

MEMORANDUM

To: Clients participating in the Zermatt Life/Health Insurance Trust

From: Ronald H. Snyder, JD, MAAA / Benefit Strategies Group, LLC

Cc: Advisors, attorneys, CPAs who have clients participating in the Plan

Date: August 12, 2014

Re: Sterling Benefit Plan Tax Court Litigation

As you may be aware, our case finally made it to Tax Court. The trial was held this past week, August 6th through August 8th in the Tax Court in Chicago, Illinois. The trial was presided over by Judge David Laro who is well-known for his opinions in previous welfare benefit plan cases, *Booth v. Commissioner*, 108 TC 524 (1997) and *Neonatology Associates, PA v Commissioner*, 115 TC 5 (2000). He is considered the authority on such plans by the Tax Court and ruled in favor of the IRS in both of those cases.

THE LITIGATION

Multiple cases were litigated, with three clients selected through negotiations between our attorneys and the IRS attorneys to represent the other taxpayers who also had filed in Tax Court. In that way, "C" corporations, "S" corporations, companies with rank and file employees and companies with no rank and file employees can be considered and decided by the Court.

We appreciate those plan participants and advisors who appeared in court as witnesses. This included 2 clients whose companies had adopted the Sterling Benefit Plan during the years under consideration (2005-2007), the CPA for one of those clients, an independent actuary who served as our expert witness, and myself.

We also appreciate the work of our attorneys, the firm of Martin, Brown, Sullivan, Roadman & Hartnett, along with Denis Conlon, the former IRS litigator who is of counsel to that firm and Allen J White, the attorney who handled many of your audits and appeals.

STATUS OF THE CASES

Three separate cases were argued, each representing multiple taxpayers. A fourth case (also representing several taxpayers who had made no contributions to the Sterling Benefit Plan after 2003) was dismissed by agreement with the IRS, and those clients have begun receiving a refund of taxes they may have paid along with penalties in connection with their audits.

Judge Laro gave both sides until October 6th to provide a post-trial brief of their proposed legal arguments and reasoning, and suggested factual holdings. He also gave them until October 16th to submit a supplemental brief concerning fact issues which are still unagreed once the post-trial briefs have been submitted.

It is expected that Judge Laro will have a chance to review those briefs by the middle of November and that he will issue his judgment and opinion after that time. Frequently Tax Court judges take more than 6 months to issue their opinions, but Judge Laro is known to be more prompt than that. He is likely to rule before the end of December, 2014.

WHERE WE GO FROM HERE

Once Judge Laro has issued his decision, we will be able to determine the course to recommend for our clients:

If we win the case, it will be necessary to file for a refund of taxes and penalties paid. It is possible that IRS will facilitate those refunds, or they may fight them.

If we lose the case, it will be necessary to consider the judge's reasoning and whether it may be worth filing an appeal. It will also be necessary to quantify the amount of the loss and whether any taxes are then owed or which may then be refunded.

In our view, it is not likely that either we or the IRS will get a 100% decision. There are multiple issues and different fact patterns which may result in some of our clients winning at least in part and others losing, at least in part. Therefore, we can only wait patiently until such time as we have a final decision from the Judge on all of the issues to know where everyone stands.

COST OF LITIGATION

We originally estimated that if each client would pay 5% of the amount that IRS was attempting to charge, and if we matched that amount, we would collectively have enough money to pay for this expensive litigation (approximately \$500,000). It now appears that, at least if no appeal is required, that amount of money will indeed be sufficient to fund all of the litigation costs and fees (legal fees, travel fees for witnesses, etc.).

Unfortunately, of the 46 companies who are tied to the litigation filed, only about 33 of them have actually paid their 5% amount to the SBP Mutual Protection Association. Currently, the attorneys are owed approximately \$50,000 additional toward their work on the trial, and we are running out of funds in the SBP MPA.

We will be sending follow-up invoices (or invoice copies) for those who still owe their share to the SBP Mutual Protection Association. If you are one of those clients who has not paid, please do so right away. If you agreed to have these attorneys represent you and have your case tied to the cases which have been litigated, you owe for your share of the excellent representation you have had.