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IRS Proposes Guidance To Limit Shifting Of Income To Foreign Partners Not Subject To U.S. Taxes

Notice 2015-54

The IRS has announced that it will issue regs to prevent U.S. taxpayers from escaping taxation on appreciated property and intangible assets by transferring the property to foreign partners who are not subject to U.S. taxation. The regs will require that the U.S. transferor recognize income on the transfer immediately or on a deferred basis.

- **Take Away.** "Taxpayers contemplating transfers to partnerships will need to evaluate the guidance in this Notice to determine if their transaction comes within the purview of the Notice, and, if it does, the impact that it may have on the transaction," Joe Calianno, partner and International Technical Tax Practice Leader, Washington National Tax Office, BDO USA, LLP, told Wolters Kluwer. "Importantly, taxpayers who must apply the Gain Deferral Method in the Notice to avoid recognizing gain under Section 721(c) must satisfy several requirements, including using the remedial allocation method described in §1.704-3(d). Additionally, taxpayers applying the Gain Deferral Method also will be required to monitor the partnership and transactions relating to the partnership on an ongoing basis to determine if there is an acceleration event (as defined in the Notice) that would require the recognition of built-in-gain," Calianno said.

Background

Initially, the Tax Code imposed a 35 percent excise tax on certain transfers of appreciated property by a U.S. person to a foreign partnership. Congress repealed the excise tax and imposed enhanced information reporting on foreign partnerships. Congress also enacted Code Sec. 367(d) to prevent U.S. persons from transferring intangibles (such as a patent) offshore to achieve deferral of U.S. taxes on the profits generated by the intangibles. The latter provision treats the transfer as a sale for amounts that would be reasonably received over the useful life of the property, commensurate with the income attributable to the intangible.

Code Sec. 704(c)(1)(A) and Reg. §1.704-3(a)(1) provide rules for partner contributions of appreciated property to a partnership, to prevent the shifting of "pre-contribution gain or loss." The partnership must allocate income, gain, loss and deductions using a reasonable method to make a Code Sec. 704(c) allocation. One of these reasonable methods is the remedial allocation method, to make allocations to noncontributing partners.

Because Code Sec. 367 only applies to transfers to a foreign corporation, a U.S. person generally does not recognize gain on a contribution of appreciated property to a partnership (domestic or foreign) with foreign partners. Also, Code Sec. 367(d)(3) only applies to transfers of intangibles.

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Partnerships

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Transfers to a partnership ordinarily are tax-free under Code Sec. 721(a). Treasury and the IRS stated that taxpayers claim they can contribute appreciated property to a partnership that can allocate income or gain from the contributed property to related foreign partners who are not subject to U.S. taxes. As a result of manipulations under Code Sec. 704 or 482, the IRS stated, partnership interests or consideration received in related controlled transactions may be incorrectly valued, reducing the amount of income or gain allocated to U.S. partners.

Proposed regs

Congress enacted Code Sec. 721(c) and 367(d)(3) in 1997 to address transfers of appreciated property and intangible property respectively. The government believed that remedial allocations under Code Sec. 704 can ensure that pre-contribution gain is properly taken into account by the U.S. partner. Consequently, the government decided that it is necessary to exercise its regulatory authority under Code Sec 721(c) to address contributions of appreciated property involving partnerships.

The government will propose regs providing that Code Sec. 721(a) will not apply when a "U.S. transferor" contributes "Section 721(c) property" to a "Section 721(c) Partnership," unless the parties apply the "Gain Deferral Method" to the property. The regs will include a de minimis provision allowing tax-free transfers if all built-in gain does not exceed $1 million.

The regs will define the following key terms:

- U.S. transferor – a U.S. person under Code Sec. 7701(a)(30), other than a domestic partnership;
- Built-in gain – the excess of the book value, as determined under Code Sec. 704(b), over the contributing partner's basis in the property when contributed;
- Section 721(c) property – property with built-in gain, other than excluded property;
- Excluded property – cash equivalents, certain securities identified in Code Sec. 475(c)(2), and tangible property with built-in gain of $20,000 or less;
- Section 721(c) partnership – A U.S. or foreign partnership where a U.S. transferor contributes Section 721(c) property to the partnership, where a related foreign person is a direct or indirect partner; and the U.S transferor and one or more related persons own more than 50 percent of the partnership interests;
- Related person – A person related to a U.S. transferor under Code Sec. 267(b) or 707(b)(1).

Furthermore, if two entities under common control engage in a transfer or license of intangible property, in exchange for annual royalty payments, the IRS may adjust the payments under Code Sec. 482 to ensure that an arm's-length royalty is paid each year to the U.S. taxpayer. Accordingly, the government will also issue regs under Code Sec. 482 on transactions between controlled parties involving partnerships and intangible assets.

Effective date. The regs will apply to transfers occurring on or after August 6, 2015, and to transfers before that date that result from making an entity classification under Reg. §301.7701-3 on or after August 6, 2015 that are effective before that date (as permitted under the regs). New reporting requirements will apply to transfers and controlled transactions that occur after regs are published.

Gain deferral method

To avoid immediate gain recognition, the transferor must apply the gain deferral method, by complying with the following requirements:

- The Section 721(c) partnership adopts the remedial allocation method for built-in gain for all Section 721(c) property contribute under the same plan by related U.S. transferors, and for all Section 721(c) property that is subsequently contributed to the partnership by the U.S. transferor and related U.S. transferors;
- For all years that there is remaining built-in gain for Section 721(c) property, the partnership must allocate all items of Code Sec. 704(b) income, gain, loss, and deduction from that property in the same proportion, between the U.S. transferor and the related foreign person;
- The U.S. transferor must satisfy any new reporting requirements imposed under Code Sec. 6038, 6038B and 6046A, including additional information required on Schedule O of Form 8865 (regarding transfers to a foreign partnership);
- The U.S. transferor must recognize built-in gain on an acceleration event;
- The U.S. transferor (and possibly the Section 721(c) partnership) must extend the period of limitations for all items related to the Section 721(c) property for eight full years following the year of the contribution. No extension will be required for tax years that end before the publication of the regs.
- **Comment.** The rules also apply to contributions involving tiered partnerships with a U.S. Transferor.

Acceleration event. The U.S. transferor must recognize deferred gain (the remaining built-in gain) on an acceleration event. The gain recognized is the remaining built-in gain that would have been allocated to the U.S. transferor on a sale at fair market value of the Section 721(c) property, just before the acceleration event. An acceleration event is an event that would reduce the remaining built-in gain to be recognized or that would defer the recognition of the built-in gain.

References: FED ¶46,374; TRC PART: 9,050.

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***

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Ninth Circuit Reverses Tax Court On Mortgage Interest Deduction Limits

Voss, CA-9, August 7, 2015

Reversing the Tax Court, a panel of the Court of Appeals for the Ninth Circuit has found that when multiple unmarried taxpayers co-own a qualifying residence, the debt limit provisions under Code Secs. 163(h)(3)(B)(ii) and (C)(ii) apply per taxpayer and not per residence. The question was one of first impression in the Ninth Circuit, the court observed.

- **Take Away.** The IRS articulated a per residence approach in CCA 200911007. The dissent (one judge on the three-judge panel) would generally have deferred to the IRS's interpretation.

Background

The taxpayers, registered domestic partners, obtained a mortgage to purchase a house (the Rancho Mirage property). In 2002, the taxpayer refinanced and obtained a new mortgage. That same year, the taxpayers purchased another house (the Beverly Hills property) with a mortgage, which they subsequently refinanced and obtained a home equity line of credit totaling $300,000. The total average balance of the two mortgages and the line of credit during the tax years at issue was approximately $2.7 million.

Both taxpayers filed separate income tax returns. Each individual claimed home mortgage interest deductions for interest paid on the two mortgages and the home equity line of credit.

The IRS calculated each taxpayer's mortgage interest deduction by applying a limitation ratio to the total amount of mortgage interest that each petitioner paid in each taxable year. The limitation ratio was the same for both: $1.1 million ($1 million of home acquisition debt plus $100,000 of home equity debt) over the entire average balance, for each tax year, on the Beverly Hills mortgage, the Beverly Hills home equity line of credit, and the Rancho Mirage mortgage. The taxpayers challenged the IRS's calculations but the Tax Court ruled in favor of the agency.

Court's analysis

Code Sec. 163(h)(3), the court found, provides that interest on a qualified residence, by a special carve-out, is not considered "personal interest," which would be nondeductible by taxpayers who are not corporations. A qualified residence is the taxpayer's principal residence and one other residence of the taxpayer which is selected by the taxpayer for the tax year and which is used by the taxpayer as a residence.

Qualified residence interest encompasses interest payments on acquisition indebtedness and home equity indebtedness. Acquisition indebtedness generally means debt incurred in, or that results from the refinancing of debt incurred in, acquiring, constructing, or substantially improving a qualified residence. Home equity indebtedness generally means indebtedness, other than acquisition indebtedness, that is secured by a qualified residence and that does not exceed the difference between the amount of acquisition indebtedness and the home's fair market value.

The court further found the Tax Code limits the aggregate amount treated as acquisition indebtedness for any period to $1 million and the aggregate amount treated as home equity indebtedness for any period to $100,000. In the case of a married individual filing a separate return, the debt limits are reduced to $500,000 and $50,000.

Looking at the language of the statute as it applies to married couples, the court found that the debt limit provisions apply per taxpayer and not per residence. There was no reason not to extend this treatment to unmarried co-owners, the court concluded.

References: 2015-2 USTC ¶50,427; TRC INDIV: 48,400.

IRS Sets July 2016 Start Date For PEO Voluntary Certification Program

www.irs.gov

Applications for the professional employer organization (PEO) voluntary certification program will be accepted beginning July 1, 2016, the IRS has announced. The PEO voluntary certification program was created by the *Tax Increase Prevention Act of 2014* (TIPA).

- **Take Away.** PEOs and employee-leasing arrangements have come under government scrutiny because of their potential for abuse. TIPA is intended to provide a framework for greater oversight of PEOs by the IRS.

Background

Generally, a business with employees is liable for paying and withholding employment taxes, including federal income tax withholding from employee wages, Federal Insurance Contributions Act (FICA) taxes, Railroad Retirement Tax Act (RRTA) taxes, and Federal Unemployment Tax Act (FUTA) taxes. An employer may contract with a PEO to pay and withhold employment taxes with respect to wages paid to employees.

TIPA

Under TIPA, PEOs will be able to apply to be certified to act - for purposes of the employment tax provisions - as the employer of service providers they lease to their customers. To be certified, a PEO generally must show that it satisfies requirements to be established by the IRS, including requirements with respect to tax status, background, experience, business location, and annual financial audits. The PEO also must meet bond and independent financial review requirements and comply with reporting obligations that may be imposed by the IRS. Further, the PEO must adopt the accrual method of accounting to compute its taxable income.

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Treasury Notifies Model 1 And Model 2 IGA Partners Of More Favorable Terms Available Under FATCA

Treasury Notification of More Favorable Terms Under FATCA IGAs, July 31, 2015

Treasury has written to partner jurisdictions under the *Foreign Account Tax Compliance Act* (FATCA) to advise them of more favorable terms available under the partner's intergovernmental agreement (IGA) with the U.S. Treasury is sending the letters to both Model 1 and Model 2 IGA jurisdictions.

- **Take Away.** To ensure that countries that entered into IGAs early in the negotiation process will not be at a disadvantage and will benefit from the same terms as countries that later enter into IGAs with the U.S., IGAs require the U.S. to notify the IGA partner of more favorable terms provided to another IGA partner jurisdiction. Model 1 IGAs are more common; as a result, the U.S. sent notices to 40 FATCA partners that have entered into Model 1 IGAs. Model 2 IGAs are less common; the documents released by Treasury refer to multiple IGAs but only identify two countries with Model 2 agreements.

Background

FATCA requires that foreign financial institutions (FFIs) with accounts or assets owned by U.S. taxpayers to report the accounts to the IRS. Financial institutions must take certain steps to screen accounts and determine whether the owner is a U.S. taxpayer or a foreign taxpayer.

In some cases, the FFI enters into a participation agreement directly with the IRS regarding its reporting duties (unless the FFI is exempt from reporting). Alternatively, the Treasury Department enters into an IGA with a foreign government that provides procedures for FFIs in that country to report the information to their own government.

- **Comment.** A Model 1 IGA allows FFIs to provide information about their assets and accounts to their own governments, which then provide the information to the IRS. Model 2 IGAs require the financial institution to provide some information directly to the IRS.

According to the Treasury letter, Article 7 of the Model 1 IGA requires the U.S. to notify its partner jurisdictions of any more favorable terms under Article 4 or Annex 1 of the IGA that are provided to another partner jurisdiction. Similarly, Article 6 of a Model 2 IGA requires the U.S. to notify the treaty partner of more favorable terms under Article 3 or Annex 1 of the IGA.

The letters are being sent to governments where the IGA has entered into force and where the IGA has not entered into force. For both types of agreements, Treasury asked the jurisdiction to notify it within 90 days if the jurisdiction decides to decline the application of the more favorable terms. For an IGA not yet in force, the more favorable terms would apply when the IGA takes effect. The letters advise that a taxpayer or other party must contact the relevant jurisdiction directly to find out whether the jurisdiction agreed to the new terms.

Model 1 changes

In a sample letter describing the IGA with the British Virgin Islands (BVI), the newer terms apply to both new individual accounts and new entity accounts. If an account was opened before the IGA took effect, the financial institution must request the specified self-certification for a new individual account and must perform the required due diligence procedures for new entity accounts.

The BVI must report a U.S. reportable account or an account held by a Nonparticipating Financial Institution, by the later of September 30 or 90 days following the date that the account is so identified. The account must be closed within one year after the date of the updated agreement if the financial institution does not collect the required self-certification or other documentation. The BVI must report on any closed account.

For new entity accounts opened after June 30, 2014 and before January 1, 2015, the new terms allow BVI financial institutions to treat the accounts as preexisting entity account and apply the appropriate due diligence procedures for those accounts.

- **Comment.** The letter describing the more favorable terms for Model 2 IGAs identifies over 20 provisions with revised terms.

Reference: TRC FILEBUS: 9,108.

PEO

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- **Comment.** Under TIPA, a certified PEO is entitled to credits against FUTA with respect to contributions made by either the PEO or its customer for contributions to a state's unemployment fund with respect to wages paid to a work-site employee.

TIPA also authorized the IRS to suspend or revoke a PEO's certification for failing to satisfy the certification requirements; and directed the IRS to publicize the name and address of each certified PEO and each PEO whose certification is suspended or revoked. Additionally, TIPA provided for a $1,000 annual user fee.

Start date

TIPA instructed the IRS to establish a PEO certification program before July 1, 2015. The IRS reported recently that since passage of TIPA, it has been working steadily to identify and define the policy, procedural, and information system changes necessary to meet the requirements of the new law. However, meeting these requirements, and doing so in a way that balances customer service with the interests of tax administration, will take additional time and resources, the agency caution. Therefore, the IRS set a start date of July 1, 2016 for the PEO voluntary certification program.

Reference: TRC SALES: 39,000.

IRS Posts New International Practice Units For Examiners

www.irs.gov

The IRS has posted new Practice Units for agency examiners. The new Practice Units discuss branch-level interest taxes and nonservices fixed, determinable, annual or periodical (FDAP) income.

- **Take Away.** The IRS reminded taxpayers that Practice Units are not official pronouncements of law. Practice Units also may not contain a comprehensive discussion of all the issues or law.

Background

Practice Units, the IRS explained on its website, are developed through internal collaboration and serve as both job aids and training materials on international tax issues. Practice Units provide explanations of general international tax concepts and information about specific transactions. The IRS had previously posted Practice Units on a variety of international topics, including controlled foreign corporations, Subpart F, foreign shareholder activities, foreign tax credits, purchase of tangible goods from a foreign parent, and more.

Branch-level interest taxes

The IRS explained that generally a foreign corporation is subject to the branch-level interest tax if it is engaged in a U.S. trade or business (or it has gross income that is treated as effectively connected with such U.S. trade or business) and it has U.S. liabilities. The purpose of the branch-level interest tax is to subject all interest borne by the U.S. branch to withholding if the interest on the debt was owed to a foreign person.

Code Sec. 884(f) was enacted to impose a 30 percent tax on the payment of all interest borne by a U.S. branch of a foreign corporation and paid to a foreign person. For purposes of the branch-level interest tax, "interest" includes all categories of interest under the Tax Code, and the statutory tax rate is 30 percent, the IRS explained.

FDAP

The IRS instructed examiners to identify the character and source of the income and whether the income is FDAP income. For purposes of the Practice Unit, the foreign corporation's (FC) dividend, interest, and royalty income would be U.S. source income. The Practice Unit also considered whether the income would be eligible for treaty benefits. Whether a foreign entity is a foreign corporation and whether it is a resident of a foreign country depends on the law of the foreign jurisdiction. Generally, the IRS noted that if a foreign corporation is not created, organized, or managed and controlled in a treaty country, it would not be a resident of a treaty country or entitled to treaty benefits.

- **Comment.** The sample in this Practice Unit generally discussed royalty income.

Reference: TRC IRS: 18,054.

Tax Court Orders IRS To Provide Taxpayer With Copies Of Subpoenas Of Nonparties

Kissling, Tax Court, Order of July 15, 2015

The Tax Court has ordered the IRS to provide copies of all nonparty subpoenas and all responses and documents produced by nonparties who are issued these subpoenas. The order ensures that the procedures for the Tax Court case are consistent with Federal Rules of Civil Procedure (FRCP) that require the same procedures in cases before federal district courts.

- **Take Away.** The Tax Court concluded that there was no rule that requires the provision of copies of nonparty subpoenas to the taxpayer, but that there should be. FRCP 45(a)(4) requires notice to other parties before service of nonparty subpoenas for the production of documents, information or other tangible things. Tax Court Rule 147, which governs subpoena practice, does not have the same requirement. The Tax Court not only ordered the provision of copies in this case; it notified the Tax Court's Rules Committee to consider adding a similar provision to the rules.

Background

The taxpayers (husband and wife) filed a conservation easement case in the Tax Court, involving the value of the taxpayers' donation of an easement. The IRS served a subpoena on a nonparty for the production of documents. The taxpayers "fortuitously" learned of the IRS subpoena and filed a motion to compel the production of all nonparty subpoenas and any information provided in response by the nonparties. The IRS replied that there is no Tax Court rule requiring it to provide this information to the taxpayers and that it would not provide information about its pretrial preparation to the taxpayers.

Court's analysis

The Tax Court agreed that its rules do not require that the IRS furnish the information regarding nonparty subpoenas. The court's rules on subpoena practice, issue in 1973, were designed to provide a rule substantially similar to FRCP 45. At that time, there was no notice requirement. The FRCP rules added this requirement in 1991, but the Tax Court rules were never updated. The Tax Court did not intend to deviate the district court rules; apparently, the rules drifted apart over time, the court found.

The Tax Court concluded that the IRS had not violated its t rules, but that FRCP 45 was a good rule. The court therefore granted the taxpayer's motion to obtain information about nonparty subpoenas and the responses provided. The court also required the taxpayers to provide similar

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IRS Greenlights Exchange; Rights To Manufacture/Distribute Products Are Of Like-Kind

LTR 201531009

The IRS has determined that an exchange of product manufacturing and/or distribution rights in one territory for the same rights in another territory qualified for like-kind treatment. Under Code Sec. 1031, no gain or loss would be recognized by the taxpayer on the exchange.

- **Take Away.** The determination of whether intangible personal property is of a like kind to other intangible personal property generally turns on the nature or character of the rights involved and the nature or character of the underlying property to which the intangible personal property relates. The IRS explained that the exchange of a copyright on a novel for a copyright on a different novel would constitute an exchange of a like-kind. However, the exchange of a copyright on a novel for a copyright on a song would not constitute an exchange of a like-kind.

Background

The taxpayer, a corporation, had two types of agreements: Dual Activity Agreements and Single Activity Agreements. The Dual Activity Agreements provided that the taxpayer had rights to manufacture and distribute AA, a group of products of various different brand names in certain areas. The Single Activity Agreements provided that the taxpayer had the right to distribute BB, another group of products of various different brand names in certain areas.

Corp. X owned a minority interest in the taxpayer. X also owned a subsidiary (S), which had two types of agreements: Replacement Dual Activity Agreements and Replacement Single Activity Agreements. The Replacement Dual Activity Agreements granted S the right to manufacture and distribute AA within certain areas (different from the areas granted to the taxpayer). The Replacement Single Activity Agreements granted S the right to distribute BB within certain areas (again, different from the areas granted to the taxpayer).

The taxpayer and S proposed an exchange. The taxpayer would simultaneously exchange its Dual Activity Agreements for S's Replacement Dual Activity Agreements as one exchange group; and simultaneously exchange its Single Activity Agreements with S's Replacement Single Activity Agreements as another exchange group.

IRS analysis

The IRS first determined that under Code Sec. 1031, no gain or loss generally is recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a like kind which is to be held either for productive use in a trade or business or for investment. "Like kind," the IRS explained, refers to the nature or character of the property and not to its grade or quality. An exchange of one kind or class of property for a different kind or class is not a like-kind exchange.

Here, the IRS determined that the taxpayer's Dual Activity Agreements and S's Replacement Dual Activity Agreements were of like-kind. Although manufacturing and distribution are two distinct business activities, the IRS determined that in this case there was a close historical connection between the two activities. The IRS determined that the manufacturing and distribution of the products covered by the agreements was best performed by a single entity as part of an integrated business process. Additionally, all of the products were manufactured using a substantially similar process in facilities of a common design, and were distributed in a substantially similar manner to a common set of customers.

The IRS further determined that the underlying property subject to the taxpayer's Single Activity Agreements and S's Replacement Single Activity Agreements was of like-kind. In this case, there was no manufacturing. All of the products (BB) were distributed in substantially the same manner to a common set of customers.

Reference: TRC SALES: 6,252.

IRS Approves Discounted Smart Cards To Employees For Riding Mass Transit

The IRS has approved a city's arrangement with a regional transit authority to purchase discounted smart cards for each of its employees. The cards could only be used on the authority's bus routes and rapid transit system. Once the employee would cease employment with the city, the city deactivated the smart card.

The IRS determined that the smart card is a transit pass qualifying as a transportation fringe benefit under Code Sec. 132. Each employee could exclude the monthly fair market value of the smart card, up to the applicable statutory limit ($130 per month for transit passes used in 2015). Since the cards were provided annually, the IRS ruled that one-twelfth of the card's fair market value would be attributable to each month. The IRS also determined that the value of the smart card would not be included in the employee's gross income for months that the card was deactivated, provided the card would be deactivated for any employee who ceases to be eligible to use the card.

LTR 201532016; TRC COMPEN: 36,354.

Tax Court

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information to the IRS on any nonparty subpoenas they issued.

- **Comment.** The court stressed that in a conservation easement case, it was particularly important that the parties have all information produced during the litigation.

Reference: TRC LITIG: 3,104.35.

TAX BRIEFS

IRS

A manufacturer that leased, maintained, serviced and repaired containers, could not treat certain expenditures it incurred as chemical security expenditures on the basis that its containers were a facility used by its lessees to transport specified agricultural chemicals. Also, only expenditures that substantially increased the cost for installing improved security measures to protect specified agricultural chemicals are qualified chemical security expenses under Code Sec. 45O. The IRS also determined that the basis of assets must be reduced by the amount allowable under Code Sec. 45O before a depreciation deduction was determined for the tax year for which the Code Sec. 45O credit was claimed.

Technical Advice Memorandum 201532034; TRC BUSEXP: 55,550

Disaster Relief

Victims of Typhoon Soudelor that began on August 1, 2015, in parts of the Commonwealth of the Northern Mariana Islands in the Pacific Ocean may qualify for tax relief from the IRS. President Obama has declared island of Saipan a federal disaster area. The IRS has postponed until November 30, 2015, certain deadlines for taxpayers who reside or have a business in the disaster area.

Commonwealth of the Northern Mariana Islands Disaster Relief Notice (CNMI-2015-01), FED ¶46,375; TRC FILEIND: 15,204.25

Liens and Levies

An IRS settlement officer did not abuse her discretion by sustaining an IRS levy against married couple. The officer's involvement with the taxpayers did not rise to the level of "prior involvement" that precluded her from conducting the collection due process hearing in this case. The taxpayers were also liable for the Code Sec. 6673 penalty.

Waltner, TC, CCH Dec. 60,368(M), FED ¶48,078(M); TRC IRS: 51,056.25

Wages

A married couple was not entitled to exclude wages using the foreign earned income exclusion because the wife (taxpayer) was a U.S. Army employee and was paid by "an agency" of the U.S. Collateral estoppel did not apply because the issue litigated in the instant case was not litigated and decided in a prior proceeding. The taxpayer, a German citizen, filed a joint return with her husband, who was a U.S. citizen.

Dinger, TC, CCH Dec. 60,367(M), FED ¶48,077(M); TRC EXPAT: 12,114

Partnerships

A federal district court erred in granting the IRS summary judgment because genuine factual issues existed regarding whether the partnerships at issue were shams. While the government presented evidence that the partnerships were shams, the genuine factual dispute as to the partners' intent precluded summary judgment.

Broadwood Investment Fund LLC, CA-9, 2015-2 USTC ¶50,423; TRC PART: 60,550

A Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, signed by an individual who was not the designated tax matters partner (TMP) for the tax year under examination was valid to extend the period of limitations. The individual had apparent authority to sign Form 872-P and the IRS reasonably believed that the individual had the authority to act on behalf of the partnership.

Summit Vineyard Holdings, LLC, TC, CCH Dec. 60,362(M), FED ¶48,072(M); TRC PART: 60,102

Jurisdiction

An individual's third-party complaint alleging that a corporation fraudulently reported his tax information to the IRS was dismissed as untimely because he failed to file suit within six years from the date the fraudulent returns were filed.

Bigley, DC Ariz., 2015-2 USTC ¶50,420; TRC FILEBUS: 9,202

A federal district court's *sua sponte* decision to dismiss an individual's wrongful disclosure claim was reversed.

Taylor v. Pekerol, CA-11, 2015-2 USTC ¶50,422; TRC IRS: 9,056

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IRS Posts Draft Instructions For Form 2848; No E-Filing Option Appears Available

Draft instructions for Form 2848, Power of Attorney and Declaration of Representative, reflecting the IRS's Annual Filing Season Program (AFSP), have been posted on the IRS website. The draft Instructions do not permit e-filing Form 2848.

AFSP. Form 2848 is used by taxpayers to authorize an individual to represent them before the IRS. In the updated Instructions to Form 2848, the IRS explained that, for returns prepared and signed after December 31, 2015, an unenrolled return preparer must possess a valid AFSP Record of Completion for the calendar year in which the return or claim for refund was prepared and signed; and a valid AFSP Record of Completion for the year or years in which the representation occurs. An AFSP Record of Completion is not required for returns prepared and signed before January 1, 2016.

- **Comment.** If an unenrolled return preparer does not meet all of the representation requirements, the taxpayer may authorize the unenrolled return preparer to inspect and/or request tax information by filing Form 8821, Tax Information Authorization. However, filing Form 8821 will not authorize the unenrolled return preparer to represent the taxpayer, the IRS added.

Filing. After the IRS retired the Disclosure Authorization program, it indicated that another method of e-filing Form 2848 might be in the pipeline. The draft Instructions do not provide for e-filing Form 2848. The form may be mailed or sent by FAX to the IRS.

www.irs.gov; TRC IRS: 3,200.

Tax Briefs

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Business Expenses

Married individuals could deduct expenses related to their boat charter activity, since they materially participated in the activity and were not barred by the passive activity loss limitation. They could also deduct some of their claimed travel and meal expenses. Accuracy-related penalties were not imposed for the two years at issue because the taxpayers reasonably relied on a competent tax adviser.

Kline, TC, CCH Dec. 60,366(M), FED ¶48,076(M); TRC BUSEXP: 33,152

An accountant was not entitled to claimed business expense deductions for the two tax years at issue because they were unsubstantiated and lacked a business purpose. The taxpayer was also liable for accuracy-related penalties attributed to negligence and substantial understatement of taxes.

Flying Hawk, TC, CCH Dec. 60,361(M), FED ¶48,071(M); TRC BUSEXP: 3,100

Innocent Spouse

A requesting spouse was granted relief from joint and several liability for the tax years at issue. The taxpayer, the court held, was a victim of abuse by the nonrequesting spouse and that abuse had resulted in the taxpayer being unable to challenge or question the treatment of the items on the returns. Therefore, the taxpayer met all seven of the threshold requirements for equitable relief.

Sapp, TC, CCH Dec. 60,365(M), FED ¶48,075(M);TRC INDIV: 18,058.05

Statute of Limitations

An IRS settlement officer did not abuse her discretion by declining to credit a restitution payment for a subsequent year to a corporation's tax liability for the tax year at issue. Neither the IRS nor any court had found that the corporation overpaid its taxes for the subsequent year. The taxpayer's contention that the statute of limitations barred assessment for the subsequent year and, therefore, the restitution payment could be applied to the year at issue was rejected.

Del-Co Western, TC, CCH Dec. 60,364(M), FED ¶48,074(M); TRC IRS: 51,056.25

Dependents

A noncustodial parent was not entitled to claim a dependent exemption for his child since he failed to obtain a signed Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, or any other document signed by his former spouse stating that she would not claim that child as a dependent. Since the taxpayer did not have a dependent, he was not entitled to file as head of household or claim the child tax credit.

Porter, TC, CCH Dec. 60,363(M), FED ¶48,073(M); TRC FILEIND: 6,150

Return Information

An individual's unauthorized inspection and disclosure claims were properly dismissed. The individual failed to show that IRS employees unlawfully inspected his confidential return information and he was precluded from bringing an unlawful disclosure claim under Code Sec. 7431 because a claim based on improper disclosure during a tax collection activity must proceed under Code Sec. 7433.

Schroeder, CA-9, 2015-2 USTC ¶50,419; TRC IRS: 9,354

Return Preparers

A tax return preparer's request for a new trial after her conviction for aiding and abetting the preparation and filing of false tax returns was denied. The jury's verdict was not against the manifest weight of the evidence because the evidence showed that the individual had client refunds deposited into her business account, that she failed to turn the funds over to her clients and that she failed to report any of that income on her own tax returns.

Pratt, DC Pa., 2015-2 USTC ¶50,421; TRC IRS: 66,202

Estate Tax

The government was entitled to reduce to judgment a decedent's outstanding tax liability for the four tax years at issue and recover it from the decedent's estate. The Forms 4340, Certificate of Assessments and Payments, the IRS presented to prove the penalty assessments imposed on the decedent satisfied the IRS's burden of production and were presumptively correct for the underlying tax assessed as well as the penalties and interest.

Sadler, III, DC Pa., 2015-2 USTC ¶50,424; TRC IRS: 27,200

Marijuana Excise Tax Reduces Amount Realized, Despite Code Sec. 280E Ban On Deducting Illegal Drug Costs

IRS Chief Counsel has determined that a state excise tax on marijuana products is described in Code Sec. 164 and that taxpayers in a marijuana-related business can treat the excise tax as a reduction in the amount realized on the sale of marijuana-related property. Code Sec. 280E's denial of deductions and credits for businesses involved in illegal drugs does not apply to a tax that reduces the amount realized. The tax is neither a deduction from gross income nor a tax credit.

Background. The State of Washington authorized a tax on marijuana for persons 21 years old and older. The tax applies to marijuana producers, marijuana processors, and marijuana retailers who are validly licensed whose actions are permitted by state law. The tax generally is 25 percent of the selling price of the product. For marijuana retailers, the tax is part of the total retail price to which state and local sales taxes apply.

IRS analysis. Code Sec. 280E denies a deduction or credit for an amount paid to carry on a trade or business involving trafficking in controlled substances that is prohibited by federal or state law. Marijuana is a controlled substance. Code Sec. 164 provides that any tax paid or accrued on the acquisition or disposition of property shall be treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of the property. Chief Counsel concluded that the State of Washington's marijuana excise tax is a tax paid or accrued in connection with the disposition of property by a trade or business.

CCA 201531016; TRC BUSEXP: 18,808.

PRACTITIONERS' CORNER

New Treasury/IRS Business Plan Highlights Significant Guidance Projects For 2015-2016

Treasury and the IRS have released their 2015-2016 Priority Guidance Plan (PGP) describing guidance projects that they intend to work on "actively" during the coming plan year, July 2015 to June 2016. According to the government, the plan does not place any deadline on the completion on projects. Nevertheless, taxpayers, practitioners and other stakeholders look to the plan as an indication of tax guidance that the government will seek to issue within the next 12 months. This Practitioners' Corner highlights some of the important guidance projects identified in the PGP.

- **Comment.** Once the government issues proposed regs, the follow-up guidance will generally be in the form of final regs. But not all guidance is issued as regulations. Significant guidance can also be issued as a notice, revenue ruling, or revenue procedure, among other forms. When the government puts an item on the business plan, and even as it develops the guidance, the government may not have decided what form of guidance to issue.

Updated plan

The government issues a revised business plan each year and issues updates approximately every three months. The 2014-2015 PGP included 317 projects. Quarterly updates issued after July 1, 2014 added 41 additional projects that became priorities and/or were published during the plan year. The government stated that 171 projects on the 2014-2015 PGP, as updated, were published by June 30, 2015.

The 2015-2016 plan includes 277 projects "that are priorities" for Treasury and IRS Chief Counsel. Some projects from the prior year PGP have been dropped because they are no longer considered a priority, although they could be included in a future plan. According to the government, "projects on the 2015-2016 plan will provide guidance on a variety of issues important to individuals and businesses, including international taxation, health care, and implementation of legislative changes."

With the enactment of tax legislation by Congress, new guidance projects are always added to the list of priorities, such as revised filing deadlines for various tax forms under the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*. Supreme Court decisions also can trigger a need for guidance. Thus, the new PGP lists guidance relating to *Obergefell v. Hodges, 2015-1* USTC *¶50,357* (June 28, 2015), where the Supreme Court extended same-sex marriage nationwide.

"Treasury and the IRS have released their 2015-2016 Priority Guidance Plan (PGP) describing guidance projects that they intend to work on 'actively' during the coming plan year."

Specific guidance areas

Corporations and their shareholders. An important area of corporate activity involves tax-free reorganizations under Code Sec. 355. Corporations frequently engage in spinoffs and other corporate divisions under Code Sec. 355 to allocate corporate interests among shareholders and corporations. The IRS private letter rulings program is also heavily involved in providing guidance to specific taxpayers on proposed transactions under Code Sec. 355. The 2015-2016 PGP includes several projects in this area, including regs on the active trade or business requirement; the business purpose requirements, and the prohibition on the use of Code Sec. 355 as a device to distribute earnings and profits tax-free.

Health coverage. Since the enactment of the *Affordable Care Act* in 2010, the government has been active in issue guidance in this area. Projects on the 2015-2016 PGP include guidance on the employer shared responsibility requirements under Code Sec. 4980H, and both a notice and proposed regs on the excise tax on high-cost employer-provided coverage (so-called "Cadillac" plans). Guidance on ACA reporting obligations of employers, Marketplaces, and health insurance issuers is a continuing need.

Net investment income (NII) tax. The NII tax is designed to be a significant fundraiser for the government. The government issued proposed regs under Code Sec. 144 in December 2013, and lists final regs as a priority on the 2015-2016 PGP. Another NII-related project is "guidance regarding material participation by trusts and estates for purposes of §469." The NII tax applies to income from passive activities, as determined under Code Sec. 469. While there have been occasional court cases in this area, there is an absence of guidance from the government on how trusts and estates can materially participate in an activity and therefore avoid the NII tax.

Research credit. The research credit under Code Sec. 41 is a "temporary" tax provision that Congress has extended annually for 30 years. There is significant support in Congress and the Obama administration for a permanent credit, but the cost of legislation to make the credit permanent has become an issue. Regardless of the provision's status as an extended, Treasury and the IRS recognize the need for guidance so that corporations can determine their eligibility for the credit and the amount to be claimed. The 2015-2016

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WASHINGTON REPORT *by the Wolters Kluwer Washington News Bureau*

SFC releases updated summaries of tax extenders bill

The Senate Finance Committee (SFC) on August 5 released an updated summary of tax extenders provisions in the Tax Relief Extension Bill of 2015. The summary reflects modifications made by SFC Chair Orrin Hatch, R-Utah. The updated bill includes expansion of the Work Opportunity Tax Credit (WOTC) to apply to hiring of the long-term unemployed, modification of increased expensing limitations and the Code Sec. 25C credit for nonbusiness energy property. Changes to revenue raisers in the chair's mark include: exclusion of certain clean coal power grants from income; modifications to the Alternative Fuels Tax Credit and Excise Tax for Liquefied Natural Gas (LNG) and Liquefied Propane Gas (LPG); and improved mortgage interest deduction reporting.

Report describes IRS mishandling of exempt applications

Senate Finance Committee (SFC) Chair Orrin Hatch, R-Utah, and ranking member Ron Wyden, D-Ore., on August 5 released the committee's investigative report detailing the probe into the IRS's treatment of organizations applying for tax-exempt status. The report follows a detailed, 41-question letter sent by the SFC to the IRS in 2013. That letter marked the beginning of a bipartisan investigation by the committee into the IRS's activities related to the review of tax-exempt applications and related issues raised by the Treasury Inspector General for Tax Administration (TIGTA).

The investigation found that IRS management failed to provide effective control, guidance and direction over the processing of applications for tax-exempt status between the years 2010 to 2013. Further, the IRS Exempt Organizations Division undertook no less than seven poorly planned and badly executed initiatives aimed at bringing the growing number of applications from Tea Party and other groups to decision.

"This bipartisan investigation shows gross mismanagement at the highest levels of the IRS and confirms an unacceptable truth: that the IRS is prone to abuse," Hatch said in a statement. Wyden said the investigation "showcases pure bureaucratic mismanagement without any evidence of political interference."

U.S. and Turkey sign FATCA agreement

The United States has reached an intergovernmental agreement (IGA) with Turkey to implement the Foreign Account Tax Compliance Act (FATCA). The agreement with the Turkey is a Model 1 IGA.

In related FATCA news, the U.S. also entered into IGAs with Turkmenistan and the Seychelles. Additionally, three updated Notification of More Favorable Terms have been released. Article 7 of the Model 1 IGA provides that the U.S. will notify its partner jurisdictions of any more favorable terms under Article 4 or Annex I of the IGA afforded to another partner jurisdiction, while Article 6 of the Model 2 IGA provides that the U.S. will notify its partner jurisdictions of any more favorable terms under Article 3 or Annex I of the IGA afforded to another partner jurisdiction. Model notification letters have been sent to the appropriate jurisdictions, Treasury reported.

More banks enter DOJ's Swiss Bank Program

The U.S. Department of Justice (DOJ) has announced that Swiss banks PKB Privatbank AG, Falcon Private Bank AG and Credito Privato Commerciale in liquidazione SA (CPC) have reached resolutions related to their potential criminal liabilities under the department's Swiss Bank Program. PKB will pay a penalty of $6.328 million, Falcon will pay a penalty of $1.806 million and CPC will pay a penalty of $348,900. In accordance with the terms of the Swiss Bank Program, each bank mitigated its penalty by encouraging U.S. accountholders to come into compliance with their U.S. tax and disclosure obligations, DOJ reported.

According to DOJ, PKB maintained 244 U.S.-related declared and undeclared accounts since August 1, 2008, with an aggregate maximum balance of approximately $328.8 million; Falcon had a total of 84 U.S.-related accounts with an aggregate value of approximately $134 million; and CPC had 16 U.S.-related accounts with an aggregate maximum balance of approximately $71 million.

"Today's agreement underscores the partnerships forged in this new era of international collaboration and further demonstrates IRS-CI's commitment to pursuing offshore tax compliance," Chief Richard Weber of IRS-Criminal Investigation (IRS-CI), said in a statement.

TIGTA reviews IRS compliance with direct contact rule

The Treasury Inspector General for Tax Administration (TIGTA) recently reported that, despite policies and procedures that ensure taxpayers have the right to designate an authorized representative to act on their behalf in dealing with the IRS, there were 29 allegations that IRS employees violated this general rule (Ref. No. 2015-30-061). In nine of these cases, the IRS took disciplinary action against those employees, TIGTA noted. TIGTA's own sample of cases, largely from the Small Business/Self-Employed Division of the IRS, showed no improper communications between IRS personnel and taxpayers.

FinCEN updates GTOs

Treasury's Financial Crimes Enforcement Network (FinCEN) announced on August 7 that it has renewed a Geographic Targeting Order (GTO) currently in place for armored cars and other common carriers of currency at two border crossings between California and Mexico. At the same time, FinCEN issued a new GTO applicable to carriers crossing the border between Texas and Mexico. FinCen explained that it modified the Report of International Transportation of Currency or Monetary Instruments (CMIR) requirements for common carriers of currency when physically moving more than $10,000 in cash across certain border crossings. The expanded requirements include 100 percent CMIR reporting.

KPMG Experts Discuss Progress Of FATCA Administration

The *Foreign Account Tax Compliance Act (FATCA)*, enacted in 2010, authorizes the U.S. government to obtain information from foreign financial institutions on their foreign accounts that have U.S. owners. The basic reporting requirements took effect July 1, 2014. Wolters Kluwer recently interviewed two KPMG experts on FATCA – Manal Corwin and Michael Plowgian. This article is a continuation of the interview, as published in the past two issues of this newsletter.

Manal Corwin is the national leader of the International Tax practice of KPMG LLP. She was Deputy Assistant Secretary for International Tax Affairs at the Treasury Department. **Michael Plowgian,** a principal in the International Tax group of KPMG LLP, was a senior advisor with the Organisation for Economic Co-operation and Development (OECD) and an attorney advisor with the Office of the International Tax Counsel at Treasury.

IRS administration

Wolters Kluwer: What volume of FATCA reporting is anticipated?

Plowgian: For 2015, the information that the IRS gets both from financial institutions directly and then from the Model 1 IGAs (intergovernmental agreements) is actually going to be relatively limited. It's going to be new accounts in most cases and some pretty limited number of preexisting accounts, given how the timelines for due diligence work. Even when the IRS gets that information, it's going to be a pretty limited universe. We'll have to wait until the reporting in 2016 and 2017 to really get a sense of the full volumes and the effectiveness of the FATCA reporting itself.

Wolters Kluwer: That's when existing accounts are more of the focus?

Plowgian: Yes, exactly. High value individual accounts did not have to be remediated until the end of June this year, so they won't be reported until 2016 in many cases. Other individual accounts don't have to be remediated until June of 2016, so they will be reported in 2017. And similar timelines apply for entities. So we won't get the full extent of reporting really until 2017.

Wolters Kluwer: But as for Form 8938 reporting, people are doing those now?

Plowgian: They are doing those now and filing those currently.

Wolters Kluwer: The IRS has talked in other contexts about the value of matching. Will we be seeing IRS matching?

Plowgian: It's only possible for the Forms 8938 and 8966 to be matched at a very high level. There are lots of reasons for that. One is that the Form 8938 is filled out according to U.S. tax principles, whereas the FFI (foreign financial institution) reporting can be done according to the tax principles of the local jurisdiction, or what the FFI uses to report to account holders, which may not tie at all to U.S. tax principles. So matching the income reporting probably won't be very effective. But certainly matching those reports to verify fact that the account exists is a key element of the enforcement effort. Account balance information and a high-level risk assessment are also possible by matching up the two kinds of reporting.

Flowthrough entities

Wolters Kluwer: Do you see any complexity for reporting by and about flowthrough entities, such as all the partnership arrangements and other passthroughs?

Plowgian: There is a fair amount of complexity as to how that all fits together, for a number of reasons. One is the issue of what kind of entity are you dealing with – is the passthrough entity itself an FFI that has its own reporting obligation, or is the passthrough entity a passive NFFE (nonfinancial foreign entity) that has to provide information on its owners to an FFI for reporting. This is an area where at least a couple of jurisdictions have taken a view that is slightly different from Treasury, and they have narrowed the scope of what is a FFI.

For example, Canada has taken a narrower view of whether the trust is an FFI itself. That causes a lot of complexity for FIs where you've got a lot of cross-border business. The status of the entity may depend on who's asking and why. That certainly does complicate matters. Now, at the end of the day, they should be looking for the same people, the same owners, and reporting the same kinds of information. So, as a practical matter, there should be the same kind of reporting – but who's doing the reporting may vary, depending on the specific circumstances.

Buy-in from other countries

Wolters Kluwer: Would countries with territorial systems be as concerned about entering into IGAs and obtaining information?

Plowgian: Other countries generally tax their individuals on a worldwide basis, even if they tax their corporations on a territorial basis. So they really care. In fact, a lot of countries care even more than the US about offshore tax evasion, so it is a big issue.

Corwin: It's not just about whether they tax individuals on worldwide income. The money that's being put into the bank accounts is often being hidden from domestic taxation. Some of it is foreign source income, and some of it is domestic source income that is being hidden to avoid taxes.

Practitioners' Corner

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PGP lists several projects under Code Sec. 41: final regs on the exception from qualified research for internal use software (proposed regs were issued in January 2015); and final regs on the allocation of the credit to corporations and trades or businesses under common control (temporary regs were just issued in April 2015).

Corporate inversions. Inversions as identified under Code Sec. 7874 continue to be a subject of controversy. The 2015-2016 PGP lists two projects in this area: regs on the treatment of stock that is disregarded for measuring stock ownership (temporary regs were issued in January 2014); regs under Code Sec. 7874, 367, 956, 304, and 7701(l) regarding inversions and related transactions. The government highlighted its regulatory targets on inversions in Notice 2014-52, released in September 2014.

COMPLIANCE CALENDAR

■ August 14
Employers deposit Social Security, Medicare, and withheld income tax for August 8, 9, 10, and 11.

■ August 17
Monthly depositors deposit federal employment taxes for July.

■ August 19
Employers deposit Social Security, Medicare, and withheld income tax for August 12, 13 and 14.

■ August 21
Employers deposit Social Security, Medicare, and withheld income tax for August 15, 16, 17, and 18.

■ August 26
Employers deposit Social Security, Medicare, and withheld income tax for August 19, 20 and 21.

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 21,104.05	345	FILEBUS 6,106.20	320	IRS 33,150	360
ACCTNG 21,302.10	373	FILEBUS 9,108	384	IRS 60,052	318
ACCTNG 33,100	362	FILEBUS 9,458.05	334	LITIG 3,104.35	385
ACCTNG 36,162.05	350	FILEBUS 9,458.05	358	LITIG 3,154.05	348
BUSEXP 3,100	339	FILEIND 3,202	351	LITIG 6,124	327
BUSEXP 18,808	388	FILEIND 15,204.25	328	PART 9,050	381
BUSEXP 31,100	386	FILEIND 15,204.25	340	PART 24,112.10	371
BUSEXP 51,102.30	338	HEALTH 3,250	321	PART 24,112.10	371
CCORP 21,400	323	HEALTH 9,302	375	PART 27,050	357
COMPEN 15,050	326	HEALTH 12,100	349	PART 60,056	323
COMPEN 18,202	336	HEALTH 18,108	322	PENALTY 9,152	348
COMPEN 18,304	346	INDIV 30,410	325	RETIRE 30,556	376
COMPEN 36,354	386	INDIV 48,400	383	RETIRE 42,170.10	333
COMPEN 45,228	335	INTL 15,052.05	362	RETIRE 45,050	336
COMPEN 48,156.05	351	INTL 15,052.05	372	RETIRE 51,050	359
CONSOL 41,200	361	INTL 30,308.30	363	RETIRE 66,750	325
ESTGIFT 45,204	374	IRS 3,058	347	RETIRE 78,052.10	350
EXEMPT 3,300	327	IRS 3,200	387	RIC 6,054.05	337
EXEMPT 12,252	324	IRS 18,054	385	SALES 39,000	383
FARM 9,050	373	IRS 21,414	361	SCORP 352.35	363

FROM THE HELPLINE

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

Q Does the new *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* revoke or deny a U.S. passport to individuals with delinquent tax debts?

A No. Before passage of the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* in the Senate, some lawmakers had proposed language revoking or denying a U.S. passport in the case of seriously delinquent tax debt. The provision was not included in the final bill but remains a potential revenue raiser in a long-term highway bill, which could be passed before year-end.

Q The IRS provided transition relief for qualified employers from the employer shared responsibility requirements under the *Affordable Care Act* for 2015. Will the transition relief be extended into 2016?

A Under the transition relief, for employers with fewer than 100 full-time employees (including full-time equivalents) in 2014, that meet certain criteria, no employer shared responsibility payment applies for any calendar month during 2015. For employers with non-calendar-year health plans, the transition relief applies to any calendar month during the 2015 plan year, including months during the 2015 plan year that fall in 2016. At this time, the IRS has not announced any extension of the transition relief. *See TRC HEALTH: 6,062.*