Wolters Kluwer

JUNE 11, 2015
ISSUE NUMBER 24

FEDERAL TAX WEEKLY

INSIDE THIS ISSUE

IRS Maintains Tight Standards For Substantial Business Activities Requirement In Final Corporate Inversion Regs

TD 9720

The IRS has issued final regs on corporation inversions that affirm the government's tight standards for determining whether a corporate group has substantial business activities in a foreign country. The final regs adopt without substantial changes the 2012 temporary regs that require 25 percent of the corporate group's employees, assets, and income to be connected to the country of the group's foreign parent. The final regs apply to acquisitions completed on or after June 3, 2015.

- ***Take Away.*** "These are important rules but may not have a big impact," Michael DiFronzo, PricewaterhouseCoopers LLP, told Wolters Kluwer. "The government kept everything intact in the final regulations regarding substantial business activities. There are no surprises; the government stuck with the last (2012) version of the regulations," DiFronzo said.
- ***Comment.*** The 25-percent threshold for substantial business activities discourages most companies from doing single-entity inversions, DiFronzo said. There are cross-border deals all the time. The guidance, albeit with a very high threshold for qualification, continues to permit these business deals to go forward, he said.

Background

According to the Obama administration, some U.S. corporations have escaped U.S. taxes by incorporating a foreign parent to head a multinational group. By having a foreign parent, foreign subsidiaries would avoid U.S. taxes, and the group could claim certain tax benefits (such as interest deductions and "earnings stripping") to reduce taxes on U.S.-source income, the administration reported. The IRS issued administrative guidance (Notice 2014-52) intended to reduce some of the benefits of inversions.

In an inversion transaction, a U.S. corporation becomes the subsidiary of a foreign entity, or otherwise transfers all of its properties to the foreign entity. Under Code Sec. 7874, the new foreign parent is treated as a "surrogate foreign corporation" if:

- The foreign parent corporation acquires all of the properties of a U.S. corporation;
- At least 60 percent of the stock (by vote or value) of the foreign parent is held by former shareholders of the acquired corporation, because of their prior ownership in the U.S. corporation; and
- After the acquisition, the expanded affiliated group (EAG) that includes the foreign parent and the U.S. subsidiary does not have substantial business activities in the foreign country where the foreign corporation is created or organized.

continued on page 278

IRS Delays Effective Date Of Certain Reporting By Brokers On Debt Instrument Transfers

TD 9713, Correcting Amendments

Responding to requests from taxpayers, the IRS has moved the effective date for reporting certain information by brokers on transfers of debt instruments by six months to January 1, 2016. Previous guidance provided for a June 30, 2015 effective date.

- ***Take Away.*** Various guidance packages on information reporting brokers under Code Secs. 6045 and 6049 have carried staggered effective dates. This action brings some of the effective dates to January 1, 2016.
- ***Comment.*** In a significant change to the 2013 regs, the 2015 regs require brokers to report transfers of Section 1256 options to other brokers. This provision applies to transfers of these options on or after January 1, 2016.

Background

Code Sec. 6045 generally requires brokers to report gross proceeds on the sale of securities, their adjusted basis and whether gain is long or short-term gain. Code Sec. 6045A imposes reporting requirements. Related Code Sec. 6045B requires an issuer of a specified security to file a return relating to certain actions that affect the basis of the security. Additionally, Code Sec. 6049 requires interest payments, including accruals of OID treated as payments, to be reported.

In March 2015, the IRS released final regs on information reporting by brokers for bond premium and acquisition premium. The IRS also issued final and temporary regs on information reporting by brokers for transactions involving debt instruments and options, including the reporting of original issue discount (OID) on tax-exempt obligations, the treatment of certain holder elections for reporting a taxpayer's adjusted basis in a debt instrument, and transfer reporting for Code Sec. 1256 options and debt instruments. The March 2015 final regs generally adopted, with certain clarifications and changes, proposed regs issued in 2013.

Delayed effective date

Under Reg. §1.6045A-1, a broker is required to provide certain information relating to a transfer of a debt instrument that is a covered security on a transfer statement. Reg. §1.6045A-1T(f) requires a broker to provide certain additional information on the transfer statement. Reg. §1.6045A-1T(f) applies to a transfer that occurs on or after June 30, 2015.

The IRS reported that taxpayers have requested a change to the June 30, 2015 effective date under Reg. §1.6045A -1T(f). Now, the IRS has moved the effective date of reporting under Reg. §1.6045A -1T(f) to transfers that occur on or after January 1, 2016. A broker, however, may rely on Reg. §1.6045A -1T(f) for a transfer of a covered security that occurs on or after June 30, 2015, and before January 1, 2016, the IRS explained.

Reference: TRC FILEBUS: 9,252.

Inversion Regs

Continued from page 277

- ***Comment.*** If the former stockholders hold 80 percent of the foreign parent, the parent is treated as a U.S. corporation. An EAG includes the foreign parent and all companies connected to it by a chain of ownership greater than 50 percent. Similar inversion rules apply if a foreign corporation acquires all of the properties of a U.S. partnership.

Substantial business activities

Temporary regs adopted in 2006 provided a facts and circumstances test for determining substantial business activities. Temporary regs adopted in 2009 retained the facts and circumstances test but eliminated examples and a 10-percent safe harbor that were in the 2006 regs. The government then issued temporary regs in 2012 that removed the facts and circumstances test and replaced it with a 25 percent bright-line test for the EAG's employees, assets and income.

The rules for applying the three tests are that:

- All employees of members of the EAG are group employees;
- Group income is limited to the gross income of EAG members from transactions with (unrelated) customers in the ordinary course of business; and
- Assets must be tangible real or personal property that EAG members use or hold for use in the active conduct of a trade or business.

In the preamble to the final regs, the IRS discussed criticism of the bright-line test and the elimination of the safe harbor. Some commentors stated that the 25 percent threshold was overly stringent and that it was unlikely an EAG operating worldwide would have 25 percent of its business activities in any one country. Other commenters suggested that satisfy-

continued on page 279

REFERENCE KEY

FED references are to ***Standard Federal Tax Reporter***
USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***
TRC references are to ***Tax Research Consultant***

FEDERAL TAX WEEKLY, 2015 No. 24. FEDERAL TAX WEEKLY is also published as part of CCH Tax Research Consultant by Wolters Kluwer, 4025 W. Peterson Avenue, Chicago, IL 60646-6085. Editorial and Publication Office, 1015 15th St., NW, Washington, DC 20005.

Final Regs Affirm Relief Under Code Sec. 382 For Treasury Sales Of EESA Stock

TD 9721

The IRS has issued final regs that exempt Treasury sales of stock from the net operating loss (NOL) limitation rules of Code Sec. 382 if Treasury acquired the stock under the *Emergency Economic Stabilization Act of 2008* (EESA). The final regs adopted temporary regs issued July 31, 2014, without making any substantive changes to the regs.

- ***Take Away.*** "These rules are very helpful. It's good to have final regulations," Todd Reinstein, partner, Pepper Hamilton LLP, Washington, D.C., told Wolters Kluwer. "There is a lot of M&A [merger and acquisition] activity in the small-to-medium bank area. A lot of these banks had losses. So the Sec. 382 rules come up. Although there is no controversy, if you're looking back [at whether there has been an ownership change], you want to know what happened and what the effect of Treasury's actions was," Reinstein said.
- ***Comment.*** Under EESA, Treasury purchased and later disposed of shares in troubled corporations. The IRS issued Notice 2010-2 to limit the impact of Treasury's stock sales under Code Sec. 382. The temporary and now the final regs ensure that the notice continues to apply.

Code Sec. 382

Code Sec. 382 limits the amount of NOLs that a corporation can use after its ownership has changed substantially. This is designed to discourage profitable corporations from acquiring corporations with NOLs (a "loss corporation") so that they can offset their future income against the loss corporation's prior losses.

The limits are triggered when a corporation has an "ownership change" in which the percentage of stock owned by a five-percent shareholder of the loss corporation increases by more than 50 percentage points because of a transfer of stock.

Public group

A five-percent shareholder includes a group of small shareholders whose holdings are aggregated and who are treated as a separate five-percent shareholder. This is known as a "public group." Under a segregation rule, an additional public group could be created on certain stock sales by a person that owned at least five percent of the loss corporation.

In 2013, the IRS issued regs (TD 9638) providing that no new public group was created on a transfer of stock to public (small) shareholders. Instead, the transferred stock was treated as being acquired proportionately by the existing public groups. This reduced the potential of an ownership change and the imposition of limits on the use of NOLs.

Notice 2010-2 and the final regs

Notice 2010-2 provides that if Treasury sells EESA stock and the sale creates a public group, the new public group's ownership in the loss corporation is not considered to increase solely because of Treasury's sale. This rule was designed to prevent the loss corporation from experiencing an owner shift (a transaction involving a five-percent shareholder), which in turn might be an ownership change.

continued on page 280

Inversion Regs

Continued from page 278

ing the threshold for two categories should be sufficient.

The IRS responded that the bright-line rule provides certainty, is consistent with Code Sec. 7874 and its underlying policies, and is more administrable than the facts and circumstances test. Similarly, the IRS stated that requiring an EAG to satisfy a 25-percent threshold for all three tests is consistent with Code Sec. 7874. The IRS also affirmed having different standards for each test, because they measure different facets of the EAG's activities and are commonly used in the tax law.

Changes in final regs

The IRS clarified that an entity is not a member of the EAG unless it is an EAG member on the "acquisition date" of the inversion. However, members of an EAG are determined by considering all transactions related to the acquisition, including transactions that occur after the acquisition date.

Under the deemed corporation rule in the 2012 regs, a partnership is treated as a corporation and a member of the EAG if more than 50 percent of its interests are owned by members of the EAG. In the final regs, the IRS adopted a look-through rule that, to determine the corporations in the EAG, treats each partner of a partnership as holding its proportionate share of stock held by the partnership.

- ***Comment.*** This partnership rules generally prevents the use of a partnership to insulate a corporation from being part of the EAG.

In applying the 25-percent tests under the existing anti-abuse rules, certain assets, employees or income are excluded from the numerator, but included in the denominator, where the transfer of these items is associated with a plan that has a principal purpose of avoiding Code Sec. 7874. The IRS modified the test to exclude items associated with a transfer of property to the EAG from both the numerator and the denominator. Otherwise, the IRS affirmed the anti-abuse rules.

The test for a group's assets requires that the asset be physically present in the particular foreign country on the date of the inversion, and that the asset be physically present in that country for more time than in any other country during the prior year. The IRS modified the test so that assets used in transportation do not have to be physically present on the inversion date.

References: FED ¶47,017; TRC INTL: 30,082.

No Requirement To Give Information First To IRS Whistleblower Office For Award, Tax Court Finds

Whistleblower 21277-13W, 144 TC No. 15

Whistleblower reform legislation does not require that a whistleblower first bring his or her information to the IRS Whistleblower Office to be eligible for an award, the Tax Court has held in consolidated cases. The whistleblowers, a married couple, provided information to other federal agencies, including an IRS operating division, before contacting the Whistleblower Office. However, this did not make them ineligible for an award, the court held.

- ***Take Away.*** "This is a good win for tax whistleblowers," Stephen Kohn of the National Whistleblowers Center emphasized. "The government needs to give the whistleblowers the highest award on the full $74 million dollars was collected."
- ***Comment.*** The IRS acknowledged that Code Sec. 7623(b) does not specifically include a timing requirement regarding when whistleblower information must be submitted. However, the IRS asserted that to be eligible for an award under Code Sec. 7623(b), an individual must submit the whistleblower information to the IRS Whistleblower Office.

Background

In 2009, the husband was indicted for criminal activity. The husband agreed to cooperate with the IRS, U.S. Department of Justice (DOJ), FBI, and other agencies by providing them with information about others engaged in the criminal enterprise, including a foreign business. The husband, however, did not have sufficient documentation to inculpate the business, but knew of a senior officer of the business who did.

The wife subsequently met with this officer in England. The husband also met with the officer in the Cayman Islands. Eventually, the officer traveled to the U.S., where he was arrested. The officer agreed to cooperate in the government's investigation. Sometime later, the business was indicted for conspiring with U.S. taxpayers to hide more than $1.2 billion in secret accounts. The business pleaded guilty and paid the U.S. $74 million.

In 2013, after the business pleaded guilty, the couple submitted a whistleblower claim. The couple filed Form 211, Application for Award for Original Information. The IRS denied the claim, noting that their Form 211 was filed after the U.S collected proceeds from the business.

Court's analysis

The court first noted that Congress passed the *Tax Relief and Health Care Act of 2006* (TRHCA) to strengthen the whistleblower program. TRHCA created the IRS Whistleblower Office, among other reforms.

- ***Comment.*** TRHCA added Code Sec. 7623(b), which provides that if the taxes, penalties, interest and other amounts in dispute exceed $2 million, the IRS will pay 15 percent to 30 percent of the amount collected. If the case deals with an individual, his or her annual gross income must be more than $200,000.

The court disagreed with the IRS's "gatekeeper" interpretation of TRHCA. The Whistleblower Office, the court found, is charged with being the central office for investigating the legitimacy of a whistleblower's award claim, not necessarily the underlying tax issue. TRHCA makes no mention of the Whistleblower Office's being the first IRS office to receive information. Nothing prevents the Whistleblower Office from pursuing the whistleblower's information even after another IRS office receives it, the court found.

Further, the IRS's interpretation would mean the Whistleblower Office is authorized to open an examination relating to a taxpayer. However, the Whistleblower Office has neither sufficient staff nor institutional expertise to investigate taxpayers, the court found.

Additionally, the court found that the couple had filed their whistleblower claim on Form 211. Using this form, the court found, does not discourage whistleblowers from approaching an operating division of the IRS.

References: Dec. 60,316; TRC IRS: 3,118.

EESA Stock

Continued from page 279

Notice 2010-2 assumes that Treasury's stock sale creates a public group. Because the 2013 regs changed the rules, so that a stock sale to public shareholders no longer creates a public group, Treasury and the IRS became concerned that the 2013 regs had inadvertently nullified Notice 2010-2. In response, the government issued temporary regs in 2014 (TD 9685) that changed the effective date of the 2013 regs, to affirm the application of the notice. The final regs reaffirm the continuing application of Notice 2010-2.

References: FED ¶47,018; TRC NOL: 33,056.

Over- And Underpayment Interest Rates Remain Same For Third Quarter 2015

The IRS has announced that the interest rates on overpayments and underpayments of tax for the calendar quarter beginning July 1, 2015 will remain unchanged. The rates will be:

- 3 percent for overpayments, in cases other than corporations;
- 2 percent for overpayments in the case of a corporation (except 0.5 percent for the portion of a corporate overpayment exceeding $10,000); and
- 3 percent for underpayments (except 5 percent for large corporate underpayments).
- ***Comment.*** The Tax Code provides that the rate of interest on over- and underpayments of tax is to be determined on a quarterly basis. The interest rates for the third quarter 2015 are computed by using the federal short-term rate based on daily compounding determined during April 2015.

IR-2015-84; Rev. Rul. 2015-12; FED ¶¶46,335,46,336; TRC PENALTY: 9,152.

Lump-Sum Payment Made By Lessee To Reduce Rent Is Income To Lessor, Tax Court Finds

Stough, 144 TC No. 16

A one-time, lump-sum payment made by a lessee to reduce rent constituted rental income to the taxpayer, the Tax Court has found. The court also rejected the taxpayer's argument that it was entitled to report the lump-sum payment ratably over the 10-year life of the lease under Code Sec. 467.

- ***Take Away.*** The Code Sec. 467 argument, the court noted, was a case of first impression. Code Sec. 467 was enacted to prevent lessors and lessees from mismatching the reporting of rental income and expenses, the court found. IRS regs require a lessor and lessee to treat rents consistently and, in certain cases involving tax avoidance, require the parties to account for rent and interest under a prescribed method.

Background

The taxpayer was the sole shareholder in an S corp engaged in real estate development. In 2006, the S corp and a third party entered into an agreement to acquire real property and construct a building. The third party agreed to lease the building for 10 years.

The S corp borrowed money from a bank to purchase the real property. The building was constructed and the third party moved into the facility in 2008. The third party elected to make a lump sum payment of $1 million, which was allowed under the terms of the lease. The S corp applied the $1 million payment to its bank loan. According to the taxpayer, the $1 million payment did not constitute rental income but was meant to reimburse the taxpayer for leasehold improvements.

Rental income

The court first noted that as a general rule, if a lessee pays any of the expenses of the lessor the payments are additional rental income of the lessor. If a lessee places improvements on real estate which constitute, in whole or in part, a substitute for rent, the improvements constitute rental income to the lessor. Whether or not the improvements result in rental income to the lessor turns on the intention of the parties.

Here, the court found there was no need to inquire into the intention of the parties. The lessee had made no improvements. The court found that the $1 million lump sum payment was made under the terms of the lease. The payment was intended to reimburse the taxpayer for "project costs" and to provide the third party with flexibility in the amount of future rent payments.

- ***Comment.*** The project costs were described by the court as the sum of acquisition costs, hard construction costs, soft construction costs, and financing costs.

Code Sec. 467

The taxpayer also argued that Code Sec. 467 allowed it to report the $1 million payment ratably over the 10-year life of the lease. The court disagreed.

In this case, the lease did not "specifically allocate" fixed rent to any rental period within the meaning of Reg. §1.467-1(c)(2)(ii)(A). Absent a specific allocation in the rental agreement, the amount of rent payable in 2008 must be allocated to the 2008 rental period, the court held. Furthermore, the taxpayer could not use the rental accrual method or the proportional rental accrual method, the court held.

References: Dec. 60,317; TRC ACCTNG: 6,228.

IRS Posts New Videos/Online Resources For U.S. Taxpayers Living Abroad

In advance of the June 15, 2015 deadline for U.S. taxpayers living abroad to file their returns, the IRS has released new online resources and several reminders concerning these taxpayers' U.S. tax obligations. The online resources include new videos and two new topics on Tax Trails, an interactive online tool designed to answer common taxpayer questions. The IRS also reminded U.S. citizens and resident aliens of the requirement to report worldwide income, including income from foreign trusts and foreign bank and securities accounts.

Online resources. The IRS has posted three new videos for international taxpayers. The videos cover (1) filing requirements for U.S. taxpayers living abroad; (2) the foreign earned income exclusion; and (3) individual taxpayer identification numbers (ITINs). Upcoming videos will address the foreign tax credit and filing status for a U.S. taxpayer married to a foreign spouse, the IRS announced.

In addition, the IRS added two international tax topics to its online Tax Trails tool. The new topics discuss the filing requirements for U.S. taxpayers living abroad and nonresident aliens who may be required to file a U.S. tax return and the filing status of U.S. citizens or resident aliens married to nonresident aliens.

Reporting requirements. The IRS also reminded taxpayers who have worldwide income, including income from foreign trusts and foreign bank and securities accounts, that they must complete and attach Schedule B to their tax return. Certain taxpayers may also have to complete and attach to their return Form 8938, Statement of Foreign Financial Assets. Reporting thresholds vary based on whether a taxpayer files a joint income tax return or lives abroad, the IRS stated.

IR-2015-85; TRC FILEBUS: 9,108.20.

No Change In Corporation's Status For Federal Tax Purposes After Dissolution By State

LTR 201522001

A corporation's dissolution by state administrative action did not end its corporate status for federal tax purposes, the IRS has determined. The IRS reiterated that the question of whether a business entity is to be taxed as a corporation is determined by federal and not state law. The state's action had no impact on the continuing treatment of the business entity as a corporation for federal tax purposes.

- ***Take Away.*** The business in this case eventually learned of its dissolution and subsequently took action to reincorporate.

Background

The taxpayer originally incorporated under the laws of State A. Sometime later, the state administratively dissolved the corporation. The state took action to dissolve the taxpayer's corporate status because the corporation failed to file an annual report and pay an annual franchise tax. The taxpayer was unaware of the state's action in dissolving its corporate status.

For federal tax purposes, the taxpayer continued to pay all corporate taxes as they came due. The taxpayer also continued to file Form 1120, U.S. Corporation Income Tax Return. The taxpayer subsequently discovered that the state had dissolved its corporate status. The taxpayer reorganized as a corporation in the same state.

IRS analysis

The question of whether a business entity is to be taxed as a corporation is determined by federal and not state law, the IRS first noted. The core test of corporate existence for purposes of federal income taxation is always a matter of federal law. For as long as an entity continues to do business in a corporate manner, despite the fact that its recognized status under state law is terminated, the entity is subject to federal corporate income tax liability. It is irrelevant if termination of corporate status is voluntary or involuntary, the IRS observed.

- ***Comment.*** The IRS cited *Messer, CA-3, 71-1* USTC *¶9214,* where transferees of the assets of the taxpayer-corporation were liable for the tax of the corporation even after its corporate status terminated under state law.

The IRS determined that the state's action to dissolve the corporation had no affect for federal tax purposes. The taxpayer's status as a corporation for federal tax purposes continued after the dissolution.

Reference: TRC ACCTNG: 24,256.20.

Restructuring Of Debtor Corporation Fails To Qualify As Type G Reorganization, Chief Counsel Determines

CCA 201523001

IRS Chief Counsel has determined that the restructuring of a debtor corporation failed to qualify as a Type G reorganization. The restructuring failed to satisfy a number of requirements.

- ***Take Away.*** A Type G reorganization is used by a debtor corporation in bankruptcy and related proceedings. To qualify for nonrecognition treatment, a Type G reorganization must meet six requirements, some of which Chief Counsel discussed in this case.

Background

A debtor corporation (D) underwent a restructuring. No shareholder in D received any consideration in the restructuring. No creditor held an instrument in D that constituted a security within the meeting of Code Sec. 354. The IRS Large Business and International (LB & I) Division concluded that the restructuring of D failed to qualify as a Type G reorganization under Code Sec. 368(a)(1)(G).

- ***Comment.*** The memorandum to Chief Counsel apparently contained a detailed description of the facts and circumstances of the restructuring. However, Chief Counsel did not restate these detailed facts and circumstances in its memorandum, for the sake of brevity.

Chief Counsel's analysis

A reorganization under Code Sec. 368(a)(1)(G) is a transfer by a corporation of all or part of its assets to another corporation in a Title 11 case. However, stock or securities of the corporation to which assets are transferred must be distributed in a transaction that qualifies under Code Sec. 354, 355 or 356. In this case, the requirement that the stock or securities of the transferee corporation be distributed in a transaction that qualified under these provisions was not met.

Under Code Sec. 354(a)(1), no gain or loss is recognized if stock or securities in a corporation a party to a reorganization are exchanged, in furtherance of the plan of reorganization, solely for stock or securities in the corporation or in another corporation, also a party to the reorganization. This transaction, Chief Counsel determined, did not satisfy Code Sec. 354(a)(1) as no shareholder of D had received any consideration in the restructuring and no creditor of D held an instrument in D that constituted a security within Code Sec. 354.

- ***Comment.*** Chief Counsel also noted that D had not yet liquidated as required by Code Sec. 354(b)(1).

Further, Code Sec. 355 applies to certain divisive transactions, Chief Counsel noted. The restructuring of D was not a

continued on page 283

IRS Greenlights Income From Interest Rate Swaps As Qualifying Income Of Publicly Traded Partnership

LTR 201523018

The IRS has determined that income from interest rate swaps and other instruments is qualifying income under Code Sec. 7704(d)(1). Accordingly, the taxpayer, a publicly-traded partnership (PTP), will not be treated as a corporation if 90 percent of its gross income for the year consists of qualifying income.

- ***Take Away.*** Under Code Sec. 7704(d)(1)(A), qualifying income includes interest, unless the interest is derived in the conduct of a financial or insurance business or is excluded under Code Sec. 856(f) (REITs). Under Reg. §1.7704-3(a)(1), qualifying income includes income from notional principal contracts (NPCs). The IRS concluded that the taxpayer's financial transactions qualified as income from NPCs or as other substantially similar income.

- ***Comment.*** Code Sec. 7704(a) treats a PTP as a corporation. A PTP is any partnership whose interests are traded on an established securities market, or are readily tradable on a secondary market.

Background

To finance assets and conduct its business, the taxpayer, a PTP, issues fixed-rate and floating rate debt securities. The interest that the taxpayer pays on the debt securities is based on (1) market reference rates for fixed-rate and floating rate debt; and (2) its credit risk. To manage its exposure to interest rates, the company enters into standard interest rate swaps, forward-start interest rate swaps, interest rate caps, and Treasury locks (collectively, the financial transactions).

The swaps involve payments on notional principal amounts of fixed or floating-rate interest between the taxpayer and a counterparty. In an interest rate cap, the taxpayer makes a fixed payment to a counterparty, who pays a floating rate to the taxpayer. In a Treasury lock, an unrelated party buys a U.S. Treasury bond at the interest rate in effect on the parties' agreement, on the date that the taxpayer issues debt securities.

IRS analysis

Qualifying income includes income from NPCs (as defined in Reg. §1.446-3) and other substantially similar income from ordinary and routine investments. The income from the NPC or contract will only qualify if it would have given rise to qualifying income if held directly by the PTP.

The IRS concluded that payments under the standard interest rate swaps and the interest rate caps are based on an interest rate or interest rate index and would give rise to interest income if held directly by the taxpayer. The forward-start interest rate swaps and the Treasury locks are both ordinary and routine transactions and are similar to NPCs because they are used to manage risk from interest rate fluctuation. Therefore, the income from the latter instruments is also qualifying income.

Reference:TRC PART: 3,254.05.

Officer Of Common Parent For Consolidated Group Must Execute POA

IRS Chief Counsel has determined that a corporate officer of a non-TEFRA LLC partnership, which was the common parent for a consolidated group, must sign a Form 2848, Power of Attorney and Declaration of Representative. Even though the first member was a corporation, was the member-manger, and was designated as the tax matters partner, it was still a subsidiary. The regs provide that the common parent for a consolidated group is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year.

IRS analysis

Ordinarily, an officer of the first member, a corporation, that has the authority to legally bind the corporation would sign the Form 2848, Chief Counsel noted. In this case, however, the first member was also a member of and subsidiary within a consolidated group.

Chief Counsel determined that signing a Form 2848 for an LLC is not a matter reserved to a subsidiary under the consolidated return regulations. Generally, Reg. §1.1502-77(a) provides that the common parent of a consolidated group is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year, Chief Counsel wrote.

Chief Counsel explained that Reg. § 1.1502-77(a)(2)(iv) provides that a parent of a consolidated group executes "all other documents" not listed in the regs. Accordingly, Chief Counsel recommended that the taxpayer secure the signature of an officer of the common parent, the LLC partnership, on the Form 2848.

CCA 201522005; TRC CCORP: 45,152.

Reorg

Continued from page 282

divisive transaction. Therefore, the restructuring failed the Code Sec. 355 component of a Type G reorganization, Chief Counsel concluded.

- ***Comment.*** Chief Counsel did not address the Code Sec. 356 component because the restructuring failed both the Code Sec. 354 and Code Sec. 355 components of a Type G reorganization. Because the restructuring failed to qualify as a Type G reorganization for these reasons, Chief Counsel did not analyze any other requirements under Code Sec. 368(a)(1)(G)

Reference: TRC REORG: 27,050.

TAX BRIEFS

International

A U.S. financial services company was not entitled to foreign tax credits for withholding taxes paid to the U.K. on substitute dividend payments. Under the U.S.–U.K treaty, the substitute dividend payments were properly treated as dividends for purposes of the U.S. foreign tax credit.

Lehman Brothers Holdings, Inc., DC N.Y., 2015-1 USTC ¶50,323; TRC INTLOUT: 3,100

Jurisdiction

A married couple's untimely petition for redetermination of a deficiency was dismissed. The notice of deficiency was sent by certified mail to the couple's last known address.

K.J. Mirch, CA-9, 2015-1 USTC ¶50,325; TRC IRS: 27,158

Summons

An IRS summons issued to an individual was ordered enforced. The government presented a *prima facie* case for enforcement and the individual failed to appear and show that the summons was an abuse of process.

Rowe, DC Calif., 2015-1 USTC ¶50,324; TRC IRS: 21,300

An IRS summons issued to the chair of a Native American Nation was enforced. The chair's claim that enforcement of the summons infringed upon the sovereign status of the nation was rejected.

Billie, CA-11, 2015-1 USTC ¶50,321; TRC IRS: 21,300

Deductions

A married couple was not entitled charitable deductions in amounts exceeding those determined by the court, nor deductions for real estate taxes or commuting expenses. The couple failed to substantiate the claimed deductions.

D.O. Nichols, DC Wash., 2015-1 USTC ¶50,326; TRC INDIV: 45,102

A married couple was not entitled to deduct claimed expense in excess of the amount allowed for the tax years at issue because they failed to substantiate the business purpose of the expenses.

Renner, TC, Dec. 60,318(M), FED ¶48,028(M); TRC BUSEXP: 3100

Tax Credits

A taxpayer was not entitled to the research credit under Code Sec. 41 because its claimed expenses were funded by a third-party The taxpayer paid regardless of whether its research was successful or not.

Dynetics, Inc., FedCl, 2015-1 USTC ¶50,322; TRC BUSEXP: 54,158.25

Frivolous Arguments

An individual's motion to reconsider an order to show cause was denied and a frivolous argument penalty was imposed. The individual had made similar arguments on behalf of his wife in a separate trial.

Leyshon, TC, Dec. 60,320(M), FED ¶48,030(M); TRC LITIG: 6,816.05

Liens and Levies

An Appeals officer (AO) property sustained a notice of federal tax lien filing against a bankrupt corporation's president. By filing the NTFL and putting the individual's account in currently not collectible status the AO chose the least intrusive collection method.

Bishay, TC, Dec. 60,321(M), FED ¶48,031(M); TRC LITIG: 6,456.25

The Tax Court properly held that a settlement officer did not abuse his discretion in sustaining the IRS's proposed lien and levy to collect a tax liability based on substitute returns. The taxpayer failed to submit returns.

Caudle, CA-4, 2015-1 USTC ¶50,327; TRC IRS: 51,056.15.

Tax Litigation Costs

A married couple's claim for litigation costs was denied because the IRS's positions were substantially justified. The taxpayers failed to provide all relevant information before the IRS filed its answer.

Mylander, TC, Dec. 60,314(M), FED ¶48,024(M); TRC LITIG: 3,154.05

Deficiencies and Penalties

An individual was liable for additions to tax for failure to timely file a return and for failure to timely pay the amount shown as tax on the return for the year at issue. The individual did not timely file a return.

Bell, TC, Dec. 60,315(M), FED ¶48,025(M); TRC FILEIND: 15,208

Offer-in-Compromise

A settlement officer's rejection of an offer-in-compromise was not an abuse of discretion. The IRS determined that the taxpayers' offer was substantially less than their reasonable collection potential.

Kakeh, TC, Dec. 60,319(M), FED ¶48,029(M); TRC IRS: 42,120

Third-Party Liability

The director of a corporation was a responsible person under Code Sec. 6672 for failure to pay over trust fund taxes. The individual had the power to compel and prohibit allocation of the corporation's funds.

Gann, FedCl, 2015-1 USTC ¶50,320; TRC PAYROLL: 6,306.05

IRS Provides Relief For Texas Storm Victims; Updates Oklahoma Relief

The IRS has postponed certain deadlines and will abate certain penalties and interest for taxpayers who reside or have a business in the parts of Texas declared a federal disaster area due to severe weather beginning May 4, 2015. The disaster area covers the counties of Bastrop, Blanco, Caldwell, Denton, Eastland, Fort Bend, Gaines, Guadalupe, Harris, Hays, Henderson, Hidalgo, Johnson, Milam, Montague, Navarro, Rusk, Smith, Travis, Van Zandt, Wichita, Williamson, and Wise.

- ***Comment.*** The IRS also updated the list of Oklahoma counties where relief is available. The list now includes Atoka, Bryan, Cleveland, Comanche, Grady, Johnston, Kiowa, Le Flore, McClain, McCurtain, Oklahoma, Pittsburg, and Pottawatomie.

HOU-05-2015, FED ¶46,334; TRC FILEIND: 15,204.25.

PRACTITIONERS' CORNER

What's New For The FBAR In 2015

As June 30, 2015, approaches, so does the deadline for certain U.S. persons with one or more foreign financial accounts to file the Report of Foreign Bank and Financial Accounts, also known as the Financial Crimes Enforcement Network (FinCEN) Form 114 or "FBAR." The requirement applies generally to U.S. persons with foreign financial interests whose aggregate value exceeded $10,000 at some point during calendar year 2014.

The FBAR reporting requirement has been in place since Congress enacted the *Bank Secrecy Act of 1970*, but the law, regs and procedures for the FBAR have not remained static. Since last June a number of new developments have already surfaced; and these may affect those required to report their foreign financial accounts. Such developments include the introduction of new procedures for determining penalties related to FBAR noncompliance, new procedures for submitting late FBARS, an additional e-filing option, a new website that provides assistance to FBAR filers, and more. In addition, the federal courts have also handed down numerous judgments in FBAR noncompliance cases. This Practitioners' Corner will summarize these changes for you and your clients.

FBAR: In brief

A U.S. person with financial interests in or signature authority over foreign financial accounts generally must file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) if, at any point during the calendar year, the aggregate value of the accounts exceeds $10,000. An FBAR is required even if the U.S. person does not receive any kind of payment or income from the account during the year.

- ***Comment.*** Although the reporting requirement exists outside of the Tax Code, Congress delegated the authority to collect and enforce it to the Department of the Treasury. Treasury, in turn, delegated to the IRS the authority for investigating civil violations, assessing and collecting civil penalties, and issuing administrative rulings.

The FBAR regulations provide further details on who is responsible for filing an FBAR. They define "U.S. person," "financial interest," "signature authority," "foreign financial account," and specify the kind of assets that are subject to the requirement.

"The FBAR reporting requirement has been in place since Congress enacted the Bank Secrecy Act of 1970, *but the law, regs, and procedures for the FBAR have not remained static."*

Streamlined procedures: U.S. residents

For purposes of the FBAR filing requirement a U.S. person includes, among others, a U.S. resident. In October 2014, the IRS issued new streamlined compliance procedures for resident U.S. taxpayers who have failed to properly report a foreign financial asset, or failed to file a Foreign Bank Account Report (FBAR) and/or one or more international information returns with respect to the foreign financial asset as a result of *nonwillful* conduct.

- ***Comment.*** Under the procedures, negligent, inadvertent or mistaken conduct as well as conduct that is the result of a good faith misunderstanding of the law's requirements is nonwillful.

Taxpayers who are eligible to take advantage of the streamlined procedures may (1) file amended returns for each of the most recent three years for which the extended due date has passed, together with all required information returns; (2) for each of the most recent six years for which the FBAR due date has passed, file any delinquent FBARs; and (3) pay a miscellaneous offshore penalty. The full amount of the tax, interest, and miscellaneous offshore penalty due should be remitted with the amended returns.

- ***Comment.*** An eligible taxpayer who complies with all of the instructions in the procedures will be subject only to the miscellaneous offshore penalty and will not be subject to accuracy-related penalties, information return penalties, or FBAR penalties, the IRS has said.

The IRS issued similar streamlined procedures and penalty relief for U.S. taxpayers residing outside of the United States who have nonwillfully failed to report the income from and pay the tax on a foreign financial asset and to file a Foreign Bank Account Report (FBAR).

Delinquent FBAR submissions

Also in October 2014, the IRS updated its procedures for taxpayers who (1) have not filed a required Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 114), (2) are not under a civil examination or a criminal investigation by the IRS, and (3) have not already been contacted by the IRS about the delinquent FBARs. These procedures are for individuals who do not need to use either the Offshore Voluntary Disclosure Program (OVDP) or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax. Individuals were instructed to file all required FBARs using the BSA e-Filing system, select a reason for filing late, and state why the FBARS were being filed late.

continued on page 287

Ways and Means votes to repeal medical device excise tax

The House Ways and Means Committee on June 2 approved the Protect Medical Innovation Bill of 2015 (HR 160), which would repeal the medical device tax. The vote was 25 to 14. The House is expected to take up the bill before Congress' July 4 recess.

The medical device tax was intended to help pay for the Patient Protection and Affordable Care Act (PPACA) and levies a 2.3-percent tax on medical device manufacturers. Senate Finance Committee Chair Orrin Hatch, R-Utah, a longtime advocate for repealing the tax, has introduced a companion measure (Sen 149) in the Senate.

Koskinen tells lawmakers about data breach

IRS Commissioner John Koskinen appeared before the Senate Finance Committee on June 2 to answer questions about the security breach of the IRS Get Transcript application. Koskinen said that the IRS is continuing its in-depth analysis of what happened. Koskinen said the breach occurred through unauthorized information requests using the Get Transcript application, which he said were "complex and sophisticated in nature." The Get Transcript program has been discontinued.

"Put simply, your agency has failed these taxpayers," SFC Chair Orrin Hatch R-Utah, told Koskinen. Hatch noted that the IRS will never be exempted from the constant threat of having its computer system breached. "In fact, there is reason to believe the IRS will be more frequently targeted in the future," he said. SFC ranking member Ron Wyden, D-Ore., added that, in order to protect taxpayers from "this onslaught of cybercrime, the IRS needs a 21st-century IT system."

Treasury Inspector General for Tax Administration J. Russell George told lawmakers about the proliferation of data breaches reported in recent years. "Providing taxpayers more avenues to obtain answers to their tax questions or to access their own tax records online also creates greater risk to an organization and provides more opportunities for exploitation by hackers," George said. "The risk for this type of unauthorized access to tax accounts will continue to grow as the IRS focuses its efforts on delivering taxpayers self-assisted interactive online tools," he added.

SFC leaders seeks solutions to refund fraud

Senate Finance Committee Chair Orrin Hatch, R-Utah, and ranking member Ron Wyden, D-Ore., on June 4 asked IRS Commissioner John Koskinen to further coordinate with the committee on finding solutions to prevent stolen identity refund fraud (SIRF). "It is clear that current measures to prevent tax fraud are insufficient and more must be done," Hatch and Wyden wrote. "Due to the complex nature of tax schemes and the large volume of fraudulent transactions, the committee cannot fully address this problem on its own. Any solution must involve coordination between Congress, the IRS, state agencies, law enforcement, and the tax preparation industry."

Hatch and Wyden cited one positive development when the IRS convened a meeting with companies in the tax preparation industry. "We understand that the three working groups that emerged from these meetings have been focusing on short- and long-term actions that could reduce tax fraud, and expect to issue recommendations soon," they wrote. "We look forward to learning more about the findings of these working groups and discussing how their recommendations can be implemented."

JEC holds hearing on PPACA's impact on employment

Subsidizing health insurance to make it more affordable for a significant part of the population, as does the *Patient Protection and Affordable Care Act* (PPACA), necessarily creates disincentives to work and earn, according to Casey Mulligan of the University of Chicago. Mulligan testified on June 3 before the Joint Economic Committee's (JEC's) hearing on the economic effects of the PPACA. Under her analysis, elements of the PPACA may push in the direction of more productivity and employment, but they are overwhelmed by disincentives elsewhere in the law.

Paul Van de Water, a senior fellow at the Center on Budget and Policy Priorities, also testified. "Five years after its enactment, the PPACA has achieved major objectives and proved wrong its critics' most dire predictions," Van de Water said. "Health reform has not been a job killer," he said.

Joseph Sergio, a small business owner representing the National Federation of Independent Business, pointed out that "to be successful in a small business you must be able to accurately identify, forecast and control your expenses in order to create profits—profits that you can in turn reinvest in growing your business." Sergio said the law has caused frustration for small businesses, their advisors, tax professionals and insurance companies.

More Swiss banks reach agreements with DOJ

The U.S. Department of Justice (DOJ)) announced on June 3 that two more banks, Rothschild Bank AG and Banca Credinvest SA, have reached resolutions under the department's Swiss Bank Program. A number of other banks had previously reached resolutions with DOJ. The Swiss Bank Program provides a path for Swiss banks to resolve potential criminal liabilities in the U.S. Swiss banks eligible to enter the program were required to advise DOJ by December 31, 2013, that they had reason to believe that they had committed tax-related criminal offenses in connection with undeclared U.S.-related accounts.

"These resolutions are further examples of the commitment by the IRS and DOJ to ensure that U.S. taxpayers report foreign bank accounts and pay taxes on all income earned from those accounts," Deputy Commissioner Douglas O'Donnell of the IRS Large Business and International Division said in a statement. "We are encouraged by today's progress and our ongoing work with the other Swiss banks that have entered the DOJ Swiss Bank Program."

Continued from page 285

Penalty guidance

In May 2015, the IRS issued interim guidance to examiners on applying FBAR penalties (SBSE-04-0515-0025). Notably, the guidance introduces a cap on the amount of civil penalties the IRS may impose for FBAR violations. It also introduces the requirement that examiners properly document their penalty decisions.

- ***Comment.*** The cap on FBAR penalties may reflect the IRS's attempt to avoid future litigation over the constitutionality of large civil fines imposed for multiple tax years for the simple failure to file a disclosure form. In June 2014, the Department of Justice successfully avoided the constitutional issue of excessive fines by settling a case with a Florida taxpayer who had faced more than $2.2 million in penalties for the failure to report an account with foreign assets totaling $1.69 million after the jury imposed the 50-percent FBAR penalty for each of four tax years (*U.S. v. Zwerner*, D-Fla., June 9, 2014).

For nonwillful violations, the guidance specifies that the IRS will generally impose *one penalty per year under examination that is limited to $10,000,* regardless of the number of unreported foreign financial accounts. If, however, the facts and circumstances of the case warrant a lower or higher penalty amount, the examiner must obtain her group manager's approval after consulting with an Operation Division FBAR coordinator. In some cases, the guidance indicates that the facts and circumstances may merit imposition of a penalty per account *and* per year.

The guidance specifies that whether the examiner decides upon a penalty that is higher or lower than $10,000 per year, her workpapers must support the penalty determination and document the group manager's approval. The guidance further emphasizes that in no case will the total amount of penalties for nonwillful violations exceed 50 percent of the highest aggregate balance of all unreported foreign financial accounts for the years under examination.

For willful violations that took place over multiple tax years, the guidance sets up a formula for calculating the penalties to apply per year under examination. The formula generally takes the ratio of the highest aggregate balance of all unreported foreign financial accounts for each year to the total of the highest aggregate balances for all years under examination and multiplies that ratio by the maximum penalty limitation under 31 U.S.C. §5321(a)(5) to determine the penalty for each year under examination.

The maximum civil penalty under 31 U.S.C. §5321(a)(5) is technically the greater of $100,000 or "50 percent of the amount in the account at the time of the violation," according to the IRS's FBAR Reference Guide. However, the new guidance states that in most cases the maximum total penalty amount for all years under examination, for purposes of the penalty calculation, will be limited to 50 percent of the highest aggregate balance of all unreported foreign financial accounts during the years under examination. Furthermore, the guidance specifies that the civil penalty may never exceed 100 percent of the highest aggregate balance of all unreported foreign financial accounts.

E-filing

Electronic filing through the BSA e-Filing system (*bsaefiling.fincen.treas.gov*) has been required for all FBARs since July 1, 2013. Previously, all individual filers were required to complete a PDF version of FinCEN Form 114, which was accessible through the Adobe Acrobat program. The IRS announced in May 2015, however, that individual FBAR filers could use a new online version of FinCEN Form 114 available through the BSA e-filing system. The new version of the form requires only an Internet browser to file.

- ***Comment.*** The online form, unlike the PDF form, does not allow filers to save their progress and return at a later time.
- ***Comment.*** Attorneys, CPAs, or enrolled agents filing the FBAR on behalf of a client cannot use these forms. They must instead register to become a BSA e-Filer and file as an institution.

Online resources

In February, FinCEN announced the launch of a new FBAR website at *www.fincen.gov/forms/bsa_forms/fbar.html*. The website features aids for filers including a summary of who must file the FBAR, a line-item guide to completing the form, and links to the BSA e-Filing system.

Judicial developments

The federal courts have continued to issue decisions in FBAR litigation throughout the second half of 2014 and the first half of 2015. Most recently, a New York district court handed down a 47-count indictment against several high-ranking officials of the Fédération Internationale de Football Association (FIFA) and its continental confederations, including the Confederation of North, Central American and Caribbean Association Football ("CONCACAF"). One former CONCACAF general secretary, also a former FIFA executive committee member, waived indictment and pled guilty to several of the counts of income tax evasion and failure to file required FBARs.

The Department of Justice successfully obtained convictions of two California tax return preparers of conspiracy to defraud the IRS and willful failure to file FBARs. The preparers participated an in an international scheme involving secret European and Israeli financial accounts. A federal court also addressed nonwillful FBAR penalties for the first time in *Moore v. United States,* DC-Wash., 2015-1 USTC ¶50,258, April 1, 2015.

In *Moore,* the district court found that a taxpayer did not have reasonable cause for failing to file the FBAR for 2005 through 2008. Among other things, the taxpayer ignored the question on Form 1040, Schedule B, asking whether he had an interest in or signature authority over a foreign financial account. The court found that this showed a lack of exercise of ordinary business care or prudence and amounted to behavior that could actually constitute a willful failure to file, although only the question of a nonwillful failure was at issue.

COMPLIANCE CALENDAR

June 12

Employers deposit Social Security, Medicare, and withheld income tax for June 6, 7, 8, and 9.

June 15

Individuals, partnerships, passthrough entities and corporations make the second installment of 2015 estimated quarterly tax payments.

U.S. citizens or resident aliens living and working (or on military duty) outside the United States and Puerto Rico must file Form 1040 and pay any tax, interest, and penalties due.

June 17

Employers deposit Social Security, Medicare, and withheld income tax for June 10, 11, and 12.

June 19

Employers deposit Social Security, Medicare, and withheld income tax for June 13, 14, 15, and 16.

June 24

Employers deposit Social Security, Medicare, and withheld income tax for June 17, 18, and 19.

June 26

Employers deposit Social Security, Medicare, and withheld income tax for June 20, 21, 22, and 23.

June 30

U.S. persons with financial interests in or signature authority over foreign financial accounts generally must electronically file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) if, at any point during the 2014 calendar year, the aggregate value of the accounts exceeds $10,000.

TRC TEXT REFERENCE TABLE

The cross references at the end of the articles in Wolters Kluwer Federal Tax Weekly (FTW) are text references to Tax Research Consultant (TRC). The following is a table of TRC text references to developments reported in FTW since the last release of New Developments.

ACCTNG 250	265	FILEBUS 12,106.05	256	PART 3,254.05	283
ACCTNG 6,228	281	FILEBUS 15,054	231	PART 33,154.15	270
ACCTNG 21,104	266	FILEIND 15,200	259	PENALTY 3,106.10	258
ACCTNG 24,256.20	282	FILEIND 15,204.25	284	PENALTY 3,108	242
ACCTNG 36,162.05	259	HEALTH 9,114.25	244	PENALTY 3,110.25	245
BUSEXP 54,200	247	INDIV 12,108	246	PENALTY 3,116	220
BUSEXP 55,850	243	INDIV 48,400	270	PENALTY 9,052	221
CCORP 30,054	254	INDIV 51,052	235	PENALTY 9,152	280
CCORP 39,252.10	253	INDIV 60,108.05	222	PLANRET 3,206.30	271
CCORP 45,152	283	INDIV 60,156	236	REAL 12,252	258
COMPEN 45,354	245	INTL 18,000	255	REORG 18,050	229
CONSOL 15,060	257	INTL 30,082	277	REORG 27,050	282
DEPR 15,160	232	INTL 36,050	244	RETIRE 66,450	260
ESTGIFT 51,060.10	232	IRS 3,118	280	RETIRE 66,502	222
EXCISE 6,162.15	257	IRS 3,200	256	RETIRE 78,052.10	267
EXEMPT 3,354	223	IRS 66,304	267	RIC 3,252	269
EXEMPT 12,252.15	231	LITIG 6,754	272	SALES 6,100	246
FILEBUS 9,108.20	281	NOL 33,056	279	SALES 45,254.05	234
FILEBUS 9,108.30	268	NOL 36,150	243	SALES 51,358	260
FILEBUS 9,252	278	PART 3,254.05	233	STAGES 6,228	223

FROM THE HELPLINE

The following questions have been answered recently by our "Tax Research Consultant" Helpline (1-800-344-3734).

Q May an individual who participates in day trading qualify as a "trader" for the purpose of deducting as ordinary and necessary business expenses the costs incurred from trading?

A It depends on how substantial the individual's trading is and how the individual plans his trades. A person classified as a "trader" rather than an investor is considered to be in a trade or business that produces capital gains and losses rather than ordinary income and losses. Therefore, the deductible expenses of a trader are ordinary and necessary business expenses and are not subject to the 2-percent floor of adjusted gross income imposed on miscellaneous itemized deductions as they would be for an individual classified as an "investor."

Who is a trader is defined by the courts rather than by the Tax Code or regulations. Generally a trader is generally someone who trades a large volume of transactions on a regular basis. The determination turns on the frequency of trades and size of the risks taken on short-term market swings. An investor's trades would generally be less frequent and would indicate intent to profit from the long-term holding of investments. *See TRC SALES: 45,050 and SALES: 45,058.*

Q When are large businesses required to file their information returns reporting health care coverage provided to their full-time employees during 2015?

A The returns required to be filed for the 2015 calendar year must be filed by February 28, 2016 (or March 31, 2016, if filed electronically). *See TRC HEALTH: 6,106.*