

In This Issue...

Another Supreme Court Win for Obamacare

Various Ways to Claim Auto Deductions

Deducting Practice-Paid Health Insurance

Health Insurance and Foreign Travel

Corporate Minutes

Identity Theft

Lease Negotiations

Professional Malpractice



COLLIER & ASSOCIATES

INCORPORATED

The C&A Advantage is mailed first-class to subscribers twice each month - \$265 annual subscription rate.

Brandon S. Collier, Editor

Collier & Associates, Inc.
30195 Chagrin Blvd., Suite #100
Cleveland, Ohio 44124
Phone: 216/785-1199
Fax: 216/831-8279

Email: newsletter@collieradvisors.com
Website: www.collieradvisors.com

The information contained in this Newsletter must not be construed as advice or consultation. Consult with your attorney, accountant or financial advisor.

To comply with certain U.S. Treasury regulations, we inform you that any federal tax advice contained in this Newsletter is not a covered opinion as described in Treasury Department Circular 230 and therefore cannot be relied upon to avoid any tax penalties or to support the promotion or marketing of any federal tax transactions.

By a 6-3 Vote, the Supreme Court Upholds Tax Subsidies for Those Who Buy Obamacare Policies on the Federal Exchange: The plain language of the health care law said that taxpayer subsidies would be available to those who bought their insurance on a state exchange. The purpose was to encourage states to develop and pay for their own programs. When only 13 states did so, the IRS issued an announcement that the subsidies would become available to those on the federal exchange as well. The Supreme Court has just approved this administrative revision of the law. If you liked the idea of dropping your staff from your group health insurance plan and moving them to Obamacare but were holding off for fear that they might lose their taxpayer subsidy, you needn't worry about this any longer.

Auto Deductions: How you claim your auto deductions depends on who owns the vehicle. If the car is titled to the practice, the practice will pay all of the vehicle's operating expenses. If, for example, your business driving percentage is 80%, then at the end of the year, your accountant assigns 20% as additional W-2 taxable income to you. You benefited by having the practice pre-pay an expense that should be personal to you.

But 20% of What? Technically, this is not 20% of the actual expenses incurred. It is 20% of the vehicle's "Annual Lease Value." The IRS publishes the ALV's based on the value of the car. An expensive car has a high ALV - and vice versa. For example, a \$50,000 car has an ALV of \$13,250. If 20% of the miles driven are personal, then you are taxed on 20% of \$13,250, or \$2,650. In addition, the tax laws require the ALV to be increased by the personal component of the cost of gas. If gas costs \$2,000 per year, then \$2,650 increases by \$400 to \$3,050. The result is that your W-2 is typically grossed up by more than what 20% of the actual operating expenses would have been. The higher the business driving percentage the less of a problem this becomes.

Three Alternatives to Mitigate the "ALV Plus Gas" Dilemma: The first two reduce the problem. The third one eliminates it.

(1) The higher the business driving percentage the less of a problem: Doctors who use their vehicles 100% of the time for business (to pick an extreme example) will have nothing added onto their W-2.

This Newsletter or portions thereof may not be duplicated without permission of COLLIER & ASSOCIATES, INC.

(2) Reimburse the practice for your personal use: If you title the vehicle in the practice name, in order to more easily capture all of the deductible operating expenses, you will save some money by reimbursing the corporation rather than being assigned the additional W-2. When you claim the additional W-2, this triggers both income tax and payroll taxes (Medicare and Social Security). When you reimburse the practice for the value of your personal use (ALV plus gas), you don't avoid the income taxes but you and the practice avoid the payroll taxes.

(3) Title the vehicle in your personal name and have the practice reimburse you for your personally paid auto expenses: The burden is on you to keep track of all of your auto expenses, including gas, repairs, insurance, license fees, and depreciation. These are all reimbursable business expenses under the tax laws. You will submit a written request to the practice for reimbursement. If the auto expenses, including depreciation, are, for example \$20,000, and the business driving percentage is 80% then the practice will reimburse you a full \$16,000. This is a tax-free reimbursement since you've already paid the auto expenses with after-tax money. The ALV concept does not apply where vehicles are owned personally.

Health Insurance For Practice Owners and Their Families is Fully Deductible, but the Method Varies Depending on the Form of Practice Entity: Health insurance premiums, of course, can qualify as an itemized deduction on our personal tax returns. However, that is not practical for most of us because medical expenses are only deductible to the extent they exceed 10% of adjusted gross income (7.5% through 2016 for those age 65 or older). Fortunately, most readers of this Newsletter have incomes high enough and medical expenses low enough that they cannot claim the medical expense itemized deduction. But 100% of health insurance costs should be deductible elsewhere.

In all these cases, the federal tax laws permit deductions even if the plans

discriminate by covering the doctors but not the staff. If you are told that you cannot cover some employees and exclude others, then that is a requirement of your particular policy or state law. So long as you have fewer than 50 employees, you are not required to offer health insurance to your employees. You can discriminate by category of employee, but not based on ownership. For example, there can be a board of directors resolution that the corporation will provide family health insurance for its doctor-employees. But, if you hire an associate, this insurance would be a fringe benefit for the associate.

Here is a general overview of the deductibility rules, but there can be complications in specific situations.

C Corporation Shareholder-Employees:

Family (or single) health insurance can be paid for the shareholder-employee and deducted by the corporation and treated as a tax-free employee fringe benefit. It is advisable to have corporate minutes authorizing the coverage for C (and S) corps.

Self-Employed Owners and More-Than-2%-Owners in S Corporations: More-than-2%-shareholders in S corps are treated like partners or other self-employed for most fringe benefit purposes. Family (or single) health insurance is deductible on page one of these owners' personal tax returns, even if the premiums are paid through the practice. Evidently, the reason for that is because partners pay self-employment payroll tax on their self-employment income, and the medical insurance premiums are not permitted to be deducted in arriving at self-employment income. This is one of those inscrutable complications in the tax code, and it carries over to the technical treatment of S corp. shareholders.

The result is that the S corp owner's health insurance premiums can be paid by the practice, but the cost ends up being added to the owner's W-2, deducted by the practice as compensation, and then deducted on page one of his or her personal tax return. If the owner

is an **unincorporated sole practitioner** reporting practice income on Schedule C, the health insurance premiums, whether paid by the practice or paid personally, are not deducted as an expense on Schedule C, and are deducted on page one of Form 1040. If the owner is a working **partner** and the insurance is paid by the partnership, the premiums are included in the partner's distributive share of the partnership income and deducted on page one of Form 1040.

S Corp Owner's Health Insurance, Which is Reported on the Owner's W-2, May Also be Subject to Social Security and Medicare Withholding: Under tax code section 3121(a)(2), if the S corp discriminates by covering the doctor and nobody else, then the cost of the insurance is subject to FICA withholding. If the insurance is offered to other employees - even if in a more limited way - based on job classification, then it is exempt. Realistically, this will only be the 2.9% Medicare part of the payroll tax, because the doctor's W-2 usually exceeds the threshold for Social Security withholding. So, you would not offer expensive group insurance in order to save this small sum.

Does Your Health Insurance Cover You During Foreign Travel? Your health insurance policy or Medicare may not help you. This is a big deal, particularly for older travelers, people with health problems or people who will be away for an extended period. Call your insurance carrier and find out if the policy will pay for hospital stays, doctor bills, ambulance rides and medical evacuations.

Medicare does not cover these services, so you will pay for these out-of-pocket unless you have the right Medigap policy. Medigap plans C, D, F, G, M and N provide foreign travel emergency health care coverage. Plans E, H, I and J are no longer sold, but if you are grandfathered in with one of these plans, then you are covered as well. These plans pay 80% of the costs after a \$250 deductible, and have a \$50,000 lifetime limit for foreign travel. (G is our favorite Medigap policy. F and G are

the most comprehensive, but G's premiums are less, because it does not cover the small \$147 Medicare Part B deductible).

If you do not have coverage, then you should consider foreign travel medical insurance. The State Department's website lists various companies that sell it. We would use this rather than getting the insurance through a tour operator. Those companies may not be the best and the operator may be selling them because they pay the best commissions. Here is the government website: <http://travel.state.gov/content/passports/english/go/health/insurance-providers.html>

Corporate Minutes: Each state requires corporations to maintain some basic formalities to preserve the liability protection granted to its owners. This includes drafting annual minutes of the shareholders and directors. If we incorporated your practice (or even if we didn't) and you would like us to prepare your annual minutes, complete as best you can the insert enclosed with this Newsletter. Return it to our office along with your 2014 corporate tax return and, if you wish, your 5500 retirement plan return. If you are missing a year (or more) our preparation of current annual minutes will bring you up to date. For a \$350 fee, we will prepare the minutes, review the tax returns and offer ideas to lower your taxes.

Guarding Against Identity Theft: The last Newsletter discussed the recent IRS hacking operation where 104,000 people had sensitive tax information stolen. These people had already had their Social Security numbers stolen, and the thieves used them to steal yet more information. You can't fully guarantee against identity theft.

No matter how careful you are in guarding your Social Security number, there are times you can't avoid giving it out, such as when filling out new account information or loan paperwork. There can be rogue employees within these organizations that will sell large batches of private client information to the identity thieves.

To reduce the possibility of identity theft, do not provide your Social Security number when it is not required. Many organizations use your Social Security number as a unique identifier (doctor's offices, hospitals, schools, charity organizations, etc). Just because someone asks for it, doesn't mean you have to comply. Also, do not keep your personal records in the office. Your home is the safest place for your Social Security number, medical records, driver license, and other personal information. All records that contain your personal information should be confetti shredded. Send personal information only by secured mail. Keep your anti-virus software updated.

Negotiating a Better Office Lease: Lease negotiations are not typically conducted on a level playing field. The landlord is in the real estate business, and most doctors are not. With some advance planning, you can often negotiate a lower rent, receive substantial tenant improvement allowances and maybe even get a few months of free rent. This is particularly true when moving into a new office, but it can also work when you renew a pre-existing lease.

The renewal option allows you to extend your lease for a predetermined amount of time (usually five or ten years) by giving your landlord six to twelve months' written notice. If the renewal option is not as favorable as you'd like, ask for a better deal. Landlords don't want to lose good tenants. It may mean months of unpaid rent while the space sits vacant, an expensive broker commission if a broker finds the next tenant, and thousands of dollars in tenant improvements when the next tenant finally moves in. The broker commission might be 3% to 4% of the total rent paid in the first ten years of the lease. Tenant improvements can run \$15 per square foot if structural work is required, which, amortized over a five-year lease is \$3 per foot. The landlord deals with none of this if you renew, so consider using this as ammunition when you request a rent reduction. Finally, the rental market in most cities is depressed, and this can be used as additional leverage.

Justin Fodor, an agent of Carr Healthcare Realty, says to start the renewal process 12-18 months in advance of your lease's expiration. This gives you time to compare your relocation options in the market before your current lease expires. Tenants who miss their lease options incur more risk. Landlords view this as an opportunity to push rents higher as the window of opportunity to relocate closes.

Carr Healthcare Realty specializes in representing healthcare professionals with all of their real estate needs. Carr Healthcare Realty has successfully negotiated over 600 lease and sale transactions. You can reach Justin at (440) 781-8596 or justin.fodor@carrhr.com.

Colonoscopy Patient Sues Doctors for Defamation and Emotional Distress and Wins \$500,000: Before being anesthetized, the Virginia man pressed "record" on his cell phone so that, according to him, he could recall the doctors' post-op instructions. When he replayed the audio, he found that during the procedure the doctors mocked him for being a difficult patient, questioned his sexual orientation, and even threatened to physically abuse him. He sued for \$1,350,000 and the jury awarded him \$500,000. The doctors behaved reprehensibly, but one lesson is that you never know when someone might be recording what you're saying - even if a patient has been sedated.

Cooperation with the Plaintiff's Lawyer: We have seen instances where doctors threatened with malpractice lawsuits are being advised (by a plaintiff's lawyer) to cooperate with the plaintiff's lawyer. When threatened with a lawsuit or if one is even suggested, do not communicate with the plaintiff's lawyer and do not give them any information. Advise your staff to do the same. Contact your malpractice insurance company immediately and let them and the defense lawyer assigned to you deal with the plaintiff's lawyer. Do not try to settle claims yourself. Do not be naive enough to believe that the plaintiff's lawyer just wants to be "fair." He is duty bound to represent his client's rights (and not yours) to the best of his ability.