

SEPTEMBER 2015 NEWSLETTER

**POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com**



Tax Credits And Deductions For College And Graduate School Education

FIRM ANNOUNCEMENTS:

A. MARTIN DALE-HUBBELL CLIENT DISTINCTION HONOR

Mr. Pozzuolo has been selected recently for a Martindale-Hubbell Client Distinction Honor. Out of more than 900,000 attorneys across the country, less than 1% received this prestigious designation. This award is made possible by Mr. Pozzuolo's clients who have taken the time to provide feedback to recognize Mr. Pozzuolo for his excellence skills, competence and expertise in the areas of communication ability, responsiveness, quality of service and overall value.

B. EDUCATIONAL SEMINARS ON YOU TUBE:

Pozzuolo Rodden, P.C. is pleased to announce you can view the following seminars taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo at "Pozzuolo Rodden, P.C.- You Tube"

*The Negotiation and Documentation of Commercial Real Estate Loan Documents

***The Fundamentals of Starting a Business**

***How Middle Income Families Should Plan for Retirement**

C. BLOGS

1. The following are a few of the business, tax and estate planning blogs posted on our main website www.pozzuolo.com during the past month:

- a. Estate Planning: Wills And Trusts;
- b. Business Succession Planning: How To Do It Right;
- c. Claim Of A Life Estate Is Rejected In Estate Litigation Case; and,
- d. Probate: Good Or Bad?

Please visit our website www.pozzuolo.com for more information on these and other relevant business, estates and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Length Of Marriage Is Only One Of The Factors To Consider In Making Alimony Award;
- b. An 100 Percent Upward Deviation From Child Support Guidelines Not An Abuse Of Discretion;
- c. Earnings Capacity Is Assessed At Higher Than Actual Income For Child Support; and,
- d. Children Age 18 Still In School And Reliant Upon Their Parents For Support Are Not Emancipated For Purposes Of Child Support.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

**Please visit our Facebook page to read all of our past and future blogs:
Pozzuolo Rodden, PC**

QUESTION OF THE MONTH:

**WHAT ACCOMMODATIONS AM I REQUIRED TO MAKE FOR MY
EMPLOYEE'S RELIGIOUS BELIEFS?**

Answer-See Page 5 of this Newsletter

Tax Credits and Deductions for College And Graduate School Education

With students going back to college and graduate school this month, it is important to be aware of the tax credits and deductions related to education expenses that you will be able to take advantage of on your Federal Income Tax returns.

I. Tax Credits

There are two tax credits available to taxpayers who pay for qualified education expenses this year. Tax credits directly reduce the amount of tax you owe, as opposed to a deduction which reduces the amount of taxable income. Although you may have qualifying education expenses for each credit, only one of the credits may be taken on your tax return for each student. For example, if you claim the Lifetime Learning Tax Credit for a child on your tax return, you cannot also claim the American Opportunity Tax Credit for the same child in the same tax year. Additionally, for both credits, in order to claim either tax credit, you must meet the following requirements:

- 1) You must either be the student or the student is your dependent (if the student can be claimed as a dependent by someone, he or she cannot take the credit themselves).
- 2) You pay qualified education expenses of higher education.
- 3) You pay the education expenses for an eligible student.

A. American Opportunity Credit

The first of the two tax credits available for education expenses is the American Opportunity Credit. You are able to claim a credit of up to \$2,500 for adjusted qualified education expenses paid for each student who qualifies for the American Opportunity Credit. Qualified education expenses include: 1) Tuition; 2) required enrollment fees; and, 3) course materials that the student needs for a course of study whether or not the materials are bought at the educational institution as a condition of enrollment or attendance

To qualify for the American Opportunity Credit, the following requirements must be met:

- 1) The student must be enrolled in a program that leads to an undergraduate or graduate degree, certificate, or other recognized education credential;
- 2) The student must be enrolled at least one half the normal full time course load for that course of study;
- 3) The student cannot have already completed four years of post secondary education; and
- 4) Neither the American Opportunity Credit nor the Hope Scholarship Credit can have been taken for that student for the preceding four years.

Whether you are able to take the American Opportunity Credit depends on the amount of your modified adjusted gross income. If you are married filing jointly, the credit starts to be reduced for incomes above \$160,000 and is unavailable to those with an income greater than \$180,000. For single filers, the credit is reduced for incomes above \$80,000 and is unavailable to single filers with an income greater than \$90,000.

One of the other benefits of the American Opportunity Credit is that this is a partially refundable credit. Up to forty percent of the credit (up to \$1,000 per student) may be refundable, meaning that if the refundable portion of your credit is more than your tax, the excess will be refunded to you. Other important limitations on the availability of this credit are that the credit is only available for four tax years per eligible student and the student must not have been convicted of a felony for possessing or distributing a controlled substance.

B. Lifetime Learning Credit

The second tax credit available for college and graduate education expenses is the Lifetime Learning Credit. You are able to claim a credit of up to \$2,000 for adjusted qualified education expenses paid for each student who qualifies for this credit.

In order to qualify for the Lifetime Learning Credit, the only requirement that must be met is that the qualified education expenses must be paid for the higher education of an eligible student. An eligible student is simply a student who is enrolled in at least one course of study at an eligible education institution. This includes both undergraduate and graduate degree programs and also includes courses to acquire or improve job skills that do not lead to recognized degrees.

The income limitations for the Lifetime Learning Credit are significantly lower than those for the American Opportunity Credit. If you are married filing jointly, the credit starts to be reduced for incomes above \$108,000 and is unavailable to those with an income greater than \$128,000. For single filers, the credit is reduced for incomes above \$54,000 and is unavailable to single filers with an income greater than \$64,000. Another drawback of the Lifetime Learning Credit is that it is not a refundable credit; meaning that the whole amount of the credit must be used against your taxes owed to receive the full amount of the benefit.

As previously noted, for each student, you can elect for any year only one of the credits. One of the most important differences between the Lifetime Learning Credit and the American Opportunity Credit is that there is no limit on the number of years for which you can claim the Lifetime Learning Credit, unlike the American Opportunity Credit which is limited to four years, including those for which the Hope Scholarship Credit was taken even if the American Opportunity Credit was not taken in that same year. Additionally, unlike the American Opportunity Credit, felony drug convictions do not make a student ineligible for the credit.

II. Student Loan Interest Deduction

If you have taken out student loans, you may be able to deduct up to \$2,500 from your taxable income as an above the line deduction. The loan must have been taken out solely to pay qualified education expenses, which include tuition and fees, room and board, books, supplies, and equipment, and other necessary expenses such as transportation. Furthermore, the expenses must have been paid for within a reasonable period of time before or after the student loan is taken out. The student for whom the loan was taken out must be enrolled at least half time in a program leading to a degree, certificate, or other recognized education credential.

You can continue to take this deduction for interest paid during the remaining period of the student loan after the student is no longer enrolled in the course of study. However, if you are married filing jointly, the deduction starts to be reduced for incomes above \$130,000 and is unavailable to those with an income greater than \$160,000. For single filers, the deduction is reduced for incomes above \$65,000 and is unavailable to single filers with an income greater than \$80,000. This deduction cannot be taken if your filing status is married filing separately.

III. Education Savings Programs

If you are still saving for your child's anticipated college expenses, using a qualified tuition program (QTP)

or Section 529 Plan should be considered. A QTP is a program set up to allow you to either prepay, or contribute to an account established for paying, a student's qualified education expenses wherein the funds contributed to the QTP can grow tax free as long as the funds are eventually used to pay for qualified education expenses. There can only be one designated beneficiary of a QTP account. QTP's are either maintained at an eligible educational institution or are established and maintained by states (or agencies or instrumentalities of a state).

The funds in the QTP must be used at an eligible educational institution, which must require, as a condition of enrollment, both tuition and fees and books, supplies, and equipment. Furthermore, in order to use the QTP funds for room and board expenses, the student must be enrolled at least half time in the program and the room and board expenses cannot exceed: 1) the allowance for room and board, as determined by the eligible educational institution, that was included in the cost of attendance for a particular academic period and living arrangement of the student; or, 2) the actual amount charged if the student is residing in housing owned or operated by the eligible educational institution.

Furthermore, assets can be rolled over or transferred from one QTP to another. To qualify as a rollover, the funds must be paid to another QTP within 60 days after the date of the distribution. In addition, there are no income tax consequences if the designated beneficiary of an account is changed to another member of the beneficiary's family. For instance, if you have funds left over in the QTP for your daughter after she finishes her education, you can change the designated beneficiary of that account to your son without incurring income tax consequences.

Finally, one of the benefits of QTP's is that they can be used in estate planning because you are permitted to make gifts up to the annual exclusion (\$14,000 in 2015) tax free to the QTP. Additionally, you are permitted to make up to five years worth of annual exclusion gifts to the QTP at once if you are trying to reduce your taxable estate more quickly, assuming no other gifts are made to the beneficiary of the QTP in the following five years.

If you have questions about which education credits and deductions you qualify for or have questions about using a QTP to save for college expenses, an experienced tax and estate planning attorney should be consulted.

QUESTION OF THE MONTH:

WHAT ACCOMMODATIONS AM I REQUIRED TO MAKE FOR MY EMPLOYEE'S RELIGIOUS BELIEFS?

Employers can often find themselves confused and frustrated when trying to determine exactly what their obligations are when an employee comes to them with a request or concern related to the employee's religious beliefs. Most employers want their employees to feel comfortable and respected, but also want to avoid disrupting the workplace, offending other employees in the company, or being taken advantage of. Accordingly, Title VII of the Civil Rights Act attempts to strike a balance of respecting an employee's beliefs while not forcing employers to bend over backwards to avoid a lawsuit.

Title VII requires an employer, once that employer is on notice that an employee has a religious accommodation that is needed, to reasonably accommodate that employee. To truly understand what that means, we need to determine the meaning of the phrases used under Title VII.

"Religion" is defined very broadly in Title VII, and includes not only traditional major religions such as Christianity, Islam, and Judaism, but also religious beliefs that are new, informal, or rare. Even atheism, the lack of a religious belief, is protected. The Court will generally resolve doubts about the nature of an employee's belief in favor of finding that they are religious. However, an employee cannot claim that a belief is religious in nature simply

because the belief is strongly held- personal preferences and social, political, and economic philosophies are not “religious” beliefs protected by Title VII.

There is always the concern that an employee will manufacture a religious belief in order to receive preferential treatment, or to tailor their working situation to his/her liking. To address that concern, Title VII requires employers to accommodate only religious beliefs that are “sincerely held.” Factors which are considered in determining an employee’s sincerity include, but are not limited to: whether the employee has behaved consistently with the professed belief, whether the accommodation sought would be desirable for non-religious reasons, and whether the timing of the request renders it suspect. None of these factors alone are determinate- people can change their beliefs as time passes- but together they can be useful in determining the sincerity of an employee requesting an accommodation. If an employer has genuine questions or concerns regarding an employee’s request, it is permitted under Title VII to ask the employee reasonable questions to seek further information.

An employer is not expected to be a mind reader, or an expert on the rules of all religions. The burden is on the employee who is seeking a religious accommodation to make the employer aware both that the accommodation is needed, and that the reason it is being requested is due to a conflict between religion and work.

Common requests for religious accommodations include requesting a schedule change to attend church services or avoid working on holy days, requesting an exception to the company’s dress code (to, for example, grow a beard, wear a yarmulke, wear a headscarf, or dress more conservatively), or requesting to be excused from a company’s morning prayer. These accommodations are generally considered reasonable and are often granted. However, there is no bright line rule saying that they must be. This is because Title VII does not require an employer to make any accommodation for an employee’s religious beliefs that would “pose an undue hardship.”

An accommodation is considered to pose an undue hardship if it would cause a “more than *de minimis*” cost or burden. This is a lower standard than an employer faces to show an undue hardship in accommodating an employee with a disability, which is defined in the Americans With Disability Act as “significant difficulty or expense.” When dealing with religious accommodations, factors to consider when determining the cost or burden include the following:

- The type of workplace
- The nature of the employee’s duties
- The identifiable cost of the accommodation in relation to the size and operating costs of the employer
- The number of employees who will need the accommodation.

To prove undue hardship, an employer must demonstrate the cost or burden that providing the accommodation would involve. “Cost” in this regard is not limited to monetary costs but also to the burden on the employer’s business. However, these costs need to be real and quantifiable- an employer cannot rely on hypothetical hardships that may occur in the future, such as the possibility that future religious employees may request the same accommodation. Further, the general jealousy and resentment of other co-workers is not considered an undue hardship.

It is important to note that while an employer is required to make religious accommodations unless there is an undue hardship, it is *not* required that they make the exact accommodation the employee is requesting. If the employer provides an alternative accommodation which meets the employee’s religious needs, the employee must cooperate. It is also allowed, and often encouraged, for the employee and employer to work together to come up with an accommodation that works best for everyone involved.

An experienced employment law attorney should be consulted for all questions or concerns about your obligations to accommodate your employee’s religious beliefs. Please feel free to contact this office and meet with

one of our experienced attorneys about any such questions or concerns.

-
- If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.
-

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

CORPORATE/TAX ARTICLES

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

ESTATE PLANNING ARTICLES

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes

- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.