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TAX

CHANGES TO WITHHOLDING AND FRINGE BENEFITS UNDER THE TAX REFORM ACT

On December 22, 2017, President Donald J. Trump signed into law the tax bill that had been known as the Tax Cut and Jobs Act[1] (the "Tax Reform Act"). The Tax Reform Act has received a lot of attention with respect to cuts in individual and corporate tax rates. However, there are also a number of changes that are of importance to employers. Not only has the individual tax rate been reduced, but an employee's ability to claim personal exemptions has been suspended and the taxation of certain fringe benefits has been changed with respect to both employer and employee.

Withholding Changes

Generally, employees direct their employer how much income tax to withhold by filing a Form W-4 claiming withholding allowances based on certain tax exemptions. One of these allowances was the personal exemption. Personal exemptions generally were allowed for the employee, spouse and any dependents. For 2017, the amount deductible for each personal exemption was $4,050. The Tax Reform Act suspends an individual's ability to claim personal exemptions, creating uncertainty as to the withholding of income tax from compensation. The Tax Reform Act directs the Secretary of the Treasury to issue rules to define an employer's requirements with regard to income tax withholding in light of the new bill.

The IRS issued Notice 1036 on January 11, 2018 containing the new 2018 withholding tables and other relevant withholding information under the Tax Reform Act.

Of note, the flat supplemental withholding rates have changed to align with the new individual tax rates. The flat supplemental withholding rate on supplemental wages paid in excess of $1 million has decreased from 39.6% to 37%. The flat supplemental withholding rate on supplemental wages paid of $1 million and below has decreased from 25% to 22%.

The IRS guidance states that employers should begin using the 2018 withholding tables as soon as possible, but not later than February 15, 2018. Employers should continue to use the 2017 withholding tables until they are able to implement the 2018 withholding tables. Employees do not need to complete new Forms W-4 in order for employers to complete the implementation.

The IRS has also issued a series of FAQs with more information for employers related to withholding and the changes required under the Tax Reform Act.

Fringe Benefits

The Tax Reform Act makes some significant changes to fringe benefits as well. These changes mainly relate to an employer's ability to deduct the costs related to certain benefits provided to employees, but in some cases the tax treatment to the employee is impacted as well.

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[1] The tax bill, H.R. 1, was initially called the "Tax Cut and Jobs Act," but the Senate Parliamentarian determined that name violated the Byrd rule, so the name of the Act was changed at the last minute to "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018." The Byrd rule is what allowed the Senate to adopt the bill with a simple majority vote, instead of the usual 60 vote requirement. Upon adoption, the tax bill became Public Law 115-97.

Moving expenses. Under the Tax Reform Act, moving expenses paid by an employer on behalf of an employee, either outright or as a reimbursement, may no longer be provided on a tax-free basis. Further, if the payment of such expenses is included in the employee's compensation, the employee may not take a deduction on his or her personal income tax return related to such expense.

Qualified Transportation Fringes. Generally, employers are no longer permitted a deduction related to the payment of any qualified transportation fringe benefit (such as parking, transit passes, etc.), except in the case of qualified bicycle commuting reimbursements. However, employers may continue to provide such benefits to employees on a tax-free basis, except with respect to any qualified bicycle commuting reimbursement which is now taxable to the employee.

Entertainment, Amusement and Recreation. Employers, and all taxpayers in general, are no longer allowed a deduction related to expenses for entertainment, amusement or recreation activities, even if such expenses are directly related to or associated with the employer's trade or business, unless an exception applies. Club dues cannot be deducted.

Meals, Food and Beverages. Piggybacking on the change related to entertainment, amusement and recreation, if meals, food or beverages are provided such that they are part of entertainment, amusement and recreation, then costs associated with such meals, food and beverage are similarly not deductible, unless an exception applies. There is a limited 50% deduction available for employers related to food and beverages provided to employees as a *de minimis* fringe benefit (e.g., coffee, donuts and soft drinks).

Employee Achievement Awards. The Tax Reform Act confirms existing law that the employer deduction and employee exclusion related to tangible personal property presented to employees as achievement awards does not apply to cash, gift coupons, gift certificates, vacations, meals, lodging, tickets to sporting or theater events, securities, and "other similar items."

If you have any questions about the potential impact of tax reform on your organization, contact your HSE attorney at 585.232.6500. Please consult the HSE tax reform website at www.hselaw.com/taxreform for more coverage of these significant changes, or visit www.hselaw.com.