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**JANUARY 2018**

**NOT ABOVE THE TAX LAW  
(TAX COURT JUDGE TO JAIL)**

The human failings of believing that “the rules don’t apply to me” and that “I am so smart that I will not be caught” are sometimes seen among highly successful and powerful people who should know better. This flaw has almost never been more vividly demonstrated than in the recent criminal tax case involving former United States Tax Court Judge Diane Kroupa who retired from the Tax Court prior to pleading guilty to federal criminal charges.

Kroupa was very accomplished and talented. She received her undergraduate degree from Georgetown University and her Juris Doctorate from the University of South Dakota. She worked very successfully for the Internal Revenue Service Office of Chief Counsel, for the U. S. Tax Court, and practiced tax law with a highly respected Minneapolis, Minnesota law firm. She then served on the Minnesota Tax Court from 1995 to 2001 and was subsequently appointed to the U. S. Tax Court. She was a very active Judge who, according to the Tax Court website, authored 234 opinions during her term on the Court.

Kroupa and her husband, Robert Fackler, a self-employed lobbyist and political consultant, filed joint returns and engaged in, according to court filings, a conspiracy to impede, impair, and obstruct the Internal Revenue Service in correctly assessing their income taxes for the period 2002 through

2012. According to court documents, the couple deducted personal expenses as business expenses, which they misrepresented on the income tax organizer provided to their tax return preparer, and which resulted in fraudulently decreasing their income taxes. Included as business deductions on their Form 1040 were various personal expenses associated with their two residences including household cleaning, remodeling, repairing, house painting, landscaping, plumbing repairs, etc. Other personal expenses deducted included spa and massage fees, jewelry and personal clothing, wine club fees, airline and hotel expenses for multiple trips, music lessons, personal computers, etc. They omitted and lied about a gain on the sale of a tract of South Dakota land and omitted cancellation of indebtedness income.

The couple underwent an audit in 2006 of their 2004 and 2005 returns. During that audit they concealed records from both their tax return preparer and from the revenue agent, telling both that they had failed to keep records of the claimed business expenses. As a result of that audit, the couple paid approximately \$48,000 in back taxes, interest and penalties. They were issued an “Inadequate Records Notice” by the Internal Revenue Service officially informing the couple that the Internal Revenue Service believed they had not been keeping adequate

*(Continued on reverse)*

records of their business expenses. In spite of this bad 2006 audit experience and the official notice that their records were inadequate, the couple deducted numerous personal expenses on subsequent income tax returns.

In 2012, the Internal Revenue Service began audits on 2009 and 2010 returns. During the second examination, the fraud and lies were documented and the audit progressed into a criminal investigation. The couple ultimately agreed to a guilty plea acknowledging an underpayment of federal

income taxes of over \$450,000 and of state income taxes of over \$57,000.

In June of 2017, Kroupa was sentenced to 34 months in prison and her husband received a sentence of 24 months. One could have expected (or at least hoped) that the obvious talents of this couple would have been accompanied by moral character (or at least fear, wisdom, or some inhibitor) sufficient to have prevented this tragedy. We are again reminded that education, intelligence, and achievement do not guarantee good moral character or wisdom.

### A RACE.....



Cole, Evans & Peterson is proud to have participated in the Susan G. Komen Northwest Louisiana Race for the Cure this fall. The team had a fun time walking and running together while participating in this worldwide fight against breast cancer. Team members were Tabitha Adams, Karen Barnes, Michelle Brown,

Carrie Cagle, Vickie Collom, Jana Cox, Jessica Golden, Kate Gray, Gwen Harju, Kim King, Sarah Teagle, Honor Teagle, Cindy Millen, Kelly Nelson, Bonnie Pesnell, Kevin Pesnell, Sophie Pesnell, Jennifer Turner, Zachry Turner and Kathleen Yerby. We look forward to making this an annual event.

### 2018 LIMITATION CHANGES

Accompanying is a list of 2018 limitation changes (most resulting from inflation indexing). The most significant tax changes for 2018 result, of course, from the Tax Cuts and Jobs Act signed into law by the President on December 22, 2017. Most tax planning for 2018 will be devoted to the

changes resulting from this new law. However, some very early planning is suggested by the limitation changes. Where possible, those funding IRAs and Health Savings Accounts might consider funding these accounts early to take advantage of the additional tax sheltered investment time.

## 2018 LIMITATION CHANGES

Many tax or regulatory limitations change on a calendar year basis. Here is a summary of some of the major 2018 limitations with 2017 for comparison.

	<u>2018</u>	<u>2017</u>
<b>Current Earnings Allowed Before Social Security Benefits Reduction:</b>		
Worker Below Full Retirement Age	\$ 17,040	\$ 16,920
Worker Full Retirement Age and Above <i>(Full Retirement Age 66 for Those Born in 1943 through 1954)</i>	- No Change - Unlimited	Unlimited
<b>Social Security Taxes:</b>		
<i>Old Age, Survivors, and Disability Insurance Income</i>		
<i>Portion of Tax:</i>		
Maximum Base for Tax	\$ 128,400	\$ 127,200
Tax Rate (Employee and Employer)	- No Change - 6.20%	6.20%
Tax Rate (Self-employed)	- No Change - 12.40%	12.40%
Maximum Tax (Employee)	\$ 7,961	\$ 7,886
Maximum Tax (Self-employed)	\$ 15,922	\$ 15,773
<i>Medicare Portion of the Tax:</i>		
Tax Rate (Employee and Employer)	- No Change - 1.45%	1.45%
Tax Rate (Self Employed)	- No Change - 2.90%	2.90%
Tax Rate (Employee and Self Employed) – Earnings in Excess of \$200,000 (\$250,000 Joint Return)	- No Change - 0.9%	0.9%
Maximum Base and Maximum Tax	- No Change - Unlimited	Unlimited
<b>Louisiana Unemployment Tax:</b>		
Maximum Base for Tax	- No Change - \$ 7,700	\$ 7,700
<b>Auto Standard Mileage Deduction:</b>		
Business Use	54.5¢	53.5¢
Use for a Charitable Organization	- No Change - 14¢	14¢
Use for Medical or Moving	18¢	17¢
<b>401(k) Maximum Elective Deferral:</b>		
Below Age 50	\$ 18,500	\$ 18,000
Age 50 or Above	\$ 24,500	\$ 24,000
<b>Maximum Contribution to Defined Contribution Retirement Plan:</b>		
General Limit – All Plans	\$ 55,000	\$ 54,000
With 401(k) Feature (Age 50 and over)	\$ 61,000	\$ 60,000
<b>Individual Retirement Account Contribution (IRAs):</b>		
Below Age 50	- No Change - \$ 5,500	\$ 5,500
Age 50 or Above	- No Change - \$ 6,500	\$ 6,500
<b>SIMPLE IRA Maximum Deferral:</b>		
Below Age 50	- No Change - \$ 12,500	\$ 12,500
Age 50 or Above	- No Change - \$ 15,500	\$ 15,500
<b>Maximum Sec. 179 Deduction of Certain Depreciable Property</b>	\$1,000,000	\$ 510,000
<b>Annual Gift Tax Exclusion Per Donee</b>	\$ 15,000	\$ 14,000
<b>Health Savings Account</b>		
Maximum Contribution – Individual Coverage	\$ 3,450	\$ 3,400
Maximum Contribution – Family Coverage	\$ 6,900	\$ 6,750
Age 55 and Over Catch Up	- No Change - \$ 1,000	\$ 1,000

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## Tax & Business Alert

JANUARY 2018

### STILL IMPORTANT: THE TAX IMPACT OF BUSINESS TRAVEL

With conference calls and Web meetings increasingly prevalent, business travel isn't what it used to be. But if your company is still sending employees out on the road, it remains important to understand the tax ramifications.

#### FRINGE BENEFITS

Generally, for federal tax purposes, a company may deduct all ordinary and necessary expenses paid or incurred during the tax year in carrying on any trade or business. This includes travel expenses that aren't deemed lavish or extravagant.

For employees, travel expenses are typically considered a "working condition fringe benefit" and, therefore,

not included in gross income. Working condition fringe benefits are any property or service provided to an employee to the extent that, if he or she paid for the property or service, it would be tax-deductible.

#### ACCOUNTABLE PLAN

Under the Internal Revenue Code, an advance or reimbursement for travel expenses made to an employee under an "accountable plan" is deductible by the employer and not subject to FICA and income tax withholding. In general, an advance or reimbursement is treated as made under an accountable plan if an employee:

- Receives the advance or reimbursement for a deductible business expense paid or incurred while performing services for his or her employer,
- Accounts for the expense to his employer within a reasonable period of time and in an adequate manner, and
- Returns any excess reimbursement or allowance within a reasonable period of time.

By contrast, an advance or reimbursement made under a "nonaccountable plan" isn't considered a working condition fringe benefit — it's treated as compensation. Thus, the amount is fully taxable to the employee, and subject to FICA and income tax withholding by the employer.





## OWNER-EMPLOYEES NEED TO STAY UP TO SPEED ON EMPLOYMENT TAXES

Keeping up with the complexity of the Internal Revenue Code is challenging for an individual and even more so for a business owner. But, if you're someone who handles both roles — an owner-employee — the difficulty level is particularly high. Nonetheless, it's important to stay up to speed on your specific obligations. As you're no doubt aware, much depends on the structure of your company.

### PARTNERSHIPS AND LLCs

Generally, all trade or business income that flows through to you for income tax purposes is subject to self-employment taxes — even if the income isn't actually distributed to you. But such income may not be subject to self-employment taxes if you're a limited partner or member of a limited liability company whose ownership is equivalent to a limited partnership interest. Whether the additional 0.9% Medicare tax on earned income or the 3.8% net investment income tax (NIIT) applies also is complex to determine.

### S CORPORATIONS

Under an S corporation, only income you receive as salary is subject to employment taxes and, if applicable, the 0.9% Medicare tax. To reduce these taxes, you may want to keep your salary relatively — but not unreasonably — low and

increase your distributions of company income (which generally isn't taxed at the corporate level or subject to the 0.9% Medicare tax or 3.8% NIIT).

### C CORPORATIONS



For C corporations, only income you receive as salary is subject to employment taxes. If applicable, the 0.9% Medicare tax may be due as well. Nevertheless, you may prefer to take more income as salary (which is deductible at the corpo-

rate level) as opposed to dividends (which aren't deductible at the corporate level, are taxed at the shareholder level and could be subject to the 3.8% NIIT) if the overall tax paid by both the corporation and you would be less. *Warning:* The IRS is cracking down on misclassification of corporate payments to shareholder-employees, so tread carefully.

### LATEST INFO

As this article went to press, tax law reform efforts were underway that may affect some of this article's content. Please contact our firm for the latest information. ■

## TAX CALENDAR

### January 16

Individual taxpayers' final 2016 estimated tax payment is due.

### January 31

File 2017 Forms W-2 ("Wage and Tax Statement") with the Social Security Administration and provide copies to your employees.

- File 2017 Forms 1099-MISC ("Miscellaneous Income") reporting nonemployee compensation payments in box 7 with the IRS and provide copies to recipients.
- Most employers must file Form 941 ("Employer's Quarterly Federal Tax Return") to report Medicare, Social Security, and income taxes withheld in the fourth quarter of 2017. If your tax liability is less than \$2,500, you can pay it in full with a timely filed return. If you deposited the tax for the quarter in full and on time, you have until February 12 to file the return. Employers who have an estimated annual employment tax liability of \$1,000 or less may be eligible to file Form 944 ("Employer's Annual Federal Tax Return").
- File Form 940 ("Employer's Annual Federal Unemployment [FUTA] Tax Return") for 2017. If your undeposited tax is \$500 or less, you can either pay it with your return or deposit it. If it is more than \$500, you must deposit it. However, if you deposited the tax for the year in full and on time, you have until February 12 to file the return.

- File Form 943 ("Employer's Annual Federal Tax Return for Agricultural Employees") to report Social Security, Medicare, and withheld income taxes for 2017. If your tax liability is less than \$2,500, you can pay it in full with a timely filed return. If you deposited the tax for the year in full and on time, you have until February 12 to file the return.
- File Form 945 ("Annual Return of Withheld Federal Income Tax") for 2017 to report income tax withheld on all nonpayroll items, including backup withholding and withholding on pensions, annuities, IRAs, etc. If your tax liability is less than \$2,500, you can pay it in full with a timely filed return. If you deposited the tax for the year in full and on time, you have until February 12 to file the return.

### February 28

File 2017 Forms 1099-MISC with the IRS.

### March 15

2017 tax returns must be filed or extended for calendar-year partnerships and S corporations. If the return is not extended, this is also the last day to make 2017 contributions to pension and profit-sharing plans.

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## 4 FINANCIAL PLANNING TIPS FOR SECOND MARRIAGES

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Every year, a substantial percentage of weddings aren't first-time nuptials but second (or subsequent) marriages. Here are four tips to help such partners better manage the situation:

**1. Take inventory.** Identify the assets and liabilities each person brings to the union. If one spouse has significant debt, how will the couple manage it? Or if one spouse holds significant savings or investments, both partners should decide whether ownership changes should occur.

**2. Complete any paperwork.** For instance, if a former spouse remains listed as the beneficiary of a retirement account, he or she may ultimately receive the asset — even if the account owner intended it to go to a new spouse. (Note: In community property states, a former spouse may still be entitled to a portion of the account.) Therefore, beneficiary change documents may need to be executed.

**3. Consider executing new wills.** This is particularly true if one spouse would like children from a previous



marriage to receive, for example, a pre-existing business or personal property. If these wishes aren't spelled out, the assets may not pass down as intended.

**4. Seek professional advice.** Laws regarding divorce and remarriage vary by state. Consult an attorney and contact our firm to discuss tax and financial ramifications. ■