Bernie Lowe & Associates, Inc.
"Beyond the Product"

Health Care Reform Update

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM

Update #77 **December 2017**

Tax Reform Legislation Contains Employee Benefits Changes Including the Elimination of the Individual Mandate Penalty

Congress has passed and the President is expected to sign tax reform legislation that includes several provisions impacting employee benefits. Here are highlights:

Individual Mandate: Effective in 2019, the legislation will reduce to zero the penalty associated with the individual shared responsibility (individual mandate) provision enacted under the Affordable Care Act (ACA). As background, beginning in 2014, taxpayers were required to maintain minimum essential coverage for each month, qualify for a coverage exemption, or pay a penalty when filing their federal income tax return. It is important to note that the individual mandate remains in effect for 2017 and 2018. The IRS has indicated that individual tax returns filed electronically in 2018 will not be accepted unless the ACA's health coverage requirements have been addressed; paper filings that do not address these requirements may be suspended until additional information is submitted, and refunds may be delayed.

401(k) Plans: If a participant's account balance in a qualified retirement plan (including a 401(k) plan) is reduced to repay a plan loan and the amount of that offset is considered an eligible rollover distribution, the offset amount can be rolled over into an eligible retirement plan, but currently that rollover must occur within 60 days. The legislation extends the 60-day deadline until the due date (including extensions) for the participant's tax return for the year in which the amount is treated as distributed. Plan loan offset amounts qualifying for this extended deadline are limited to loan amounts that are treated as distributed solely by reason of either termination of the plan or failure to meet the loan's repayment terms because of a severance from employment. The legislation also allows 401(k) plans and other eligible retirement plans to help victims of federally declared major disasters occurring in 2016 by allowing "qualified 2016 disaster distributions" of up to $100,000 per individual prior to January 1, 2018. Such distributions are not subject to the 10% additional tax on early withdrawals, can be included in income ratably over three years, and all or part of the distributions can be repaid to a qualifying plan if repayment occurs during the three-year period beginning immediately after the day of the distribution. Retroactive plan amendments to provide for these distributions can be made at least until the last day of the first plan year beginning on or after January 1, 2018.

Employer Tax Credit for Paid Family and Medical Leave: The legislation creates a new tax credit for eligible employers providing paid family and medical leave to their employees. To be eligible, employers must have a written program that pays at least 50% of wages to qualified employees for at least two weeks of annual paid family and medical leave. Eligible employers paying 50% of wages may claim a general business credit of 12.5% of wages paid for up to 12 weeks of family and medical leave a year. The credit increases to as much as 25% if the rate of payment exceeds 50%. The provision is generally effective for wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020.

Qualified Transportation Plans: The legislation eliminates the employer deduction for qualified transportation fringe benefits and, except as necessary for an employee's safety, for transportation, payments, or reimbursements in connection with travel between an employee's residence and place of employment. Similarly, exempt organizations will have to treat as unrelated business taxable income (UBTI) any amounts used to provide nondeductible qualified transportation fringe benefits or parking facilities used for qualified parking. The tax exclusion for qualified transportation fringe benefits is generally preserved for employees, but the exclusion for qualified bicycle commuting reimbursements is suspended and unavailable for tax years beginning after 2017 and before 2026.

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM
Update #77 **December 2017**

Tax Reform Legislation Contains Employee Benefits Changes Including the Elimination of the Individual Mandate Penalty

Moving Expenses: For an eight-year period starting in 2018, most employees will not be able to exclude qualified moving expense reimbursements from income or deduct moving expenses. During that period, the exclusion and deduction are preserved only for certain members of the Armed Forces on active duty who move pursuant to a military order.

Meals: For years after 2017, the legislation repeals the rule allowing employers to avoid the 50% limitation on deductions for food or beverages if the expenses are excludable from employees' income as de minimis fringe benefits—e.g., because they are provided on a nondiscriminatory basis at a facility on or near the employer's business premises that produces revenue equal to or greater than its direct operating costs. Also, for amounts paid or incurred after 2025, no deduction will be allowed for the expenses of operating such a facility, for food and beverage expenses associated with that facility, or for meals furnished for the convenience of the employer on the business premises of the employer (regardless of whether provided at such a facility). Employees' meal exclusions remain unchanged.

Other Fringe Benefits: Effective for amounts paid or incurred after 2017, the legislation repeals the rule under Code § 274 that currently allows a partial deduction for certain entertainment, amusement, and recreation expenses (including expenses for a facility used in connection with such activities) if those expenses are sufficiently related to or associated with the active conduct of the taxpayer's business. Also effective after 2017, the deductibility of employee achievement awards is limited by a new definition of "tangible personal property" that denies the deduction for cash, cash equivalents, and gift cards, coupons, or certificates, except when employees can only choose from a limited array pre-selected or pre-approved by the employer. Other nondeductible awards include—vacations, meals, lodging, theater or sports tickets, and securities. Another provision removes computers and peripheral equipment from the definition of "listed property" for equipment placed in service after 2017. [EBIA Comment: Listed property is subject to strict substantiation requirements. The legislation eliminates a difference between cell phones, which were removed from the list starting in 2010, and computers.

Inflation Adjustments: Beginning in 2018, many dollar amounts in the Code—including some benefit-related amounts—that are currently adjusted for inflation using the Consumer Price Index for All Urban Consumers ("CPI-U") will instead be adjusted using the Chained Consumer Price Index for All Urban Consumers ("C-CPI-U"). According to the Bureau of Labor Statistics (which determines and issues the CPI), the C-CPI-U is a closer approximation to a true cost-of-living index for most consumers, and it tends to increase at a lower rate than the CPI-U.

Medical Expense Deduction: The threshold for claiming an itemized deduction for unreimbursed medical expenses is reduced from 10% of adjusted gross income to 7.5% for all taxpayers for 2017 and 2018. The lower threshold also applies for purposes of the alternative minimum tax (AMT).

Bernie Lowe & Associates, Inc. is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act ("ACA"). Bernie Lowe & Associates, Inc. makes no representation as to the impact of plan changes on a plan's grandfathered status or interpretation or implementation of any other provisions of ACA. Bernie Lowe & Associates, Inc. will not determine whether coverage is discriminatory or otherwise in violation of Internal Revenue Code Section 105(h).