Eye On Washington
Legislative Update

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Year-End Legislation Includes Provisions Affecting Employers

On December 18, 2015, President Obama signed into law two bills that will affect employers: "The Consolidated Appropriations Act of 2016," commonly referred to as the "Omnibus Appropriations" bill, and "The Protecting Americans from Tax Hikes Act of 2015" (PATH Act), commonly referred to as the "tax extenders" bill.

A number of the tax provisions in the recently passed legislation will have direct implications for employer payroll, benefits, and tax strategies. Most notably, unlike last year's one-year extension, the Act provides an extension of over 50 separate tax benefits that expired on December 31, 2014 on either a two-year, five-year, or permanent basis. Below is a summary of selected provisions of interest to employers.

- *Delay of Excise Tax on High-Cost, Employer-Sponsored Health Coverage* – delays for two years the 40% Excise Tax on high-cost, employer-provided health care plans, the so-called "Cadillac tax" (Section 4980I of the Internal Revenue Code). This Excise Tax now takes effect after 2019. The tax was also modified to make it deductible, and a study of the benchmark for the "age and gender" adjustment was established.

- *Accelerated Forms W-2 Filings* – requires Forms W-2, W-3, and returns or statements to report non-employee compensation (i.e., Forms 1099) to be filed on or before January 31, following the taxable year, beginning with tax year 2016 (i.e., Forms W-2 and 1099 filed in 2017).

- *Truncated Social Security Numbers on Forms W-2* – authorizes the IRS to promulgate a regulation to permit employee Social Security Numbers to be truncated on Forms W-2 (e.g., XXX-XX-9999). The provision is effective immediately; however, the IRS must first issue regulations, most likely making the provision effective in 2016 (for Forms W-2 filed in 2017).

- *Parity for Employer-Provided Mass Transit and Parking* – extended *permanently* the maximum monthly exclusion amount for transit passes and vanpooling benefits in order to match the exclusion allowed for qualified parking benefits. In 2015, the monthly maximum is $250 for combined transit pass and vanpooling benefits and $250 for parking benefits excluded from federal income tax withholding, FICA taxes, and FUTA. In 2016, these monthly maximums are increased to $255. For bicycle commuting reimbursements, the 2015 and 2016 maximum monthly amount excluded is $20. The retroactive nature of this change may require action by employers in the closing days of 2015 to re-compute benefits as nontaxable, prior to closing out the year and issuing Forms W-2.

  After similar parity legislation was enacted on December 19, 2014, the IRS published Notice 2015-2 to provide guidance related to the Tax Increase Prevention Act of 2014 (Pub. L. 113-295), which retroactively increased the monthly transit benefit exclusion under § 132 of the Internal Revenue Code from $130 to $250 for calendar year 2014. The notice provided that employers may not retroactively increase the transit benefit for 2014, but permitted employers that had made excess transit benefits over $130 per month (up to $250) in 2014 to adjust the employee's taxable wages on Form W-2.

  The notice also outlined procedures to address the retroactive application of the increased exclusion for 2014, including a special administrative procedure in which employers were permitted to apply all changes in the excludable amount for transit benefits provided in all quarters of 2014 to the Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2014. Notice 2015-2 does not address the present legislation, but the IRS may issue similar guidance in the coming weeks.

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- *Safe Harbor for de Minimis Errors on Forms W-2* – If any single dollar amount reported on a Form W-2 differs from the correct amount by less than $100, and any single amount reported for tax withheld on a Form W-2 differs from the correct amount by less than $25, then no correction will be required, and no accuracy penalty will apply for failure to furnish a correct payee statement. However, if an employee requests a corrected Form W-2, then a Form W-2C must be provided and must be filed with the Social Security Administration. The IRS is directed to issue regulations to implement this section, which is effective for returns required to be filed, and payee statements required to be provided, after December 31, 2016.

- *Indian Employment Tax Credit* – extends through December 31, 2016, the credit for the first $20,000 of qualified wages paid to each qualified employee who works on an Indian reservation.

- *Wage Credit for Employees Who Are Active-Duty Members of the Uniformed Services* – expands the current credit from 20% of eligible differential wage payments per qualified employee to 100% of differential wage payments made to employees called to active duty. The credit is also expanded to allow businesses of all sizes to claim the tax credit (previously limited to eligible small businesses of fewer than 50 employees). This credit was extended *permanently*.

- *Empowerment Zone Tax Incentives* – extends through December 31, 2016, employment credits for businesses and employers that hire employees who reside and work in an empowerment zone (among other tax incentives). Additionally, a modification was made to the enterprise zone facility bonds. The change would ease the 35% in-zone employment requirement to permit employees residing in any empowerment zone, enterprise community, or qualified low-income community to be used for calculation purposes.

ADP Compliance Resources

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