

Important Tax
Dates &
Deadlines:

March 1, 2010:

Businesses:
File W-2's with So-
cial Security Admini-
stration

File Annual 1099's
with IRS

March 15, 2010:

Businesses:
S-Corp Election Deci-
sion Due

March 15, 2010:

File Corporate In-
come Tax Return
(Forms 1120, 1120s
or 1120-A)

Or

Corporate Extension
Due (Form 7004)

**Quote of the
Month:**

**May your bless-
ings outnumber**

**The shamrocks
that grow, and
may trouble avoid
you**

Wherever you go.

~Irish Blessing



Zimmerman, Boltz & Company

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PREPARING FOR THE EMPLOYMENT TAX AUDIT INITIATIVE

In February 2010, the IRS began its employment tax audit initiative. The initiative involves the audit of 2,000 U.S. businesses this year, which is in addition to the annual 60,000 employment tax audits the IRS already conducts. The two main goals of the study from the IRS' perspective are:

- To secure statistically valid information for computing the Employment Tax Gap (*i.e.*, non-payment of employment taxes); and
- To determine compliance characteristics so the IRS can focus on the most noncompliant employment tax areas.

So, how will this impact Dental Practices? There are a number of areas where Practices are potentially exposed to liability when it comes to employment tax audits, some of which are discussed below.

Worker Classification

Employers are obligated to pay half of a worker's social security and medicare taxes if the worker is classified as an employee. Many times employers characterize workers as independent contractors to avoid payment of these taxes. Knowing this, the IRS targets this area during the employment tax audits. The IRS uses a 20 factor test to determine whether the employer properly characterized the worker as an independent contractor instead of an employee. This 20 factor test boils down to three main categories: (i) behavioral control; (ii) financial control; and (iii) overall relationship. If the IRS determines that an employer misclassified a worker as an independent contractor, the employer is obligated to pay the IRS the employer's portion of the past-due employment taxes, as well as penalties and interest. The overall amount due can be significant and cause a financial hardship. Further, to the extent the business fails to remit the taxes, the IRS may also impose the Trust Fund Recovery Penalty under Internal Revenue Code § 6672 on certain responsible persons, holding them personally liable for the unpaid employer's portion of employment taxes.

The issue of employee versus independent contractor comes up for Practices in two main areas: (i) dental hygienists and (ii) associate doctors. From my perspective, there is no question that dental hygienists are always employees and cannot be treated as independent contractors. The main reason for that very definitive position is that the ultimate behavioral control and financial control is with the Practice, not the hygienist. For those Practices in Ohio, as an example, the Ohio Revised Code requires that the doctor supervise and oversee the hygienist's work, including the method and means of the work.

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Submitting Retirement Withholdings and Match Contributions

As more governmental focus has descended upon retirement plans, we are seeing more clarification in the interpretation of the regulations. One area in particular is the timely deposit of employee deferral contributions. The regulation stated that deferrals should be deposited when contributions could be reasonably segregated from the employer's assets but no later than the 15th business day of the following month. Based on the Department of Labor's interpretation and enforcement efforts of this rule, we are advising our clients with less than 100 participants to deposit as follows:

Deposit employee deferral for EACH payroll by the 7th business day following the day on which the amounts would have been paid to the person in cash.

If you have any further questions concerning this information please contact us to discuss further.

Practice Impact

Are considering selling your practice in the next 12 months? If so, contact Paul Hudanick to discuss the options available.

Practice Impact
(614) 855-2500 or
visit their website at
www.practiceimpact.com

Important Tax Dates & Deadlines:

April 15, 2010:

Individuals:

File Individual Income Tax Returns (Form 1040, 1040A, or 1040-EZ)

Or

Individual Extensions Due (Form 4868)

First Installment of Individual Estimated Tax Due (Form 1040-ES)

Last day to file Form 1040X Amended Individual Tax Return for the 3rd preceding tax year

Estates & Trust:

File Fiduciary Tax Returns (Form 1041)

Fiduciary Extension Due (Form 7004)

Last day to file an Amended Fiduciary Tax Return for the 3rd preceding tax year

Businesses:

File Partnership Income Tax Return (Form 1065)

Or

Partnership Extension Due (Form 7004)

Last day to file an Amended Partnership Tax Return for the 3rd preceding tax year

April 30, 2010:

Businesses:

1st quarter payroll returns due (Form 941)

1st quarter sales tax returns due

Preparing For The Employment Tax Audit Initiative continued -

When it comes to associate doctors, however, the determination of employee versus independent contractor is less clear. As an example, an associate doctor being hired by a Practice to perform general dentistry, is an employee if the Practice—through the owner doctor—does the following: (i) sets the hours for that associate doctor; (ii) supervises the associate doctor's dental services; (iii) sets the compensation for the associate doctor; (iv) determines the associate doctor's vacation, sick time, and education time-off; and (v) bills and collects the payments for that associate doctor's services. The focus of the relationship is on the overall behavioral and financial control. In another example, however, an associate doctor being hired by a Practice to perform certain services not performed by the Practice (*i.e.*, specialists) will likely be treated as an independent contractor. The distinguishing factor from the employee relationship discussed above is that, in the specialist situation, the Practice is likely not controlling the method and means of the services being performed, and is likely not supervising those services. Again, in the example of the associate doctor who is hired to perform general dentistry, the method and means, as well as the overall supervision are with the Practice.

Ultimately, however, every specific doctor relationship must be examined on its own facts and circumstances before a decision can be made as to the treatment. It is important for Practices to ensure that they have a written agreement in place with an associate doctor, which outlines the rights and obligations of the Practice and the associate doctor. The Practice must also ensure that those rights and obligations are actually followed. That is, it does not help a Practice if in the day-to-day running of the Practice the doctors do not follow the terms of the written agreement. The agreement should clearly define the relationship of the associate doctor as either an independent contractor or an employee based on what that overall relationship truly is. Finally, the associate doctor's and the Practice's actions should be consistent with that written agreement.

Shareholder Compensation

Another area of exposure is the shareholder-employee's compensation. As an example, corporations have motivations to modify the characterization of monies paid to the shareholder-employee as either compensation or payment of a distribution. With C corporations, if the corporation characterizes distributions as compensation, the corporation may deduct the compensation and not pay corporate tax on that portion. With an S corporation, however, if the corporation characterizes the payments to the shareholder-employee as a distribution it does not have to pay employment tax on that amount. Either way, whether it is a C corporation trying to inflate the compensation, or an S corporation trying to minimize the compensation by treating the payments as distributions, the amount of compensation ultimately paid must be reasonable.

To defend itself during an audit, employers should formally establish the compensation of its shareholder-employee in the beginning of each year. This could be done in an employment agreement or in the corporate minutes. Also, the business must be able to justify the amount of compensation as being reasonable. This comes up most commonly for Practices that elect to be treated as S corporations, but fail to properly report the salary of the doctor-shareholder.

Reimbursed Expenses

For an employer to exclude reimbursements of expenses from an employee's compensation, it must be made pursuant to a qualified accountable plan. If not, then all reimbursements to an employee are included as compensation and subject to employment tax. To protect themselves, employers should ensure that they have written reimbursement policies that qualify as qualified accountable plans and ensure that these policies are updated and followed. Also, the employer's accounting records and procedures should substantiate these reimbursements and the purpose for the reimbursements. The reimbursed expenses are another area where Practices are exposed to potential liability. Not necessarily because they do not have the formal qualified accountable plan, but more likely because they did not maintain the proper records to support the expenses. Businesses must maintain these types of records for at least seven years, but it is the advice of Nardone Law Group that they are kept permanently. If you would like more detail on the records issue, Tawnya Underwood wrote an article relating to record retention in the Zimmerman, Boltz & Company's Newsletter, January 2010 edition.

Vincent J. Nardone and M. Pilar Puerto are attorneys with the Nardone Law Group, LLC, who specialize in tax, business, and estate planning for professional practices and their owners. If you need assistance, please contact them by telephone at (614) 223-0123, or by email at vnardone@nardonelawgroup.com for Vincent or ppuerto@nardonelawgroup.com for Pilar.

Roth IRA conversion, does it make sense for you?

Have the investments in your traditional IRA or employer sponsored retirement plan recently declined? There may be a chance for you to benefit from this by taking advantage of converting this to a Roth IRA and plan better for your future. You could owe fewer taxes by converting because of the decline in value of your account. If the stock market recovers, any earning on the Roth IRA would accumulate tax-free and remain so for future qualified distributions. The three biggest benefits to a Roth IRA are: tax-free earnings growth, tax-free qualified distributions in retirement, and no required minimum distributions in the future. This has been available for years but many were limited based on certain income rules. In 2010 the rules have changed and everyone is allowed to convert to a Roth IRA and you can defer the taxes that you would owe to 2011 and 2012. It is important to have your Financial Advisor do a Roth IRA conversion analysis and work with your CPA to do determine if this process is beneficial for you. Feel free to contact Jason Codrea if you have additional questions or would like him to prepare an analysis to determine if converting to a Roth IRA works for you.

Jason Codrea, CMFC; Codrea Financial Services; LPL Financial Advisor; jason@codreafinancial.com; 614-452-8185



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Motivating Employees in Tough Times

Over the last several months many clients have contacted us looking for powerful, yet affordable, ways to motivate their employees. In tough economic times, many of you may not have the funds for raises or bonuses even for your most dedicated employees. While you watch other businesses file for bankruptcy or eliminate half their workforce you may think: “My team should be grateful that we haven’t had to take such drastic measures; Why can’t they see how fortunate they are just to have a job?” But when the economy improves, team members who feel unappreciated will quickly start to polish their resumes.

Showing your employees that you value them is just as important in today’s economic climate. It communicates that you realize their ongoing contribution to the practice’s success, even in tough times, and will keep them loyal for many years to come. Just like you, your team is working both harder and smarter to confirm appointments, explain the importance of regular, preventative hygiene visits, and communicate the value of each appointment where the patient incurs an out-of-pocket cost. Let them know you’ve noticed their efforts. After all, if your team is happy, your patients will sense this during each appointment. This, in turn, generates a happy patient who returns, completes treatment, and refers others...

Here are some simple ways to acknowledge, motivate, and reward your team:

- Say thank you daily
- Create a positive atmosphere
- Recognize them with an award
- Give the gift of time
- Offer a weekly free lunch
- Invest in health (i.e. gym membership)
- Invest in education (i.e. CE course)
- Solicit feedback and suggestions to better the practice

Always keep in mind that what motivates one employee may not motivate another so you may want to consider using a variety of motivators. Money seems to be a common motivator and the issue of raises and bonuses is one that all of us face each year. Don’t ignore what could turn into “the elephant in the room.” Give your team timeline for raises around a goal or benchmark for the practice. Make sure the goal is S.M.A.R.T. (Specific, Measurable, Attainable, Realistic, and Timely) and that each team member understands how they can directly contribute to its attainment. Once the goal is set and everyone understands, stand back and let the team lead the practice to success!

Office Hours & Upcoming Events

ZBC. hours:

Monday - Friday
8:30am to 5:30pm

Upcoming Events

March 12th - Paragon Management will be hosting the Ohio Excelleration Seminar here in Columbus.

March 25 & 26th - Paragon Management will be offering the Front Office Academy I in Columbus, Ohio.

April 23rd - Paragon Management will be hosting their

Spring 1-Day Seminar in Columbus, Ohio.

For further information regarding any Paragon events contact Rhonda at 614-433-0790 or visit their website at:

www.theparagonprogram.com