overvaluation penalty (the 40% penalty) under IRC Section 6664(c)(3) for tax years beginning after 12/31/2006.

• EDWARD M. REISNER AND MANDA K. WEINTRAUB v. COMMISSIONER

• T.C. Memo 2014-230
The Service MUST follow the TEFRA procedures or risk losing cases.

• JOHN C. BEDROSIAN AND JUDITH D. BEDROSIAN v. COMMISSIONER
• 143 T.C. No. 4