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HALL, KISTLER & COMPANY LLP
CONSULTANTS AND CERTIFIED PUBLIC ACCOUNTANTS

soundideas. solidanswers.

Phone: 330-453-7633
220 Market Avenue South, Suite 700
Canton, Ohio 44702
www.hallkistler.com

INSIDE THIS ISSUE:

New IRS Program for Employers to Reclassify Workers 1-2

How to Get Tax-Free Treatment of Cell Phones 2-3

Planning for Your Children's College Education 3-4

Beware of the Perils of Poor Recordkeeping 4-5

Employees Using Tablet Computers: Assess the Risks 5-7

Hall, Kistler Announcements 7-8

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New IRS Program for Employers to Reclassify Workers

The IRS has launched a new program that will enable many employers to resolve past worker classification issues at a relatively low tax cost by voluntarily reclassifying their workers. This new program offers employers an opportunity to come into compliance by making a payment covering past payroll tax obligations.

This IRS "Fresh Start" initiative coincides with another new government Department of Labor program to crack down on employers who misclassify employees as independent contractors (see below for more information).

According to the IRS, the new Voluntary Classification Settlement Program "is designed to increase tax compliance and reduce burden for employers by providing greater certainty for employers, workers, and the government." Under the program, eligible employers can obtain substantial relief from Federal payroll taxes they may have owed for the past, if they prospectively treat workers as employees. The IRS program is available to many organizations, tax-exempt organizations, and government entities that now erroneously treat workers as non-employees or independent contractors, and want to reclassify them as employees.

To be eligible, an applicant must:

- Consistently have treated the workers in the past as non-employees.
- Have filed all required Forms 1099 for the workers for the previous three years.
- Not currently be under audit by the IRS, the Department of Labor, or a state agency concerning the classification of these workers.

Here are the results for employers accepted into the program:

- They will pay 10 percent of the amount of employment taxes that would otherwise have been due on compensation paid for the most recent tax year to the workers, calculated under the reduced rates of section 3509 of the Internal Revenue Code.
- No interest or penalties will be due.
- The employers will not be audited on payroll taxes related to these workers for prior years.
- Participating employers will, for the first three years under the program, be subject to a special six-year statute of limitations, rather than the usual three years that generally applies to payroll taxes.

Continued on page 2

Reclassify Workers ... (continued from page 1)

If a business signs up for the IRS program, do all of its workers have to be reclassified as employees? No. The program permits taxpayers to reclassify some, or all, of their workers. However, once a taxpayer chooses to reclassify certain workers as employees, all individuals in the same class must be treated as employees for employment tax purposes.

For example, a construction firm currently contracts with drywall installers, electricians, and plumbers to perform services at housing construction sites. The company wants to voluntarily reclassify its drywall installers as employees. Once a closing agreement is executed with the IRS, the company must treat all drywall installers as employees for employment tax purposes.

Please consult with us if your business is interested in participating in the IRS Voluntary Classification Settlement Program. It may not make sense in some situations.

Information Sharing Program Announced by Labor Department

Just two days before the IRS launched its voluntary reclassification program, the U.S. Department of Labor kicked off a program “to end the business practice of misclassifying employees in order to avoid providing employment protections.”

The Labor Department signed a “memorandum of understanding” with the IRS, other Federal agencies, and numerous states. The parties agreed to share information and coordinate law enforcement efforts involving worker misclassification. The states that have already signed the agreement are Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Utah, and Washington. States that have agreed to sign are Hawaii, Illinois, Montana, and New York.

The memorandums of understanding arose as part of the department’s Misclassification Initiative. The Labor Department has called the misclassification of employees as independent contractors “an alarming trend, particularly in industries such as construction that often employ low-wage, vulnerable workers.”



How to Get Tax-Free Treatment of Cell Phones

The IRS has issued new guidance designed to clarify the tax treatment of employer-provided cell phones and similar telecommunications devices. The guidance relates to a provision in the *Small Business Jobs Act of 2010*, enacted last year, that removed cell phones from the definition of “listed property,” a category under tax law that normally requires additional recordkeeping by taxpayers.

Prior to the legislation, cell phone use triggered the same strict substantiation rules that apply to business use of vehicles. In other words, you had to track your business and personal use in order to claim deductions. The 2010 law removed these requirements for cell phones and similar communication devices, and treats employer-provided devices as tax-free fringe benefits, as long as certain requirements are met.

The IRS states that when an employer provides an employee with a cell phone primarily for non-compensatory business reasons, the business and personal use of the cell phone is generally not taxable to the employee. The IRS will not require recordkeeping of business use in order to receive this tax-free treatment (*IRS Notice 2011-72*).

What does the IRS consider business reasons? The tax agency listed some possible scenarios:

- An employer needs to contact the employee at all times for work related emergencies.
- An employer requires that an employee be available to speak with clients at times when the employee is away from the office.
- An employee needs to speak with clients located in other time zones at times outside of his or her normal work day.

Continued on page 3

... Tax-Free Treatment of Cell Phones (continued from page 2)

“A cell phone provided to promote the morale or good will of employees, to attract a prospective employee, or as a means of furnishing additional compensation to an employee is not provided primarily for non-compensatory business reasons,” the IRS added.

The IRS also announced in a memo to its examiners a similar administrative approach that applies when businesses give cash allowances and reimbursements for work-related use of personally owned cell phones.

Under this approach, employers that require employees to use personal cell phones for business may treat reimbursements of the employees’ expenses for reasonable cell phone coverage as non-taxable. This treatment does not apply to unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee’s regular wages.



Bottom line: When employers provide cell phones to employees or when employers reimburse employees for business use of personal cell phones, tax-free treatment is available without burdensome recordkeeping requirements. The guidance does not apply to the provision of cell phones or reimbursement for cell-phone use that is not primarily business related, as such arrangements are generally taxable.

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Planning for Your Children’s College Education

When you hear about the cost of college education, it can be intimidating. A four year public, in state resident, college student can estimate a cost of \$19,000 per year for tuition, fees and board. And for out of state residents, that estimate jumps to \$30,000 nationally. For private institutions, students can estimate the fees anywhere from \$36,000 on up. So what’s a parent to do?

Paying for College. What are some options?

SAVINGS PROGRAMS

In most cases, its best to start saving early in childhood to maximize your college savings fund. These programs can be as simple as a bank savings account or investing in U.S. saving bonds. They can also be as sophisticated as tax based incentive programs such as a State College Advantage 529 plan. Ohio’s College Advantage 529 is a tax free way to save for your child’s or grandchild’s education.

The benefits of Ohio’s 529 plans include:

- Earnings that are income tax free if used for college
- Contributions that are deductible from Ohio taxable income in the year made, up to \$2,000 per beneficiary per year
- Grandparents are eligible to make contributions to a single beneficiary in a single year up to \$65,000 (\$130,000 if married) under the prorated 5 year plan without triggering the Federal gift tax
- The funds can be used at any college in the country
- You (the donor) benefit from professional money managers
- You have the flexibility to manage your account investments and make changes
- You maintain control of the funds/account, not the beneficiary

See www.collegeadvantage.com for Ohio’s 529 features and benefits.

FINANCIAL AID AND SCHOLARSHIPS

The national average of financial aid per student was \$11,500 for the school year 2009-2010, including \$5,500 in Federal grants that does not require full repayment. There are also Federal work study grants that are available. The first step is completing the on-line Federal Student Aid Application known as FAFSA to determine what you may be entitled to in Federal aid.

Continued on page 4

...College Education (continued from page 3)



This application form must be completed annually as the aid amount can change as a result of changes in financial conditions of either the parents or the student.

When applying for financial aid with the school, consider:

- What types of student aid are available at the school
- What are the application deadlines and what are the dates of award notification
- Does the school offer merit based or talent based scholarships
- Does the annual aid or scholarship awarded apply for all 4 years and what conditions must be met to continue the award

Also, determine if there are local scholarships available and if your parent's employer offers scholarships to employee's children. You will find the timetables here are very critical.

FEDERAL TAX BENEFITS

One of the best ways to increase the affordability of your child's education is to take advantage of the Federal tax breaks offered within the tax code.

- EE and I savings bonds purchased after 1989 by someone at least 24 years old may be redeemed tax free when paid for spouse or dependent college tuition and fees. Income limits may apply.
- Early withdrawal penalties for traditional IRA's are waived when used for qualified education expenses for dependent children or grandchildren.
- You can take an above the line deduction, subject to income limits, for qualified educational expenses if you are not eligible for the Lifetime Learning or American Opportunity credits.
- The American Opportunity Credit and the Lifetime Learning Credit are available as additional tax credits for your dependent child's educational costs, subject to income limitations.
- Up to \$2,500 in student loan interest may be deducted above the line if certain conditions are met.

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Beware of the Perils of Poor Recordkeeping

The importance of keeping thorough and accurate records can't be emphasized enough. If you have incomplete or no records and get audited by the IRS, it can cost you valuable deductions.

One recent Tax Court case illustrates the potential pitfalls facing some taxpayers.

Facts of the case: Adan Sucilla operated a sole proprietorship providing farm labor services in California. He claimed deductions for various business expenses in 2007 and 2008, including travel and entertainment, car and truck expenses, repairs, maintenance, supplies, taxes, and insurance. But Sucilla didn't keep separate books for his business operation. Instead, he relied on bank statements, subcontractor checks, and receipts to account for the expenses. Sucilla did, however, hire an accountant to prepare his Federal tax returns for the years in question.

The IRS agent who examined the returns for these two years found that all the business income was reported accurately, but some expenses were not substantiated because Sucilla had either lost or misplaced the receipts.

For 2007, out of a total of \$2,262,421 in expenses, the IRS found \$165,386 was unsubstantiated. For 2008, out of a total of \$1,287,945 in expenses, \$35,920 was unsubstantiated.

However, the IRS allowed deductions totaling \$38,635 and \$18,585 for 2007 and 2008, respectively, for previously unclaimed but allowable expenses.

Tax outcome: Citing a lack of information concerning the deductions claimed on the tax returns, the Tax Court agreed with the IRS. Other than the deductions conceded, the court stated, the taxpayer "failed to provide receipts, logs, books, or any other kind of documentation to substantiate the deductions."

Continued on page 5

... Poor Recordkeeping (continued from page 4)

The court added that the “Cohan rule,” which allows estimates of expenses without complete documentation, does not apply to certain expenses (The Cohan rule is described below).

One consolation: Because Sucilla acted with reasonable cause and in good faith, the court ruled that he was not liable for accuracy-related penalties for substantially understating income (*Sucilla*, TC Memo 2011-197).

The substantial understatement penalty is one of the most commonly assessed Federal income tax penalties. It can also be one of the most expensive. The penalty equals 20 percent of any tax underpayment caused by a substantial understatement of income tax liability on a Federal return.

However, there is an important penalty exception when the taxpayer:

- Had reasonable cause for taking the tax position that caused the substantial understatement; and
- Acted in good faith.

One of the ways to demonstrate reasonable cause and good faith is to give a competent, independent tax professional all the relevant information and then rely on his or her advice and tax preparation efforts.

The moral of this case is pretty simple: Don’t leave the important matter of documentation to chance. With guidance from your tax adviser, you can prepare tax return records that will stand up to close scrutiny from the IRS.

There is no one way to keep records. In fact, the IRS states on its website that “you may choose any recordkeeping system suited to your business that clearly shows your income and expenses.” However, in a few cases, the law does require certain records and imposes requirements. For example, with respect to travel, entertainment, gifts, and listed property expenses, a taxpayer must generally substantiate with records:

1. The amount of the expense.
2. The time and place the expense was incurred.
3. The business purpose.
4. In the case of a business entertainment or gift expense, the business relationship.
5. For listed property, a taxpayer must establish the amount of business use and the amount of total use.

For more information about tax recordkeeping, call our office at 330-453-7633.



Employees Using Tablet Computers: Assess the Risks

When Apple launched the iPad, it created a new class of device that met with rave reviews and sold more than three million devices in the first few months. Currently, more than 29 million iPads have been sold, and the third generation is rumored to be hitting the stores in the spring of 2012.

Tablet computers are here to stay, as evidenced by the popularity of the iPad and the introduction of competitors such as Amazon’s lower priced Kindle Fire.

The devices are popping up in all types of businesses including luxury car dealerships, restaurants, retail stores, and hotels. Many people find the portability and functionality provide a competitive edge. In situations where it is impractical to pull out a laptop, boot it up, and load information, you can easily whip out a tablet and review information with customers, prospects, suppliers, and others.

But like many new technology devices, in addition to improving how businesses operate, they can involve a great deal of risk. Yet many tablet users, managers, and executives do not understand the risks and have not taken steps to mitigate them.

Continued on page 6



...Tablet Computers: Assess the Risks (continued from page 5)

When new technology hits the market, most businesses do not adopt it right away. However, some of their employees will buy new devices and begin using them to conduct business without the knowledge or approval of their employers.

The vast number of applications that exist for the iPad can be a double-edged sword. Employees may utilize their iPads in beneficial ways their employers have not envisioned. At the same time, employees may use tablet computers for tasks that could cause angst for senior executives, such as working on the company's yet-to-be released product or storing confidential blue prints on a cloud computing platform.

For many users, a tablet may seem like a more convenient laptop computer. But laptops have more security programs designed to protect them from theft, viruses, and hacking. Lower-priced tablets, such as the Amazon Kindle Fire, could pose a bigger problem for employers since more employees will be able to afford to conduct business with them.

Don't ignore the threats posed by tablets. Instead, take the time to assess the risks and deploy countermeasures:

Does it make sense to buy tablet computers for employees? Depending on the size and the role they could play in your business, it may make sense to buy tablet computers for employees. Doing so can avoid the "gray area" of enforcing corporate policies for employees who use their personal devices to conduct business. If your company chooses to purchase tablets for those with a defined business need, maintain an up-to-date inventory.

Once an employee leaves or is terminated from the company, the devices must be returned. Some companies allow their employees to keep cell phones, laptops, and other devices once they leave because the business has no use for now obsolete technology. But while the technology may be obsolete, the data it could contain is not. It is crucial to have an accurate inventory of devices deployed, as well as processes in place to ensure that managers collect them.

Better to be safe than sorry. Take another look at your company's computer use policy. Most companies have a policy that mandates employees establish a strong password (made up of letters, numbers, and symbols) that they don't share in response to e-mail requests or phishing e-mails. Policies also prohibit employees from disabling anti-virus software.

Before allowing employees to use tablet computers in whatever manner you deem appropriate, ensure that all aspects of your computer use policy can be applied to them. Consider the following additional aspects of a computer policy that can be amended to apply to tablets:

- *Deploy* standard security such as a password and remote detonation of data in the event the tablet is lost or stolen. There's a good chance someone may forget a tablet in a cab or leave one unattended at a coffee shop, airport, or even a conference attended by your company's competitors.
- *Only permit* the installation of a suite of company-approved applications. Employees should also be made aware that all other apps that reside on the iPad are not approved for use in connection with business-related tasks.
- *Periodically submit* the tablets to your company's IT personnel for review to ensure that there are no viruses or unauthorized apps being used to store company data.

Update your company data retention policies. In the event that your company becomes involved in litigation, it will likely be required to produce all types of paper and electronic documentation during the discovery phase. Your company's data retention policies should be updated to include how tablet-related data is being stored, managed, and gathered during litigation. Keep in mind that Rule 34 of the Federal Rules of Civil Procedure is generally written to cover devices, such as tablet computers.

...Tablet Computers: Assess the Risks (continued from page 6)

Consider forcing all e-mails to be routed through your company server so you can archive messages, rather than allowing employees to configure devices to use personal e-mail services. It potentially limits information leakage and makes it harder for employees to steal data through their personal e-mail accounts. It can also limit the probability of a virus being transmitted to the company's networks.

Your attorney can provide best practices in data retention and management. In addition, place an unobtrusive bar code on the device so that it can be tracked and recorded throughout the discovery process.

Should iPads and tablet computers be banned at your company? Is the risk posed too great to allow the use of the devices? For example, if your company works on government contracts and handles classified information, the risk that the data could be lost or stolen may be too great to allow employees to use tablet computers. The same may be true for a medical company with confidential patient information. Banning tablets should only be undertaken in extreme circumstances, but it may be appropriate if the risk far outstrips the return.

As with most new types of technology, the inherent risk is far greater at the outset. iPads became very popular in a short period, in part due to companies and individuals adopting the new technology within the first six months of its launch.

Now is the time to pause and assess the real risk that iPads create in the workplace. While security vendors continue to develop software to protect iPads, your company should employ a mixture of technology, policies, and procedures to ensure that the risk does not exceed the return.

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Hall, Kistler Announcements:



Karen M. Brenneman, CPA, MT, managing partner has been elected Rotary Club of Canton president and has also been elected to the board of BKR International. Karen has been elected president of the Rotary Club of Canton for the 2011-2012 year. She has been a member of the Rotary Club of Canton since 2001 and has held various positions within the organization including, Community Avenue Chair, Vice President, President-Elect and has hosted two exchange students from Thailand and France through Rotary Internationals Youth Exchange program. The mission of the Rotary Club of Canton is to provide service to others, promote high ethical standards, and advance world understanding, goodwill, and peace through its fellowship of business, professional, and community leaders.

BKR International has also elected Karen to a three year term on the America's Region board. BKR International's America's Region encompasses firms from Canada, the United States, and all of Latin America. BKR International is a leading global association of independent accounting and business advisory firms representing the expertise of more than 135 member firms with over 9,000 professionals in 300 offices in over 70 countries around the world.



Brian C. Miller, CPA, MT has been promoted to Manager. Brian joined Hall, Kistler & Company in 2003 in a full-time capacity, after working part-time for the firm in the area of tax preparation. Brian provides tax, auditing and accounting services for closely held and publicly held companies. His experience in tax includes individuals, corporations, partnerships, not-for-profits and trusts.

Brian serves on several firm committees including oil and gas and tax. He is a member of the AICPA, OSCP and the Council of Petroleum Accountants Societies (COPAS) – Appalachia, where he serves as treasurer. Brian received his Bachelor of Arts degree in Accounting from Mount Union College, graduating Magna Cum Laude, and earned his Masters of Taxation from the University of Akron.

Continued on page 8



220 Market Avenue South, Suite 700 • Canton, Ohio 44702-2100
(330) 453-7633 • www.hallkistler.com



Karen M. Brenneman, CPA, MT
Managing Partner



Michael G. Eberhart, CPA, CVA
Senior Partner



Kim I. Miller, CPA, MBA
Partner



John J. Skakun, CPA
Partner



S. Franklin Arner, CPA
Partner



Keith A. Arner, CPA, CVA
Partner

...Hall, Kistler Announcements: (continued from page 7)



Jolene A. Colant has been elected Marketing Chair of BKR International's America's Region. Director of Marketing for Hall, Kistler & Company for over 10 years, Jolene has recently been elected to chair the marketing committee of BKR International's America's Region. That region encompasses firms from Canada, the United States, and all of Latin America. BKR International is a leading global association of independent accounting and business advisory firms representing the expertise of more than 135 member firms with over 9,000 professionals in 300 offices in over 70 countries around the world.

Jolene is a member of the Association for Accounting Marketing, The Women's Impact Initiative Steering Committee, the American Heart Association Heart Ball Committee and has recently been quoted in *Accounting Today* (10/11).



Hall, Kistler & Company is pleased to announced that **Andrew (Andy) M. Griffin, CPA, Senior Accountant has obtained his Certified Public Accountant certification.** Andy joined Hall, Kistler & Company in 2004 after receiving his Bachelor of Science Degree in Accounting and Business from Malone College. He practices in the areas of accounting, audit and tax for clients in the oil and gas, manufacturing and distribution and wholesale industries as well as other closely held companies. Andy has a thorough understanding of the issues affecting oil and gas companies, as well as publicly traded companies. He serves on several company committees including the oil and gas and audit and accounting committees.

Andy is a member of the Ohio Society of CPA's, and the Council of Petroleum Accountants Society - Appalachia. He is a graduate of the 2007 Spotlight Stark County program and is a member of the Canton and Massillon Chambers of Commerce.

Correction: In our 70th Anniversary announcement **Robert L. Carnahan, CPA** was inadvertently omitted from the list of past partners. He was partner until the time of his passing in 1986.