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HEALTH CARE BILL IMPOSES ONEROUS FORM 1099 REPORTING REQUIREMENTS

The Patient Protection and Affordable Care Act (PPACA), enacted into law on March 23, 2010, is known for reforming the nation's health care system. However, the PPACA also contains a generally overlooked provision, section 9006, which significantly broadens the scope of Form 1099 reporting requirements. This provision is intended to promote compliance with tax laws and capture unreported income, which presumably will generate more revenue to offset the cost of the health care bill. However, businesses should beware as this broad provision is likely to create considerable administrative burdens.

Under current Tax Code section 6041, a person engaged in a trade or business must send a Form 1099 for payments in excess of $600 for non-employee services, rent, interest and dividends paid to individuals and entities <u>other than corporations</u>. Effective January 1, 2012, section 9906 of the PPACA amends Code section 6041 in two principal ways. First, payments made to corporations (except for tax-exempt corporations) are no longer automatically exempt from the reporting requirements. Second, the type of payments subject to Form 1099 reporting is expanded to include amounts paid "in consideration for property" and other "gross proceeds."

Under these amendments, Form 1099 reporting will be required for nearly all payments in excess of $600. For example, any aggregate payments for meal or hotel expenses that exceed $600 for the entire year will require the payor to file a Form 1099. To prepare a Form 1099, the payor will need to obtain the name, address and taxpayer identification number from every payee. This will create significant administrative burdens and businesses may need to modify their bookkeeping systems to track payments. As the $600 threshold for reporting payments is not tied to any index, such amount remains constant even as inflation is likely to increase the cost of business purchases.

Failure to comply with this new law subjects businesses to penalties. For each failure to file a Form 1099, the payor may be liable for a $50 penalty not to exceed a total of $250,000. In addition, if the payee does not provide a taxpayer identification number, tax law requires the payor to withhold 28% on all subsequent payments to the payee.

Uncertainty remains over the extent to which these Form 1099 reporting requirements will be in existence on January 1, 2012. A number of bills have been introduced in the Senate and the House to repeal section 9006. While H.R. 5982 recently did not pass, Senate amendments to H.R. 5297 and the Senate and House versions of the Small Business Paperwork Mandate Elimination Act, which propose to repeal section 9006, are pending.

While these bills remain in discussions, the Treasury Department and the IRS are in the process of issuing guidance to implement the changes. The IRS has requested comments to address minimizing the burden and avoiding the duplicative reporting with the Form 1099 reporting requirements. Proposed regulations are also already in place that would provide a broad exception to information reporting for business purchases made with payment cards.

We will continue to follow modifications to the Form 1099 reporting requirements. If you have any questions, feel free to contact your Reinhart attorney or any member of the Reinhart Tax Team.