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National Not-For-Profit Industry Conference

I Have to Report That, Right?

Richard Locastro

Session 305

I Have to Report That, ……Right?

Presented by:

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Speaker Biography

Richard J. Locastro, CPA, JD is a principal with Gelman, Rosenberg & Freedman CPAs, where he oversees the firm's team of tax professionals who provide consulting and tax compliance services to more than 600 nonprofit organizations. He coordinates tax planning and consulting services, return preparation and representation on IRS audits.

Mr. Locastro has more than 20 years of experience providing tax services to tax-exempt organizations. Prior to joining Gelman, Rosenberg & Freedman, he spent three years as the senior director of Tax Consulting Services at Arctic International LLC, where he provided nonresident alien tax consulting services to colleges, universities and other tax-exempt organizations. He also served as senior manager for KPMG's Exempt Organizations Tax Practice for the Baltimore/Washington region and KPMG's national director for Nonresident Alien Tax Compliance. His clients included private foundations, colleges, universities, healthcare organizations, museums and other large nonprofit institutions.

He received his B.S. in Accounting, *Magna cum Laude*, from Le Moyne College, Syracuse, NY, and his J.D. from the University of North Carolina, Chapel Hill.

Agenda

- **Employee Issues**
  - Form W-2/1099 issues
  - Employer-Provided Health care benefits
  - Cell phones
  - Test subject fees
  - Donated leave time
  - Local Lodging to Employees

Agenda

- **Donor Reporting**
  - Vehicle donations
  - Auction items
  - Volunteer Expenses
  - Donation of Time
- **Third Party Reporting**
  - Gaming and Raffle winnings
  - Scholarship and prizes/awards

Can an Employee Really Get a Form 1099-MISC too?

- **Why is Worker Classification Important?**
  - IRS Employment Tax National Research Program (NRP) for 2010, 2011, and 2012 – 2000 examinations each year – total of 6000 examinations
  - Focuses on four areas :
    - Worker Classification
    - Executive Compensation
    - Fringe Benefits
    - Payroll Taxes

Can an Employee Really Get a Form 1099-MISC too?

- **Why is Worker Classification Important?**
  - IRS believes that noncompliance in this area affects millions of workers and contributes to the tax gap.
  - When misclassified as independent contractors, employers avoid paying their share of employment taxes, workers compensation, unemployment insurance and other benefits.
- **Voluntary Worker Classification Settlement Program**
  - Described in Announcement 2011-64 issued in September 2011
  - May provides substantial relief from payroll taxes for employers if they treat workers as employees prospectively

Can an Employee Really Get a Form 1099-MISC too?

Facts that provide evidence of the degree of control and independence fall into three categories:

- Behavioral
- Financial
- Relationship

Publication 1779
http://www.irs.gov/businesses/small/article/0,,id=99921,00.html

Can an Employee Really Get a Form 1099-MISC too?

Requirements for reports	**Method of payment**
Payment of business or travel exp.	**Provision of tools and materials**
Investments in facilities	**Realization of profit or loss**
Work for multiple companies	**Availability to public**
Control over discharge	**Right to termination**
Level of instruction	**Amount of training**
Degree of Business Integration	**Extent of Personal Services**
Control of Assistants	**Continuity of Relationships**
Flexibility of Schedule	**Demands for Full-time work**
Need for on-site services	**Sequences of work**

Can an Employee Really Get a Form 1099-MISC too?

- **The answer is "YES" but the circumstances are limited**

- ***Reece v. Commissioner,* T.C. Memo 1992-335**
  - Tenured faculty member contracted with the University's Division of Executive Education (DEE) to teach non-credit seminar programs
  - IRS disallowed self-employment retirement plan contribution arguing he was an employee for these purposes
  - Tax Court held he was an independent contractor for purposes of the seminar
  - Analysis focused on degree of control which varies according to the nature of the services

Can an Employee Really Get a Form 1099-MISC too?

- **Important Factors included:**
  - The University treated non-University providers as independent contractors
  - University considered days of working for DEE to count as outside remunerative activity subject to limitations
  - Reece provided this service to multiple clients
  - Reece was not retained by DEE but contracted on a per-seminar basis

- **IRS Ruling**

Employer-Provided Health care benefits

Employer Provided Health Care Benefits Reporting

- PPACA requires reporting on Form W-2 of the cost of employer- sponsored health coverage as of January 1, 2011
- IRS Notice 2010-69 delayed this reporting until January 1, 2012
- IRS Notice 2011-28 makes reporting optional at least for 2012 for small employers filing fewer than 250 Forms W-2

Employer Provided Health Care Benefits Reporting

- **Reporting requirements under IRC 6051(a)(14)**
  - Cost of coverage under employer-sponsored health plan must be reported on Form W-2
  - Report in Box 12 with the Code DD
  - This reporting does not affect the taxability of coverage (still non-taxable)
  - Purpose is to provide employees with useful and comparable information on the cost of health care coverage

Employer Provided Health Care Benefits Reporting

- **Reporting requirements under IRC 6051(a)(14)**
  - IRS Notice 2012-9 provides guidance and amends Notice 2011-28
  - The amount reported is the "aggregate cost of applicable employer-sponsored coverage" (references IRC section 4980I)
  - Reportable amount generally includes both the portion paid by employer and employee
  - Also includes amounts for any person covered because of relationship to the employee (e.g. spouse or dependent)

Employer Provided Health Care Benefits Reporting

- **Reporting requirements under IRC 6051(a)(14)**
  - IRS Notice 2012-9 provides specific guidance on a number of questions, including:
  - Amounts contributed to Archer MSA, Health Savings Accounts, Health Reimbursement Arrangements, and Health FSAs (see Q&A -16 through Q&A -23

Employer Provided Health Care Benefits Reporting

- **Reporting requirements under IRC 6051(a)(14)**
  - IRS Notice 2012-9 Q&A -24 through Q&A -31 give details on how to calculate costs using different methods:
    - COBRA applicable premium
    - Modified COBRA premium
    - Premium charged method
  - Calculating costs may be a big challenge for many organizations

Employer Provided Health Care Benefits Reporting

- **Helpful IRS Table at :**
  http://www.irs.gov/newsroom/article/0,,id=257101,00.html

- **Table breaks out coverage types into three reporting categories:**
  - Report
  - Do Not Report
  - Optional

Employer Provided Health Care Benefits Reporting

- **Report:**
  - Major medical
  - Health FSA value for the plan year in excess of employee's cafeteria plan salary reductions for all qualified benefits
  - Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer
  - Domestic partner coverage included in gross income
- **If Employer charges a COBRA premium, report:**
  - Employee Assistance Plan (EAP) providing applicable employer-sponsored healthcare coverage
  - On-site medical clinics providing applicable employer-sponsored healthcare coverage
  - Wellness programs providing applicable employer-sponsored healthcare coverage

Employer Provided Health Care Benefits Reporting

- **Do Not Report list includes:**
  - Health FSA funded solely by salary reduction amounts
  - Health Savings Arrangements (HSA) contributions (employer or employee)
  - Archer Medical Savings Account (Archer MSA) contributions (employer or employee)
  - Hospital indemnity or specified illness (insured or self-funded), paid on after-tax basis
  - Accident, disability long-term care, liability insurance, and workers' compensation.

Employer- Provided Cell Phones

Employer- Provided Cell Phones

- Small Business Jobs Act of 2010 removed cell phones from listed property
- Prior to this, excluding value of employer-provided cell phone required detailed substantiation of business use under IRC section 274(d).
- Failure to comply could result in income to employee which, under intermediate sanctions, could be an automatic “excess benefit transaction”

Employer- Provided Cell Phones

- For years after December 31, 2009 no longer required to comply with strict substantiation requirements
- This does not mean that personal use of cell phones are not taxable
- May be excluded from income as a working condition fringe or a de mininis fringe

Employer- Provided Cell Phones

- **IRS Notice 2011-72 provides guidance**
- **May be excluded from income as a working condition fringe if provided primarily for a noncompensatory business purpose, e.g.:**
  - Employer’s need to contact employee at all times for emergencies
  - Employee’s need to speak with clients in other time zones outside normal workday
  - Employer’s requirement that employee be available to clients at times when employee is out of the office

Employer- Provided Cell Phones

- **If cell phone provided primarily for noncompensatory business reasons then employee use for business is excluded as a working condition fringe and personal use is excluded as a de minimis fringe**
- **Need to establish and document noncompensatory business reason for cell phone!**

Test Subject Fees

Test Subject Fees

- Payments to human test subjects are generally reportable on Form 1099-MISC as non-employee compensation
- Generally includable in taxable income of the recipient but would may not be considered self-employment income or wages for income tax withholding or federal employment tax purposes (see TAM 9106004)

Donated Time

Donated time to vacation bank

- Organizations may have programs in place that allow employees to donate leave to another employee under certain conditions
- Under general rule of tax, the value of the leave time earned would be taxable to the employee who earned the leave
- The IRS addressed the taxability of such programs in Rev. Rul. 90-29 and PLR 9051005

Donated time to vacation bank

- Rev. Rul. 90-29 addressed an established employer's plan that allowed employees who suffered medical emergencies to receive additional leave surrendered by other employees.
- "Medical Emergency" was defined as a medical condition of the employee or family member that will require a prolonged absence from work and result in a substantial loss of income because the employee will have exhausted all paid leave available
- Plan had limits on amount of leave that could be surrendered to the leave bank

Donated time to vacation bank

- Employee requesting leave had to submit a written application
- If approved, employee received additional compensation at the recipient employee's rate of pay
- IRS concluded that amounts were taxable to the leave recipient (not the donor)
- Amounts paid were also considered wages for FICA, FUTA, and income tax withholding to leave recipient

Donated time to vacation bank

- Employee that donated leave did not recognize income
- PLR 9051005 reached a similar conclusion on similar facts based on Rev. Rul. 90-29

Local Lodging to Employee

Local Lodging to Employee

- IRC section 162(a) allows a deduction for traveling expenses away from home on business
- Under Treas. Reg. section 1.132-5(a), the value of a working condition fringe is not income to an employee
- Travel away from home qualifies as a working condition fringe if would be allowable as a deduction under IRC section 162.
- IRC section there is no deduction for personal , living or family expenses.

Local Lodging to Employee

- In Notice 2007-47 – the IRS announced that it planned to amend regulations under IRC section 262 to provide that the costs of lodging not incurred away from home were personal expenses
- Result is that payment would be compensation to the employee
- Section 1.262–1(b)(5) was amended (INSERT DATE) that lodging incurred when not away from home (local lodging) are nondeductible personal expenses

Local Lodging to Employee

- On April 25, 2012 the IRS published proposed regulations regarding the deductibility of "local lodging" (REG-137589-07) that would repeal Notice 2007-47
- Proposed regulations section 1.162-31 provides that while generally local lodging expenses are personal, there are some circumstances where such expenses are deductible under IRS section 162

Local Lodging to Employee

- Proposed regulations section 1.162-31(b) provides a safe harbor for local lodging at business meetings and conferences if :
  - It is necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function;
  - It is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;
  - If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and
  - If the lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit

Local Lodging to Employee

- Regulation is not effective until published as final but taxpayers may apply the proposed regulations to local lodging

Vehicle Donations

Vehicle Donations

- Special reporting requirements and deduction limits can apply to donation of cars, that are “qualified vehicles” – made primarily for use of public streets and boats, and airplanes
- Doesn’t include vehicles held for sale to customer (e.g. dealer inventory)
- Additional requirements result of the growth of vehicle donation programs where the charity received small amounts relative to the donor’s deduction (blue book value?)
- IRS Publication 4302 (for charitable organizations) and Publication 4303 (for donors) provides good information on vehicle donation issues.

Vehicle Donations

- Three types of donation programs:
  - Charity operates program itself
  - Charity hires an agent to run the program
  - Third party operates the program using the charity’s name
- Special substantial rules apply to donations depending on the value of donation and/or the use of the vehicle after donation
- Form 1098-C can be used for substantiation purposes.

Vehicle Donations

- **Deduction rules –the donation is generally limited to the gross proceeds of the sale of the vehicle**
- **If the value is greater than $500 and the charity sells it for less than $500, the donor may take a deduction for $500**
- **Donor can take FMV deduction if the charity:**
  - Makes a significant intervening use of the vehicle
  - Makes a material improvements to the vehicle
  - Donates or sells the vehicle to a needy individual at significantly below market price if the transfer helps a poor person in need of transportation

Vehicle Donations

- **If the vehicle is sold, the organization must generally provide acknowledgment (Form 1098-C) within 30 days of the sale of the vehicle**
- **Form 1098-C is due to the IRS by February 28th of the year following the year in which the acknowledgment was provided to the donor**
- **Organization doesn't have to sell the vehicle in the same year as the donation**

Vehicle Donations

- **Acknowledgment must contain information in addition to that required for all acknowledgments – the following:**
  - a statement certifying that the vehicle was sold in an arm's length transaction between unrelated parties,
  - the date the vehicle was sold,
  - the gross proceeds received from the sale, and
  - a statement that the donor's deduction may not exceed the gross proceeds from the sale

Vehicle Donations

- **Applying these rules can have some consequences that may not make sense**
- **What happens if a taxpayer donates a car to be raffled off?**
- **What if it is auctioned off?**

Auction Items

Auction Items

- Donors that contribute items for auction can receive a deduction for item contributed
- Usual substantiation rules apply to donation of goods
- What about the purchaser of the auction items?
- How much is the deduction and do we need to send an acknowledgment?

Auction Items

Well …….. It depends!

- There needs to an intent to make a contribution otherwise there is no contribution
- Notifying donor of value prior to sale/auction can establish intent if purchased in excess of stated FMV
- Acknowledgment is required that states a good faith estimate of the article purchased and states that deduction is limited to amount over FMV

Volunteer Expenses

Volunteer Expenses

- Volunteers may make a contribution in the form of unreimbursed expenses
- Expenses that are deductible are those directly connected with the volunteer services provided
- Can't be personal, living or family expenses (e.g. paying a babysitter while you do volunteer work)

Volunteer Expenses

- Some common examples include:
  - A board member's unreimbursed travel expenses incurred to attend a board meeting
  - Mileage incurred in connection with volunteer services
  - Cost and upkeep of uniforms that must be worn while providing services
- If a single contribution in excess of $250 or more in unreimbursed business expenses, donor must get an acknowledgment

Volunteer Expenses

- **Acknowledgement must contain:**
  - A description of the services provided by donor
  - A statement as to whether the organization provided goods or services in return for the contribution
  - A description and good faith estimate of the goods or services provided in return for the contribution
- **Donor must keep adequate records to prove the amount of the expense**
- **What if someone hosts a fundraiser and gives your organization the proceeds?**

Gaming and Raffle Winnings

Gaming and Raffle Winnings

- Many organizations conduct gaming or raffles to raise money
- Don't forget to check state and local laws that may impact the organization's ability to conduct these activities
- Need to reporting gaming activities on Form 990 Schedule G

Gaming and Raffle Winnings

- Reportable gambling winnings depends on the type of activity and the amount of the wager
- Report gambling winnings on Form W-2G if:
  - The winnings (not reduced by the wager) are $1,200 or more from a bingo game or slot machine,
  - The winnings (reduced by the wager) are $1,500 or more from a keno game,
  - The winnings (reduced by the wager or buy-in) are more than $5,000 from a poker tournament,

Gaming and Raffle Winnings

- **Report gambling winnings on Form W-2G if:**
  - The winnings (except winnings from bingo, slot machines, keno, and poker tournaments) reduced, at the option of the payer, by the wager are:
    - $600 or more, and
    - At least 300 times the amount of the wager, or
  - The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).

Reportable Gaming and Raffle Winnings

Type of Game	Winnings Amount at Least	Reduced by the Amount of Wager?
Bingo	$1,200	No
Slot machines	$1,200	No
Keno	$1,500	Yes
Other wagering transactions (e.g. raffles, instant bingo, pull-tabs, etc.)	$600 and at least 300 times the wager	At option of payer
Poker Tournaments	$5,000.01	Yes

Reportable Gaming and Raffle Winnings

- Report on Form W-2G
- File Copy A with the IRS by February 28th of the following calendar year in which you paid the winnings (March 31st if you file electronically)
- Provide winner with Copies B and C by January 31st

Gaming and Raffle Winnings Withholding

Type of Game	Regular Withholding at 25% if Winnings Are:	Backup Withholding At 28% If Winner Does Not Provide TIN and Winnings are:
Bingo	N/A	≥ $1,200
Slot machines	N/A	≥ $1,200
Keno	N/A	≥ $1,500
Sweepstakes, wagering pools, lotteries and raffles	> $5,000	$600 to $5,000
Wagering transactions when winnings are at least 300 times the amount wagered	> $5,000	$600 to $5,000
Poker Tournaments	N/A if winnings are reported on Form W-2G	> $5,000

Gaming and Raffle Winnings

- **Report regular and backup withholding in box 2 of Form W-2G**
- **If the prize is a car (or other non-cash item) there are two options:**
  - The winner pays the withholding to the organization
  - The organization pays the withholding on behalf of the winner (gross up to 33.33%)

Gaming and Raffle Winnings

- **Payments to nonresident aliens (NRAs)**
  - In general, gambling income is subject to withholding at 30% (if not effectively connected with a U.S. trade or business)
  - No withholding is required on blackjack, baccarat, craps, roulette or big-6 wheels
  - Report gambling income on Form 1042-S if subject to NRA withholding
  - Many treaties exclude gambling income from tax

Scholarships vs. Prizes and Awards

Scholarships vs. Prizes and Awards

- Scholarship – defined generally as an amount paid or allowed to a student at an educational institution for the purpose of study
- Doesn't include amounts that are in exchange for services
- Scholarships are generally taxable unless a "qualified scholarship"

Scholarships vs. Prizes and Awards

- **Prizes and awards are not defined explicitly in the IRC and "include (but are not limited to) amounts received from radio and television giveaway shows, door prizes, and awards in contests of all types, as well as any prizes and awards from an employer to an employee in recognition of some achievement in connection with his employment" See Treas. Reg. 1.74-1(a)(1)**
- **Prizes are generally taxable unless:**
  - Qualified scholarships
  - Certain prizes transferred to charity, or
  - Employee achievement awards

Scholarships vs. Prizes and Awards

- **Reporting and withholding is relatively simple:**
  - Scholarships are not subject to reporting and withholding -even if non-qualified and taxable to the recipient!
  - May give a statement to the recipient so that the recipient can properly report any taxable income
  - Prizes are subject to reporting on Form 1099-MISC (box 3)
  - Note: Form 1099-MISC instructions specifically state that Form 1099-MISC is not to be used to report scholarships and fellowships

Scholarships vs. Prizes and Awards

- **The real question – is it a scholarship or is it a prize?**
- **IRS guidance has not always been clear**
- **Compare two scenarios:**
  - Rev. Rul. 59-80
  - Rev. Rul. 65-58

Scholarships vs. Prizes and Awards

- **Rev. Rul. 59-80**
  - Scholarship prize awarded by a business firm
  - Award was two year "scholarship" at one of two institutions specified
  - Prize money could only be used to pay tuition for two consecutive years
  - Prize money couldn't be paid to recipient for any other use
  - If only one year was needed to complete training, did not receive the unexpended portion

Scholarships vs. Prizes and Awards

- **Rev. Rul. 65-58**
  - Scholarship prize awarded by a business firm
  - Award was a scholarship to the “school of your choice”
  - It was the hope that the prize money would be used to further the recipient’s education
  - There was no requirement that the amounts further the educational purposes of the winner
- **Conclusion:**
  - Rev. Rul. 59-80 – scholarship
  - Rev. Rul. 65-58 - prize

Questions and Answers

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