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AUGUST 2012

Supreme Court upholds 2010 health care law

In a 5 to 4 decision, the Supreme Court ruled on June 28 that most of the *Patient Protection and Affordable Care Act of 2010* was constitutional. Chief Justice John Roberts wrote the majority opinion that rejected the individual insurance mandate under the commerce clause of the Constitution, but upheld it as part of Congress's power to tax.

In addition to upholding the individual insurance mandate, the ruling means that the tax changes included in the law were also upheld as constitutional.

With the tax provisions in the 2010 health care laws staggered over a multi-year time frame, it's not always easy to remember what's in effect now and what will become effective later. Here's an overview of the status of selected provisions.

- **Health insurance credit.** This general business credit began in 2010, and remains available. For 2012, when your business employs fewer than 25 full-time equivalent employees with an average annual wage of less than $50,000, and you pay at least one-half of health insurance coverage costs, you can claim a credit for up to 35% of your premiums. After 2013, the credit increases to 50%.
- **W-2 disclosure.** Health coverage benefits you provide to employees are reportable on Form W-2. Exception: Pending further IRS guidance, reporting is optional for employers filing fewer than 250 W-2s.
- **Information reporting to corporations.** The requirement to provide Form 1099 to corporations from whom you purchased property or services of more than $600 was repealed by a law in 2011 and has not been reinstated. (The 1099 reporting requirement for rental property owners was also repealed by the 2011 law.)
- **Medicare tax on earned income.** Beginning in 2013, a new 0.9% tax will apply to wages and self-employment income in excess of $200,000 for singles and $250,000 for married couples filing jointly.
- **Medicare tax on unearned income.** Starting January 2013, a new 3.8% Medicare tax will be imposed on unearned income for single taxpayers with income over $200,000 and married couples with income over $250,000. Examples of unearned income: interest, dividends, royalties, and rental income.
- **Medical deductions.** For 2012, you can claim an itemized deduction for unreimbursed medical expenses in excess of 7.5% of your adjusted gross income. For 2013, the threshold is raised to 10% for taxpayers under age 65.
- **Health account changes.** The 20% penalty for nonqualifying distributions from your health savings account (HSA) remains in effect. In addition, most nonprescription medicines continue to be ineligible expenses for purposes of your HSA, health flexible spending arrangement (FSA), health reimbursement account, and Archer medical savings account.

A change for 2013: The maximum annual contribution you can make to your health FSA will be $2,500.

- **Penalty taxes.** The fee for failing to buy or maintain health insurance for yourself and your family begins in 2014, and will be reported on your federal tax return. In addition, if your business employs an average of 50 full-time employees and does not offer health insurance coverage, a nondeductible "shared responsibility" penalty will apply starting in 2014.

Though future tax legislation could change these provisions, you should be aware of them in your tax planning for this year and next. To discuss how this landmark Court decision could affect your tax situation, give us a call.

Capital gains and losses: New twists for 2012

The end of the year is the traditional time for securities investors to "harvest" capital losses for federal income tax purposes. But there's an added wrinkle in 2012: Due to pending tax law changes, you might try to reap more capital gains than losses. Thus, the usual strategy of harvesting losses could be turned upside down.

Here's a recap of the basic rules. The capital gains and capital losses you realize during the year are "netted" under complex rules when you file your tax return. A gain or loss is treated as being long-term if you've held the securities for more than one year. For 2012, net long-term capital gain is taxed at a maximum tax rate of 15% (0% for investors in the regular 10% and 15% tax brackets).

If you're showing a net capital gain on paper as year-end approaches, any capital losses you realize will reduce the amount of the taxable gain or offset it completely. An excess loss can then offset up to $3,000 of highly taxed ordinary income before any remainder is carried over to next year. However, the usual strategy of harvesting losses is complicated this year by three key tax law changes scheduled for 2013.

1. The maximum tax rate for net long-term capital gain will increase to 20% (10% for investors in the lower tax brackets).
2. Ordinary tax rates are going up. For example, the top rates of 33% and 35% will increase to 36% and 39.6%, respectively.
3. A special 3.8% Medicare surtax will apply to the lesser of net investment income for the year or the amount by which modified adjusted gross income (MAGI) exceeds $250,000 ($200,000 for single filers).

Barring any late legislation by Congress, investors may be inclined to harvest capital gains instead of losses at year-end. As a result, you can benefit from the favorable tax rates in effect for 2012. If you've already realized short-term gains in 2012, you might want to realize short-term losses to offset those gains. But don't use short-term losses to offset long-term gains, if you can help it, because long-term gains are taxed at a maximum rate of only 15% in 2012.

Other considerations may come into play. The best approach is to do what's best for your situation.

Put midyear tax planning on your summer schedule

Don't forget to put a little tax planning on your busy summer agenda. A midyear tax review is essential this year if you want to save tax dollars and time. To get together for a check of your 2012 tax situation, give us a call.

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