



SPECIAL ALERTS

Homebuyer Credit Fraud

In a recent news release the IRS announced its first successful prosecution involving first-time homebuyer credit (FTHC) fraud. A Florida tax preparer pled guilty to falsely claiming the FTHC on a client's return. He faces the possibility of up to three years in jail, a fine of up to \$250,000, or both.

In addition, the IRS has executed seven search warrants and has 24 open criminal investigations related to potential FTHC fraud. Tax professionals and taxpayers must understand that claiming a credit (or any other tax benefit) to which they are not entitled can be pursued as fraud.

View the IRS news release.

FEDERAL TAX UPDATE

SALES TAX DEDUCTION ON NEW CAR AVAILABLE IN STATES WITH NO SALES TAX

The American Recovery and Reinvestment Act of 2009 provides a deduction for sales tax, including state and local sales or excise tax, on new vehicles purchased on or after Feb. 17, 2009 and before Jan. 1, 2010. The deduction can be taken either as an itemized deduction or as an additional standard deduction on the 2009 tax return. The deduction is subject to phaseout for higher income taxpayers.

According to the IRS, the sales tax deduction, which is based on a maximum vehicle value of \$49,500, can be claimed even if the vehicle was purchased in a state that does not impose a sales tax. States that don't impose a sales tax include Alaska, Delaware, Hawaii, Montana, New Hampshire, and Oregon. Taxpayers who purchase a vehicle in these states can deduct other fees or taxes assessed on the purchase of a vehicle if:

1. they are imposed by the state or local government,
2. they are assessed on the purchase price of the vehicle, and
3. they are based upon the sales price of the vehicle or as a per unit fee.

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For the Tax Pro

QUESTION OF THE MONTH

Q. My clients' daughter intends to purchase a new car. They claim their daughter as a dependent. Would they be able to claim the deduction for the vehicle sales and excise tax if she purchases the car? What if they buy the car and then gift it to their daughter?

A. There is no provision in the new law that allows the vehicle sales and excise tax deduction to be claimed by anyone other than the person who purchased the vehicle. If your clients' daughter purchases the car, she is the only one allowed to claim the deduction.

However, there is no requirement that the vehicle be used personally by the purchaser. Your clients may purchase the car, gift it to their daughter, and claim the deduction.



IDENTITY THEFT DISCLOSURE ISSUES

In a recently issued Program Manager's Technical Advice statement (PMTA 2009-24), the IRS provided guidance as to what extent the IRS may disclose tax return information to victims of identity theft, employers, and non-tax law enforcement authorities.

The IRS addressed two different scenarios involving apparent identity theft and tax returns.

Scenario A: An individual steals someone else's identity and files a tax return early during the filing season in the name and SSN of the victim, who has not yet filed a return for the tax year. The thief may attach a phony Form W-2 to the return in order to claim a refund.

Scenario B: An individual who does not have legal status to work in the United States uses another person's stolen SSN to appear work eligible.

The IRS addressed three specific disclosure issues for each situation.

Disclosure Issue 1: May the IRS notify the victim of apparent identity theft, and if so, what information may the IRS disclose?

In Scenarios A and B, the IRS may disclose any information relating to the IRS's determination of the victim's tax liability. This includes information relating to the original balance due or refund based on the fictitiously filed Form 1040 or an erroneous Form W-2, and any underpayment or overpayment information as the victim's account is adjusted. The IRS may also disclose to the victim that it suspects identity theft. The IRS may not disclose any other information about the 1040 or W-2, or any information about the IRS's investigation into the civil or criminal tax liability of the person who misused the SSN.

Disclosure Issue 2: May the IRS notify an employer whose worker has used a stolen SSN that the SSN on the W-2 filed for that worker belongs to a different taxpayer, and may the IRS reveal any other information about the apparent identity theft to the employer?

In Scenarios A and B, the IRS may disclose to the employer that an SSN on a Form W-2 is incorrect and in what respect. It may inform the employer of a mismatch between the name and SSN on a Form W-2 filed by the employer. However, the IRS may not disclose the identity of the true owner of the SSN. If the IRS is proposing to assess penalties (for filing Form W-2 with an incorrect SSN) against an employer on the basis that the employer was aware or should have been aware that an employee was using another taxpayer's SSN, the IRS may determine whether disclosure of any other information is appropriate on a case by case basis.

Disclosure Issue 3: May the IRS tell appropriate (non-tax) law enforcement officials about an apparent identity theft situation?

Scenario A: The IRS may disclose information to non-tax law enforcement officials.

Scenario B: The IRS may not disclose information to non-tax law enforcement officials.

Note: A PMTA is a Chief Council Memo that is designated as a Program Manager's Technical Advice.

PMTA 2009-24



POST RETIREMENT BENEFIT INCREASE IS NOT A PROTECTED BENEFIT

District Court Case. Thornton v. Graphic Comm. Conference of the Int'l Bhd. of Teamsters Supplemental Ret. & Disability Fund 92009, 566 F.3d 597 (6th Cir. 2009).

Ruling in favor of a pension plan, the U.S. Court of Appeals for the Sixth Circuit held that an amendment made to the pension plan that eliminated a post-retirement benefits increase for certain retirees did not violate a rule that prohibits a plan from decreasing accrued benefits for retirees.

Background. IRC §411(d)(6) and ERISA §204(g), 29 U.S.C. §1054(g), are parallel provisions which provide that accrued retirement benefits (defined by IRC §411(a)(7)(A)(i)) cannot be reduced or eliminated by a plan amendment (except in certain limited circumstances that are not applicable in this case). Commonly referred to as the “anti-cutback” rule, these provisions are intended to safeguard the benefits promised to an employee who has fulfilled a plan’s conditions for retirement benefits.

Facts. Charles Thornton was a participant in the Graphic Communications Conference of the International Brotherhood of Teamsters Supplemental Retirement and Disability Fund 92009 (“the Plan”), a multi-employer defined benefit plan.

He retired under the terms of the Plan on Feb. 1, 1995. After his retirement, the plan was amended in 3 separate years, 1997, 1998 and 1999, to increase benefits for both current employees and retirees. The 1999 increase amounted to an additional 9.4% to Mr. Thornton. In December 2002, however, the Plan was amended to remove the benefit increase from the 1999 amendment for plan participants who retired prior to 1999. The Board stated that the amendment was needed based upon advice from an actuarial consultant who claimed the Plan faced a funding deficiency severe enough to jeopardize its long term survival. Although the 1997 and 1998 increases remained intact, Mr. Thornton saw his retirement benefits reduced as a result of the amendment.

...benefit increases after retirement are not an “accrued benefit” under IRC §411(a)(7)(A)(i) and are not protected benefits.

Mr. Thornton filed a class action suit in federal district court against the Plan under ERISA, arguing that the anti-cutback rule had been violated when his benefits were reduced by the amendment. The federal district court ruled that the December 2002 amendment reducing the benefits did not violate the ERISA anti-cutback rule. Mr. Thornton timely appealed the district court’s decision to the U.S. Court of Appeals for the Sixth Circuit on Feb. 26, 2008.

Discussion. In his appeal, Thornton argued that the statutory definition of “accrued benefits” in IRC §411(a)(7)(A)(i) was ambiguous based upon prior case law with respect to post-retirement benefit increases, and that the Appeals Court should defer to Treasury Department interpretations of the statute. Based upon the perceived ambiguity, he argued that the elimination of the prior benefit increase was in violation of ERISA’s anti-cutback rule.

Under IRC §411(a)(7)(A)(i), an accrued benefit, in the case of a defined benefit pension plan, means the amount of “the employee’s accrued benefit determined under the plan and . . . expressed in the form of an annual benefit commencing at normal retirement age.”

The Appeals Court ruled in favor of the Plan, concluding that there was no Treasury interpretation to defer to and the “accrued benefits” referred to by the ERISA anti-cutback rules are those that existed at the time the participant was last employed and still accruing benefits under the plan. Thus, benefit increases after retirement are not an “accrued benefit” under IRC §411(a)(7)(A)(i) and are not protected benefits. The Court concluded that, with no guidance contrary to the statute in existence, the best interpretation of the law and the Plan was that the post-retirement benefit increase was not an accrued (i.e., protected) benefit.

Note: The Appeals Court acknowledged that a Treasury regulation released in 2005, §1.411(d)-3, directly supported Thornton’s position. However, the Appeals Court could not consider the regulation in Thornton’s case because the regulation is only effective with regard to amendments of benefit plans adopted on or after August 12, 2005.

Thornton v. Graphic Comm. Conference