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Inside this Issue

New Resources Will Help Filers With PPACA Requirements, Treasury/HHS Announce

◆ *www.treasury.gov, www.hhs.gov*

Treasury and the U.S. Department of Health and Human Services (HHS) are developing new resources to assist taxpayers in filing their 2014 returns and remain compliant with the *Patient Protection and Affordable Care Act* (PPACA). The PPACA generally requires individuals without minimum essential health insurance coverage, unless exempt, to make an individual shared responsibility payment when they file their 2014 returns.

■ ***Take Away.*** "Individuals who elected not to have minimum essential coverage in 2014 and make a shared responsibility payment may want to re-evaluate their decision in 2015," Kristin Esposito, CPA, senior technical manager, AICPA, told Wolters Kluwer. "The shared responsibility payment is scheduled to increase significantly for 2015 and subsequent years," Esposito emphasized. For 2015, the payment is the greater of two percent of household income that is above the tax return filing threshold for the individual's filing status; or the flat dollar amount, which is $325 per adult ($162.50 per child), subject to certain ceilings, Esposito explained.

Background

Individuals who carry minimum essential coverage or who qualify for an exemption are not responsible for a shared responsibility payment. Generally, employer-provided health coverage, government coverage, such as Medicare, Medicaid, and CHIP, and coverage through the PPACA Marketplace, qualifies as minimum essential coverage.

Payment. For 2014, the individual shared responsibility payment is the greater of: one percent of household income that is above the tax return filing threshold for the individual's filing status; or the individual's flat dollar amount, which is $95 per adult and $47.50 per child, limited to a family maximum of $285, but capped at the cost of the national average premium for a bronze level health plan available through the Marketplace in 2014. For 2014, the annual national average premium for a bronze level health plan available through the Marketplace is $2,448 per individual ($204 per month per individual), but $12,240 for a family with five or more members ($1,020 per month for a family with five or more members).

Exemptions. Exemptions from the shared responsibility requirement may be requested for a variety of reasons. Some hardship exemptions are available through the PPACA Marketplace; other hardship exemptions may be claimed only as part of filing a return, the agencies explained. The exemptions for members of federally-recognized Indian tribes and individuals who are incarcerated are available through the Marketplace or as part of filing a federal income tax return. Individuals claiming an exemption based on a short coverage gap must claim it on their return. The IRS has developed Form 8965, Health Coverage Exemptions, for individuals claiming an exemption to file with their return.

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Route to: ____________ ____________ ____________ ____________ ____________

IRS Issues 2015 Auto And Truck Maximum FMVs For Cents-Per-Mile/Fleet-Average Valuation

◆ *Notice 2015-1*

The IRS recently issued the maximum fair market value (FMV) amounts that designate the proper valuation rule for employers calculating fringe benefit income from employer-provided automobiles, trucks, and vans first made available for personal use in 2015. Taxpayers with employer-provided vehicles within the designated FMV amounts may apply the vehicle cents-per-mile rule or fleet average valuation rule, as appropriate.

- ***Take Away.*** An employer that has provided a vehicle for an employee's personal use must include the value of that personal use in that employee's income and wages as a fringe benefit under Code Sec. 61. Employers and taxpayers may calculate the value of their personal use using several valuation methods, including the cents-per-mile valuation rule outlined in Reg. §1.61-21(e) or the fleet average valuation rule under Reg. §1.61-21(d).

Cents-per-mile valuation rule

To qualify to use the cents-per-mile valuation rule, the employer must reasonably expect the vehicle to be regularly used in the employer's business throughout the calendar year, or the vehicle must be used primarily by employees, including for commuting, and be driven at least 10,000 miles that calendar year.

- ***Comment.*** The 10,000-mile requirement may be met by one employee or any combination of employees who drive the vehicle.

Employers and employees arrive at the value of the fringe benefit provided in a particular calendar year by multiplying the standard mileage rate for the year by the total number of miles the vehicle is driven by the employee for personal purposes.

- ***Comment.*** The standard business mileage allowance rate for 2015 is 57.5 cents-per-mile (up from 56 cents-per-mile for 2014).

Employers and employees may not use the cents-per-mile rule, however, if the fair market value of the vehicle exceeds the sum of the maximum recovery deductions under Code Sec. 280F(a) for the first five years of service. The maximum 2015 FMV amounts for use of the cents-per-mile valuation rule are:

- $16,000 for a passenger automobile (the same as for 2014 and 2013); and
- $17,500 for a truck or van, including passenger automobiles such as minivans and sport utility vehicles, which are built on a truck chassis (up from $17,300 in 2014).

Fleet-average valuation

Employers maintaining a fleet of at least 20 automobiles can value the FMV of each automobile as equal to the average value of the entire fleet. The fleet average value is the average of the FMV of all automobiles used in the fleet.

The maximum FMV amounts for use of the fleet-average valuation rule in 2014 are $21,300 for a passenger automobile (the same as for 2014) and $22,900 for a truck or van (up from $22,600 in 2014).

References: FED ¶46,219;
TRC COMPEN: 33,152.10.

PPACA

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- ***Comment.*** HHS has explained on its website some of the various circumstances that may constitute a hardship. These circumstances include domestic violence; a fire, flood, or other natural or human-caused disaster; filing for bankruptcy protection within a certain period; determination of ineligibility for Medicaid because the taxpayer's state did not expand eligibility for Medicaid under PPACA; and more.

Outreach projects

Treasury and HHS reported that a number of PPACA outreach projects are being planned for the filing season. The IRS has already posted information about the PPACA on its website for taxpayers and tax professionals. Treasury Secretary Jack Lew said the administration will continue to work with tax preparers to provide individuals with the information they need to prepare for tax season.

- ***Comment.*** "For the vast majority of Americans, tax filing under the Affordable Care Act will be as simple as checking a box to show they had health coverage all year," Lew said. "A fraction of taxpayers will take different steps, like claiming an exemption if they could not afford insurance or ensuring they received the correct amount of financial assistance. A smaller fraction of taxpayers will pay a fee if they made a choice to not obtain coverage they could afford."

One outreach will focus on exemptions. The agencies reported that they will launch online tools to help individuals connect with local tax preparation services and determine if they are eligible for an exemption from the individual shared responsibility requirement.

Reference: TRC HEALTH: 3,000.

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Reference Key

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

IRS Clarifies Treatment Of Retroactive Increase In Excludable Transit Benefits For FICA Taxes And W-2 Reporting

◆ *Notice 2015-2*

The IRS has clarified how employers should address the retroactive increase for 2014 in the monthly exclusion for transit passes and van pooling benefits under the *Tax Increase Prevention Act of 2014* (TIPA). The IRS also provided a special administrative procedure for employers to make adjustments on their Forms 941, Employer's Quarterly Federal Tax Return, filed for the fourth quarter of 2014, and in filing Forms W-2, Wage and Tax Statement.

■ ***Take Away.*** Before TIPA, the adjusted maximum monthly excludable amount for 2014 for the aggregate of transportation in a commuter highway vehicle and any transit pass was $130; and the adjusted maximum monthly excludable amount for qualified parking was $250. TIPA, however, retroactively enacted parity between the two amounts for the 2014 tax year. Therefore, the maximum monthly excludable amount for the period of January 1, 2014, through December 31, 2014, is $250 for transit passes and van pool benefits and also $250 for qualified parking. However, nothing in TIPA mandates that employers provide additional transit benefits to employees.

Background

The *Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010* provided for parity for the exclusion limitation on transit passes, van pool benefits and qualified parking through 2011. The *American Taxpayer Relief Act* (ATRA) previously extended parity retroactively to January 1, 2012 and through 2013. TIPA extended parity through 2014. The IRS provided similar special administrative procedures after passage of ATRA.

Notice 2015-2

The IRS explained that, under TIPA, any transit benefits (the aggregate benefit for transit passes and van pooling) provided in 2014 by an employer to an employee in excess of $130 and up to $250 is excluded from the employee's gross income and wages. (The notice refers to this additional $120 as "excess transit benefits.") The exclusion applies whether the employer provided the transit benefits out of its own funds or whether the transit benefits were provided through salary reduction arrangements.

With regard to transit benefits provided pursuant to compensation reduction arrangements, the guidance clarifies that employees may not retroactively increase their compensation reduction for 2014 to take advantage of the increase in the excludable amount for transit benefits in 2014. In addition, employees may not reduce their compensation by more than $130 per month in 2015 to make up for any permissible reimbursement of transit benefits incurred in 2014. TIPA's transit benefits parity provision applies to the 2014 tax year only.

Special procedure

Employers that treated "excess transit benefits" as taxable wages and that have not yet filed their fourth quarter Form 941 for 2014 (due February 2, 2015) should repay or reimburse their employees the overcollected FICA tax on the excess transit benefits for all four quarters of 2014, on or before filing the fourth quarter Form 941, the IRS explained.

The employer, in reporting amounts on its fourth quarter Form 941, may reduce the fourth quarter wages, tips and compensation reported on line 2; taxable Social Security wages reported on line 5a; and Medicare wages and tips reported on line 5c, by the excess transit benefits for all four quarters of 2014.

Employers that have filed the fourth quarter Form 941 must use normal procedures and must file Form 941-X, Adjusted Employer's Federal Tax Return or Claim for Refund to make an adjustment or claim a refund for any quarter in 2014, the IRS explained. Similarly, employers that, on or before filing the fourth quarter Form 941, did not repay or reimburse employees who received excess transit benefits in 2014 must use Form 941-X.

Forms W-2

Employers that have not furnished 2014 Forms W-2 to their employees should take into account the increased exclusion for transit benefits in calculating the amount of wages reported in box 1, Wages, tips, other compensation; box 3, Social Security wages; and box 5, Medicare wages and tips, the IRS explained. Employers that have already filed 2014 Forms W-2 should file Form W-2c, Corrected Wage and Tax Statement.

References: FED ¶46,218; TRC COMPEN: 36,350.

Senate Bill Would Authorize IRS To Regulate Paid Return Preparers

Proposed legislation giving the IRS authority to regulate paid tax return preparers has been introduced in the Senate. The Taxpayer Protection and Preparer Proficiency Bill of 2015 was drafted by Sen. Ron Wyden, D-Ore., ranking member of the Senate Finance Committee, and Sen. Ben Cardin, D-Md.

Legislation. The Senate bill would amend 31 USC Sec. 330 to clarify that the IRS has the authority to regulate return preparers. The bill generally would define return preparer as any person who prepares for compensation, or who employs one or more persons to prepare for compensation, a return.

TRC IRS: 3,200.

IRS Provides Automatic Approval For "Takeover Plans" Pension Plans To Change Funding Method

◆ *Announcement 2015-3*

The IRS has provided automatic approval for a change in a defined benefit's funding method following a change in the plan's enrolled actuary services, provided the new funding method satisfies a four-part safe harbor. The automatic approval applies to plan years beginning on or after January 1, 2013.

■ ***Take Away.*** Announcement 2015-3 applies to so-called "takeover plans," where both the enrolled actuary and the business organization providing actuarial services have changed. The announcement expands on prior guidance, by providing approval for a change in either the plan's prior year funding (the year immediately preceding the current year) or its current year funding (the year in which the takeover occurs); and by allowing the new actuary to use a signed report from the prior actuary, in lieu of Schedule SB (Form 5500, Single-Employer Defined Benefit Plan Actuarial Information).

■ ***Comment.*** Under Code Sec. 412(c)(5), any change in funding method requires IRS approval.

Funding determinations

The automatic approval applies to funding determinations that must comply with Code Sec. 430, minimum funding standards for single-employer defined benefit pension plans. Under the *Pension Protection Act of 2006* (PPA), a single funding method must be used, but there may be some variation in the manner that the method is applied.

For plan years beginning on or after January 1, 2009, the IRS previously granted automatic approval in Announcement 2010-3 for certain changes in funding methods used to determine the minimum funding requirement under Code Sec. 430. Similar to prior guidance, Announcement 2010-3 applied certain five percent tests to the amount of assets and liabilities reflected on Schedule SB for the prior plan year.

The IRS noted that Notice 2014-53, regarding changes to the funding stabilization rules for single-employer pension plans, provides for the filing of an amended Schedule SB for the 2013 plan year. The changes in Announcement 2015-3 facilitate the filing of an amended Schedule SB for 2013 for a takeover plan, without the need for the newly-hired actuary to perform the five percent test using the valuation methods from the 2012 plan year.

Safe harbor

Announcement 2015-3 provides automatic approval for a change in funding method resulting from a change in enrolled actuary if four conditions are satisfied:

(1) There has been a change in both the enrolled actuary and the business organization providing actuarial services, and the new actuary uses different valuation software or applies the prior actuary's funding method in a different manner. This condition applies to the

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IRS Announces Opening Of FATCA Data Exchange Service

◆ *IR-2015-01*

The IRS has announced the official opening of the International Data Exchange Service (IDES) for the provision of information required by the *Foreign Account Tax Compliance Act* (FATCA). Foreign financial institutions (FFIs) and foreign tax authorities will use IDES to send information reports on foreign financial accounts and assets held by U.S. persons, the IRS stated.

■ ***Take Away.*** The purpose of FATCA is for the IRS to collect information on foreign assets and financial accounts owned by U.S. taxpayers. While the focus has been on determining the detailed legal requirements for collecting this information, it has also been important for the IRS develop the technology and capabilities for foreign financial institutions and governments to send FATCA information to the IRS. The IDES provides this capability.

■ ***Comment.*** "The opening of the International Data Exchange Service is a milestone in the implementation of FATCA," IRS Commissioner John Koskinen said in a statement.

Background

U.S. withholding agents and qualified intermediaries that make payments to FFIs and to other entities maintaining foreign accounts must withhold 30 percent of the payments if the entity does not comply with the reporting and due diligence requirements of FATCA.

IDES

More than 145,000 financial institutions have registered with the IRS FATCA Registration System, the agency reported. The U.S. also has more than 110 intergovernmental agreements with foreign countries to implement information exchanges required by FATCA.

IDES is a secure web application for financial institutions and host country tax authorities to transmit certain FATCA account information to the IRS. The IRS will also use IDES to provide similar information to foreign tax authorities on accounts of U.S. financial institutions owned by the foreign jurisdiction's residents.

References: FED ¶46,222; TRC FILEBUS: 9,108.

Tax Court Holds Money Services Business Not A Bank; No Ordinary Loss Allowed On Worthless Securities

◆ *MoneyGram International, Inc., 144 TC No. 1*

A taxpayer engaged in the money services business was not a bank under Code Sec. 581, the Tax Court has held. The taxpayer business did not have the essential characteristics of a bank and could not claim under Code Sec. 582 ordinary loss deductions on account of worthless securities.

■ ***Take Away.*** The court reiterated that Congress intended to limit bad debt deductions for securities losses to banks, to the exclusion of other financial institutions. Here, the taxpayer failed to persuade the court to depart from Congress' longtime approach.

Background

The taxpayer was the parent of a group of companies that operated a global payment services business. Its activities involved the movement of money through three main channels: money transfers, money orders, and payment processing services. Money orders and money transfer services were provided to consumers through supermarkets, convenience stores, and other retail locations. Payment processing services were provided directly to banks and other financial institutions.

The taxpayer generally received a transaction fee from each money order and also derived revenue from the investment of funds remitted by its agents. The taxpayer also received fees from financial institution customers for its official check services.

During the 2007–2008 economic slowdown, the taxpayer's securities lost much of their value. The taxpayer claimed significant bad debt deductions for securities losses on its returns. The IRS determined that the taxpayer was not a bank and disallowed the bad debt deductions.

■ ***Comment.*** To qualify as a bank under Code Sec. 581, a taxpayer must meet three requirements. First, it must be a bank or trust company incorporated and doing business under federal or state law; (2) a substantial part of its business must consist of receiving deposits and making loans and discounts; and (3) it must be subject to supervision and examination by federal or state authorities.

Court's analysis

The court first found that the taxpayer was registered with Treasury as a money services business. The taxpayer also was licensed by most states as a money transmitter. The taxpayer was never regulated as bank under federal law or incorporated as a bank under state law. Further, the court found that the taxpayer's financial statements did not list any loans among its assets or deposits among its liabilities.

The court also found that until 2008 the taxpayer had described its business on its returns as nondepository credit intermediation. This represented that it did not receive deposits. The funds that the taxpayer received did not display the essential features of bank deposits. Customers did not place funds with the taxpayer for safe keeping, nor did the taxpayer hold its customers' funds for extended periods of time as part of its capital structure. Rather, customers expected that the taxpayer would transmit the funds to the payee. The court found that consumers patronized the taxpayer to move money and not to hold it.

Additionally, the taxpayer's transactions with its agents did not constitute loans within the meaning of Code Sec. 581. The court found that agents accepted cash from customers and paid that cash to the taxpayer several days later as previously agreed. This pattern, the court found, was not unique to the taxpayer but is the pervasive pattern for all businesses that sell goods or services and receive deferred payment.

■ ***Comment.*** The court noted that 70 years ago life insurance companies argued for similar treatment. Congress stated that it intended to limit bad debt deductions for securities losses to banks to the exclusion of life insurance companies.

References: Dec. 60,201; TRC BUSEXP: 48,154.

Plans

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funding method used to determine the funding target, target normal cost, and actuarial value of assets.

(2) The funding target and target normal cost for the prior plan year, as calculated by the new actuary using the assumptions of the prior actuary, are both within five percent of the values reported in the prior plan year's Schedule SB (signed by the prior actuary) or actuarial report.

(3) The actuarial value of plan assets for the prior year, under the same circumstances, is within five percent of the actuarial value of plan assets reported in the prior year's Schedule SB (signed by the prior actuary) or actuarial report.

(4) The new actuary's funding method applied to the funding target, target normal cost, and asset values must be substantially the same as the prior actuary's method, and must be consistent with the method's description in the prior year Schedule SB (signed by the prior actuary) or actuarial report.

Alternatively, the comparisons described in paragraphs (2) to (4) can be made on the basis of the current plan year, if the prior actuary has issued a report with current year results or has provided a signed Schedule SB to the new actuary for the current year.

If the plan qualifies for automatic approval of its change in funding method, the new actuary can only use new actuarial assumptions and a new funding method for the current year that are permitted under the general requirements of Code Secs. 430(h) and 412(d)(1).

References: FED ¶46,217; TRC RETIRE: 30,566.

Expenditures Properly Treated As Merchandising-Program Adjustments To Costs Of Goods Sold Rather Than Business Deductions

◆ *CCA 201501010*

IRS Chief Counsel has determined that a taxpayer may properly treat the costs of providing a certain item to its customers under an added-value merchandising program as an adjustment to its costs of goods sold (COGS). Because these costs were treated as price adjustments, they were not business expenses deductible under Code Sec. 162, but were not subject to the limitations of Code Sec. 274.

■ ***Take Away.*** Citing *Max Sobel Wholesale Liquors, CA-9, 80-2* USTC *¶9,690*, Chief Counsel distinguished expenditures that constitute refunds and rebates from expenditures that are treated as business deductions under Code Sec. 162. Chief Counsel noted that purchase price adjustments and rebates to customers offered as an inducement to purchase in a taxpayer's trade or business are generally considered adjustments to the price of the service or property sold. Rather than being deducted as expenses under Code Sec. 162, they are subtracted from gross receipts used to compute gross income.

Background

The taxpayer ran an added-value merchandising program through which it purchased the items, distributed them to customers to whom it had given a merchandising allowance or "points," and paid related companies to provide services to the item holders. The taxpayer treated these expenditures as an adjustment to its cost of goods sold. The IRS revenue agent, however, determined that the taxpayer should have deducted the expenditures from its gross income under Code Sec. 162, subject to the limitations of Code Sec. 274.

Chief Counsel's analysis

Chief Counsel determined that the taxpayer's price adjustments were properly treated as part of COGS rather than business expenses deductible under Code Sec. 162. It examined the facts and circumstances of the case at hand and compared them to those in *Pittsburgh Milk, TC, Dec. 21,816*, and Rev. Rul. 2005-28, asking what had been the intent of the parties and for what purpose or consideration the allowance actually had been made.

■ ***Comment.*** Citing *Pittsburgh Milk*, Rev. Rul. 2005-28 provides that, "Where a payment is made from a seller to a purchaser, and the purpose and intent of the parties is to reach an agreed upon net selling price, the payment is properly viewed as an adjustment to the purchase price that reduces gross sales."

In this case, as in *Pittsburgh Milk*, the intention and purpose of the allowance was to provide a formula for adjusting a specified gross price to an agreed net price. The taxpayer and its customer had negotiated over the amount of the items and the merchandising allowance or points that would be a part of the sale. The parties also agreed that the adjustment was not contingent on subsequent payment from the customer.

Chief Counsel therefore determined that, regardless of the time or manner of the adjustment, the net agreed-upon selling price must be given recognition for income tax purposes. The fact that the taxpayer incurred the expense to acquire the goods after it executed the contract with the customer was not legally significant, Chief Counsel determined. It was also irrelevant that the item was merchandise rather than cash.

Reference: TRC ACCTNG: 15,252.15.

Charitable Conservation Deduction Disallowed; Property Remained Subject To Unsubordinated Deed Of Trust At Time Of Donation

◆ *Mitchell, CA-10, January 6, 2015*

The Tenth Circuit Court of Appeals has upheld the Tax Court's disallowance of a deduction for a donation of a charitable conservation easement. The donated property remained subject to an unsubordinated mortgage at the time of its conveyance.

■ ***Take Away.*** Code Sec. 170(h)(5)(A) provides that a contribution shall not be treated as being exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. The regulations interpret the meaning of "protected in perpetuity." In particular Reg. §1.170A-14(g) states that, "In the case of conservation contributions made after February 13, 1986, no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity."

Background

A married couple purchased land totaling 456 acres from a landowner, to be paid for with an initial down payment followed by installments. The couple signed a promissory note, which was secured by a deed of trust held by the original landowner.

The taxpayers transferred the property, still subject to the deed of trust, to a family limited liability partnership, which then donated 180 acres of the property as a conservation easement to a conser-

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Tax Briefs

Jurisdiction

The U.S. Court of Federal Claims lacked subject matter jurisdiction over an individual's suit for refund of all amounts withheld from his income by the IRS and his claims for monetary and equitable relief. The individual's action for refund was dismissed because he failed to pay the taxes prior to filing his refund suit.

Gregoline, FedCl, 2015-1USTC ¶50,127; TRC IRS: 51,158.30

Summons

An individual's petition to quash an IRS administrative summons issued to him and a third-party summons issued to a financial institution seeking records in connection with his business was denied and the summonses were ordered enforced. The government established its prima facie case for enforcement because all of the *Powell* factors had been met and the individual failed to show that the summonses were not issued in good faith or that they were an abuse of process.

Masciantonio, DC Pa., 2015-1 USTC ¶50,137;

Income

A couple disputed the amount of dividend income they received; the IRS's determination that the taxpayers had unreported dividend income was not sustained. The husband devoted a substantial amount of time to contest the relatively small amount of tax liability at issue. He testified consistently, clearly, and with considerable conviction in explaining that he did not receive the disputed dividend payments. He persuaded the court that he did not receive the disputed dividend payments.

Ebert, TC, CCH Dec. 60,206(M), FED ¶47,916(M); TRC INDIV: 27,162

Deductions

An individual had unreported income and was not allowed claimed deductions for lack of evidence. The IRS properly used the bank deposits method to reconstruct his income. The taxpayer was subject to penalties for the three years at issue for fraud and failure to file returns or pay taxes.

Sodipo, TC, CCH Dec. 60,204(M), FED ¶47,913(M); TRC FILEIND: 6,150

An attorney was not entitled to expense deductions exceeding amounts allowed by the IRS. He was ineligible to elect Code Sec. 179 treatment for his airplane as his business use did not exceed 50 percent in either of the tax years at issue.

Peterson, TC, CCH Dec. 60,202(M), FED ¶47,911(M); TRC BUSEXP: 3,100

Liens and Levies

A couple's petition seeking damages against the IRS alleging wrongful conduct in pursuing tax collection and for failure to release timely release tax liens was dismissed for lack of subject matter jurisdiction. The couple failed to timely file their complaint or exhaust their administrative remedies.

Nerlinger, DC Mich., 2015-1 USTC ¶50,136; TRC IRS: 45,114

An individual's petition challenging a Notice of Federal Tax Lien was properly dismissed for lack of subject matter jurisdiction. The IRS letter advising the individual to pay the trust fund recovery penalty and then file for a refund was not a valid determination notice.

R.G.S. Au, CA-9, 2015-1 USTC ¶50,135; TRC LITIG: 6,136.25

A husband's one-half interest in the sale proceeds from jointly-owned property was exhausted by payment of the first and second mortgages on the property; therefore, the remainder of the proceeds belonged to the wife, free of the tax lien.

Sawyer, DC Mass., 2015-1 USTC ¶50,133; TRC IRS: 48,106.05

Refund Claims

An individual's complaint seeking a refund of taxes was barred by the statute of limitations, and she failed to show that she qualified for the financial disability exception under Code Sec. 6511(h) to the applicable limitations period.

Pull, DC Calif., 2015-1 USTC ¶50,138; TRC IRS: 36,052.05

A decedent's estate was not entitled to a refund of income taxes for the tax year at issue because the decedent constructively

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IRS Updates Determination Letter/Ruling Procedures For EO And Private Foundation Status

The IRS has issued its annual update to the procedures governing determination letters and rulings on the status of exempt organizations under Code Secs. 501 and 521. The IRS also released the annual update to its procedures for the issuance of determination and letter rulings for private foundation status, operating foundation status, and exemption operating foundation status under Code Secs. 509(a), 4942(j)(3), and 4940(d)(2), respectively.

Changes. Notably, Rev. Procs. 2015-9 and 2015-10 provide that the Exempt Organizations (EO) Rulings and Agreements office that is primarily responsible for customer-initiated activities such as determination applications, taxpayer assistance, and assistance to other EO offices will no longer issue private letter rulings or technical advice memoranda.

Rev. Proc. 2015-9, Rev. Proc. 2015-10, FED ¶¶46,220, 46,221; TRC EXEMPT: 12,054.

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received the income in that year, not in the year the stock certificates were actually redeemed.

Santangelo, Jr., CA-5, 2015-1 USTC ¶50,132; TRC ACCTNG: 6,152.05

Collection

An IRS settlement officer (SO) properly sustained a proposed IRS levy to collect a self-employed insurance salesman's delinquent taxes. It was not an abuse of discretion for the settlement officer to decline to consider an installment agreement where the taxpayer did not place a specific proposal on the table.

Scholz, TC, CCH Dec. 60,203(M), FED ¶47,912(M); TRC IRS: 51,056.25

Deficiencies and Penalties

An estate was liable for the maximum late-filing penalty under Code Sec. 6651 because it failed to establish that the filing delay was due to reasonable cause and not willful neglect. Although the attorney handling the estate failed to comply with the filing deadlines, the executor was not disabled. There was no evidence that she was without the ability to control whether the deadline was met.

Specht, DC Ohio, 2015-1 USTC ¶50,134; TRC PENALTY: 3,060.05

An individual was not entitled to dependency exemptions for his children or grandchild, and was not entitled to head of household filing status. The IRS did not address an accuracy-related penalty that it had determined, so the penalty was not sustained.

McBride, TC, CCH Dec. 60,207(M), FED ¶47,917(M); TRC FILEIND: 3,150

Married individuals were liable for deficiencies arising from their unsuccessful attempt to avoid taxation through a tax shelter scheme and were denied claimed deductions. They were bound by a settlement agreement entered into by them and the IRS.

Wakefield, TC, CCH Dec. 60,205(M), FED ¶47,915(M); TRC INDIV: 27,056

Bankruptcy

The Bankruptcy Court had the authority to direct the IRS to apply Chapter 13 debtors' plan payments. The debtors' proposed allocation of proceeds from the sale of exempt property was necessary to the success of their plan. Further, the payment was voluntary and voluntary payments may be allocated by the taxpayer.

In re Fielding, BC-DC Tex., 2015-1 USTC ¶50,128; TRC IRS: 57,156

Prohibited Transactions

The Tax Court's decision that an S corp was liable for an excise tax and additions to tax because its employee stock ownership plan (ESOP) violated anti-abuse provisions under Code Sec. 409(p) was affirmed. The taxpayer in question was an S corp, formed by an individual who established an ESOP, of which he was the sole beneficiary. After reviewing the Tax Court case, the Eighth Circuit held there was no basis for reversal.

Ries Enterprises, Inc.; 2015-1 USTC ¶50,131; TRC RETIRE: 75,104.15.

New Tax Briefing Reviews Major Tax Developments Of 2014

The year 2014 brought significant tax-related developments, including completion of the guidance package on the treatment of costs for tangible property (the so-called "repair regulations"), the roll-out of the individual shared responsibility requirement of the *Patient Protection and Affordable Care Act,* severe cuts to the IRS's FY 2015 budget, changes that affect retirement planning, and the last-minute extension of numerous important tax breaks.

Wolters Kluwer has issued a new Tax Briefing: 2014 Tax Year-in-Review that provides an overview of key tax law developments from 2014 and their impact on taxpayers. The full Briefing is available on IntelliConnect.

Mitchell

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vancy. The couple failed, however, to obtain an agreement from the original landowner to subordinate his deed of trust to the interest of the conservancy. The landowner did not agree to subordinate his mortgage interest until two years after the donation. Several years after the husband died, the IRS disallowed the deduction for the charitable conservation easement. The Tax Court upheld the disallowance.

Court's analysis

The Tenth Circuit found that the regulations do not permit a charitable contribution deduction unless any existing mortgage on the donated conservation property has been subordinated at the time of gift, irrespective of the likelihood of foreclosure. The Tenth Circuit rejected the wife's argument that because the mortgage subordination provision in the Code Sec. 170 regs fails to specify a time frame, the fact that the deed of trust became subordinated after the donation meant the conservation contribution complied with the requirements of Code Sec. 170.

The Tenth Circuit also rejected the wife's arguments that strict compliance with the statute was unnecessary because the deed of trust protected the conservation purpose in perpetuity and the risk of foreclosure in this instance was so remote as to be negligible. The IRS was entitled to demand strict compliance with the mortgage subordination provision of the regulations, the Tenth Circuit concluded.

References: 2015-1 USTC ¶50,130; TRC INDIV: 51,364.05.

2015 May Be Decisive Year For Tax Reform

As President Obama's January 20 State of the Union Address approaches, expectations are rising in Washington that the president and the leaders of the Republican-controlled Congress will seek some sort of tax reform agreement. Since the November elections, President Obama has signaled to Democrats and Republicans that he wants to see a serious attempt at tax reform in 2015. Republican leaders, for their part, say taxes are one area where they believe compromise is available. "I can tell you broadly what I'd like to see. I'd like to see more simplicity in the system. I'd like to see more fairness in the system," Obama said in December.

Complexity

Both the White House and Congressional Republicans agree that the Tax Code is too complex. The corporate tax rate of 35 percent is the highest among industrialized nations. A myriad of tax incentives, some permanent, some extended, are available to individuals and businesses. The *Patient Protection and Affordable Care Act* (PPACA) has imposed new reporting and filing requirements on individuals and businesses. As Obama said in a speech last December touching on tax reform, "the devil is in the details."

Staff level talks

In December, President Obama said that his administration would immediately begin to hold talks at the staff level with GOP members of Congress to outline the parameters of tax legislation in 2015. "The tax area is one area where we can get things done. And I think in the coming weeks leading up to the State of the Union, there will be some conversations at the staff levels about what principles each side are looking at," the President said. Obama also signaled he was serious about tax reform during a speech at year-end to business executives. The president indicated he remains open to future extensions of expired tax provisions, but he believes they should be done as part of tax reform.

foundation for true reform. This is where true compromise will have to take place as Republican leaders are skeptical of President Obama's desire to push through true tax reform.

> *"Since the November elections, President Obama has signaled to Democrats and Republicans that he wants a serious attempt at tax reform in 2015."*

Perhaps the most contentious area for agreement between Democrats and Republicans is that tax reform should embrace the principle of revenue neutrality. Democrats would reach this goal by increasing taxes on higher income individuals. That move is certain to meet opposition from Republicans.

Hatch lays groundwork

Senate Finance Committee Chair Orrin Hatch, R-Utah, is emerging as one of the proponents of tax reform in the 114th Congress. In a January op-ed, Hatch launched the first salvo of the New Year on the subject, saying "tax reform is no longer an option but an obligation. With the start of the new Congress, Washington has an opportunity to rebuild the Tax Code in a way that will spur economic growth, jump-start job creation, and once again restore prosperity to the American people."

To reach this goal, however, Hatch insisted that the White House must "get in the game and start to lead." Hatch said this would entail putting smart policy ahead of poll-tested talking points and working with Congress in good faith. In addition, Hatch said it would mean accepting principles established by Congress to lay the

■ ***Comment.*** Some GOP lawmakers have said they believe the president is seeking to use the tax system as a means to raise revenue to pay for lower and middle class tax breaks and to fund work on the country's infrastructure. Some GOP lawmakers have already resigned themselves, off the record, to achieving small results in overhauling the tax system- at least in the beginning.

Hatch stated that the most important tax reform principles are those followed by President Reagan almost 30 years ago when Congress last acted to overhaul the Tax Code: economic growth, fairness, and simplicity. Hatch said that tax reform should promote growth in the economy and reduce economic distortions. Moreover, it must eliminate the uncompetitive nature of the Tax Code and reduce disincentives to work, entrepreneurship, savings, and investment.

Hatch also called for a tax overhaul that promotes savings and investment, which provide fuel for growth. "Many aspects of the current U.S. income-tax system discourage savings and investment, which ultimately hurts long-term growth," he said.

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Washington Report

by the CCH Washington News Bureau

House votes to repeal PPACA's 30-hour rule

House lawmakers on January 8 approved, by a vote of 252 to 172, the Save American Workers Bill of 2015 (HR 30), which would alter the calculation under the *Patient Protection and Affordable Care Act* (PPACA) of the number of full-time equivalent employees for the purposes of determining which employers are subject to the employer shared responsibility payment. The House bill would change the definition of full-time employment from 30 hours per week under current law to 40 hours per week. President Obama has issued a veto threat if the bill comes to his desk.

Senate Majority Leader Mitch McConnell, R-Ky., predicted the Senate would, at some point, hold a vote on a companion bill. "One of the worst things we can do is to destroy the 40-hour work week," McConnell said. Senate Minority Whip Richard Durbin, D-Ill., said that Republicans were "pursuing an extreme bill that undermines the Affordable Care Act."

House bills exclude veterans, volunteers from PPACA employer mandate

House lawmakers approved on January 6 the Hire More Heroes Bill of 2015 (HR 22), which would permit an employer, when determining whether it must provide health care coverage to its employees under the *Patient Protection and Affordable Care Act* (PPACA) to exclude employees who have coverage under a healthcare program administered by the Department of Defense (DOD). On January 12, the House approved the Protecting Volunteer Firefighters and Emergency Responders Act (HR 33). The bill excludes emergency services volunteers from being taken into account as employees under the employer shared responsibility requirement. Similar legislation passed in the House in 2014.

"By exempting veterans who already have health coverage through the Department of Defense or the VA from the employer mandate, we're making it easier for small businesses to hire and helping more veterans find work," House Speaker John Boehner, R-Ohio, said.

Bill would repeal medical device tax

Legislation to repeal the medical device tax has been introduced in the House. Rep. Erik Paulsen, R-Minn., reported at a news conference in Washington, D.C. on January 7 that his repeal bill, the Protection Medical Innovation Act, has 254 cosponsors, including 27 Democrats.

The PPACA imposes a 2.3 percent excise tax on manufacturers, producers or importers of certain medical devices. Generally, a taxable medical device is one that is listed as a device with the U.S. Food and Drug Administration (FDA). A number of devices are exempt, including contact lenses, and hearing aids as well as devices purchased by the general public at retail for individual use.

Since passage of the PPACA, there have been several attempts in Congress to repeal the medical device excise tax. Paulsen had introduced similar legislation in the House in 2013 and 2014. In November 2014, the House voted to repeal the medical device tax in the Jobs for America Act (HR 4) but the bill did not advance in the Senate in 2014. In the Senate, the new chair of the Senate Finance Committee, Orrin Hatch, R-Utah, has been a vocal opponent of the medical device excise tax. President Obama, however, has signaled his support for the tax.

Speakers seek quick finalization or delay of hybrid plan proposed regs

Speakers at a January 9 IRS hearing on proposed regulations under Code Sec. 411(b)(5) urged the agency to either finalize the proposed regs quickly or delay their effective date. The speakers estimated that plan sponsors would require possibly a year or more to evaluate the regs and to decide upon and implement any plan design changes. One speaker noted that many plan sponsors would need to negotiate with employee unions. Speakers also expressed concerns that the proposed regulations introduced too restrictive an approach for making the plan amendments necessary to bring a noncompliant interest crediting rate into compliance.

"[January 1, 2016] would be sufficient if the entire package was finalized," Michael Pollack of Towers Watson testified. He urged the IRS to finalize the regulations in the first quarter of 2015, explaining that plan sponsors require sufficient time before the effective date to implement the appropriate plan design, allow participant communication, and update administrative systems. "In the event that the regs can't be finalized in the time frame, we encourage they be delayed until 12 months after they are finalized."

Kent Mason, who represented the American Benefits Council and the Coalition to Preserve the Defined Benefit System, also supported rapid finalization of the proposed regs. "We really will need these proposed regulations to be finalized fast if we're going to stick with January 1, 2016," he testified. Mason also called for a delay specifically for plan sponsors who need to enter collective bargaining negotiations in the event of a plan design change. Mason also asked that any guidance the IRS publishes on the interpretation of pension equity plans be prospective rather than retroactive.

Practitioners's Corner

Continued from page 33

Democratic proposals

One of the House's senior Democrats, Chris Van Hollen, D-Md., has emerged as a standard-bearer of individual tax reform. Van Hollen recently proposed creating a paycheck bonus tax credit of $1,000 for single individuals earning less than $100,000 each year and a paycheck bonus tax credit of $2,000 for married couples earning less than $200,000 each year. The estimated $1.2 trillion proposal would be paid for by a new tax on financial transactions. Van Hollen and some House Democrats have also called for increasing the child and dependent care tax credit, enhancing the EIC, and making permanent the American Opportunity Tax Credit (AOTC).

"The challenge is a big one. You have to think big, you have to think forward, and you have to think new. You have to think new and fresh," House Minority Leader Nancy Pelosi, D-Calif., said. House Ways Means Committee ranking member Sander Levin, D-Mich., has called for permanent extensions of the Work Opportunity Tax Credit, renewable energy tax credits and the New Markets Tax Credit.

Corporate tax reform

In 2012, President Obama described a "Framework for Corporate Tax Reform." The Framework proposed linking any reduction in the corporate tax rate to the elimination of business tax preferences. The Framework proposed to eliminate the last-in, first-out (LIFO) method of accounting, certain fossil fuel preferences, and reform the tax treatment of insurance industry and products. In exchange, the corporate tax rate would be reduced to 28 percent (with a 25 percent rate available to qualified manufacturers). The Framework also proposed a minimum tax on foreign income. Income earned by subsidiaries of U.S. corporations operating abroad would be subject to a minimum rate of tax. Additionally, the Framework would tax carried interest at ordinary income.

In late 2014, President Obama indicated that he continues to support his 2012 Framework. President Obama noted that the administration is aware that there are companies that are paying the "full freight," 35 percent, which he called "higher than just about any other company on Earth if—if you're paying 35 percent." In addition, President Obama said that there are other companies that are paying zero. "There are companies that are parking money outside the country because of tax avoidance. We think that it's important that everybody pays something if, in fact, they are effectively headquartered in the United States." On corporate inversions, Obama highlighted companies doing what he termed, "paying their fair share of taxes. I think that needs to be fixed." He added, "Fairness, I think is going to be very important. Some of those principles, I've heard Republicans say they share."

House Ways and Means Chairman Paul Ryan, R-Wis., recently said that it would be better than nothing if Congress only addresses corporate tax reform in the coming year and leaves changes to individual taxation for another year. Ryan has already slated a Ways and Means hearing to look at jumpstarting the economy. "American job creators face an uncompetitive tax code, rising costs, restrictions abroad on U.S. goods and services, and a stifling regulatory apparatus here at home," Ryan said in announcing the hearing.

Tax extenders

Tax extenders will also have to be addressed again as the Tax Increase Prevention Act of 2014 merely extended the incentives through 2014. Both sides agree that the research and development tax credit should be made permanent, but they split on things such as tradeoffs from enhancing the earned income credit (EIC) and other credits aimed at lower income families. President Obama has signaled his support for the EIC and other incentives for families, such as the child tax credit. Look for significant horse trading as lawmakers struggle to decide on what provisions to keep, make permanent, or get rid of altogether.

Dynamic scoring

Add to the mix of tax reform is the concept of dynamic scoring which House members plan to implement when looking at the costs of tax legislation. Dynamic scoring requires developing a set of economic models that can be used to estimate the true revenue effect of tax proposals, or the macroeconomic effects of taxes on national income. And under new House rules approved at the beginning of the 114th Congress, the CBO and Joint Committee on Taxation (JCT) will begin to employ "dynamic scoring" on all major tax legislation. The practice requires developing a set of economic models that can be used to estimate the true revenue effect of tax proposals, or the macroeconomic effects of taxes on national income.

Affordable Care Act

To pay for health care reform, the PPACA created a number of new revenue raisers. These include the employer shared responsibility requirement, the medical device excise tax, the so-called "Cadillac tax" on high-dollar health plans, new rules for deducting medical expenses, and much more. When Democrats controlled the Senate, supporters of the PPACA could table bills from the GOP-controlled House that proposed to repeal or modify any of these provisions. Now, the GOP controls both chambers and Republican leaders have indicated they want to repeal the PPACA. One of the first-tax related provisions that will likely come up for a repeal vote is the medical device excise tax. Supporters already have enough pass a medical device excise tax repeal bill in the House and the Senate will likely go along. Bills to repeal other provisions are expected to be introduced shortly. President Obama has said he will veto any bills to weaken the PPACA.

Compliance Calendar

■ January 15
Deadline to make a final payment of estimated tax for 2014, using Form 1040-ES, Estimated Tax for Individuals.

■ January 16
Employers deposit Social Security, Medicare, and withheld income tax for January 10, 11, 12, and 13.

■ January 20
2015 filing season opens. The IRS is scheduled to begin accepting individual income tax returns electronically. Paper tax returns will begin processing at the same time.

■ January 22
Employers deposit Social Security, Medicare, and withheld income tax for January 14, 15, and 16.

■ January 23
Employers deposit Social Security, Medicare, and withheld income tax for January 17, 18, 19, and 20.

■ January 28
Employers deposit Social Security, Medicare, and withheld income tax for January 21, 22, and 23.

TRC Text Reference Table

The cross references at the end of the articles in CCH Federal Tax Weekly (FTW) are text references to CCH 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 15,252.15	30	FILEBUS 9,206	575	IRS 51,056.25	576
ACCTNG 21,110	602	FILEIND 15,200	1	IRS 57,150	18
ACCTNG 24,300	577	HEALTH 3,000	25	IRS 60,052	14
ACCTNG 33,204.15	589	HEALTH 9,118	4	LITIG 6,508	577
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EXEMPT 12,054	32	IRS 12,200	17	RETIRE 66,458.10	578
EXEMPT 12,102.05	32	IRS 12,300	4	RETIRE 66,750	2
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FILEBUS 9,104.20	601	IRS 33,156	589	SALES 36,350	3
FILEBUS 9,108	599	IRS 42,106	600	SALES 48,056	19

From the Helpline

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

Q For 2014 and beyond, may employers reimburse or directly pay premiums for an employee's individual health care coverage?

A Notice 2013-54 provides that employer payment plans described in Rev. Rul. 61-146 no longer include an employer-sponsored arrangement under which an employee may choose either cash or an after-tax amount to be applied toward health coverage. Thus, while employer payment plans are still permitted, Rev. Rul. 61-146 only applies to such plans if they are stand-alone plans for retirees, plans that cover only one employee, or stand-alone reimbursement plans for "excluded" benefits such as vision or dental care. *See TRC HEALTH: 18,108 for more information.*

Q Are small employers that do not comply with the requirement to file an annual return with the IRS reporting certain health coverage information for each employee covered liable for penalties?

A Beginning in 2015 (postponed from 2014), applicable large employers will be required to report to the IRS whether they offer full time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan and provide details regarding the coverage offered and other required information. Small employers, with fewer than 50 full-time and full-time equivalent employees are generally not required to do this. However, employers large and small are subject to Code Sec. 6055 reporting if they have self-insured plans. *See TRC HEALTH: 6,106 and COMPEN: 45,236.10.*