



WORLDWIDE ERC®

2018 Global Workforce Symposium

17 - 19 OCTOBER | SEATTLE, WA USA



# Worldwide ERC® Tax and Legal Update

October 18, 2018





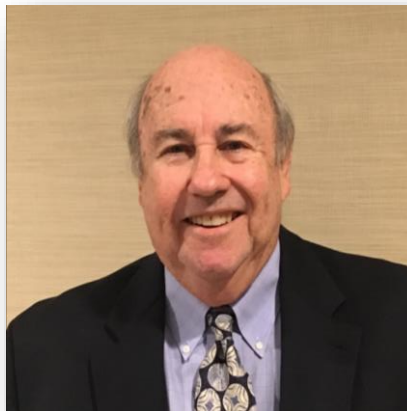
# Speakers



*Moderator:*  
**Hank Roth**  
Associate Counsel  
Dwellworks, LLC



**Tristan North**  
Government Affairs Advisor  
Worldwide ERC®



**Peter K. Scott**  
Tax Counsel  
Worldwide ERC®





# Forum Chairs and Vice Chairs

## **Global Forum**

*Chair:* Nino Nelissen of Executive Mobility Group

*Vice Chair:* Roberta Mura of MRS Global

## **Immigration Forum**

*Chair:* David Berry of Berry Appleman & Leiden LLP

*Vice Chair:* Jurga McCluskey of Deloitte UK

## **Real Estate & Mortgage Forum**

*Chair:* Jay Hershman of Baillie & Hershman

*Vice Chair:* Patrick McManamy of McManamy McLeod Heller

## **Regulatory & Compliance Forum**

*Chair:* Bill Tehan of Ruder Ware and General Counsel of Graebel

*Vice Chair:* Jeff Margolis with SIRVA Worldwide, Inc.

## **Tax Forum**

*Chair:* Hank Roth of Dwellworks, LLC

*Vice Chair:* Craig Anderson of AECC



# Topics

- Government Affairs Update
- Tax Update
- Forums Update
- Questions and Answers





DESTINATION: SEATTLE

# Capitol Hill Overview





# Moving Americans Privacy Protection Act

- U.S. Customs and Border Protection (CBP) is required to release vessel manifests which can include personally identifiable information of transferees shipping goods
- Information can include Social Security numbers, passport numbers and addresses
- Data brokers purchase information compiled by CBP and use for marketing and analysis purposes and post on websites
- On May 1, 2017, Senators Daines (R-MT) and Peters (D-MI) introduced the Moving Americans Privacy Protection Act (S. 998). On November 15, 2017, Representatives Denham (R-CA) and Pascrell (D-NJ) introduced House companion bill (H.R. 4403)
- On April 14, 2018, House passed H.R. 4403 on voice vote
- Worldwide ERC® actively supporting and lobbying on bill



# NAFTA Renegotiated Agreement

- On September 30, trade representatives of the United States, Canada and Mexico reached an agreement on revisions to NAFTA
- U.S. and Mexico had reached deal on August 27 and U.S. negotiators gave Canada until September 30 to make agreement tri-lateral
- Changes in auto parts assembly, dairy and pharmaceuticals industries, higher safety and environmental considerations, continuation of disputes under Chapter 19 for 16 years (6-year review)
- President Trump, Canadian Prime Minister Trudeau and Mexican President Pena Nieto expected to sign on November 30
- Agreement must still be passed by the respective legislative chambers of the three countries



# California Consumer Privacy Act

- Signed into law on June 28 and takes effect on January 1, 2020
- Applies to for-profit companies that either 1) have annual revenue of more than \$25 million, 2) handle information of 50,000 or more consumers or 3) make 50% or more income from selling information
- Allows Californians to 1) determine what data is being collected and 2) what data is be provided to third parties, 3) prevent sale of their data, 4) access their data and 5) control their data without penalty
- Pertains to data of California residents who can sue for data breach of \$100 to \$750 per incident and California Attorney General can also bring suit





# Tax Reform Issues

- 2018 payments for 2017 moving expenses
- Business/entertainment and meal expenses
- State conformity
- State workarounds for state tax deduction limitation
- Prepaid property taxes
- Loss of miscellaneous itemized deductions



# 2018 payments for 2017 moving expenses

- Major issue early in 2018
  - Worldwide ERC provided analysis generally supporting exclusion, but no guidance from IRS
  - Many companies chose conservative path and grossed up 2018 payments
- IRS Notice 2018-75, 9/21/2018
  - Resolves issue in favor of exclusion
  - Employers can go back and change under standard procedures





# Notice 2018-75

- Reimbursements an employer pays to an employee or a moving company in 2018 for qualified moving expenses incurred in a prior year are not subject to federal income or employment taxes.
- Reimbursements must be for work related moving expenses and meet the prior qualifications of Section 217 and definition of Qualified Moving Expense. See Form 3903 or Publication 521 for 2017 rules. That is, they would have been deductible in 2017 if paid directly by employee.
- The employee must not have deducted the expenses in 2017.
- Employers who have already treated the reimbursements or payments as taxable can follow the normal employment tax adjustment and refund procedures. Publication 15 – Section 13, or Form 941-X and its instructions.





# Notice 2018-75: Issues

- If company did in fact treat these amounts as taxable, it may be difficult to go back and separate them from other 2018 payments
  - May require extensive reconstruction of records, additional programming
  - Who will absorb those costs?
- States another difficult area
  - Many companies grossed up for all states for 2018, but nearly all states permitted an exclusion in 2017
  - Should they try to go back and separate these costs?
- Does the move have to have been completed in 2017?
  - Notice is not clear
  - Could also apply to costs incurred in 2017 even if move not completed until 2018





# Business Entertainment & Meals

- Tax Cuts and Jobs Act (TCJA) disallows any deduction for business entertainment starting in 2018.
  - 50% was deductible previously
  - TCJA is silent on treatment of business meals associated with entertainment
  - Not clear if buying hotdogs for client at the ballgame remains 50% deductible
- Notice 2018-76, 10/3/2018, resolves issue
  - Food and beverages provided during or at entertainment activity remain 50% deductible if:
    - Purchased or billed separately from the entertainment
    - Must substantiate separate charge (receipt for the hotdogs, or a bill for entertainment that separately lists food/beverage charges)
  - Will require establishment of new recordkeeping processes





# Moving Expenses: States

- Companies Do Not Know Whether to Treat Reimbursements/Payments as Taxable in Many States
  - Most states follow federal law
  - About half do so automatically (called “rolling” conformity), half based on a fixed date (called “static” conformity)
  - In rolling conformity states, moving expense deduction/exclusion is no longer available unless they change their law to allow it
  - In static conformity states, deduction/exclusion still in place unless state acts to update its conformity date without excluding that change





# Moving Expenses: States

- 16 Static States Have Acted:
  - 12 now follow federal law: Georgia, Idaho, Indiana, Iowa, Maine, North Carolina, Ohio, Oregon, South Carolina, Vermont, West Virginia, Wisconsin. (But Iowa not effective until 2019) (Maine conformed 9/12/2018, and SC conformed 10/2/2018)
  - 4 still allow exclusion: Arizona, Hawaii, Kentucky, Virginia (and Iowa for 2018)
- 4 Static States Haven't Acted, Moving Expense Still Excludable:
  - Arkansas, California, Massachusetts, Minnesota
  - One Rolling Conformity State Has Kept Exclusion
    - New York
- 18 Rolling Conformity States Exclusion Currently Not Allowable:
  - Alabama, Colorado, Connecticut, D.C., Delaware, Illinois, Kansas, Louisiana, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Rhode Island, Utah
- 3 Non-conformity States:
  - New Jersey, Pennsylvania: allow exclusions; Mississippi: does not allow exclusions
- Current final score:
  - 12 states allow exclusion for 2018: Arizona, Arkansas, California, Hawaii, Iowa, Kentucky, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Virginia





# State Workarounds

- Four states have sued U.S. to reverse the \$10,000 limit on state tax deductions
- Three (NY, NJ, and CT) have enacted “workarounds” (IL, and RI considering)
  - Establish state or local charities to which taxpayers may contribute
  - Full charitable contribution deduction on federal return
  - Taxpayer gets credit against state income tax or local property tax for contribution
- Programs mimic other state credit programs that have been allowed in the past, at least where full credits were not allowed







# State Workarounds

- Treasury issued proposed regulations August 23
  - Allowable federal contribution deduction reduced by the credit
  - Will affect not only new workaround programs, but numerous existing programs (eg, school choice) allowing tax credits for donations
    - These had generally been approved in the past
  - IRS said on September 5 that new regulations do not apply to businesses that make contributions in exchange for credits
    - Those remain fully deductible as business expenses as long as there's a business reason for the contribution
  - By September 21, Treasury had already received over 1,500 comments on the proposed regulations
  - Issue will be litigated





# Prepaid Property Taxes

- Many taxpayers paid 2018 property taxes in 2017 to avoid new \$10,000 limit on deductions going into effect in 2018
  - New law forbade such early deductions for income tax, but silent as to property tax
- IRS advisory late 2017 said 2017 deductions for early payment only allowable if 2018 tax was actually assessed in 2017
- IRS repeated that position in July
- That issue will also undoubtedly be litigated, but creates uncertainty for taxpayers





# Miscellaneous Itemized Deductions

- Previously deductible to the extent they exceeded 2% of Adjusted Gross Income
- Tax Reform eliminated deduction for 2018 through 2025
- Impact on mobility
  - No deduction for home office, other business expenses for remote employees
    - Independent contractors not affected, puts additional pressure on worker classification
  - No deduction for extra expenses incurred by employees traveling on business
  - No deduction for repayments under payback agreements





# Tax Reform “2.0”

- House passed legislation 9/28 to make temporary provisions of Tax Reform law permanent (vote 220-191)
  - Tax rate cuts
  - 20% passthrough business tax deduction
  - Repeal of moving expense deduction/exclusion
  - State and local tax deduction limit of \$10,000
  - Home mortgage debt limit reduced from \$1 million to \$750,000
  - Repeal of personal exemptions
  - Larger standard deduction
  - Miscellaneous itemized deduction repeal
- Cost estimated at \$627 billion over 10 years





# Tax Reform “2.0”

- Senate unlikely to act
  - Would require 60 votes
  - Some Republicans in high tax states won't vote for it
  - Could come up in lame-duck session after mid-term elections depending upon outcome
- Other legislation
  - Expired provisions
  - Technical Corrections
  - Either may be considered during lame duck, depending of outcome of midterms





# Forums Update

- Global
- Immigration
- Real Estate and Mortgage
- Regulatory and Compliance
- Tax





# Questions and Answers

