2017 TAX ACT: EMPLOYEE BENEFIT PLAN HIGHLIGHTS

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Employee Benefits

The tax reform legislation signed into law this month by President Trump contains provisions that affect various employee benefit programs. The following are highlights of some of the employee benefit changes:

- **Repeal of Affordable Care Act ("ACA") Individual Mandate.** The ACA individual shared responsibility provision (i.e., the individual mandate) will be repealed beginning in 2019. The penalty imposed on individuals with no health plan coverage, or with health plan coverage that does not meet prescribed minimum essential coverage standards, will be reduced to zero.
- **Compensation Deduction for Publicly Traded Companies.** The definition of compensation for purposes of the $1 million deduction limit on compensation paid to certain executives (which now will include the company's chief financial officer in addition to the chief executive officer and the three other most highly paid executives) of publicly traded companies will be modified to eliminate the exceptions for performance-based compensation and commissions. Subject to a transition rule for written binding contracts in effect on November 2, 2017 that are not materially modified on or after that date, this rule change will be generally effective after 2017.
- **Excise Tax Applicable to Certain Highly Compensated Employees of Tax Exempt Organizations.** A tax-exempt employer generally will be subject to a 21% excise tax on compensation in excess of $1 million paid to any of its top five most highly compensated employees. Certain golden parachute payments exceeding three times prior average annual compensation also will be subject to the 21% excise tax. Payments made for medical services performed by certain qualified medical professionals will be exempt from the definitions of compensation subject to the $1 million limit as well as the limit on parachute payments. These rules will be effective for tax years beginning in 2017.
- **Qualified Equity Grants.** After 2017, privately held companies may make grants of stock options or restricted stock units to certain non-executive employees, and those employees may elect to defer income tax inclusion on those grants for up to 5 years, provided certain requirements are met. The deferral election will not be available to 1% owners, current or former chief executive officers and chief financial officers (as well as their family members), or certain highly compensated officers.

- **Rollover of Qualified Plan Loan Offset Amounts.** After 2017, a participant who terminates employment and who has an outstanding plan loan will have until the due date for filing his or her tax return to roll over the outstanding loan balances (i.e., the plan loan offset amount) to an IRA and not have the loan treated as taxable distributions.
- **Recharacterization of Conversion Contributions to Roth IRAs.** After 2017, the special rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA will no longer apply a conversion contribution to a Roth IRA. Thus, recharacterization will no longer be available to unwind a Roth conversion.
- **Qualified Moving Expenses.** The exclusion from taxable income for recipients of employer-paid moving expenses generally will be suspended for taxable years 2018 through 2025. The employer deduction for qualified moving expenses also will be eliminated for taxable years 2018 through 2025.
- **Deduction for Entertainment, Amusement or Recreation Expenses.** For amounts paid or incurred after 2017 the deduction for entertainment, or recreational activities, facilities, or membership dues which relate to those activities or other social purposes will be repealed.
- **Deductions for Meals, Food or Beverages.** Deductions for meals, food and beverages will be disallowed after 2017 if the expenses constitute entertainment, amusement, or recreation. Deductions for meals provided through an on-premises eating facility for the convenience of the employer will be repealed after 2025.
- **Deduction for Qualified Transportation Fringe Benefits.** Qualified transportation fringe benefits, such as parking and transit passes, may still be offered on a pre-tax basis for employees. However, after 2017, employers can no longer deduct expenses for qualified transportation fringe benefits.
- **Qualified Bicycle Commuting Reimbursement.** The exclusion from taxable income for qualified bicycle commuting reimbursements is suspended for taxable years 2018 through 2025.
- **Employee Achievement Awards.** After 2017, deductible employee achievement awards will no longer include cash, cash equivalents, gift cards, gift coupons or gift certificates (other than arrangements conferring only the right to select and receive tangible personal property from a limited array of such items pre-selected and pre-approved by the employer), or vacations, meals, lodging, theater tickets, sporting event tickets, stock, bonds, other securities and other similar items.
- **Length of Service Award Program Accrual Limits.** After 2017, the aggregate amount of length of service awards that may accrue for certain bona fide volunteers (firefighting, emergency medical services, ambulance) with respect to any year will increase to $6,000 and the limit will be subject to further adjustment for changes in cost of living. The legislation includes rules for applying the limit to service award programs set up as defined benefit pension plans.