Tax Issues Impacting the Amish Community
Significant Tax Issues Impacting the Amish Community

• Child Tax Credit: Internal Revenue Code (IRC) § 24

• Social Security and Medicare Taxes: IRC §§ 1401, 1402, 3101, 3111, and 3127.
Background: Child Tax Credit

IRC § 24

• **Amount of credit**: The maximum credit is $2,000 for each qualifying child under age 17 at the end of the tax year. The amount of the credit is phased out once the taxpayer’s modified adjusted gross income (MAGI) exceeds $200,000 ($400,000 for joint return).

• **Qualifying Child [IRC §§ 24(c) and 152]**:
  - Under age 17.
  - Must be citizen, national, or resident of the U.S.
  - Lives with taxpayer more than half the year.
  - Has not provided more than half of own support.
  - Relationship: child, descendant of a child, sibling, step-sibling, or descendant of sibling or step-sibling (nieces and nephews).
New Social Security Number (SSN) Requirement

- The Tax Cuts and Jobs Act ("TCJA") amended IRC § 24 to require taxpayer to provide an SSN for each qualifying child claimed for the CTC in TYs 2018-2025.
- Before TCJA, IRC § 24 required just a Taxpayer Identification Number (TIN).
- Post-TCJA, the SSN must be issued by the SSA before the due date of the return (including extensions).
- If dependent child was born alive and died during the same tax year with no SSN, taxpayer can enter “Died” in column (2) of the Dependents section of tax return and include a copy of the child's birth certificate, death certificate, or hospital records.
Credit for Other Dependents
(or Other Dependents Credit - ODC): IRC § 24(h)(4)

• Created by the Tax Cuts and Jobs Act (Dec. 2017) for TYs 2018-2025.

• Dependents who can’t be claimed for the CTC may still qualify for the ODC.

• This is a nonrefundable tax credit of up to $500 per qualifying dependent.

• The qualifying dependent must be a U.S. citizen, U.S. national, or U.S. resident alien.
Credit for Other Dependents
(or Other Dependents Credit - ODC): IRC § 24(h)(4)

• If the dependent does not meet the definition of a qualifying child because there is no SSN, or if the dependent is 17 or older, the taxpayer can claim the ODC for the dependent if there is a valid ITIN or ATIN issued on or before the due date of the return.

• To claim the ODC, taxpayer must provide proof of U.S. citizenship or U.S. residency for the dependent who qualifies for the credit [IRM 21.6.3.4.1.24.3, Credit for Other Dependents (Oct 1., 2018).]
Area of Focus: Application of the Religious Freedom Restoration Act to the Social Security Requirement under IRC § 24(h)(7), Which Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups
IRS Implementation of New CTC and ODC

• IRS will disallow Child Tax Credit (CTC) if SSN not provided for each qualifying child ($2,000/per child)

• Taxpayers with religious or conscience-based objections to obtaining SSNs may instead claim the Other Dependent Credit (ODC) ($500/per child)

• The National Taxpayer Advocate is urging the IRS to administratively accommodate these taxpayers to allow the full CTC for qualifying children without SSNs if the taxpayer has an approved Form 4029 on file
Evolution of Free Exercise Claims

• First amendment Constitution - free exercise of religion

• Sherbert v. Verner (1963), State did not have compelling interest to justify substantial infringement on First Amendment Right

• Sherbert Test – requires:
  – Compelling governmental interest; and
  – Narrow tailoring of law that substantially burdens an individual’s free exercise of religion
Compelling Governmental Interest Standard

- *Wisconsin v. Yoder* (1972), Wisconsin’s compulsory school attendance law imposed a substantial burden on free exercise of religion and was unnecessary to serve a compelling governmental interest
Erosion of Compelling Interest Standard

- United States v. Lee (1982) and
- Employment Division, Department of Human Resources of Oregon v. Smith (1990)
  - Limiting religious liberty is permissible if essential to accomplish an overriding governmental interest; and
  - Right of free exercise does not relieve individual of obligation to comply with valid or neutral law of general applicability
Religious Freedom Restoration Act (RFRA)

Purpose:

– Restore compelling interest test from Sherbert and Yoder and guarantee its application in all federal cases where free exercise of religion is substantially burdened; and

– Provide a claim or defense to persons whose religious exercise is substantially burdened by the government
Religious Freedom Restoration Act (RFRA)

• Government shall not substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability,

• Except government may substantially burden a person’s exercise of religion **only** if it demonstrates that application of the burden to the person –
  – Is in furtherance of a compelling governmental interest; and
  – Is the least restrictive means of furthering that compelling governmental interest
Religious Freedom Restoration Act (FRFA)

- *Burwell v. Hobby Lobby Stores, Inc.* (2014), “least restrictive means standard is exceptionally demanding” and was not met in requirement to provide health insurance including contraception

- Agency must show it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion

- Secretary of Health and Human Services had previously adopted other means by which regulation could be complied with while not substantially burdening free exercise of religion
IRS Office of Chief Counsel
Opinion

• IRS must not administratively accommodate taxpayers with religious reasons for not having SSN for children
  – Federal Courts have upheld requirement to provide dependent’s SSN to obtain tax benefits if (1) statute is facially neutral and applies to all applicants, and (2) promotes a legitimate and important public interest;
  – Under RFRA, government may not substantially burden the free exercise of religion unless burden (1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that interest; and
  – In implementing SSN requirement for CTC, government has compelling interest to ensure uniform and orderly tax administration and to prevent improper CTC claims, and the only means to further those compelling interests is to require qualifying child’s SSN

See PMTA 2019-2 (March 29, 2019)
IRS Office of Chief Counsel Opinion

- National Taxpayer Advocate
  - disagrees with Counsel’s conclusion that IRS does not need to administratively accommodate taxpayers with religious or conscience-based objections to obtaining SSNs, and
  - believes the legal advice inaccurately interprets IRS’s obligation to comply with RFRA

- RFRA analysis in Counsel opinion, National Taxpayer Advocate
  - agrees that the law requiring SSNs serves a compelling governmental interest to ensure uniform and orderly tax administration and to prevent improper CTC claims, but
  - disagrees with premise that the tax system could not function if denominations were allowed to challenge the tax system on the grounds that it violates their religious beliefs
IRS Accommodates Unprotected Class

- IRS allows taxpayers to claim CTC for children with missing SSN if child was born and died in same or consecutive tax period if birth certificate or hospital record showing live birth provided.

- Sherbert, as incorporated into RFRA, requires the law be neutral and generally applicable; if an exemption is offered to one, then it must be offered to everyone.
Background: Social Security and Medicare Taxes

- Taxes under the Federal Insurance Contributions Act (FICA) include:
  - Social Security Taxes: Also known as old-age, survivors, and disability insurance taxes
  - Medicare Taxes: Also known as the hospital insurance tax

- The taxes are imposed differently on employees, employers, and self-employed taxpayers

**Employees** pay (IRC § 3101)
- 6.2% Social Security (up to wage limit, $132,000 in TY 2019)
- 1.45% Medicare
- 0.9% Additional Medicare Tax on wages in excess of threshold income amount ($200,000 single or HOH, $250,000 joint, or $125,000 MFS)

**Employers** pay rates for Social Security and Medicare Taxes (not Additional Medicare Tax) (IRC § 3111)

**Self-Employed Taxpayers:** The tax rates (IRC § 1401):
- 12.4% for Social Security (up to $132,000)
- 2.9% for Medicare
- 0.9% Additional Medicare Tax on wages, compensation and self-employment income in excess of income threshold
- File Schedule SE of the 1040
- Pay with estimated taxes

Note: “Self-employment tax” refers to Social Security and Medicare taxes for self-employed taxpayers. (IRC § 1401)
Exemption from Social Security and Medicare Taxes

• IRC § 1402(g) exempts members of certain religious faiths from the payment of Social Security and Medicare taxes.

• To qualify, the taxpayer must be “a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).”

• To claim the exemption, the taxpayer must file an application for exemption, IRS Form 4029.
Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits

- Employees and self-employed individuals claim an exemption from Social Security and Medicare taxes, and waive associated benefits, on IRS Form 4029.
- Taxpayer files IRS Form 4029 directly with Social Security Administration (SSA) - It is a one-time election.
- SSA makes the exemption determination.
- SSA forwards the approved Form 4029 to the IRS to record on the IRS database.
- The IRS returns the Form 4029 to the taxpayer marked “Approved.”
- If taxpayer is no longer a member of the religion, the taxpayer must send a letter requesting revocation to the IRS at the address printed on the back of Form 4029.
Form 4029 & Employment

What happens when a Form 4029 holder works for an employer who doesn’t have a Form 4029?
Mr. Byler

Amish farmer in Pennsylvania
Mr. Byler

• Mr. Byler didn’t pay Social Security and Medicare taxes on his farm income
• The IRS filed a lien against Mr. Byler’s horses as a way to motivate Mr. Byler’s payment of the Social Security and Medicare taxes
• This approach didn’t work
Mr. Byler

- The IRS subsequently foreclosed on its lien by seizing the horses and selling them at auction
- The IRS applied the proceeds of the auction to Mr. Byler’s liability
- The IRS returned the remaining balance of $37.89 to Mr. Byler
Congress responds

• Congress responded to the issue of the intersection of religious belief and the payment of Social Security and Medicare taxes

• 26 USC § 1402(g) exempts certain self-employed individuals from the payment of Social Security and Medicare taxes
The Statute

(g) Members of certain religious faiths.--

(1) Exemption.--Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).
What about employer-employee relationships?

• The case of Mr. Lee
• Member of Old Order Amish
• Self-employed carpenter and farmer
• Employer of Amish individuals
• Didn’t pay Social Security and Medicare taxes
Mr. Lee

- IRS assessed all taxes against Mr. Lee
- He paid one quarter, and then filed a refund claim in U.S. District Court
- Mr. Lee asserted that the payment of the Social Security taxes violated his religious beliefs, and to make him pay was unconstitutional
Mr. Lee, cont’d

• The U.S. District Court agreed with Mr. Lee.

• Such a requirement violates the Free Exercise clause of the First Amendment, “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof…”

• And Congress already provided an exemption in IRC § 1402(g).
The Supreme Court

- The Supreme Court disagreed
- “Not all burdens on religion are unconstitutional.”
- “The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.”
Supreme Court, cont’d

- What’s a government interest?
- Maintaining the nationwide Social Security system
- And, Congress already accommodated the Amish when it enacted IRC § 1402(g).
Congress Responds

• Congress enacted 26 USC § 3127 to exempt employees and employers from the payment of Social Security tax

• BUT, both employer and employee must be exempt: both must have filed and received approval of their Forms 4029.
The Statute

• *(1)* an employer (or, if the employer is a partnership, each partner therein) is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

• *(2)* an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

• such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of the employees thereof who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.
Form 4029

• But what about the role of the Form 4029 where the Form 4029 holder is employed by a *non-exempt* employer?

• Form 4029 holder (employee) must pay Social Security and Medicare taxes

• Employer must pay Social Security and Medicare taxes
Form 4029 & non-exempt employers

• How many taxpayers does this affect?
• TAS research estimates the number of returns with 4029 indicator for one or both spouses:

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<th>Year</th>
<th>2013</th>
<th>2014</th>
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4029 & non-exempt employers, cont’d

• TAS research estimates the number of returns with 4029 indicator for one or both spouses and primary taxpayer has W-2 income:

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4029 & non-exempt employers, cont’d

- TAS research estimates the number of returns with 4029 indicator for one or both spouses and secondary taxpayer has W-2 income:

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Congress responds

• H.R. 2714, an Act to exempt religious Members and Individuals from Social Security and Healthcare Taxes Act” or the “AMISH Act”

• Introduced by Congressman Gibbs (R-OH-7) on May 14, 2019
H.R. 2714

• The proposed legislation would allow for the refund to the exempt taxpayer of Social Security and Medicare taxes the exempt taxpayer paid during the year
• Would require a tax return
• Does not affect non-exempt employer
• Responds to concerns raised in Lee