THE SMALLBIZ BUILDER

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THIS MONTH:

Employee Verification – Form I-9 Requirements

Employers should be aware of the Immigration Reform and Control Act of 1986 (IRCA) and how it affects their hiring process. <u>IRCA requires *all* employers to verify every employee's identity and their authorization to work in the U.S.</u> Employers are required to have a properly completed Form I-9, *Employment Eligibility Verification*, on file for each employee. The Form I-9 requirements are enforced by the Immigration and Customs Enforcement (ICE), which is a branch of the Department of Homeland Security (DHS), under the regulation of The U.S. Citizenship and Immigration Service (USCIS). Most of the required information for USCIS Form I-9 is also found on IRS Form W-4, with exception of the worker's actual start date. Even though the overlapping new employee paperwork may look repetitive, burdensome, or even mundane, don't allow yourself to become complacent in your hiring practices.

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Tax Increases in 2013 Under Affordable Care Act

Even if Congress were to somehow solve its tax extender problems and kick all the EGTRAA and JGTRRA sunsets down the road for another year, the fact remains that under the Affordable Care Act, a number of important tax increases will go into effect in 2013. These include

Higher hospital insurance tax for high earners: Beginning in 2013, an additional .9% applies to wages and SE income in excess of: $250,000 for joint returns; $125,000 for married filing separate; and $200,000 in all other cases.

Surtax on unearned income of higher-income individuals: Beginning in 2013, an unearned income Medicare contribution tax is imposed. For an individual, the tax is 3.8% of the lesser of either (1) net investment income or (2) the excess of modified adjusted gross income over the threshold amount ($250,000 for a joint return or surviving spouse, $125,000 for a married filing separate, and $200,000 for all others.

Limit on Flex Savings Accounts (FSA) contributions: Beginning in 2013, the maximum amount available for reimbursement of incurred medical expenses of an employee (and dependents and other eligible beneficiaries) under the health FSA for a plan year (or other 12-month coverage period) can't exceed $2,500.

Higher threshold for deducting medical expenses: Beginning in 2013, the unreimbursed medical expenses will be deductible by taxpayers under age 65 only to the extent they exceed 10% of AGI for the tax year. For taxpayers age 65 and over, a 7.5% floor applies through 2016.

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Employer audits performed by ICE tend to target clerical errors or incorrectly completed Form I-9. Penalties for an incorrectly prepared Form I-9 can range from $110 to $1,100 per violation. A 'domino' effect can occur when a clerical error is discovered on a Form I-9. If the employer was consistent, then they probably made the same clerical error on several other Form I-9s, too. Each clerical error on Form I-9 can be subject to a penalty.

In a high profile case, a large retailer was fined more than $1,000,000 as a result of errors in their Form I-9 e-verification system, even though the company had no unauthorized workers. The fines tend to be double when an ICE audit uncovers unauthorized workers.

Employers Responsibility for Payroll

Employers are ultimately responsible for the payment of income tax withheld, and both the employer and employee portions of Social Security and Medicare taxes, even if they outsource their payroll responsibilities to a third party. Outsourcing payroll to a third party can help ensure that filing deadlines and deposit requirements are met and greatly streamline business operations. However, it's the employer's ultimate responsibility to pay these taxes, even if the failure to pay is entirely due to the payroll service provider's negligence or fraud.

Best Business Practices:

1) DO NOT change the address on file with the IRS to that of the payroll service provider so the IRS will contact the employer. Changing the address may significantly limit the employer's ability to be timely informed of tax matters involving its business.

2) DO ensure the payroll service provider is using the Electronic Federal Tax Payment System (EFTPS), which maintains a business's payment history for 16 months and can be viewed on-line, allowing the employer to confirm payments electronically. Employers should register on the EFTPS system to get their own PIN and use this PIN to periodically verify payments. A red flag should go up the first time a payroll service provider misses or makes a late payment. Employers with an EFTPS account will also be able to make additional tax payments that their payroll service provider isn't making on their behalf (e.g., estimated tax payments).

The IRS cautions that there have been instances of individuals and companies acting under the guise of payroll service providers who have stolen funds intended for payment of employment taxes