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TO: OUR CLIENTS AND FRIENDS
FROM: JACKSON M. PAYNE
DATE: DECEMBER 1, 2011
RE: FINANCIAL STRATEGIES FOR YOUR LIVES AND BUSINESSES

**E-VERIFY BASICS –
BECAUSE SOON IT WILL BE MANDATORY EVERYWHERE**

U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. E-Verify is an Internet-based system that allows businesses to determine the eligibility of employees to work in the United States.

As part of new immigration laws, employers in Alabama, Georgia and South Carolina will be required to use E-Verify starting next year. While parts of these laws may be in conflict with federal immigration law or even outright unconstitutional, the states do have a right to require employers to use E-Verify. And a mandatory E-Verify Bill has been introduced in Congress. So if your state doesn't require E-Verify yet, the feds will soon. For those of you not already doing so, here are some E-Verify basics taken from the U.S. Citizenship and Immigration Services (USCIS) E-Verify web-page.

Form I-9. This is the basis for E-Verify and must still be completed. The I-9 must be completed no later than three days after the employee starts work for pay. E-verify must be completed in the same timeframe. A couple of differences using E-Verify versus using the I-9 alone are that a social security number must be provided with E-Verify and any List B document (such as a driver's license) used must contain a photo.

Photo Matching. This feature presents the employer with a photo to compare to a photo in a document presented by the employee. The employer must compare the two photos – not the face of the

employee to the photo on E-Verify. Photo matching is automatic when the employee presents a U.S. passport or passport card, permanent resident card (I-551) or Employment Authorization Document (I-766). If these documents are used, copy them and keep them on file with the I-9.

Remember that the employee may choose to present any acceptable document and employers may not require that a specific document may be used. To do otherwise may subject the employer to discrimination claims.

3 – 5 Seconds. Once the case is opened and all information entered, the employer should get a result in 3 – 5 seconds unless there is a mismatch of information and a manual search is required. E-Verify works by comparing employer-entered data to government records but, occasionally, a manual search is required. It should not be assumed that because the employer receives a TNC (Tentative NonConfirmation) that the employee is not authorized to work or is an illegal immigrant.

TNC. If there is no match, the employer will receive a “DHS Verification in Process” and this will take 24 hours to three business days. If this is due to a typographical error, close the case and open a new one, entering the correct information. This is a situation in which the accuracy of data entry is extremely important. If the employer receives a TNC, notice must be given to the employee. If the employee contests the TNC, the employer must refer the case to the appropriate agency and print a letter for the employee. The letter will contain vital instructions on contesting TNC. The employee has 8 federal government working days from the date of referral in E-Verify to resolve the TNC. Only once a final nonconfirmation is received may the employer terminate the employee based on E-Verify. If the case takes longer than 8 days to resolve, the employer must continue to allow the employee to work until the matter is resolved.

Three Types of Mismatch. There are three types of mismatches: (1) SSA; (2) The Department of Homeland Security (DHS) is unable to confirm work authorization and (3) DHS photo mismatch. Photo mismatch means the employer responded that the E-Verify photo did not match the employee’s photo I.D. If this happens, the employer must either scan and upload the image from the employee’s document or copy it and mail via express mail at the employer’s expense.

Posters. Do not forget to display your posters. Employers must display two posters – E-Verification and Right to Work. English and Spanish are available.

USCSI provide a plethora of publications, tutorials and customer assistance on E-Verify. Be sure to read all instructions yourself thoroughly before using E-Verify.

IRS CLARIFIES ESTATE RULES

The Internal Revenue Service clarified a provision of the estate tax affecting people who die in 2011 and 2012. The good news: The paperwork process is now clearer for surviving spouses. But the new rules could pose problems for some.

Last December, Congress reinstated the estate tax after allowing it to lapse in 2010, and raised the amount of assets exempt from the tax to \$5 million per individual or \$10 million per married couple. Included was a provision on “portability,” which allows a surviving spouse in effect to roll over the unused portion of a deceased spouse’s exemption. The IRS said that to preserve the spouse’s exemption, executors must file an estate-tax return listing assets and their values, even if the total is very small.

Say, Harry’s wife, Jane, died this year. Jane’s assets totaled \$1.5 million, so \$3.5 million of her exemption went unused. Harry’s assets total about \$6 million and include a large individual retirement account and an interest in a business owned by his extended family.

Under the new rules, Jane’s executor can file an estate-tax return listing her assets and their values as of the date of death. That automatically preserves her remaining \$3.5 million for use at Harry’s death, putting him below the estate-tax threshold.

Normally, advisers would not file a federal return if an estate is worth less than the exemption amount. But under these rules, even small estates have to file a return if they want to preserve any unused exemption. Not only could advisers miss the IRS’s guidance and fail to file, but those estates that do file will owe professional fees for any needed appraisals (say of a house).

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