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Key Legislative Developments Affecting Your Human Resources

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Year-End Legislation Delays Cadillac Tax; Restores Transit Parity; Impacts Tax Credits, W-2s and Church Plans

A looming government shutdown was averted last week when the House and the Senate passed the omnibus spending bill, as well as a tax extenders bill, and President Obama signed legislation that included both bills in a single package. In this issue, we review the impact the legislation has for employers and benefit plans.

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Omnibus Spending Bill and Tax Extenders Bill

The Consolidated Appropriations Act, 2016, often referred to as the "Omnibus Spending Bill" and The Protecting Americans from Tax Hikes Act of 2015, often referred to as the "Tax Extenders Bill", were consolidated into a single package and signed by the president late on Friday after being approved earlier in the day by both the House of Representatives and Senate. Significant provisions from the Omnibus Spending Bill affecting employer-sponsored plans relate to the Cadillac tax and the annual fee on health insurers. Key provisions for employers from the Tax Extenders Bill relate to transit parity, the medical device tax, work-related tax credits, W-2s and church plans. Below are the highlights, with references to the bill from which the provision originated.

Home for the Holidays

The House and the Senate have recessed for remainder of the year. Look for our next *Legislate* on January 11, 2016.

Cadillac Tax

Under prior law, the Cadillac tax was a non-deductible excise tax on high-cost plans that would have been effective starting in 2018. Under the Omnibus Spending Bill, the Cadillac tax is delayed for two years to 2020. Furthermore, the excise tax will be deductible for federal tax purposes.

> **Comment.** Both of these changes will have a significant financial impact for employers. As such, employers should consider them while developing strategies for providing health care coverage in the future and for negotiating collective bargaining agreements. In particular, employers' analysis should factor in the tax relief provided by the bill.

The Omnibus Spending Bill also directs a study on the tax to be performed and submitted to the Senate Committee on Finance and the House Committee on Ways and Means. Specifically, the study is to evaluate the suitability of potential benchmarks for the age and gender adjustments of the applicable dollar limit to which the Cadillac tax applies.

> **Comment.** Notably, the bill does not include a direction to study the impact of geographic location of an employer's workforce. Employers have voiced concern about this, as it will cause the tax to be unfairly imposed on those employers that have locations in high-cost areas.

Cadillac Tax Repeal Efforts

Bipartisan, bicameral congressional efforts to secure a full repeal of the Cadillac tax via the **reconciliation package** and stand-alone legislation have not stopped. (See our **December 7**, **November 23**, and **October 26** issues of *Legislate* for additional information.)

Annual Fee on Health Insurance Providers

The Omnibus Spending Bill provides limited relief from the annual fee imposed on health insurance providers by providing a one-year suspension of the fee for 2017.

> **Comment.** With the elimination of this tax in 2017, employers who provide health care coverage on an insured basis will be impacted directly through lower premium rates in 2017. Employers who provide health care coverage on a self-insured basis are not impacted by this provision, as they are not subject to the fee. (For background, see our December 30, 2013 *For Your Information.*)

Medical Device Tax

The Tax Extenders Bill provides a reprieve from the 2.3% medical device tax. Specifically, a moratorium will be in place for the 2016 and 2017 calendar years, and will reduce health care costs for those two years.

Transit Parity

Transit parity was in place from 2009 through 2014. The Tax Extenders Bill permanently restores and retroactively reinstates parity for 2015. For additional background and monthly amounts for 2015 and 2016, see our December 14 *Legislate*. Importantly, this provision is not a temporary patch and permits employees to exclude from income the same amount per month for qualified mass transit expenses as for parking expenses.

> **Comment.** Administrative complexities will arise due to parity being applied retroactive to January 1, 2015. We anticipate that IRS will provide guidance that closely tracks the guidance issued by the IRS in January 2015 when transit parity was reinstated retroactively for 2014. See our January 9 *FYI Alert* for further information and background.

Wage Credit for Employees of the Uniformed Services

The Tax Extenders Bill reinstates and broadens the credit for employees who are called to active military duty. For small employers (generally those with less than 50 employees) the credit applies retroactively to payments made on and after January 1, 2015. For all other employers, the credit generally applies to payments made on and after January 1, 2016.

Work Opportunity Tax Credit

The work opportunity tax credit relates to individuals hired from an eligible target group, such as veterans, food stamp recipients and ex-felons. Under the Tax Extenders Bill, the credit that expired after 2014 is reinstated for five years —

retroactively for individuals hired after 2014. The credit is also expanded to include, as a new eligible target group, "long-term" unemployment compensation recipients hired after 2015 and before 2020. To be treated as a "long-term" unemployment compensation recipient, an individual will need to have been unemployed for least 27 consecutive weeks and have received unemployment compensation income under state or federal law during that period. For long-term unemployed individuals, the credit is 40 percent of the first $6,000 of wages.

Indian Employment Tax Credit

This credit relates to each employee who is (or is married to) a member of an Indian tribe, and who lives on or near an Indian reservation where the employee works. Under the Tax Extenders bill, the credit — that previously did not apply for years after 2014 — is retroactively reinstated for a two-year period from January 1, 2015 through 2016.

Safe Harbor for Small Errors on Information Returns and Payee Statements

The law requires employers to timely file correct information returns and payee statements, such as an IRS Form W-2. The penalty for failure to comply with this mandate is $250 per return or form, up to a separate cap of $3 million per calendar year (subject to reduction if a corrected form is filed within 30 days). The penalty applies to **any** failure to include all required information or the inclusion of incorrect information.

The Tax Extenders Bill creates a safe harbor for certain small errors. Specifically, information returns and payee statements will be treated as correct and no penalty shall apply if:

- No single amount in error differs from the correct amount by more than $100, and
- No single amount reported for tax withheld on any information return differs from the correct amount by more than $25

The safe harbor applies to returns required to be filed, and payee statements required to be provided, after December 31, 2016.

SSNs and IRS Form W-2

Prior to this legislation, the law required employers to include a complete social security number (SSN) on the IRS Form W-2. The Tax Extenders Bill replaces this mandate with a requirement to use an "identifying number" for each employee.

> **Comment.** This change allows the Department of Treasury to issue regulations that require or permit Form W-2s to reflect a partial SSN.

Church Plan Clarification

The Tax Extenders Bill includes the Church Plan Clarification Act of 2015 (S. 2308 and H.R. 4085), which was introduced last month. Specifically, the legislation allows church plans to include auto-enrollment features, eliminates requirements to aggregate plans for nondiscrimination purposes, prevents grandfathered defined benefit plans from having to meet certain requirements for maximum benefit accruals, allows investments in collective trusts, and permits certain reorganizations. (See our December 7 *Legislate* for background). In general, these provisions are effective immediately.

Fiduciary Rule – Congress' Efforts

Although widely anticipated, neither the Omnibus Spending Bill nor the Tax Extenders Bill included any provision impacting the DOL's ability or timing to finalize its proposed rule for fiduciaries and conflicts of interest. Specifically, the bills did not include any language restricting the DOL from using federal funding to finalize this rule or requiring the DOL to delay finalization of the rule.

Nevertheless, congressional efforts in this area continue as the DOL marches forward to finalize its proposed rule. Last week, Rep. Phil Roe (R-TN) introduced H.R. 4293, the Affordable Retirement Advice Protection Act, and Rep. Peter Roskam (R-IL) introduced H.R. 4294, Strengthening Access to Valuable Education and Retirement Support (SAVERS) Act. Both bills would require the DOL to receive approval from Congress before implementing a final rule and, if approval is not provided, would require a new fiduciary standard to be implemented based on principles introduced last month. See our December 7 *Legislate* for background on other bills seeking to affect the DOL's rulemaking process.

Looking Ahead

Congress is on recess until January 4, 2016.

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