

EXECUTIVE BENEFIT TAX UPDATE

SEPTEMBER 2002

For Friends & Clients of NCR Executive Benefit Services...

Now that summer is over, the kids are back in school and Congress is back in session... talk about bittersweet! It has been busy in Washington, D.C. and a number of key tax issues are on tap this Fall for consideration by the Treasury and Congress:

- ◆ Split-Dollar Insurance – the Sarbanes-Oxley Act of 2002, signed into law on July 30, prohibits personal loans to executives of publicly-traded companies. The impact on split-dollar is not clear, but the potential penalties are severe. The Treasury also issued proposed split-dollar regulations that are more confusing than the previously issued Notice 2002-8. Notice 2002-59, addressing so-called “reverse split-dollar”, was also issued recently. Since nothing specific to split-dollar has yet become law, the safest course is to continue to rely on Notice 2002-8 and consult with your advisors regarding the impact of Sarbanes-Oxley.
- ◆ Proposed regulations have also been issued regarding “Section 419 plans.” The Treasury has merely put into formal regulations their position (which has been upheld in several Tax Court cases) that any type of deferred compensation disguised as a 419 plan will suffer the fate of other egregious tax shelters. In other words: interest and underpayment of tax penalties for the client; and penalties and possible criminal action against the “consultant” or purveyor of the transaction.
- ◆ The House Ways & Means Committee and the Senate Finance Committee are considering legislation that would affect split-dollar and nonqualified deferred compensation plans. The split-dollar impact follows Sarbanes-Oxley by limiting or preventing “loans to executives” without taxation. The deferred compensation impact would involve current taxation for “funded” deferral plans and the removal of several plan design provisions that have become popular in recent years. Offshore (or other creditor-frustrating) rabbi trusts would also be eliminated.

As you can see, the Enron/WorldCom/etc. scandals have caused a knee-jerk reaction that runs the risk of going too far. However, with elections this November and other, more pressing, domestic and international issues on the front burner in Washington, it is not likely that these proposals will become law during this session of Congress. I will continue to monitor the situation and will alert you if something changes.

Please call me to discuss these issues or if you need more information. I want to be your preferred resource for executive compensation, benefits, and tax information.