



Tidbits – February 2010

Increased late filing penalty for pass-through entities

The IRS has increased the failure-to-file penalty for partnerships and S corporations from \$89 per owner to \$195 per owner. The increased penalty applies to returns for taxable years beginning after December 31, 2009.

Standard Mileage Rate for 2010

The standard mileage rate for car use in 2010 has dropped to \$.50 per business mile, down from \$.55 per business mile in 2009. The standard mileage rate can be used to reimburse employees under an expense allowance plan or an expense reimbursement plan.

Proposed changes to SBA 8(a) program

The Small Business Administration (SBA) has submitted some proposed changes to the 8(a) program. Comments were due January 28, 2010 (www.regulations.gov). This list is not all-inclusive, but the ones that have the most impact on our clients are:

- Changing the audit requirement from \$5 million in revenue to \$10 million
- Reviewed financial statements would be required of all Participants with gross annual receipts between \$2,000,000 and \$10,000,000, instead of between \$1,000,000 and \$5,000,000
- Changing the excessive withdrawal limit from \$300,000 to \$400,000 (for a multimillion dollar firm) and increasing the lower levels by \$50,000
- Changing the application of the excessive withdrawal limit from "all officers and all bonuses" to generally eliminate the inclusion of officers' salaries within the definition of the term withdrawal. The rule also proposes to generally exclude other items currently included within the definition of withdrawal
- Adding a sentence to clarify that SBA does not take community property laws into account when determining economic disadvantage. This means that property that is legally in the name of one spouse would be considered wholly that spouse's property, whether or not the couple lived in a community property state.
- Amendment to exempt funds in Individual Retirement Accounts (IRAs) and other official retirement accounts from the calculation of net worth provided that the funds cannot currently be withdrawn from the account prior to retirement age without a significant penalty.
- amend paragraph (c)(2) to exempt income from an S Corporation from the calculation of both income and net worth to the extent such income is reinvested in the firm or used to pay taxes arising from the normal course of operations of an S corporation.
- A new paragraph (c)(3) would be added to provide that SBA would presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the past two years exceeds \$200,000. The rule also proposes to establish a two year average income level of \$250,000 for continued 8(a) BD program eligibility.

The information provided here is in summary form and does not reflect the IRS tax codes, applicable state tax codes, Federal Acquisition Regulations or any other regulatory codes in their entirety. If a particular situation may be applicable to you, please consult your CPA or tax advisor.



- Under the proposed rule, an individual would not be considered economically disadvantaged if the fair market value of all his or her assets exceeds \$3 million at the time of 8(a) application and \$4 million for purposes of continued 8(a) BD program participation.
- Determining whether to admit to the 8(a) program companies owned by individuals where such individuals have immediate family members who are owners of current or former 8(a) concerns.
- add an additional requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant.
- amendment to specifically clarify that a Participant could be terminated from the program where an individual owner or manager exceeds any of the thresholds for economic disadvantage (i.e., net worth, personal income or total assets), or is otherwise determined not to be economically disadvantaged, where such status is needed for the Participant to remain eligible, and where the Participant has not met the targets and objectives set forth in its business plan.
- Amendment to clarify that work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration (GSA) Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program.

The full text is available at <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=SBA-2009-0019> under the proposed rules posted on 10/28/09.