EMPLOYMENT LAWSCENE ALERT: NEW YEAR – NEW LABOR AND EMPLOYMENT LAW DEVELOPMENTS EVERY EMPLOYER SHOULD KNOW

In 2019, several federal agencies, including the U.S. Department of Labor, Equal Employment Opportunity Commission, and the National Labor Relations Board have either issued new regulations, new guidelines, or employer-friendly decisions that every employer should be aware of as we begin our journey into this 2020 election year. Most of the changes coming at the federal level are the result of the Trump administration's agenda to level the playing field for employers by tilting back for employers the shift that occurred in the legal landscape during the Obama administration. Here are the latest labor and employment law developments every employer should know as we venture into 2020.

U.S. Department of Labor (DOL)

New Overtime Regulations Go into Effect January 1, 2020

Effective January 1, 2020, the salary threshold necessary to exempt executive, administrative and professional employees from the Fair Labor Standard Act's minimum wage and overtime pay requirements increases from $23,660 (or $455 per week) to $35,568 (or $684 per week). The DOL's new rule is the product of the Trump administration's efforts to reset the Obama administration's 2016 final rule that established the salary threshold at $47,476 per year or $913 per week. Now is the perfect time for employers to audit their payroll data to make sure that every employee who is being treated as an exempt executive, administrative or professional employee is being paid at least the salary threshold amount of $35,568 (or $684 per week). Employees who do not meet this new minimum salary threshold should be treated as non-exempt and employers should begin to pay these newly minted non-exempt employees overtime compensation (1.5 times their regular rate) if they work over 40 hours in a workweek.

DOL Issues Final Rule Clarifying the Regular Rate of Pay

In December, the DOL announced a final rule clarifying for employers what "perks" and benefits must be included in the regular rate of pay when calculating overtime compensation. The "regular rate" is the hourly rate that is paid to employees and must not only include an employee's hourly wage rate, but it must also include in its calculation other forms of compensation received in a workweek, including bonuses, commissions, and other forms of compensation, subject to eight specified exclusions. Perplexing to employers, and exposing employers to additional risk for overtime liability, was the uncertainty as to whether certain kinds of “perks,” benefits, or other miscellaneous payments must be included in the regular rate. The DOL attempted to eliminate this uncertainty in its final rule by confirming what employers may offer to employees through the following non-exhaustive list of “perks” and benefits without the risk of additional overtime liability:

- The cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance;
- Payments for unused paid leave, including paid sick leave or paid time off;EEOC, EE
- Payments of certain penalties required under state and local scheduling laws;
- Reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred solely for the employer’s benefit; the DOL also clarified that reimbursements that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System or the optional IRS substantiation amounts for travel expenses are per se “reasonable payments”;
- Certain sign-on bonuses and certain longevity bonuses;
- The cost of office coffee and snacks to employees as gifts;
- Discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples; and
- Contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.

The DOL’s final rule becomes effective on January 15, 2020.

National Labor Relations Board (NLRB)

Employers Can Cut-Off Union Dues Upon CBA Expiration

In a 3-1 ruling, the NLRB overturned an Obama-era decision (*Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015)) requiring employers to continue to honor the dues checkoff provision in an expired labor contract. In *Lincoln Lutheran of Racine*, the NLRB held that an employer’s statutory obligation to check off union dues continues to be enforceable under Section 8(a)(5) of the National Labor Relation Act after expiration of a collective bargaining agreement that establishes the checkoff arrangement. The Obama-era Board reasoned that the “dues checkoff” provision could not just dissipate once a contract expired, but instead could be ignored only if all parties to the contract agreed. On December 16, 2019, the NLRB reversed course in *Valley Hospital Medical Center*, 368 NLRB No. 39 (2019), holding that while dues checkoff provisions are mandatory subjects of bargaining, they also fall into a special “limited category” of unique union rights that are contractual in nature and do not necessarily relate to wages, pensions, welfare benefits, and other terms and conditions of employment. Given its special category, a dues-checkoff provision remains enforceable only during the term of the agreement in which those contractual obligations were created by the parties. Consequently, the Board held that there is no independent statutory obligation to check off and remit dues after expiration of a collective-bargaining agreement containing a checkoff provision, just as no such statutory obligation exists before parties enter into such an agreement. The Board's ruling brings more balance to the bargaining table and provides the employer some leverage when contract negotiations may extend beyond the expiration of the labor agreement. It also incentivizes the union to reach an agreement before expiration of the labor agreement to avoid loss of union dues. Of course, the right to cut-off union dues under the Board's *Valley Hospital* decision does not exist when the employer and the union agree to extend the labor agreement during the pendency of negotiations.

NLRB Provides Employers, Once Again, the Power to Control Company-Owned Email

On December 17, 2019, in *Caesars Entertainment* (368 NLRB No. 143) the NLRB overturned its 2014 controversial *Purple Communications* decision (361 NLRB No. 126) which had held that employees have the right to use their employers' email systems for non-business purposes, including communicating about union organizing. The NLRB's *Purple Communications'* decision overturned its 2007 *Register Guard* decision (351 NLRB No. 70) where the Board recognized the long-standing precedent that the NLRA generally does not restrict an employer's right to control the use of its equipment, which applies to company-owned email systems, and held that while union-related communications cannot be banned because they are union-related, facially neutral policies regarding the permissible use of employers' email systems are not rendered unlawful simply because they have the "incidental" effect of limiting the use of those systems for union-related communications. The *Purple Communications* decision upset this precedent and held, for the first time in the history of the Board, that employees do have the right to use company-owned equipment for non-work purposes. The Board's decision in *Caesars Entertainment* basically restored the standard set forth in the *Register Guard* decision before the *Purple Communications* decision stripped employers of an important property right with the only exception being those rare cases where an employer's email system provides the only reasonable means for employees to communicate with one another. Now, under the *Caesars Entertainment* decision, employers may prohibit employees from using company-owned email systems for non-work-related purposes, including communications concerning union organizing activities. Employers, however, are permitted to implement such a prohibition only if the employer's rules or policies are not applied discriminatorily by singling out union-related activities or communications.

NLRB Restores Employers' Right to Impose Confidentiality in Workplace Investigations

On December 16,2019, in a 3-1 decision, the NLRB overruled a 2015 NLRB precedent (*Banner Estrella Medical Center*, 362 NLRB 1108) that required a case-by-case determination of whether an employer may lawfully require confidentiality in specific workplace investigations.

The Board had ruled that employees have a Section 7 right to discuss discipline and ongoing investigations involving themselves and other co-workers. In *Apogee Retail*, 368 NLRB No. 144 (2019), however, the NLRB returned to its previous standard, and now allows employers to implement blanket nondisclosure rules requiring confidentiality in all workplace investigations. The NLRB's ruling aligns itself with the EEOC's position against the backdrop of the #MeToo movement where confidentiality rules imposed during a workplace sexual harassment investigation encourage victims and witnesses to come forward. The standard set forth by the Board in *Apogee Retail* only applies to open and-on-going investigations and only to those employees directly involved in the investigation. Obviously, on the other hand, any confidentiality order or rule imposed by the employer cannot be imposed on employees not involved in the investigation or to an investigation that has concluded. The Board's decision in *Apogee Retail* provides employers an important tool to maintain the integrity of its internal investigations without fear that imposing the safeguards of confidentiality requirements during the pendency of an investigation violates Section 7 rights.

Equal Employment Opportunity Commission (EEOC)

EEOC Rescinds Policy Against Binding Arbitration

The EEOC voted 2-1 to rescind its 1997 *Policy Statement on Mandatory Binding* Arbitration where the EEOC had stated its position that mandatory arbitration agreements that keep workers' discrimination claims out of court clash with the civil rights laws the agency enforces.

The EEOC based its decision to rescind its policy regarding binding arbitration based on the fact that its policy statement did not reflect current law, especially given the Supreme Court's numerous and consistent decisions since 1997 that favor agreements to arbitrate employment-related disputes as being enforceable under the Federal Arbitration Act (FAA). The EEOC found that its 1997 policy conflicted with the arbitration-related decisions of the Supreme Court where the Court rejected the EEOC's previously enunciated concerns with using the arbitral forum – both within and outside the context of employment discrimination claims. It should be noted by employers, however, that the EEOC's decision to rescind its 1997 policy statement on mandatory arbitration should not be construed to mean that employees cannot file charges of discrimination with the agency if they signed an agreement to arbitrate or that the EEOC is prohibited from investigating such charges. Moreover, the EEOC makes clear that its rescission of its 1997 policy should not be interpreted as limiting the EEOC's ability, or that of the employee, to challenge the enforceability of any agreement to arbitrate. This change in the EEOC's policy position regarding mandatory arbitration of employment disputes is not surprising given the long-line of Supreme Court decisions favoring arbitration in employment disputes. Given the positive change in the EEOC's position on mandatory arbitration agreements in employment, along with strong precedent-setting federal court decisions favoring arbitration, employers should consider revisiting whether they should be utilizing agreements with their employees for mandatory arbitration of employment disputes.

TAX AND WEALTH ADVISOR ALERT: THE POTENTIAL IMPACT OF POST-VALUATION DATE EVENTS ON GIFT TAX VALUATIONS

When a gift is made, the fair market value of the gift must be determined for federal gift tax purposes. The fair market value of a gift is important to determine whether the donor's gift exceeds the annual gift tax exclusion amount ($15,000 per person per year in both 2019 and 2020), and if so, how much of the donor's estate tax exemption is being used. The gift tax regulations define "fair market value" as the price that a hypothetical willing buyer would pay a hypothetical willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of relevant facts.

Generally, gifts are valued "as of" the date they are given. In certain circumstances, however, an event that happens after the date of the gift must be taken into consideration. The IRS has recently reiterated this position in IRS Memorandum 201939002 (September 27, 2019). In this case, the donor gifted shares of a publicly-traded corporation, of which he was a co-founder and Chairman of the Board, to an irrevocable trust. The very next day, the corporation announced a merger. The value of the donor's gifted shares increased substantially following the merger announcement.

Even though the merger was announced a day after the gift was made, the IRS determined that the pending merger must be factored into the valuation of the stock. The IRS pointed out that the merger had been negotiated for some time before the announcement and was practically certain to go through.

The IRS reasoned that information that a reasonable buyer or seller would uncover during negotiations would constitute "reasonable knowledge," and would consequently impact the fair market value of the shares. A hypothetical willing buyer is presumed to be "reasonably informed" and "prudent," which means they are assumed to have asked the hypothetical willing seller for information that is not publicly available. Therefore, a hypothetical willing buyer and willing seller, on the date of the gift, would be reasonably informed during negotiations over the purchase and sale of shares and would have knowledge of all relevant facts, including a pending merger.

It is important to remember that post-valuation date events may impact the fair market value of the gifted property for gift tax purposes. A post-valuation date event may be considered if the event was reasonably foreseeable as of the valuation date. Even an unforeseeable post-valuation date event may be probative of the earlier valuation if it is relevant to establishing the amount that a hypothetical willing buyer would have paid a hypothetical willing seller for the subject property as of the valuation date.

If you have any questions on how to value a gift, please contact O'Neil Cannon at 414-276-5000.

EMPLOYMENT LAWSCENE ALERT: HAPPY HOLIDAYS! HERE'S A LAWSUIT!

The holiday celebration season is in full swing and everyone is ready to celebrate! And while that hopefully means reflecting on successes of the past year and bonding with coworkers, employers need to be aware of their exposure to potential liability arising from holiday celebrations and what they need to do to reduce or avoid such potential liability. While not to drive the joy out of the holidays, here are some common concerns employers should be aware of during the holiday season and tips on how to reduce employers' risk:

1. **Is That Mistletoe?:** Prevent Sexual Harassment. In light of the continued focus on the #MeToo movement, employers should stay focused on preventing sexual harassment during the holiday season, which includes any holiday party where coworkers congregate or socialize together. Ensure that your employees are aware of your anti-harassment policy and that they understand that harassment involving any employee at any time, including at a holiday party, will not be tolerated. Remind your employees that, while they are encouraged to have a good time at the holiday party, it is a company-sponsored event where all of your employment policies and rules apply. If you become aware of inappropriate conduct that occurs at the holiday party, you must deal with it appropriately in the same manner as you would address such an incident had it occurred in the workplace. Additionally, if you receive complaints post-party about activities that may have occurred at the holiday party, you must document the incident, do a proper investigation to deal with those issues, and take prompt corrective action, if necessary.
2. **Hey, What's in This Drink?:** Reduce the Risk of Alcohol-Related Incidents. Employers may be subject to liability for injuries caused by employees who consume alcohol at employer-sponsored events. To avoid potential liability, employers should promote responsible drinking and monitor alcohol consumption appropriately. Employers may want to consider either not serving alcohol or hosting their holiday parties at a restaurant or other off-site location where alcohol is served by professional bartenders who know how to recognize and respond to guests who are visibly intoxicated.

Employers may also consider providing information regarding or paying for a ride-sharing service such as Uber or Lyft to promote responsible behavior.

3. **It's Icy Outside!:** Minimize the Risk of Workers' Compensation Liability. Workers' compensation benefits may be available to employees who suffer a work-related injury or illness arising from an employer-sponsored holiday party. To avoid this liability employers should make it clear that there is no business purpose to the event, that attendance is completely voluntary, and that they are not being compensated for their attendance at the event. Illnesses caused by contaminants found in food or beverages may create legal exposure if the providers are not properly licensed, so employers should use licensed third-party vendors who have their own insurance coverage to provide food and beverages.
4. **Am I Required to Be Here?:** Prevent Wage and Hour Claims. Non-exempt employees must be paid for all work-related events that they are required to attend. Therefore, to ensure that the time spent at a holiday party is not considered compensable under state or federal wage and hour law, employers should make it clear that attendance is completely voluntary, hold the party outside of normal working hours, ensure that no work is performed during the party, and make sure that employees are not under the impression that they are performing work.
5. **Happy Non-Denominational Holiday Celebration!:** Avoiding Religious Discrimination Claims. An employer's holiday party or year-end celebration should be about the people who work there and the accomplishments of the organization, not a particular set of religious beliefs unless, of course, you are a religious organization. Employees of all religious and ethnic backgrounds need to feel invited and welcome to attend. Additionally, if employees do not want to attend based on their particular beliefs or practices, an employer may not discriminate or retaliate against the employee for that choice.

So, for this 2019 holiday season, we hope that you spread the joy of the season, have fun, be safe, appreciate the hard work of your employees, and avoid the employment law pitfalls that can come with the holidays!

The Labor and Employment Law Practice Group, O'Neil Cannon

O'NEIL CANNON RANKED IN 2020 "BEST LAW FIRMS"

O'Neil Cannon has been ranked in the *2020 U.S. News – Best Lawyers®* "Best Law Firms" list in 17 practice areas:

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Bet-the-Company Litigation

- Commercial Litigation
- Construction Law
- Corporate Law
- Family Law
- Litigation – Bankruptcy
- Litigation – Insurance
- Litigation – Labor and Employment
- Mergers and Acquisitions Law
- Municipal Law
- Personal Injury Litigation – Plaintiffs
- Product Liability Litigation – Defendants
- Real Estate Law
- Securities / Capital Markets Law
- Tax Law
- Trusts and Estates Law

Firms included in the 2020 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

ATTORNEYS CHRISTA WITTENBERG AND GRANT KILLORAN FEATURED IN WISCONSIN LAWYER

Recently Attorneys Christa Wittenberg and Grant Killoran were featured in the State Bar of Wisconsin publication *Wisconsin Lawyer.* In the article, they discuss the hot topic of measles and the due process implications of public health responses.

Read the full article here.

TAX AND WEALTH ADVISOR ALERT: 'TIS THE SEASON FOR CHARITABLE GIVING AND TAX DEDUCTIONS

As we enter the holiday season and focus on what we are most thankful for, many of us will begin planning for our annual charitable contributions. While tax benefits are not the primary reason behind most giving—giving back is its own reward—the IRS has established these tax benefits to encourage charitable giving. This year, as you begin making decisions about your gifting, make sure you understand and consider the recent changes under tax reform so you can stay on the nice list and get the most out of your charitable giving tax deduction!

Standard or Itemized Deductions

A common thought with charitable giving is that you can take a charitable contribution deduction for the full amount of your donation and directly offset your income. This thought will get you on the naughty list! You can *only* receive a charitable donation tax deduction if you "itemized" your deductions. You will not receive a charitable donation tax deduction if you take the "standard deduction."

The Tax Code allows you to subtract a standard deduction based on your filing status or subtract your total itemized deductions—whichever is greater. For 2019, the standard deduction will be $12,200 for single taxpayers, $18,350 for heads of households, $24,400 for joint filers, and $12,200 each for married couples filing separately. Allowable itemized deductions, sometimes subject to limits, include such expenses as mortgage interest, charitable contributions, state and local taxes and medical expenses. Look at the following example. If you are a single taxpayer, and the sum of your itemized deductions (contributions included) do not exceed $12,200, you will take the standard deduction over the itemized deduction. In this scenario, you will technically not receive a tax deduction for your charitable contribution.

Before the new Tax Cuts and Jobs Act, the standard deduction for each filing status was about the half the amount that it is for 2019. The increase in the standard deduction makes itemizing a difficult hurdle to jump, and many may now find it harder to itemize and take advantage of the charitable contribution deduction.

However, if you can itemize, the allowable charitable contribution deduction will depend on the type of contribution made (i.e., of cash, securities, property, etc.), as well as the type of organization to which the donation was made. While most charitable deductions are limited to 60% of your adjusted gross income (AGI), some are limited further—to 30% or, in some cases, even 20%. Therefore, your total AGI is an important consideration if you plan to benefit from a charitable donation deduction.

In short, at a minimum, you will be able to deduct 20% of your AGI. At a maximum, you will be able to deduct 60%. If you made charitable contributions during the year, and one or more limits described below apply, you can use the IRS's Worksheet 2 to help compute your deduction.

Eligible Donations

Before understanding the deduction limitations for each type of charitable contribution, it is important that your charitable contribution be eligible to claim as an itemized deduction. Only donations to 501(c)(3) public charities or private foundations are generally deductible as qualified charitable donations. Of note, gifts given to benefit specific individuals are not deductible, which includes most online crowdfunding websites. Moreover, gifts made to political parties, political campaigns, political action committees, labor unions, chambers of commerce, business associations, for-profit schools or hospitals and foreign governments are also not tax deductible.

Additionally, gifts to donor-advised funds, a recently popular vehicle for gift giving, have further eligibility restrictions which should be evaluated before funding. The IRS offers a search tool (Tax Exempt Organization Search) so you can confirm the 501(c)(3) status of an organization you are considering donating to.

Lastly, it is important to remember that your donation to a qualified charity is deductible only in the same year in which it is made. Therefore, if you plan to take a deduction for 2019, you must make sure your deduction is made before December 31 and you ring in the new year!

Charitable Gifts of Cash

Under the old law, your deduction for charitable contributions of cash to qualified organizations was limited to 50% of your adjusted income. If your contributions exceeded this limit, you could carry them forward for up to five years. Under the new Tax Cuts and Jobs Act, until 2026 (unless otherwise extended), the limitation is raised to 60% of your adjusted gross income for gifts of cash to qualified organizations; the five-year carryforward is still allowed.

For example, if your adjusted gross income is $220,000 for the year, you can take a charitable deduction of up to $132,000 (60% of $220k) as long as the gift was in cash and made to a 501(c)(3) public charity. Therefore, if you made a gift of cash that year to the Salvation Army of $150,000, your gross income can be offset by the $132,000 charitable deduction limit (reducing it to $88k) and the remaining $18,000 of your charitable deduction that you were not able to utilize due to the percentage limitations can be carried forward for the next five years.

Charitable Gifts of Non-Cash Items

The IRS will allow a deduction for donations of non-cash items as well, if the item is in “good working condition or better.” Therefore, stop and think before claiming a deduction for the donation of a dusty old toaster that is missing a few parts that you received 35 years ago as a wedding gift. There is no fixed method for determining the value of these items, but the IRS, Salvation Army, and Goodwill, all provide helpful valuation guidelines.

If you make noncash contributions, your deduction for the noncash contribution is limited to

50% of your adjusted gross income minus your cash contributions subject to the 60% limit. If your total deduction for all noncash contributions for the year is over $500, you must complete Form 8283 and list the donated items, as well as their value, and attach it to your Form 1040. Additionally, any non-cash contribution over $5,000 will most likely require a qualified appraisal attached to the Form 8283 to substantiate the value (publicly traded stock may be an exception).

Charitable Gifts Quid Pro Quo

If you receive some sort of compensation for your donation (such as tickets to a charity gala, a theatrical performance, a sporting event, or merchandise, goods, or services), you can only deduct the amount of the donation that exceeds the fair market value of what you received. Moreover, you cannot deduct the cost of raffle, bingo, or lottery tickets bought from a charitable organization or deduct the value of your donated time or professional services, or the value of donated blood. Additionally, important for all of those college sports fans to know, is that under the new Tax Cuts and Jobs Act, if you make contributions in exchange for the right to buy college athletic tickets, you are not allowed a deduction for this donation (previously, you could deduct 80%).

Charitable Gifts of Securities

Direct donation of publicly traded securities (or other illiquid gifts) is another common way to fund a charity for donors. This is a particularly tax-efficient method if you have long-term appreciated stock, because with a direct charitable gift of appreciated securities held long-term, you avoid paying the capital gains tax (typically 20% of the appreciated value). If you were to sell the shares and donate the cash proceeds instead, while you would get the higher percentage limitation with the donation of cash (60%), you would have to pay the capital gains tax upon the sale of the shares. This usually does not result in a greater tax benefit than a direct donation of securities.

The amount of the charitable deduction and the limitation on the deduction depends on how long the securities (or other illiquid gifts) have been held and, in part, on the type of charity receiving the property (for example, private foundations are subject to different limitations – but that is beyond the scope of this discussion). If you donate short-term securities to a public charity, a deduction is allowed only for the lesser of (1) the FMV of the securities or (2) your cost basis. In most cases, if the stock appreciated, this will mean your deduction is your cost basis. You may then deduct up to 50% of AGI, reduced by the amount of any cash contributions you made that year allowed under the 60% limit. If you donate long-term securities to a public charity, a deduction is generally allowed for the FMV of the securities. You may then deduct the lessor of (1) 30% of your AGI or (2) 50% of your AGI less other contributions to 50% charities and cash contributions allowed under the 60% limit.

Charitable Gifts from Your IRA

If you meet the requirements, you can also make a charitable contribution from your IRA. However, your ability to take a charitable deduction will depend on whether the contribution is made from your traditional IRA or Roth IRA. If you are age 70½ or older, you may make direct charitable gifts from your traditional IRA (which counts toward your required minimum distributions) of up to $100,000 to public charities (other than donor advised funds and supporting organizations) and not have to report the IRA distributions as taxable income on your federal income tax return. There is no charitable deduction for the distributions, so you benefit from this if you do not itemize your deductions. However, not paying tax on otherwise taxable income is essentially the equivalent of a charitable deduction.

Assuming the Roth IRA distribution requirements are met (generally, over the age of 59½ and held Roth for over 5 years), your cash distribution from a Roth IRA will be tax free. You can then use this distribution to make a cash donation to a charity. The bonus here is that there are no restrictions on the type of charity like there are with the traditional IRAs. Additionally, unlike traditional IRAs, you can claim an itemized deduction for your charitable cash contribution up to the 60% of AGI limitation. Nevertheless, it generally is not the best option to take distributions from your Roth IRA and donate to charity because the tax rules for Roth IRAs are so favorable. Usually, it is best to leave your Roth balances untouched and earning more tax-free income rather than taking money out for charitable contributions if you can make your contributions from a different source.

Documentation

No matter what you end up donating and how limited your deduction may be, the most important thing to remember if you intend to reap the tax benefits of your charitable contribution is that you must keep accurate records of your contribution. Any contribution over $250 must be acknowledged with a receipt from the charity indicating the organization’s name, the date of the contribution and the amount. The IRS notes that you, the donor, are responsible for requesting and obtaining the written acknowledgment from the charity. Typically, charities will provide donors with written letters of acknowledgement or receipt; however, you can write it yourself ahead of time, and simply have it signed when you drop off your items. This way you can trust that the receipt is correct and that it includes all the information you need.

The IRS can disallow charitable donations of $250 or more if you do not have a written acknowledgment from the charity to document your gift. So, while your canceled checks, receipts, bank statements, telephone bills or photographs (all of which you should keep) can be useful if your return is audited, the IRS may not allow the deduction in case of a missing acknowledgement receipt or letter.

Conclusion

While taxes might not be at the forefront of your mind when gifting this holiday season, the tax deduction for charitable contributions is a nice added benefit under the tree! To make the most out of this tax benefit it is important to familiarize yourself with the deduction rules and limitations.

The attorneys at O'Neil, Cannon, Hollman, DeJong and Laing S.C can ensure that you are making donations that best serve organizations while helping you maximize tax benefits this holiday season. If you need assistance in developing individual tax strategies or have questions about tax and estate planning, please contact Attorney Britany E. Morrison to discuss how we can assist you in your needs.

ATTORNEYS CARL HOLBORN AND BRITANY MORRISON PUBLISHED IN THOMSON REUTERS JOURNAL

Attorneys Carl D. Holborn and Britany E. Morrison were recently published in the *Taxation of Exempts*, a Thomson Reuters journal.

There is a big unresolved public policy issue in the philanthropic world—private foundations and their use of donor-advised funds (DAF). Specifically, the issue is whether distributions made by private foundations to donor-advised funds should be treated as "qualifying distributions" for purposes of the 5% annual payout rule.

While the issue was sparsely debated before, the IRS really stirred the debate in the charitable world with the issuance of Notice 2017-73. The Notice specifically requests comments on whether a contribution to a DAF by a private foundation should be considered a distribution that counts as a "qualifying distribution" for the purposes of the annual 5% payout rule. [1] Comments in response to the Notice poured in and opinions were deeply divided between those in favor of reform to disallow or limit "qualifying distributions" to DAFs and those in full defense of the IRS maintaining the status quo.

Two years have passed since the Notice issuance and the IRS has yet to issue an any regulations or proposed regulations. This article highlights some of the major arguments for reform, limits, and the status quo regarding private foundations distributions to DAFs "counting" as qualified distributions.

Read full article here.

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[1]See Notice 2017-73, 2017-51 IRB 562 available at https://www.irs.gov/pub/irs-drop/n-17-73.pdf.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- IRS Unveils Significant Virtual Currency Taxation Enforcement Initiative
- Aretha Franklin's Estate: Are Handwritten Documents Valid Wills?
- Time to Act on Act 368: Wisconsin Pass-Through Entity-Level Tax Election
- Breaking News: DOL Sets Overtime Salary Exemption Threshold at $35,568
- The Objectives of Good Succession Planning

Firm News:

- Congratulations to Our Attorneys Listed in The Best Lawyers in America® 2020 Edition
- Attorney Erica Reib Reelected to the Board of the State Bar's Labor and Employment Section

Click the image below to read more.

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ELECTS JB KOENINGS AND ERICA REIB AS SHAREHOLDERS

O'Neil, Cannon, Hollman, DeJong and Laing is pleased to announce that Attorney JB Koenings and Attorney Erica Reib were recently elected as shareholders of the firm.

JB has been with the firm since 2010, first as a law clerk and then as an attorney in 2011. He works with and advises clients on a wide range of business law matters, including form of entity selection and initial capitalization, raising funds through private equity offerings, securities compliance and broker/dealer matters, mergers and acquisitions, contract preparation and negotiation, and software, technology, and IP matters.

Learn more about JB Koenings by visiting his full profile.

Erica has been with the firm since 2014 and is a member of the Employment Law Practice Group. She assists clients with employment discrimination litigation, non-competition and trade secret litigation, wage and hour issues, NLRB and unfair labor practice matters, employment policy and agreement drafting and review, unemployment compensation, investigations and proper employment practices to avoid litigation.

Learn more about Erica Reib by visiting her full profile.

We are pleased to add both JB and Erica as shareholders.

IN MEMORIAM: WILLIAM RYAN DREW

We are saddened to announce the passing of William Ryan Drew, who served of counsel at O'Neil Cannon for more than thirty years.

Bill was a tireless public servant for the citizens of Milwaukee as an elected and appointed official serving in many capacities over the decades, including: Director of Administration for Milwaukee County, Commissioner of City Development for the City of Milwaukee, Treasurer of the Southeastern Wisconsin Regional Planning Commission, President of the Milwaukee Common Council, and Fourth District Milwaukee Alderman. In addition, he served as President of the Board of Directors for the City of Milwaukee Retiree's Association, Board of Directors for the National Center for Housing Management, and was on the Board of Visitors for the Les Aspin Center for Government at Marquette University.

His counsel will be missed dearly by our firm. Our prayers and thoughts are with his family.