

Tax-Free Employee Educational Assistance Programs Extended by Fiscal Cliff Legislation

At the end of last year, we alerted you that the beneficial tax treatment of educational assistance programs under Section 127 of the Internal Revenue Code (the Code) pursuant to which an employer pays, or reimburses, an employee for up to \$5,250 in educational assistance was set to expire on December 31, 2012 and it was unclear whether Congress would act to extend it. *We now write to inform you that under the American Taxpayer Relief Act of 2012—i.e., the fiscal cliff legislation—Congress has extended the ability of employers to pay or reimburse an employee on a tax-free basis for up to \$5,250 in educational assistance (which does not have to be job-related) under a written plan of the employer.*

To qualify as an educational assistance program under Code Section 127, an employer's program must generally, among other things:

- Provide benefits exclusively to employees of the employer;
- Provide qualified educational assistance benefits (e.g., tuition, fees and similar payments and books). Such a program may not provide benefits for any meals, lodging or transportation or for a course or other education involving sports, games or hobbies;
- Be a separate written program established by the employer and disclosed to employees;
- Not allow employees a choice between educational assistance benefits and additional taxable income; and
- Not discriminate in favor of highly compensated employees.

No more than \$5,250 can be excluded from an employee's income each calendar year under a Code Section 127 plan. If an educational assistance arrangement fails to comply with the Code's requirements, the educational assistance provided will be treated as taxable wages to the employee unless the educational assistance meets the standards of other parts of Code - such as the working condition fringe rules.

Please contact your Patterson Belknap relationship attorney if you would like more information on employee educational assistance programs.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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