Lally&Co.
CPAs and Business Advisors

The EVERGREEN

Quarterly Journal for Clients & Friends

Fall 2013 – Volume VIII

This Issue:

- **Affordable Care Act's Employer Mandate Delayed Until 2015; Individual Mandate on Schedule for 2014**
- **U.S. Delays FATCA's Withholding, Reporting and Other Rules for Six-Months**
- **How Do I Claim Bonus Depreciation in 2013?**

The Evergreen. Always Growing.

Like the evergreen oak tree, Lally & Co. is always growing. With the support and loyalty of our clients and friends we have evolved into a firm of 35 individuals who serve clients in many diverse engagements. In the next few months, we will be adding four more to our staff. Our partners and staff are continuously expanding their knowledge and credentials to better serve our current and broadening clientele.

Our growth has given us the ability to serve our clients and adapt to their needs. We are always looking for ways to better serve you.

Contact our office or visit our website for more information.

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Dear Clients and Friends,

As we approach the end of the year, many clients are asking how the Affordable Care Act might affect them. While certain parts of the Act have been delayed and several other parts are uncertain, we have devoted this edition to informing our clients on the Affordable Care Act as it stands. We have also included information regarding the importance of foreign reporting as we have seen an increase in IRS attention to this matter.

As you read through *The Evergreen*, please do not hesitate to contact us at any time. We would be happy to hear from you! This and past issues of *The Evergreen* are available on our website at http://lallycpas.com/newsletters/.

Affordable Care Act's Employer Mandate Delayed Until 2015; Individual Mandate on Schedule for 2014

The Affordable Care Act set January 1, 2014 as the start date for many of its new rules, most notably, the employer shared responsibility provisions (known as the "employer mandate") and the individual shared responsibility provisions (known as the "individual mandate"). The employer mandate has been delayed to 2015, however the individual mandate has not been delayed.

Employer mandate

Very broadly, the Affordable Care Act imposes a shared responsibility payment (also known as a penalty) on an applicable large employer that either:

- Fails to offer to its full-time employees (and their dependents) the opportunity to enroll in MEC (Minimum Essential Coverage) under an eligible employer-sponsored plan and has under its employ one or more full-time employees that are certified to the employer as having received a premium assistance tax credit or cost-sharing reduction (Code Sec. 4980H(a) liability), or
- Offers its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and has under its employ one or more full-time employees that are certified to the employer as having received a premium assistance tax credit or cost-sharing reduction (Code Sec. 4980H(b) liability).

The amount of the employer shared responsibility penalty varies depending on whether the employer is liable under Code Sec. 4980H(a) or Code Sec. 4980H(b). The calculations of the payment are very complex but two examples help to shed some light on how they are intended to work. Example 1 is based on Code Sec. 4980H(a) liability and Example 2 is based on Code Sec. 4980H(b) liability.

(continued on page 2)

Did you know?

- Todd A. Sacco, J.D., CPA/PFS a tax manager at Lally and Co. wrote and published an article that was featured in the Fall 2013 edition of the Pennsylvania CPA Journal. The article entitled "Medicare Now Taps Unearned Income of Trusts" discusses the tax implications of the new medicare tax on trust income.

- You can find helpful financial tools on our website www.lallycpas.com/financial-calculator/

- This and past issues of *The Evergreen* are available on our website. www.lallycpas.com/newsletter

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Firm Announcements

Lindsey M. Burchell successfully completed the Uniform CPA Exam in August 2013

Kari M. Miller joined our Administrative Staff in October 2013

Patrick J. Revay, CPA was married to Ellen Porter on October 19, 2013

Todd A. Sacco, J.D., CPA/PFS successfully completed the Accredited in Business Valuation Exam in September 2013

Lisa M. Wiegand, CPA earned her Master of Business Administration degree from Robert Morris University in August 2013

Important Dates

November 15, 2013 -
2012 Extended Foundation Tax Returns Due

December 16, 2013 -
2013 Estimated Tax Payments Due for Corporations

Example 1. Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive a Code Sec. 36B premium assistance tax credit for the year for enrolling in a Marketplace plan. For each employee over a 30-employee threshold, the employer would owe $2,000, for a total penalty of $140,000. The Code Sec. 4980H(a) penalty is assessed on a monthly basis.

Example 2. Employer B offers minimum essential coverage and has 100 full-time employees, 20 of whom receive a Code Sec. 36B premium assistance tax credit for the year for enrolling in a Marketplace plan. For each employee receiving a tax credit, the employer would owe $3,000 for a total penalty of $60,000. The maximum penalty for Employer B would be capped at the amount of the penalty that would have been assessed for a failure to provide coverage ($140,000 above in Example 1). Since the calculated penalty of $60,000 is less than the maximum amount, Employer B would pay the calculated penalty of $60,000. The Code Sec. 4980H(b) penalty is assessed on a monthly basis.

These examples are merely provided to illustrate how the employer shared responsibility payment is intended to work. Every employer's situation will be different depending on the number of employees, the type of insurance offered and many other factors. Please contact our office for more details.

IRS guidance
Since enactment of the Affordable Care Act, the IRS and other federal agencies have issued guidance on the employer shared responsibility provision. The IRS has defined what is an applicable large employer (generally defined as businesses with 50 or more employees), who is a full-time employee with certain exceptions for seasonal workers, and much more. The IRS has not, however, issued guidance on reporting requirements by employers and insurers. The Affordable Care Act generally requires employers, insurers and other entities that offer minimum essential coverage to file annual information returns reporting information about the coverage. As originally enacted, this information reporting was scheduled to take effect in 2014, the same year that the employer shared responsibility provisions were scheduled to take effect.

Delay
In early July, the Treasury Department announced that information reporting by employers, insurers, and other entities offering minimum essential coverage will not start in 2014 but will be delayed until 2015. The IRS followed-up with transitional guidance. Information reporting by employers, insurers, and other entities offering minimum essential coverage is waived for 2014. However, the IRS encouraged employers, insurers, and others to voluntarily report this information. The IRS reported it is working on guidance and expects to issue regulations before year-end.

Because information reporting has been delayed, the Affordable Care Act's employer shared responsibility provisions are waived for 2014. The IRS explained that the transitional relief is expected to make it impractical to determine which employers would owe shared responsibility payments for 2014. As a result, no employer shared responsibility payments will be assessed for 2014.

Individual mandate
The January 1, 2014 scheduled start date of the Affordable Care Act's individual shared responsibility provisions is not delayed. Unless exempt, individuals must carry minimum essential health coverage

(continued on page 3)

after 2013 or pay a shared responsibility payment (also called a penalty). The Affordable Care Act exempts many individuals, such as most individuals covered by employer-provided health insurance, individuals enrolled in Medicare and Medicaid, and many others.

After 2013, individuals may be eligible for a new tax credit (the Code Sec. 36B credit) to help offset the cost of obtaining health insurance. The credit is payable in advance to the insurer. The January 1, 2014 scheduled start date of the Code Sec. 36B is also not delayed.

Small employers
Qualified small employers will be able to offer health insurance to their employees through the Small Business Health Options Program (SHOP). Enrollment for coverage through SHOP is scheduled to begin October 1, 2013 for coverage starting January 1, 2014. For 2014, SHOP is open to employers with 50 or fewer employees. Beginning in 2016, SHOP will be open to employers with up to 100 employees.

After 2013, the small employer health insurance tax credit is scheduled to increase from 35 percent to 50 percent for small business employers (and from 25 percent to 35 percent for tax-exempt employers). However, the credit is only available after 2013 to employers that obtain coverage through SHOP. This credit is targeted to very small employers with the credit gradually phasing out as the number of employees reaches 50.

U.S. Delays FATCA's Withholding, Reporting and Other Rules for Six-Months

The scheduled January 1, 2014 rollout of withholding, reporting, and other rules in the Foreign Account Tax Compliance Act (FATCA) have been delayed six months, the Treasury Department and the IRS have announced. The six-month delay is expected to give the U.S. more time to conclude negotiations and sign agreements to implement FATCA with foreign governments. The Treasury Department and the IRS have not, however, delayed the rules for reporting by individuals.

Far-reaching scope
FATCA 's scope is very far reaching. FATCA requires certain foreign financial institutions (FFIs) to report information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The reporting institutions include not only banks, but also other financial institutions, such as investment entities, brokers, and certain insurance companies. Some non-financial foreign entities will also have to report certain of their U.S. owners.

FATCA also requires that some individuals holding financial assets outside the U.S. must report those assets to the IRS. The IRS has developed Form 8938, Statement of Specified Foreign Financial Assets. This reporting requirement is separate from the long-time reporting requirement under the Bank Secrecy Act to file an "FBAR" (Form TD F 90.22-1, Report of Foreign Bank and Financial Accounts).

Final rules
In early 2013, the Treasury Department and the IRS issued final FATCA regulations. The final rules require withholding agents to withhold 30 percent of certain payments (called "withholdable payments") to FFIs unless the FFI has entered into a reporting agreement with the IRS. To avoid withholding under FATCA, a participating FFI must enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts, and
- Withhold a 30 percent tax on certain U.S.-connected payments to non-participating FFIs and account holders who are unwilling to provide the required information.

Delay
The final regulations called for the gradual phasing-in of the FATCA rules beginning in 2014 and continuing through 2017. Now, the Treasury Department and the IRS have further delayed the start of some of the FATCA rules, including rules on withholding, reporting, and due diligence by FFIs. Withholding agents generally will be required to begin withholding on withholdable payments made after June 30, 2014 instead of December 31, 2013.

Withholding agents also generally will be required to implement new account opening procedures by July 1, 2014. In addition, Treasury and the IRS intend to modify the final regulations so that the information reports previously required from certain FFIs on U.S. accounts for the 2013 and 2014 calendar years will be required only for 2014 (with respect to U.S. accounts identified by December 31, 2014). Reporting by these FFIs would be required by March 31, 2015. Additionally, all qualified intermediary agreements that would otherwise expire on December 31, 2013 will be extended to June 30, 2014. The launch date of the IRS's online FATCA registration site has also been delayed to August 19, 2013.

Agreements
Since FATCA became law, the U.S. has been negotiating with foreign jurisdictions to implement its reporting requirements. The U.S. has developed two model intergovernmental agreements (IGAs).

(continued on page 4)

The first model agreement (Model I) generally requires an FFI to report account information to its government, which, in turn, will exchange the information with the IRS. Under the second model agreement (Model II), an FFI registers with the IRS and reports account information directly to the IRS.

As of August 1, 2013, the U.S. has entered into IGAs with nine countries (Denmark, Germany, Ireland, Japan, Norway, Mexico, Spain, Switzerland, and the U.K.). The Treasury Department has reported that it hopes to conclude negotiations before 2014 with Argentina, Belgium, Korea, Malaysia, New Zealand, South Africa, and many other countries.

Individuals
FATCA's rules for reporting by individuals are not delayed. Generally, FATCA requires taxpayers to file Form 8938 if he or she is a U.S. citizen, a resident alien, and in some cases, a nonresident alien. The taxpayer also must own a "specified foreign financial asset," which includes any financial account maintained by an FFI unless specifically excluded. Additionally, the aggregate value of the specified foreign financial asset must exceed certain reporting thresholds.

For single individuals living in the U.S., the total value of the specified foreign financial assets must be more than $50,000 on the last day of the tax year or more than $75,000 at any time during the tax year. For married couples filing a joint return and living in the U.S these amounts are $100,000 and $150,000. The threshold amounts are higher for taxpayers living outside the U.S.

Form 8938 is not a substitute for the FBAR. The forms have different filing requirements. Please contact our office for more details about the two forms and their filing requirements. The IRS is also expected to issue rules on FATCA reporting by domestic entities if the entity is formed or used to hold specified foreign financial assets and the assets exceed the appropriate reporting threshold. Until the IRS issues regulations, only individuals must file Form 8938.

How Do I Claim Bonus Depreciation in 2013?

Bonus depreciation will expire for most taxpayers at the end of 2013 unless Congress extends the provision. A 50-percent bonus depreciation deduction (the "special first-year depreciation allowance") is allowed for the first year that qualifying property is placed in service. Bonus depreciation is available for property acquired after December 31, 2007 and acquired and placed in service only before January 1, 2014 (the "applicable period").

The 50-percent rate is also available for property acquired pursuant to a binding written contract entered into during the applicable period. Self-constructed property for the taxpayer's own use qualifies for bonus depreciation if the taxpayer begins manufacturing, constructing or producing the property during the applicable period. In addition, the 50-percent rate is extended one year, to property acquired and placed in service before January 1, 2015, for property with a longer production period and for aircraft. Unlike the Code Sec. 179 expensing allowance, there is no limit on the overall amount of bonus depreciation that may be claimed.

The bonus depreciation rate was 100 percent for qualified property acquired after September 8, 2010 and before January 1, 2012, and placed in service before January 1, 2012. A special election is available under Rev. Proc. 2011-26 for taxpayers that want to claim 50-percent bonus depreciation instead of the 100-percent rate available in the latter part of 2010 and in 2011.

Qualifying property
Qualifying property is property depreciable under MACRS (the Modified Accelerated Cost Recovery System) that has a recovery period of 20 years or less, or is MACRS water utility property, computer software depreciable over three years, or qualified leasehold improvement property. The property must be new property, and its original use must start with the taxpayer during the applicable period. Property is acquired when the taxpayer takes possession or control of the property and has the risk of loss. Property is placed in service when it is in a condition or state of readiness and availability for a specifically assigned function in a trade or business, or for the production of income.

Election out
A taxpayer must claim bonus depreciation unless the taxpayer elects not to take any additional first year depreciation. This "election out" applies to all property in the class or classes for which the election is made, and that is placed in service for the tax year of the election. The election out may be revoked only with the IRS's consent.

The election must be made by the due date (including extensions) of the tax return for the year in which the property is placed in service. Form 4562 provides instructions for making the election. The taxpayer must attach a statement to the return that indicates the property class for which the election is being made.

Solid Footing

Anna M. Sella joined Lally & Co. as an Associate in our Tax Department in January 2012; in February 2013 she successfully completed the Uniform CPA Exam and is currently pursuing her Master of Business Administration degree at Robert Morris University. While Anna juggles her full schedule of work, school, and personal life, she still manages to find time to volunteer.

Anna has volunteered her time with several Pittsburgh based non-profit organizations, but enjoys spending most of her time volunteering with Hello Bully and Habitat for Humanity. Anna spends her weekends and weeknights volunteering at Hello Bully, a pit bull rescue and rehabilitation organization that aims to repair the reputation of the American Pit Bull Terrier. She spends her time caring for the dogs at the Hello Bully house in Cranberry Township and in February 2013 she assisted with the Lovers Not Fighters Gala event hosted by Hello Bully.

In May 2013, Anna traveled (on her own dime) to Feira Nova, Pernambuco, Brazil with Habitat for Humanity to assist with a 100-home 2-year building project aimed at providing homes to single mothers and their children. Anna spent 7 days laying brick foundations to build the walls of new homes that would provide shelter to many women and children.

Last year, Anna honored the twelve days of Christmas by donating her time and money to various charities.

Anna has been a real inspiration to many of us at Lally & Co. in the way in which she balances her business and personal life and graciously gives back to various charities. She has encouraged us to organize an office-wide charity event with the Greater Pittsburgh Community Food Bank this upcoming holiday season. We hope that sharing her story provides the same inspiration to you.

"It's amazing seeing so many people working hard to make the world a better place." - Anna M. Sella