

## ***In This Issue...***

- INS Penalizing Restaurateurs with Incomplete I-9 Forms
- Why Choose Monthly Accounting
- Avoid the Pitfalls When Buying a Restaurant or Bar
- The Good News and the Bad on the Tax Front

## **PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)**

Also known as Obamacare, the PPACA is becoming a concern for restaurant owners as 2014 nears and they hear more of the law's requirements. Over the next three newsletters, I will talk about the law as it relates to restaurants and bars. In addition, Kallas Restaurant Accounting will be setting up systems and programs to make it easier for you to comply and will be providing consultation services for large employers.

The law differentiates between small and large employers. If you are a large employer, you must provide insurance to your employees or be subject to a non-deductible penalty tax.

### **Q. When does the law take effect?**

**A.** Parts of the law have already been in effect but the main part of the law which affects restaurant and bar owners and their employees begins January 1, 2014. Also, your payroll now will have an effect on whether you are a small employer or a large employer.

### **Q. Who does the law cover?**

**A.** With rare exceptions, it covers all employers, employees and even retirees and people not working.

### **Q. I am a small bar with 5 employees. What do I have to do?**

**A.** If you are a small employer defined as less than 50 employees, you do not have to provide insurance but you still must send reports to the IRS each year. In addition, you must inform your employees by written notice that they must buy their own health insurance starting January 1, 2014

### **Q. How do I know if I am a large employer?**

**A.** The law defines a large employer as having 50 or more employees adding full time people plus full time equivalent employees.

### **Q. How does the law define full time and full time equivalent?**

**A.** A full time employee is any employee who consistently works 30 hours or more a week. The number of full time equivalent employees is the number you get by adding all part time hours and dividing by 120

### **Q. I am not sure if I have 50 or more employees. How do I calculate the 50 employee threshold?**

*(Continued on page 2)*

(Continued from page 1)

**A. Step 1.** For each of the 12 months prior to January 2014, an employer must look back and determine how many employees averaged 130 hours or more in a calendar month. These are your full time employees. **Step 2.** Add together the hours of all other employees divided by 120. These are your full time equivalent employees. **Step 3.** Add the number of full time and full time equivalents. **Step 4.** Repeat the process for each month in 2013 and average all 12 months. If your result is 50 or more, you are a large employer.

*Note: Kallas Auto Payroll service is setting up programs to do this calculation*

**Q. What if I am a seasonal employer?**

**A.** If your workforce exceeds 50 employees for less than 120 days or four calendar months, and if the employees in excess of 50 during those months were seasonal employees, you may qualify for a "seasonal employee exception" from the mandate.

**Q. What if I own more than one restaurant.**

**A.** If you are the sole owner or shareholder of more than one restaurant or other businesses - even if they are separate corporate entities - you must count all of them for purposes of the 50 employee threshold.

**Q. I own more than one restaurant but I have partners. How does that work.**

**A.** It is complicated and you should consult with your tax advisor at Kallas but it basically works like this: If 5 or fewer people own a controlling interest which is 80 % or more of each entity and the same 5 or fewer people have effective control which is determined by taking the common percentage ownership and the same people own more than 50% then both entities must be combined.

A simple example would be if Jim and Mary are partners in two restaurants. Jim owns 50 % of one restaurant and 60% of the other restaurant. The restaurants must be combined because the same people own more than 80% of each and adding their lowest common percentage of 50% for Jim and 40% for

Mary, they have effective control of more than 50% of both.

Another example would be if Jim owned 100% of one restaurant and 50% of a second restaurant with Mary. Under this situation, the 2<sup>nd</sup> restaurant would not be included because Jim does not own more than 50%.

**Q. If I am a large employer, do I have to offer health insurance for all my employees?**

**A.** No. Just for the full time employees – not the part time employees. Plus you get an exemption for the first 30 full time employees. In other words, if you have 40 full time employees, you would only have to offer insurance to 10 of them (40, less the exemption of 30 equals 10). Or, in another example, if you have over 50 employees but only 29 full time, you would not have to offer insurance to anyone because you are under the 30 full time exemption.

**Q. What if I can't afford the cost of health insurance for my employees?**

**A.** There are ways to reduce the cost of the health insurance mandate which we will talk about in the next newsletter but many restaurant owners have already decided to just not offer health insurance and pay the penalty instead. The penalty which is non-deductible is \$2,000 per eligible full time employee per year. (minus the exemption of 30). So in the above example of 40 full time less 30 exemption, your penalty tax would be \$20,000 (40 full time employees minus exemption of 30 equals 10 times \$2,000 per employee).

**Q. Are there ways to get around this law?**

**A.** Not many. Most employers are trying to cut down full time employees (remember – under 30 full time – you pay nothing) and go to more part time employees. Others are considering offering the health insurance instead of taking the non-deductible penalty.

In the next issue of the Kallas newsletter, I will talk about what is involved in offering health insurance under PPACA.

*"There is only one boss. The customer. And he can fire everybody in the company from the chairman on down, simply by spending his money somewhere else." - Sam Walton*

## INS PENALIZING RESTAURATEURS WITH INCOMPLETE I-9 FORMS

The I-9 form must be filed out completely when you hire a new employee. The I-9 is used to document that a person you hire is legally able to work.

The Immigration and Naturalization Service (INS) can visit your location unannounced and ask to see your I-9 forms. If you do not have them or they are not correctly filled out you may be subject to penalties.

Employers who fail to properly complete, retain, or make I-9 Forms available for inspection are subject to fines ranging from \$100 to \$1,100 per individual I-9.

For employers who knowingly hire or knowingly continue to employ unauthorized workers, civil penalties range from \$250 to \$11,000 per violation.

For employers engaging in a pattern of knowingly hiring or continuing to employ unauthorized workers, criminal penalties can be as much as \$3,000 per unauthorized employee and/or 6 months of imprisonment.

There is a revised I-9 form that you *must* start using as of May 7, 2013.

Discard any blank old versions of the form and either order new versions from Kallas or print them directly on-line at [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf) Do not use the old version of the form after May 7.

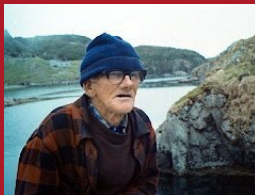
The Newfoundland Department of Employment claimed a boat owner wasn't paying proper wages to his help and sent an agent to Burin to investigate him.

GOVT AGENT: "I need a list of your employees and how much you pay them".

BOAT OWNER: "Well, there's Clarence, my hired hand, he's been with me for 3 years. I pay him \$200 a week plus free room and board. Then there's the mentally challenged guy. He works about 18 hours every day and does about 90% of the work around here. He makes about \$10 per week, pays his own room and board, and I buy him a bottle of Lamb's rum and a dozen Labatt Lite every Saturday night so he can cope with life. He also gets to sleep with my wife occasionally".

GOVT AGENT: "That's the guy I want to talk to - the mentally challenged one".

BOAT OWNER: "That'll be me. What'd you want to know?"



## WHY MONTHLY ACCOUNTING

Many small businesses attempt to do their own accounting on Quickbooks or manually and then give the work to the accountant or CPA at year end.

For some very small businesses that may work. When it comes to restaurants and bars, I highly discourage that thinking.

It is important for restaurant and bar owners to receive monthly financial statements - not just for the obvious reason of being able to manage your business better but to actually cut costs and mistakes.

If there are mistakes during the year, they can be corrected on a timely basis rather than when it is too late.

Year end fees for most accountants are going to be at a premium because their time is so limited. Paying monthly and receiving monthly financial statements spreads the cost and the workload.

A big year end accounting fee could be a big financial hit for you. Monthly fees are easier to budget.

Monthly accounting reduces the learning curve. If your accountant only sees the work at year end, he/she can forget how certain items are handled or has to re-learn your way of doing things.

Pushing everything into year end creates pressures and rushing to meet deadlines. That is when mistakes are made.

Monthly accounting allows your accountant to better answer your financial questions and to advise you properly all year long.

Monthly accounting helps eliminate horrible tax surprises at year end.

If you prepare your books on a monthly basis and need financial statements during the year for banks or other third parties, they are available.

The man who will use his skill and constructive imagination to see how much he can give for a dollar, instead of how little he can give for a dollar, is bound to succeed. - Henry Ford

# Calendar for June, July, August 2013

## June 15

- *Individuals outside the U.S.:* File 2012 Form 1040.
- *Individuals:* Pay the second installment of estimated tax for 2013.
- *Corporations:* Deposit the second installment of your 2013 estimated tax.
- *Corporations:* Taxes due for March year end corporations.
- *Corporations:* Estimated Taxes due for corporations with fiscal year ending March, June, October or December.

## June 20

- Michigan Sales, Use and Withholding estimates due.

## July 4

- Kallas Restaurant Accounting closed for Independence Day

## July 15

- *Corporations:* Taxes due for April year end corporations.
- *Corporations:* Estimated Taxes due for corporations with fiscal year ending January, April, July or November.

## July 20

- Michigan Sales, Use and Withholding estimates due.

## July 25

- *Payroll:* UIA form 1020 due for 2nd Quarter.

## July 31

- *Payroll:* Deposit FUTA owed through June if more than \$500.
- *Payroll:* File Form 941 for the second quarter of 2013.

## August 10

- *Payroll:* File Form 941 for the second quarter of 2013 if you timely deposited all required payments.

## August 15

- *Corporations:* Taxes due for May year end corporations.
- *Corporations:* Estimated Taxes due for corporations with fiscal year ending February, May, August or December.

## August 20

- Michigan Sales, Use and Withholding estimates due.

Kallas  
Restaurant  
Accounting

## INSIDERS REPORT

645 Griswold, Ste 1500, Detroit, MI 48226  
(313) 962-6000 [www.KallasCompany.com](http://www.KallasCompany.com)

## AVOID THE PITFALLS WHEN BUYING A RESTAURANT OR BAR

Before committing to purchasing a restaurant or bar, it is advisable to take the proper steps to avoid unpleasant surprises later. A due diligence investigation should be performed which includes seeking professional advice on how to proceed. Even if you are an experienced buyer, the laws change and if you don't make the right moves, costly problems could emerge.

If you are interested in purchasing a restaurant or bar and you have your eye on a specific location, that is the time to start talking to your accountant and lawyer.

The attorney will draft a Preliminary Purchase Agreement with contingencies. Contingencies will allow you to renegotiate or back out of the contract altogether if your due diligence turns up serious problems.

The attorney will also search for liens and security interests which will need to be resolved for you to obtain clear title.

Part of your due diligence should include obtaining the professional opinion of a building inspector and an equipment expert who will check the age and condition of the equipment you are purchasing.

The experienced accountants at Kallas Restaurant Accounting should also be consulted. There are many tax considerations that have to be made and preliminary steps that should be taken prior to the final purchase. Here is a checklist:

**How the business is purchased.** Should you buy the stock of an existing company or create a new entity and buy certain assets? Each option has different tax consequences which should be discussed with your tax advisor. Buying the real estate also involves tax considerations.

**What type of entity should be used and creating that entity.** Each situation is different. Creating and deciding to operate as an LLC versus an S Corporation or a C Corporation involves many considerations with differing tax ramifications.

**Allocation of the sale price.** The IRS requires you and the seller to come to an agreement about the val-

ue of the assets you are purchasing. This is an important step with long lasting tax consequences and should be made in consultation with your tax accountant.

**Filing Registrations.** This should be done by your accountant in the proper sequence and is the next step in the process.

**Opening bank accounts and pre-opening expenses.** A bank account in the name of your new entity should be opened. It is important to start documenting your expenses relating to the purchase in the proper way to pass IRS rules.

**Unemployment considerations.** An increasingly important step in any purchase of a restaurant or bar is to obtain the unemployment history of the location. In most cases, a purchaser inherits the rate of the seller. Some steps can be taken to mitigate or reduce problems in this area but you must know if a problem exists and that takes research and knowledge.

**External and in-house accounting procedures.** These procedures should be discussed in the context of the resources available and the results expected.

**Management agreement in the case of liquor license transfers.** If a liquor license is involved in the purchase, you will have to begin the process of transferring the license. For you to operate the business while the license is being transferred will require a management agreement. Management agreements involve considerable risk to both the seller and the buyer. Before entering into a management agreement these risks should be discussed.

**Inventory all food, liquor, kitchen wares, furniture, fixtures and equipment.** A preliminary inventory should be done prior to closing. Hardware, equipment and other items have a tendency to disappear between the Preliminary Purchase Agreement and the closing.

For referrals of experienced restaurant and bar attorneys go to [KallasCompany.com](http://KallasCompany.com), click the down arrow on Restaurant Pros and click on attorneys.

If you owe the bank \$100 that's your problem. If you owe the bank \$100 million, that's the bank's problem.—J. Paul Getty

## THE GOOD NEWS AND THE BAD ON THE TAX FRONT

If you were not paying attention, Obamacare (the law you are just supposed to sign and not read) and the so-called fiscal cliff (the expiration of the Bush tax cuts) New Year's day compromise created a bunch of new taxes.

Don't worry. It was advertised as just hitting the rich 1%. The top 1% of earners according to 2010 figures make about \$370,000 and up. Apparently, politicians cannot count because some of the new taxes fall onto taxpayers making less than \$370,000. And, looking into the future, since there was no adjustment for inflation creep – and inflation is controlled by the government – you can bet more of us will eventually fall within these taxable brackets.

First the bad news:

- New \$65 tax for each insured person plus insured family member. This new tax will be billed by your health insurance company. For a family of five that is \$325 per year. This is one of the new Obamacare taxes.
- The 2% payroll tax cut expired causing payroll taxes to increase for 2013. This tax applies to all working people and went into effect January 1, 2013. You probably heard your employees complain when they got their first check for 2013 and it was smaller than they expected.
- If you are single and make over \$400,000 or married and make over \$450,000, you are now in a new 39.6% bracket. Previously you were in the 35% bracket.
- If you are single and make over \$400,000 or married and make over \$450,000, the tax on your capital gain and dividend income goes from 15% to 20%.
- If you are single and make over \$250,000 or married and make over \$300,000, your itemized deductions begin to phase out by 3%. That means if your Adjusted Gross Income is \$400,000 and you are married, you lose \$3,000 ( $\$400,000 - \$300,000 \times 3\%$ )

of your normally deductible itemized deductions.

- If you are single and make over \$250,000 or married and make over \$300,000, your personal exemption begins to phase out. For a family of 5, the personal exemptions amount to a \$19,000 deduction from income. At an income level of \$425,000 a married couple would lose the deduction entirely. A single taxpayer would lose it at \$375,000.
- If you are single and make over \$200,000 or married and make over \$250,000, you have to pay a brand new surtax of 3.8% on interest, dividends, capital gains, rental income, royalty income and passive activity businesses. This will be a huge factor on 2013 returns.
- If you are single and make over \$200,000 or married and make over \$250,000, you have another brand new surtax of .9% on your wages in excess of the above amounts. This will be another big factor on 2013 returns.

You have heard enough of the bad news. Now the good news.

- Starting in 2013, if you die and your estate is valued at less than \$5,250,000, your heirs will owe no federal estate tax. Graduated tax rates do apply to amounts over \$5,250,000.
- The 50% bonus depreciation and section 179 special depreciation rules were extended to 2013. These special depreciation rates, in prior years, have been a huge tax saving boon for those opening a new or buying an existing restaurant or bar.
- The 19 year depreciable life on restaurant buildings and restaurant leasehold improvements is extended to 2013. This is another big tax favored treatment for restaurant owners that buy or construct a building for their restaurant or bar.

"Insiders Report" is intended as an informational tool for Restaurant and Bar owners. "Insiders Report" is a quick source for new and changing tax laws, legislation and practical management strategies the restaurant and bar owner need in today's highly competitive food and beverage service industry.

"Insiders Report" is published quarterly by Kallas Publishing, Inc as a free service to Kallas Restaurant Accounting clients.

For information or subscription rates, contact:

Kallas Publishing, Inc  
645 Griswold St., Ste 1500  
Detroit, MI 48226  
(313) 962-6000

The hardest thing to understand in the world  
is the income tax. - Albert Einstein