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Community Associations Should be Proactive and Comply with New Federal Identity Theft Requirements

by Ronald L. Perl, Esq. & Brian J. McIntyre, Esq.

The Federal Trade Commission's broad new rules governing identity theft took effect on December 31, 2010. These new rules, address the detection, prevention, and mitigation of identity theft at financial institutions and creditors. Community associations may fall under the category of creditors and hence be required to adopt and oversee identity theft prevention programs. Indeed, the FTC already has warned that it intends a broad application of its new rules.

The rules are largely intended to apply to creditors that extend credit, i.e. those entities that provide goods and services involving deferred payments. While it is possible to argue that community associations are not creditors, given the FTC's intentions to broadly interpret the applicability of its rules, some associations may wish to comply with the newly promulgated rules. Associations that should consider complying with the rules include those that accept installment payments and/or believe there is a reasonable risk of identity theft of member data. In other words, those that allow annual, special or other forms of assessments to be paid on a monthly or quarterly basis.

With the increase of identity theft, the widespread fear invoked by the public on this topic and the potential for penalties for failing to comply,

associations should be proactive and adopt identity theft protection programs. In adopting the programs, associations may be able to turn the compliance costs into a marketing opportunity—by sharing with members the association's concern for its members' data, and the steps the association is taking to protect the same.

FTC Identity Theft Rules

The newly imposed identity theft rules require financial institutions and creditors to create written identity theft prevention programs. The programs must be appropriate to the size and complexity of the entity, and should be designed to detect, prevent and mitigate identity theft with respect to a customer's (in the case of a community association, a member's) account.

The program must include procedures to:

1. Identify "Red Flags" (pattern, practice, or specific activity that indicates the possible existence of identity theft) for a customer's (member's) account and incorporate them into the program.
2. Establish a written procedure for detecting "Red Flags."

**Wilkin &
Guttenplan, P.C.**

certified public accountants
and consultants

1200 Tices Lane
East Brunswick, NJ 08816

T 732.846.3000

F 732.846.0618

www.wgcpas.com

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The Small Employer Health Insurance Credit: Can Associations Benefit from this New Incentive?

by Len Nitti, CPA, MST

Many small employers who provide health care benefits are excited about a new tax credit that is available for the first time in 2010. This Small Employer Health Insurance Credit enacted by the 2010 Health Care Act will now make providing health insurance more affordable for small employers. Unfortunately, even though many community associations would typically be considered to be small employers, only an association with the right set of facts and circumstances may stand to benefit from this new tax incentive. This article is designed to give a background on this new credit and provide the limited circumstances where an association may benefit from the tax credit.

Who is Considered to be a Small Employer?

The first step is determining whether or not the association meets the definition of a small employer for purposes of this credit. In order to be considered a small employer, the association must pass two tests. The first test is based on the number of full time equivalent employees (for conversion of part-time employees, take the total hours worked by all divided by 2080 hrs) that work for the employer. Any employer with 25 or fewer full time equivalent employees is considered to be a small employer. The second test is based on the average annual wages paid to each employee. For this test, a taxpayer is considered to be a small employer if total average annual wages paid do not exceed \$50,000. The average annual wages are calculated by dividing the total wages paid during the year by the number of full time equivalent employees that worked during the year.

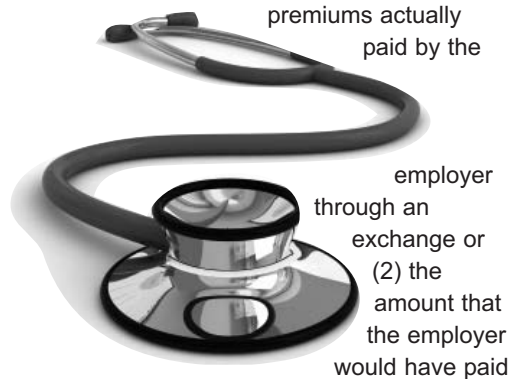
What Type of Health Care Coverage must be Provided?

In order to qualify for the credit, the employer must pay for at least 50 percent of its employees' health care insurance through a contribution arrangement. The contribution arrangement must require for a nonelective contribution to be made for

each employee who enrolls in the insurance plan in an amount equal to a uniform percentage of at least 50 percent for all employees.

What is the Amount of the Tax Credit?

The maximum credit is 50 percent of the lesser of (1) the total health care premiums actually paid by the



employer through an exchange or (2) the amount that the employer would have paid

if it had enrolled in a qualified health plan which had a premium equal to the average premium for the small group market as determined by the Secretary of Health and Human Services.

After determining the maximum credit, the employer must determine its allowable credit for the tax year. There are two phase outs which limit the credit available to an employer. The first phase out is for the number of full time equivalent employees. For each employee in excess of the 10th employee, the maximum credit is reduced by an amount equal to 6 2/3 percent. For example, an employer with 15 full time equivalent employees would have its maximum credit reduced by 33 1/3 percent (5 employees times 6 2/3 percent). The second phase out is based on the average annual wages of the employer. For wages in excess of \$25,000, the maximum credit is reduced by 6 2/3 percent for each \$1,000 the average annual wages exceeds \$25,000.

Community Associations and Tax Credits

Community associations generally have two different sources of income and expenses, membership and

nonmembership (patronage and nonpatronage in the case of a co-op). Each source of income and associated expenses are tracked separately. Associations pay tax on their net nonmembership income while the net income from membership sources is generally not taxed. Based on the limited guidance that the IRS has provided, the general rule for tax credits when it comes to associations is that the tax credit can only be used to offset the tax liability relating to the source of income which the credit relates. As the wages that an association pays typically relates to membership activities, the Small Employer Health Insurance Credit would be allocated towards membership income and therefore could only be used to offset an association's tax liability relating to membership income. As an association generally does not pay tax on their membership/patronage income, the association would not receive a benefit from any tax credit allocated to this source of income.

Community Associations May Benefit from the Credit

Community associations who are most likely to benefit from this credit are those which are paying wages relating to nonmembership/nonpatronage sources of income. One example is an association which employs a bookkeeper could allocate a portion of the credit towards nonmembership income based on the percentage of time that the employee works on the nonmembership income items. Another example is an association which operates rental units and employs someone responsible for maintaining

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This publication is prepared quarterly by Wilkin & Guttenplan, P.C. For further information or for complimentary copies or subscriptions, you may contact Avery Quayle at 732-846-3000 or aquayle@wgcpas.com.

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Tax Relief Available for Homeowners with Corrosive Drywall Damage

by Jodi Kleuskens

Homeowners who have paid for repairs resulting from corrosive drywall installed in their home between 2001 and 2008 may now qualify for relief from the IRS in the form of a tax deduction pursuant to Revenue Procedure 2010-36. The deduction, classified as a casualty loss, may be deducted by a homeowner on their individual tax returns for the costs incurred to repair their personal residences or household appliances resulting from the corrosive drywall. The casualty loss is deductible in the year the payments for these repairs are made. Individuals who have paid for repairs in earlier tax years can still benefit by amending the tax return filed in a previous year to claim the casualty loss.

In order to qualify for the deduction for the repairs caused by problem drywall, a two-step identification process must be met. The first step is a threshold inspection showing the corrosion and that the drywall replacement occurred between 2001 and 2008. The second step is identifying corroborating evidence that damage was in fact caused by the corrosive drywall. Additional information regarding the two-step method can be found at <http://www.cpsc.gov/info/drywall/guidance0827.pdf>.

Due to the unusual circumstances surrounding damages resulting from corrosive drywall and the related insurance reimbursement claims, the IRS has provided "safe harbor" guidelines for taxpayers to calculate the amount of loss that can be taken in a particular year. The amount of loss that can be claimed depends on whether the taxpayer has a pending claim for reimbursement (or intends to pursue reimbursement) or the loss through property insurance, litigation or other

remedies, as summarized below:

- (1) A taxpayer who does not have a pending claim for reimbursement may claim as a loss all unreimbursed amounts paid during the taxable year to repair damages to the taxpayer's personal residence and household appliances due to the corrosive drywall.
- (2) A taxpayer who has a pending claim may claim a loss for 75% of the unreimbursed amount paid for to repair damages to the taxpayer's personal residence and household appliances as a result of the corrosive drywall. A taxpayer in this category may have to recognize income or an additional deduction in subsequent years depending on the actual amount of the repairs net of reimbursement received compared to the 75% safe harbor deduction they took. If the deduction taken is less than the actual amount of unreimbursed expenses, the taxpayer would be entitled to an additional deduction. If the deduction taken is more than the actual amount of unreimbursed expenses, the taxpayer would be required to recognize additional income for the difference.
- (3) A taxpayer who has been fully reimbursed before filing a return for the year the loss was sustained may not claim a loss at all.

Please consult your tax advisor to determine if you may qualify for and benefit from the casualty loss deduction resulting from corrosive drywall damage.

Jodi Kleuskens is an accountant with Wilkin & Guttenplan. She can be reached at jkleuskens@wgcpas.com.

Health Insurance Credit *(cont. from page 2)*

these units. The credit attributable to these wages would also be allocable towards nonmembership sources of income to offset any tax liability.

Even if the association is able to benefit from a portion of the credit, it should do a cost/benefit analysis to determine if it is worthwhile to have the calculation of the credit completed. As you can imagine this credit calculation is quite complicated and can be costly to complete. A credit of only a

few hundred dollars will likely not be worth the cost of performing the calculation.

If you think that your association may benefit from this tax credit, please contact your advisor at Wilkin & Guttenplan.

Len Nitti is a tax manager with Wilkin & Guttenplan. He can be reached at lnitti@wgcpas.com.

News from the Firm

Employee Anniversaries

25 Years

Sefi Silverstein

24 Years

Mike LoVerde

23 Years

Kristine Flores

18 Years

Carol Koransky

14 Years

Brian Geissler
Bill McDevitt

12 Years

Amanda Brady
Len Nitti

11 Years

Patty Hernandez

10 Years

Mohammed Salyani

Tradeshow Appearances

Wilkin & Guttenplan will be exhibiting in booth #236 at The Cooperator's Co-op & Condo Expo in the Hilton New York on April 12, 2011.

The firm will also be exhibiting at The New Jersey Cooperator's Condo, HOA & Co-op Expo on May 11, 2011 at the Meadowlands Exposition Center. Look for us in booth #300.



Identity Theft Requirements *(cont. from page 1)*

3. Respond to any identified “Red Flags” so as to prevent and mitigate identity theft.
4. Periodically update the program to reflect changes in risk to customers (members) and to the safety of and soundness of the association from identity theft.

The identify theft program must be approved by the board or an appropriate committee of the board. Once approved, the board, an appropriate board committee or senior manager, must be involved in the oversight, development, implementation and administration of the program. Staff must be trained to effectively implement the program’s provisions.

Enforcement and Penalties

It is unlikely that the FTC will actively investigate community association compliance with these rules. However, if a violation occurs, which results in injury to a member who then files a complaint, the FTC will

become involved and seek compliance. Upon determination that a violation occurred, the FTC can impose a fine up to a \$3,500.00 per violation. Repeated violations can result in higher penalties.

Going Forward

Given the risks posed by identity theft for any organization that collects personal information, the FTC’s increased mandate concerning the collection of financial information and the potential for fines, it is recommended community associations adopt policies that comply with the FTC rules concerning identity theft.

Ron Perl is the partner-in-charge of Hill Wallack LLP’s Community Association Group. He can be reached at rperl@hillwallack.com. Bryan McIntyre is an associate at Hill Wallack LLP. He can be reached at bmcintyre@hillwallack.com

Upcoming Issues

- Allocating Federal Taxes to the Replacement Fund
- Taxes – The W&G Way
- The Difference Between Internally Generated Financial Statements and Audited Financial Statements



Wilkin & Guttenplan P.C.
Certified Public Accountants and Consultants

1200 Tices Lane
East Brunswick, NJ 08816
732.846.3000 ph
732.846.0618 fax
www.wgcpas.com

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