

## MEMORANDUM TO CLIENTS

**RE: H.R. 4994 Passes House – Favorable Cell Phone Relief Comes at a Price – Increased Reporting Penalties on Information Returns**

This week (April 14, 2010), the House passed, by a large margin, H.R. 4994 – the Taxpayer Assistance Act of 2010. It includes two important benefits/payroll provisions that are worth watching – stay tuned.

1. **Cell Phone Relief:** Like many of its predecessors, the Bill removes "any cellular telephone (or other similar telecommunications equipment)" from the list of "listed property." This provision is effective retroactively to January 1, 2010, as is consistent with the IRS Commissioner's comments to support such legislative change. It is envisioned that delisting cell phones from these complex substantiation requirements will result in treatment as a tax-free de minimis fringe benefit – and no longer having to track business and personal use. This would allow employers to deduct the full cost of the cell phones while employees would not have taxable income as a result of making a personal call (or surfing the internet). The estimated cost of this change is \$411 million over 10 years.
  
2. **Increased Reporting Penalties:** The Bill increases the penalties under Code section 6721 for failure to properly report on information returns, which includes Forms W-2 and 1099. The increases are effective for returns filed on or after January 1, 2011. The penalty increases mirror the Obama's Administration Proposal, which at least doubles the penalty amount per return, and also increases the maximum annual limit by as much as 6 times, limited to failure to file penalties under Code section 6721. The increases do not extend to (a) failure to furnish payee statement under Code section 6722 (that in large measure mirrors Code section 6721), or (b) penalty for failure to comply with other information reporting requirements under Code section 6723, although a reference in the Congressional summary of the Bill is to the contrary. The revenue estimate for these changes is \$419 million over 10 years.

Specifically, the penalty increases are described below:

<u>Existing</u>	<u>Proposed</u>
\$50/return; \$250,000 annual limit (gross receipts of more than \$5M)	\$100/return; \$1.5M annual limit
\$50/return; \$100,000 annual limit (gross receipts of \$5M or less)	\$100/return; \$500,000 annual limit
\$100/return minimum for intentional disregard (no limit)	\$250/return minimum (no limit)
\$15/return (if corrected within 30 days, \$75,000 limit if gross receipts > \$5M)	\$30/return; \$250,000 annual limit
\$15/return (if corrected within 30 days, \$25,000 limit if gross receipts <= \$5M)	\$30/return; \$75,000 annual limit
\$30/return (if corrected before Aug. 1, \$150,000 limit if gross receipts > \$5M)	\$60/return; \$500,000 annual limit
\$30/return (if corrected before Aug. 1, \$50,000 limit if gross receipts <= \$5M)	\$60/return; \$200,000 annual limit
No adjustment for inflation	Adjustment for inflation every 5 years

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Author: Elizabeth Thomas Dold

If you have any questions, please contact your regular Groom contact or any of the attorneys listed below:

Elizabeth Thomas Dold	<a href="mailto:edold@groom.com">edold@groom.com</a>	(202) 861-5406
Christine L. Keller	<a href="mailto:ckeller@groom.com">ckeller@groom.com</a>	(202) 861-9371
Louis T. Mazawey	<a href="mailto:lmazawey@groom.com">lmazawey@groom.com</a>	(202) 861-6608
William F. Sweetnam	<a href="mailto:wsweetnam@groom.com">wsweetnam@groom.com</a>	(202) 861-5427
Brigen L. Winters	<a href="mailto:bwinters@groom.com">bwinters@groom.com</a>	(202) 861-6618