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IRS Announces Penalty Relief For Small Employer Health Care Payment Plans

◆ *Notice 2015-17*

The IRS has announced transition relief for small employers from the Code Sec. 4980D excise tax for certain health care payment plans. The IRS also reported that it is exploring additional guidance on the application of market reforms under the *Patient Protection and Affordable Care Act* (PPACA) to a 2-percent shareholder-employee healthcare arrangement. Notice 2015-17 supplements and clarifies Notice 2013-54.

■ ***Take Away.*** Although the penalty relief in Notice 2015-17 is temporary, it is very welcomed news for many small businesses, which have traditionally provided a health benefit to their employees through these arrangements, Kristin Esposito, CPA, tax technical manager, American Institute of Certified Public Accountants (AICPA), told Wolters Kluwer. "The goal now is to find more permanent relief," Esposito explained.

Background

In Rev. Rul. 61-146, the IRS determined that, under certain conditions, if an employer reimburses an employee's substantiated premiums for non-employer sponsored hospital and medical insurance, the payments are excluded from the employee's gross income. This exclusion also applies if the employer pays the premiums directly to the insurance company.

In Notice 2013-54, the IRS described these arrangements as employer payment plans, which are considered to be group health plans subject to the PPACA market reforms. Excise taxes under Code Sec.4980D apply for failure to comply with PPACA market reforms. The Code Sec. 4980D excise tax reaches $100 per affected individual per day.

■ ***Comment.*** "The market reforms include a prohibition on plans with annual and lifetime dollar limits on benefits," Esposito noted.

Notice 2015-17

Now, the IRS has reiterated that the arrangement described in Rev. Rul. 61-146 is an employer payment plan. An arrangement under which an employer provides reimbursements or payments that are dedicated to providing medical care, such as cash reimbursements for the purchase of an individual market policy, is itself a group health plan. The arrangement is subject to the PPACA market reform provisions, the IRS explained.

Transition relief

Limited transition relief from the Code Sec. 4980D excise tax is available to employers that are not applicable large employers (ALEs), which generally are employers that employed an average of at least 50 full-time employees, including full-time equivalent employees, on business days during the preceding calendar year. Some small employers, the IRS explained, may need additional time to obtain group health coverage or adopt a suitable alternative. Transition relief is available for 2014 for employers that are not ALEs; and for the period January 1, 2015 to June 30, 2015 for employers that are not ALEs.

■ ***Comment.*** Employers eligible for the transition relief are not required to file Form 8928 (regarding failures to satisfy requirements for group health plans under chapter 100 of the Code,

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HHS Opens Marketplace Enrollment Period For Filing Season/ Notifies Enrollees Of Incorrect Forms 1095-A

◆ *www.hhs.gov, www.healthcare.gov*

The U.S. Department of Health and Human Services (HHS) has opened a special enrollment period for coverage in federally-facilitated Health Insurance Marketplaces from March 15 to April 30. Individuals who discover that they must make a shared responsibility payment when they file their 2014 returns because they lacked coverage in 2014 are eligible to apply for coverage in 2015 during the special enrollment period. HHS also announced that some 800,000 Marketplace enrollees have received incorrect Forms 1095-A, Health Insurance Marketplace Statement.

■ ***Take Away.*** Individuals who receive advance payments of the Code Sec. 36B credit must reconcile their payments, using information from Form 1095-A on their 2014 returns. In a conference call with reporters, HHS officials predicted that Treasury would have more guidance for taxpayers who have already filed their 2014 returns.

■ ***Comment.*** States that run their own Marketplaces are expected to provide a similar special enrollment period.

Background

The *Patient Protection and Affordable Care Act (PPACA)* requires individuals and their dependents to carry minimum essential health coverage or make a shared responsibility payment, unless exempt. 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. The shared responsibility payment is made when the individual files his or her return. For 2015, the percentage and dollar amounts increase to two percent and $395, respectively.

Special enrollment

HHS reported that many individuals first learned of the individual shared responsibility payment when they filed their 2014 returns. They did not enroll in Marketplace coverage in 2014 and missed the cut-off date for open enrollment for coverage for 2015 (February 15, 2015).

To be eligible for special enrollment:

- Individuals must not be currently enrolled in Marketplace coverage for 2015;
- Individuals must attest that when they filed their 2014 return they paid the shared responsibility fee for not having minimum essential coverage in 2014; and
- Must attest that they first became aware of, or understood the implications of, the shared responsibility payment after the end of open enrollment (February 15, 2015) in connection with preparing their 2014 return.

■ ***Comment.*** HHS explained that individuals taking advantage of the special enrollment period will still owe a shared responsibility payment for the months they were uninsured in 2015.

Form 1095-A

All individuals who enrolled in minimum essential coverage through the Marketplace for 2014 received Form 1095-A, describing their coverage and the amount, if any, of advance payments of the Code Sec. 36B credit. HHS reported that approximately 20 percent of enrollees received incorrect Forms 1095-A. These Forms 1095-A included reference to an incorrect benchmark plan.

Affected individuals are being contacted by the Marketplace and will receive corrected Forms 1095-A, HHS reported. HHS recommended that affected individuals hold off filing their returns until they receive the corrected forms.

Reference: TRC HEALTH: 3,250.

Payment Plans

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including the market reforms) solely as a result of having these arrangements for the period for which the employer is eligible for relief. The IRS indicated that additional clarifications on employer payment plans will be provided in the near future.

S corps

Generally, if an S corp pays for or reimburses premiums for individual health insurance coverage covering a 2-percent shareholder, the payment or reimbursement is included in income but the 2-percent shareholder-employee may deduct the amount of the premiums. Until more guidance is released (and in any event through 2015), the IRS will not impose the Code Sec. 4980D excise tax for failure to satisfy the market reforms by a 2-percent shareholder-employee healthcare arrangement, the agency reported.

Medicare/TRICARE

The IRS also reviewed the integration of Medicare premium reimbursement arrangements. If an employer reimburses (or pays directly) some or all of Medicare Part B or Part D premiums for employees, this constitutes an employer payment plan, subject to the PPACA market reforms. Additionally, the IRS explained that an HRA may not be integrated with TRICARE to satisfy the market reforms because TRICARE is not a group health plan for integration purposes.

References: FED ¶46,257; TRC TRC HEALTH: 18,108.

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*

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IRS Provides Transition Relief To Employers Claiming WOTC For 2014

◆ *Notice 2015-13*

Qualified employers that hired a member of a group targeted by the Work Opportunity Tax Credit (WOTC) during 2014 have until April 30, 2015 to satisfy the pre-screening requirements under Code Sec. 51(d) and claim the credit, the IRS has provided in new transition guidance. The transition relief is also available to certain tax-exempt employers that hired a military veteran during 2014 and claim the WOTC.

■ ***Take Away.*** The WOTC had expired on December 31, 2013. However, Congress extended the availability of the credit through 2014 when it passed the *Tax Increase Prevention Act of 2014* (TIPA). This transition relief provides extra time to employers to submit Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Tax Credit, to a Designated Local Agency (DLA) and obtain the requisite certification that the hired individual is a member of a targeted group. Without this transition relief, the WOTC extension would have been all but meaningless—an employer would have been required to submit the form within 28 days from the date on which the individual began working.

Background

The WOTC is part of the general business credit under Code Sec. 38 and may be carried back and forward as part of the credit, subject to its limitations and rules. Code Sec. 51, as extended by TIPA, allows employers to take a WOTC for employees who are members of targeted groups and who began work before January 1, 2015. Employers are generally required to obtain a certification of the employee's targeted group status from a DLA, or complete a pre-screening notice, by the date the employee begins work or within 28 days from that date.

Targeted groups

TIPA extended the WOTC to taxable employers for all hires from all targeted groups. These groups include, but are not limited to:

- Qualified individuals in families receiving Title IV-A Social Security benefits for at least nine months;
- Qualified veterans who are members of families receiving supplemental nutrition assistance program (SNAP) benefits (formerly known as food stamps) or who have service-connected disabilities;

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IRS Previews "Cadillac Plan" Guidance, Excise Tax Under Code Sec. 4980I

◆ *Notice 2015-17*

In a Notice, the IRS has previewed possible approaches to implement the Code Sec. 4980I excise tax on high cost employer-sponsored health coverage (so-called "Cadillac plans"). The *Patient Protection and Affordable Care Act* (PPACA) created the new excise tax, which applies to tax years beginning after December 31, 2017.

■ ***Take Away.*** The reach of the Code Sec. 4980I excise tax is broad. It encompasses current employees, retired employees, surviving spouses, and others.

Background

The PPACA includes a number of new excise taxes, including the Code Sec. 4980I tax. A 40 percent excise tax is imposed on any excess benefit provided to an employee. An excess benefit, the IRS explained, is the excess, if any, of the aggregate cost of the applicable coverage of the employee for the month over the applicable dollar limit for the employee for the month. Applicable coverage is generally coverage under any group health plan. Generally, the cost of applicable coverage determined under rules similar to the rules for determining the COBRA applicable premium, the IRS explained.

The PPACA provides two annual applicable dollar limits. One dollar limit is for an employee with self-only coverage and another dollar limit is for an employee with other-than-self-only coverage (for example, spouse or family coverage). For 2018, the dollar limit for an employee with self-only coverage is $10,200 and the dollar limit for an employee with other-than-self-only coverage is $27,500. Both monetary amounts are subject to various adjustments under the PPACA, such as an adjustment for individuals who work in high risk professions, and age and gender adjustments.

Employers calculate the excise tax and notify the entity responsible for payment of the excise tax. Under the PPACA, the entity responsible for making payment is the health insurance issuer in the case of applicable coverage provided under an insured plan; the employer if the applicable coverage consists of coverage under which the employer makes contributions to a health savings account (HAS) or Archer Medical Savings Account; and the person that administers the plan in the case of any other applicable coverage.

Notice 2015-16

The IRS requested comments on, among other topics,

- The definition of applicable coverage, including coverage for retirees;
- Determination of the cost of applicable coverage, including possible approaches for determining the cost of applicable coverage; and
- Determination of the cost of applicable coverage, including possible approaches for determining the cost of applicable coverage

The IRS reported that it anticipates issuing another notice on the Code Sec. 4980I excise tax before it releases proposed regs. Additionally, the IRS cautioned that Notice 2015-16 does not provide guidance under Code Sec. 4980I on which taxpayers may rely.

References: FED ¶46,263; TRC HEALTH: 9,302.

Tax Court Nixes Purported Charitable Deduction For Estate; Funds Not Permanently Set Aside

◆ *Estate of Belmont, 144 TC No. 6*

The Tax Court has denied an estate a charitable deduction, finding that the estate did not permanently set aside the funds. The estate used some of the funds to pay for litigation over the decedent's will.

■ ***Take Away.*** The estate claimed it could not have reasonably foreseen the litigation. The IRS countered that there was a substantial possibility of litigation and the estate would likely have to use some of the $220,000 for litigation expenses. The Tax Court agreed with the IRS in an opinion that addressed how likely contingencies must be before a deduction can be denied.

Background

The decedent died in 2007 survived by her brother and half-sister. The decedent's will, signed in 1994, generally provided that all of her property would pass to a charitable foundation, with a monetary amount given to her brother.

The estate filed a Form 1041, U.S. Income Tax Return for Estates and Trusts, in 2008, reporting income of $242,000 and also a $220,000 charitable contribution deduction on the basis of decedent's will leaving the residue of her estate to the foundation. As of the date Form 1041 was filed, the $220,000 amount had not been paid to the charity.

■ ***Comment.*** The estate did not segregate the $220,000 from other funds in its checking account, which were used to pay various administrative expenses.

Sometime later, litigation ensued between the estate and the decedent's brother. The brother was successful. The estate expended funds as a result of the litigation and depleted some of the $220,000 it had set aside for the foundation. By 2013, $185,000 remained in the estate's account. The IRS determined that the estate was not entitled to its claimed charitable deduction because the $220,000 had not been permanently set aside for charitable purposes.

■ ***Comment.*** The brother had sought to exchange his monetary bequest for a life tenancy in real property held by the estate. The brother argued that the decedent and their mother had agreed before their deaths that he should have a life tenancy in the property.

Court's analysis

The court first found that Code Sec. 642(c)(2) permits a current charitable contribution income tax deduction, notwithstanding that the amount will not be paid or used for a charitable purpose until sometime in the future. Three criteria must be satisfied. The charitable contribution must be an amount from the estate's gross income; the charitable contribution must be made under the terms of a governing instrument; and the charitable contribution must be permanently set aside for purposes specified in Code Sec. 642(c)(2). An amount will not be deemed permanently set aside for a charitable purpose unless under the terms of the governing instrument and the circumstances of the particular case, the possibility that the amount set aside, or to be used, will not be devoted to the purpose or use is so remote as to be negligible.

The court looked to the information that was known or reasonably knowable to the estate when it filed Form 1041. The court found that the information indicated that there was a serious pending challenge by the decedent's brother. These facts, the court held, were sufficient to put the estate on notice of the possibility of an extended and expensive legal fight. When the estate filed its Form 1041, the estate was aware that the brother's claim to a life tenancy interest was a serious one. As a result, it was not so remote as to be negligible that the funds set aside for the foundation would be depleted because of litigation, the court concluded.

■ ***Comment.*** The court noted that when Form 1041 was filed, there were no income-producing assets in the estate.

References: Dec. 60,234; TRC ESTGIFT: 45,052.05.

WOTC

Continued from page 99

- Designated community residents;
- Vocational rehabilitation referrals certified to have a physical or mental disability;
- Qualified summer youth employees;
- Ex-felons hired not more than one year after the later of their conviction or release from prison; and
- Individuals who are in families that have been receiving SNAP benefits for six months.

■ ***Comment.*** Although the *VOW to Hire Heroes Act of 2011* only extended the WOTC to employers that hired qualified veterans through December 31, 2012, the *American Taxpayer Relief Act* of 2012 extended the credit for all targeted groups through December 31, 2013, and TIPA again extended the credit through December 31, 2014 for all targeted groups. The WOTC generally applies with respect to wages paid to persons who begin work for the employer before January 1, 2015.

Transition relief

A qualified employer that hired a member of a targeted group, or a qualified tax-exempt organization that hired a military veteran, on or after January 1, 2014, and before January 1, 2015, will be considered to have satisfied the requirements of Code Sec. 51(d)(13)(A)(ii) if it submits completed Form 8850 to the appropriate DLA to request certification no later than April 30, 2015. A timely request for certification does not eliminate the need for the employer to receive certification before claiming the credit, the IRS added.

References: FED ¶46,261; TRC BUSEXP: 54,252.

HHS Affirms "Skinny Plans" Do Not Meet Minimum Value Requirement Under PPACA

◆ *CMS-9944-F 287*

Employer-sponsored health plans must provide substantial coverage of both inpatient hospital services and physician services to meet the minimum value (MV) requirement of the *Patient Protection and Affordable Care Act* (PPACA), the Department of Health and Human Services (HHS) has clarified in final regs. The final rule adopts the IRS's proposed rule from November 2014 (Notice 2014-69).

■ ***Take Away.*** The IRS intended Notice 2014-69 to prevent employers from adopting "skinny plans," meaning group health plans that attempt to meet the MV requirement by covering at least 60 percent of certain medical costs but not inpatient hospital services.

Background

In 2013, HHS published final regulations and the IRS and Treasury issued proposed regulations under section 1302(d)(2) of the PPACA, which, among other things, allowed group health plans to determine their MV percentage by using HHS's MV Calculator. Afterwards, some employers were able to claim that plans without coverage of inpatient hospital services provide MV by adopting a benefit package that, based on standardized actuarial assumptions used in the MV calculator, offset the absence of spending on inpatient hospital coverage with increased spending on other benefits.

■ ***Comment.*** Code Sec. 36B(c)(2)(C)(ii) provides that an eligible employer-sponsored plan generally provides MV if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of those costs.

Final rule

HHS concluded that the quantitative test for MV is not exclusive. The final rule requires that to meet the MV requirement, an employer-sponsored plan must both meet the quantitative standard of the actuarial value of benefits and provide a benefit package that meets a minimum standard of benefits. This includes substantial coverage of inpatient hospitalization services, something the rule describes as "a critical benefit universally understood to be included in any minimally acceptable employer health plan coverage."

The final regs generally will not apply before the end of the plan year to plans that before November 4, 2014, entered into a binding written commitment to adopt, or began enrolling employees into, the plan, so long as that plan year begins no later than March 1, 2015. However, the delayed deadline applies only for purposes of applying the Code Sec. 4980H employer penalties. An employee will not be denied the Code Sec. 36B credit if they received or were offered coverage through a skinny plan.

Reference: TRC HEALTH: 3,310.

AFRs Issued For March 2015

◆ *Rev. Rul. 2015-4*

The IRS has released the short-term, mid-term, and long-term applicable interest rates for March 2015.

Applicable Federal Rates (AFR) for March 2015

Short-Term	***Annual***	***Semiannual***	***Quarterly***	***Monthly***
AFR	.40%	.40%	.40%	.40%
110% AFR	.44%	.44%	.44%	.44%
120% AFR	.48%	.48%	.48%	.48%
130% AFR	.52%	.52%	.52%	.52%
Mid-Term				
AFR	1.47%	1.46%	1.46%	1.46%
110% AFR	1.62%	1.61%	1.61%	1.60%
120% AFR	1.76%	1.75%	1.75%	1.74%
130% AFR	1.91%	1.90%	1.90%	1.89%
150% AFR	2.20%	2.19%	2.18%	2.18%
175% AFR	2.58%	2.56%	2.55%	2.55%
Long-Term				
AFR	2.19%	2.18%	2.17%	2.17%
110% AFR	2.41%	2.40%	2.39%	2.39%
120% AFR	2.64%	2.62%	2.61%	2.61%
130% AFR	2.85%	2.83%	2.82%	2.81%

Adjusted AFRs for March 2015

	Annual	***Semiannual***	***Quarterly***	***Monthly***
Short-term adjusted AFR	.36%	.36%	.36%	.36%
Mid-term adjusted AFR	1.14%	1.14%	1.14%	1.14%
Long-term adjusted AFR	2.19%	2.18%	2.17%	2.17%

The Code Sec. 382 adjusted federal long-term rate is 2.19%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.67%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.42% and 3.18%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before January 1, 2015, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 1.8%.

References: FED ¶46,259; TRC ACCTNG: 36,162.05.

U.S. Corporation Must Increase E&P For Subpart F Inclusions, IRS Concludes

◆ *AM 2015-001*

The IRS has concluded, in a generic legal advice memorandum (GLAM), that a U.S. parent corporation must increase its earnings and profits (E&P) at the time that it has taxable income from its controlled foreign corporation (CFC). The corporation must increase its E&P when the items are included in its gross income, even if the CFC does not make a distribution to the parent.

■ ***Take Away.*** "This is the answer I would have expected from the IRS and from even a court," Andrew Eisenberg, partner, Jones Day, Washington, D.C., told Wolters Kluwer. "It is appropriate to include in the E&P of the U.S. person the passive income of its foreign subsidiary, in the year the income is taken into account. One could argue that E&P should be a measure of the ability to pay dividends, but that's a weak argument," Eisenberg said.

■ ***Comment.*** E&P measures a corporation's ability to pay dividends. If E&P were not increased, when appropriate, a corporation would be able to make distributions to its shareholder(s) and avoid treatment of the distribution as a taxable dividend.

Background

A U.S. parent corporation (USP) wholly owns a foreign subsidiary. The subsidiary is a CFC under Code Sec. 957, and USP is a U.S. shareholder of a CFC under Code Sec. 951(b). The subsidiary earns income under Code Sec. 952 (Subpart F) and owns United States property (as defined in Code Sec. 956, investment of earnings in U.S. property). As a result, USP has taxable income under Code Sec. 951(a) (amounts included in gross income of U.S. shareholders).

IRS analysis

Under Reg. §1.312-6, all items includible in gross income, are included in E&P. USP has income under Code Sec. 951(a)(1); therefore, it must increase its E&P. Statutory provisions that affect the timing of income have a corresponding effect on E&P, unless contradicted by a specific statute or reg.

The application of Reg. §1.312-6 to Code Sec. 951 is consistent with the framework articulated in the tax code and case law regarding the interaction among income, basis adjustments, and E&P. The operation of basis provisions with gross income and E&P ensures that items of gross income are neither duplicated nor excluded from taxable income or E&P. The case law establishes the relationship among E&P increases, income realization when income recognition is deferred and basis provisions preserve the income for future taxation.

In this case, when USP has taxable income under Code Sec. 951, it increases its previously taxed income (PTI) account and its basis in the CFC stock. This ensures that the earnings will not be included in gross income a second time. The U.S. shareholder includes its share of the CFC's income in its income only once, and E&P must be increased at that time. If E&P were not increased when the income was recognized and basis increased, the income might never produce an increase in E&P.

Potential taxpayer arguments

According to the IRS, USP could argue that Code Sec. 951 inclusions do not increase E&P because USP's ability to make dividend distributions was not increased. However, E&P is not simply a measure of cash flow; it increases even when an income inclusion does not coincide with the receipt of cash or other property. Thus an increase of E&P for Code Sec. 951 inclusions is appropriate and consistent with E&P guidance.

Under the IRS analysis, the CFC's E&P does not decrease (because there is no distribution), while USP's E&P increases. USP might argue that E&P cannot be in two places at once, and that USP should increase its E&P when the CFC distributes the earnings attributable to Code Sec. 951. However, the IRS noted, this argument conflicts with the tax rules in other corporate contexts. For example, if a U.S. parent and U.S. subsidiary file a consolidated return, the parent must increase its E&P to reflect increases in the subsidiary's E&P.

Furthermore, a CFC's distribution of PTI is not included in the U.S. parent's income and does not increase E&P. Instead, E&P must be increased in the shareholder's tax year that the income is included; otherwise, the foreign earnings might never increase E&P.

Reference: TRC CONSOL: 33,050.

IRS Examiners Challenging Ownership Of Property Under Code Sec. 199

IRS examiners are challenging whether taxpayers claiming the domestic production activities deduction (DPAD) under Code Sec. 199 have the benefits and burdens of ownership of the property being disposed of, a former Treasury tax official has reported. Speaking at a Federal Bar Association program on the DPAD in Washington, D.C., George Manousos, a partner with PricewaterhouseCoopers LLP, said that examiners are disregarding an IRS directive that allows the two parties with a claim to ownership to certify which party will claim the deduction.

Ownership. The question of ownership is significant. Code Sec. 199 provides a deduction based on qualified income from a disposition of qualified property. Ownership of the property is key. "You can't sell what you don't own," Manousos said.

IRS directive. Where ownership is unclear, the IRS allows one party to certify that it is the owner and will claim the deduction, and the other party to certify that it is not the owner. The directive requires that the taxpayer claiming ownership provide a statement to the IRS explaining why it is the owner. "The directive sets the bar pretty low" for claiming ownership, Ken Beck, a Treasury attorney, said. However, examiners are requiring parties to provide a more robust justification. If auditors do not respect the taxpayer certifications under the directive, Manousos said, what is the point of the directive.

TRC BUSEXP: 6,160.20.

Internal Revenue Service

The IRS has issued general requirements and conditions for the development, printing and approval of all substitute tax forms to be acceptable for filing in lieu of official IRS-produced and distributed forms. This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules. Rev. Proc. 2013-17, I.R.B. 2013-11, 612, is superseded.

Rev. Proc. 2015-18, FED ¶46,262; TRC FILEBUS: 12,052.10

The IRS, in its series of notices reminding taxpayers of their rights, has issued a Fact Sheet on Right No. 4 of the Taxpayer Bill of Rights, the right to challenge the IRS's position and be heard. These rights are set out in detail in IRS Publication 1, Your Rights as a Taxpayer. Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions. They have the right to expect that the IRS will consider timely objections and documentation promptly and fairly.

FS-2015-10, FED ¶46,256; TRC IRS: 51,056

The Commissioner has delegated to the Office of Chief Counsel authority to perform all technical functions performed by the Tax Exempt and Government Entities (TE/GE) Division prior to January 2, 2015. This delegated authority is not exclusive, and TE/GE retains authority to issue, in particular, letter rulings, closing agreements, and information letters, as set forth in Rev. Proc. 2015-4, I.R.B. 2015-1144. This authority is effective with the implementation of the January 2, 2015, realignment of technical work.

CDO No. 30-7, FED ¶46,255; TRC IRS: 9,206.05

Tax Crimes

An 81-month sentence imposed upon an individual who was involved in a conspiracy to defraud the IRS using identity theft was proper. The conspiracy was complex and took advantage of the IRS's ability to issues quick tax refunds using stolen identities and engaged in complex scheme to conceal their criminal activity.

James, CA-11, 2015-1 USTC ¶50,195; TRC IRS: 66,306

Summons

An IRS summons issued to an individual requesting him to appear, testify, and produce documents regarding his outstanding tax liability was ordered enforced. The government established its *prima facie* case for enforcement, which the individual failed to rebut, the court found.

McCarthy, DC Calif., 2015-1 USTC ¶50,204; TRC IRS: 21,300

Deductions

Losses claimed through a tax shelter scheme involving a purported partnership were disallowed. The court sustained the IRS's disallowance of loss deductions and a resulting adjustment of the partnership's capital contributions and distributions to zero. In addition, a gross valuation misstatement penalty was imposed on the taxpayer, an individual.

436, LTD., TC, CCH Dec. 60,233(M), FED ¶47,943(M); TRC SALES: 6,050

An individual was not entitled to deduct future attorney's fees as alimony. The payments did not terminate upon the death of the payee spouse as required by Code Sec. 71(b)(1)(D) in order to be considered alimony, the Tax Court held.

Hampers, TC, CCH Dec. 60,232(M), FED ¶47,942(M); TRC INDIV: 21,206

An inventor was not entitled to a theft-loss deduction for alleged patent infringement for the tax years at issue. The individual did not satisfy any of the requirements of Code Sec. 165(c) for demonstrating a theft loss.

Sheridan, TC, CCH Dec. 60,230(M), FED ¶47,940(M); TRC INDIV: 54,104

Tax Credits

The IRS has announced the immediate beginning of the 2015 reallocation of credits (Round 2) under the qualifying advanced coal project program. Generally, the allocation round will be conducted in the same manner and under the same procedures provided under Notice 2012-51. To be considered, applications must be submitted to the Department of Energy and to the Internal Revenue Service on or before April 1, 2015. This notice is effective on February 18, 2015, the IRS explained.

Notice 2015-14, FED ¶46,260; TRC BUSEXP: 51,702

The evidence was sufficient to convict two individuals of conspiracy to defraud the government and tax evasion. The individual

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New Phishing Scam Lures Return Preparers To Reveal EFINs

The IRS has warned tax professionals about a new email phishing scam designed to trick them into revealing their e-services portal information and Electronic Filing Identification Numbers (EFINs). Scammers send bogus emails containing links that, if clicked, will capture the preparer's e-services username and password and/or EFIN. Scammers can use this information to file fraudulent tax returns claiming false tax refunds.

The IRS stressed that if preparers receive such an email, they should realize it was not generated by the IRS and disregard it. The IRS does not request personal or financial information from taxpayers or preparers by email, text message, social media, or other electronic communication.

IR-2015-31; TRC IRS: 66,304.

Tax Briefs

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was not really providing consulting services to his clients; he developed a plan to take advantage of the Virgin Islands Economic Development (EDC) tax-credit program by creating phony invoices to support false deductions on the clients' tax returns.

Bailey, CA-3, 2015-1 USTC ¶50,194; TRC IRS: 66,160

False Tax Returns

An individual was properly convicted of filing false and fraudulent income tax returns. There was sufficient evidence to show that he acted intentionally, knew the return was false or fraudulent and knowingly participated in a scheme to defraud the IRS.

Louis, CA-11, 2015-1 USTC ¶50,203; TRC IRS: 66,202

A 36-month sentence imposed upon an individual for filing a materially false tax return was proper, the Court of Appeals for the Eighth Circuit held. The increased sentence was proper because the unreported income that led to the individual's conviction was obtained through a fraud scheme in which she participated for over 10 years.

Bonine, CA-8, 2015-1 USTC ¶50,201; TRC IRS: 66,308

Liens and Levies

Summary judgment in favor of the IRS was appropriate in two cases encompassing seven issues arising from efforts to collect a couple's income tax liabilities by levy. The liabilities are the end result of lengthy litigation in bankruptcy court that preceded the collection effort.

Snyder, TC, CCH Dec. 60,231(M), FED ¶47,941(M); TRC IRS: 57,000

Refund Claims

A class action against an employer for refund of over-withheld employment taxes was dismissed because the individuals' failed to exhaust their administrative remedies. Since the action sought to recover over-withheld FICA taxes, the individuals' state (Kentucky) law claims were preempted by Code Sec. 7422, the Court of Appeals for the Sixth Circuit held.

Berera v. Mesa Medical Group, PLLC, CA-6, 2015-1 USTC ¶50,200; TRC LITIG: 9,062

A *pro se* individual's complaint sufficiently alleged federal jurisdiction over her refund claim. The individual filed an administrative refund claim within the time limits set forth in Code Sec. 6511 and the individual brought her action within two years after the IRS disallowed her administrative refund claim.

Greenidge, DC N.Y., 2015-1 USTC ¶50,199; TRC LITIG: 9,058.20

A married couple and their wholly owned LLC were not entitled to a refund of the amount paid to discharge tax liens on their property for nonpayment of taxes owed by their S corporation. The couple and the LLC were the alter-egos of the corporation.

Politte, CA-9, 2015-1 USTC ¶50,198; TRC IRS: 48,106.10

Collection Due Process

The Tax Court properly denied a couple's request to remand their Collection Due Process (CDP) case to Appeals because they failed to show a change in circumstances affecting the CDP determination.

Van Camp, CA-9, 2015-1 USTC ¶50,197; TRC IRS: 51,056.25

Tax Assessments

A married couple's federal tax assessments were properly reduced to judgment, federal tax liens were foreclosed against their real property and the property was ordered to be sold. The government established its *prima facie* case against the couple, which they failed to rebut.

Worley, CA-3, 2015-1 USTC ¶50,196; TRC IRS: 45,158

Gain Recognition

The Tax Court properly held that an individual was not entitled to defer recognition of gain under Code Sec. 1045 on the sale of stock in a corporation. The court found that the individual failed to prove that the stock he purchased constituted qualified small business stock for purposes of Code Sec. 1045.

Holmes, CA-9, 2015-1 USTC ¶50,202; TRC SALES: 15,304

Retirement Plans

For pension plan years beginning in February 2015, the IRS has released the 30-year Treasury bond weighted average interest rate, the unadjusted segment rates, Highway and Transportation Funding Act of 2014 (HATFA) (P.L. 113-159) adjusted rates, the MAP-21 adjusted rates and the minimum present value segment rates.

Notice 2015-19, FED ¶46,258; TRC RETIRE: 15,304.10

Transferee Liability

Former shareholders of a C Corporation were not liable as transferees for the corporation's unpaid income taxes arising from the sale of the corporation's stock. The transfer of assets was not fraudulent under state (North Carolina) law. There was no evidence to show that the shareholders had any actual or constructive knowledge that the new corporation's post-closing plans would render the corporation insolvent and unable to meet its tax obligations.

Andrew, DC N.C., 2015-1 USTC ¶50,193; TRC IRS: 60,050

CRS Highlights Tax Expenditures For Individuals

The Congressional Research Service (CRS) has published a summary of tax deductions for individuals, including the estimated revenue loss from the deductions. The most expensive tax deductions include the home mortgage interest deduction ($67.8 billion for fiscal year (FY) 2014); the deduction for state and local nonbusiness taxes ($56.5 billion); the charitable contribution deduction ($43.8 billion); and the real estate tax deduction ($31.9 billion).

- ***Comment.*** The home mortgage interest deduction and the real estate tax deduction include amounts paid on both first and second residences. The CRS figures do not provide a breakout.

Low-cost items. The study also reported on deductions whose costs were relatively low: the student loan interest deduction ($1.7 billion); health savings accounts ($1.6 billion); home mortgage insurance deduction ($0.6 billion); and the casualty and theft deduction ($0.4 billion).

CRS Report 7-5700; TRC INDIV: 48,400.

IRS Relief For Repair Regs' Accounting Method Changes—Choices For Small Business

The IRS has issued final "repair regs" for determining whether costs incurred with respect to tangible property should be deducted or capitalized under Code Secs. 162, 168 and 263. The final regs (TD 9636, September 2013) primarily are effective for tax years beginning on or after January 1, 2014. The regs are generally taxpayer-favorable.

Eric Wallace, CPA, Director, Boyer & Ritter LLC, CPAs and Consultants, Camp Hill, PA (www.cpabr.com)**:** These regulations are the biggest thing since the 1986 Tax Reform Act—a complete reboot of depreciation regarding improvements to tangible assets and to real estate.

David Auclair, National Managing Principal, Washington National Tax Office, Grant Thornton LLP, Washington, D.C.**:** The repair regs apply to all fixed assets. Some rules involve changes in accounting methods.

To comply with many of the regs' provisions, taxpayers must change one or more methods of accounting. Many businesses and practitioners have been concerned about the difficulty of complying with the requirements for changing accounting methods. To provide some relief, the IRS recently issued Rev. Proc. 2015-20.

This Practitioners' Corner reviews the change of accounting method issue. Wolters Kluwer talked to several practitioners about the impact of Rev. Proc. 2015-20: Wallace, Auclair, and George Manousos, partner, PricewaterhouseCoopers LLP, Washington, D.C.

Change of accounting methods (CAMs)

Taxpayers changing their accounting method(s) must obtain IRS consent. To facilitate changes, the IRS will often grant automatic consent for certain accounting method changes. For other methods, the taxpayer must request advance consent before making the changes. However, an election is not an accounting method and does not require following the procedures for a change of accounting method.A taxpayer changing its method of accounting must comply with Code Sec. 481.

Auclair: A change in accounting method generally requires a look-back piece to prior years—"If I was applying the new rules at that time, would that require different treatment?"

That is a 481(a) adjustment. Sec. 481 requires taxpayers to account for treatment of the affected items in tax years prior to the current year and to calculate an adjustment to their treatment of the same items for prior years, so that there is no duplication of deductions or omission of income.

A taxpayer that changes its method of accounting in accordance with IRS procedures may be granted audit protection for years before the year of change. If the IRS provides audit protection, it will not challenge the prior year's accounting treatment. A taxpayer that files a Form 3115 to obtain advance (non-automatic) consent generally will receive audit protection for tax years before the year of change.

CAMs under the repair regs

Under Rev. Procs. 2014-16 and 2014-54, the IRS provided automatic consent for taxpayers to change their accounting methods to comply with the repair regs. A taxpayer must file Form 3115 to request a change of accounting method and to obtain IRS consent. Taxpayers also must apply Code Sec. 481.

Manousos: The guts of the regs are done with a full 481 adjustment.

"To comply with many of the repair regs' provisions, taxpayers must change one or more methods of accounting. There are still some decisions for small businesses."

Auclair: Implementation is in 2014, but depending on the business, making annual elections could affect earlier years. So there are steps to implement the rules in 2014 and steps to take going forward. If you stop making elections, this could have the effect of requiring an accounting method change (and a 481 adjustment). Some changes are made on a cutoff basis, such as materials and supplies.

Manousos: The government said, in effect, "These are brand new regulations, so most taxpayers will need to file Form 3115." Small business was concerned that having to file a 3115 would be burdensome.

Relief requested

Manousos: Small business asked for an optional cutoff method – but the government didn't provide this in the final regulations. The 481 adjustment was one of the burdens that small business was upset about.

Auclair: There were two concerns. For costs incurred in 2014, the business had to do some kind of look-back. The other

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Washington Report

by the CCH Washington News Bureau

House plans vote on 529 expansion bill

The House is expected to vote on legislation expanding Code Sec. 529 plans on February 25. The bill would permit the purchase of a computer with 529 plan funds to be considered a qualified expense. The bill would also remove distribution aggregation requirements and would allow a student who receives a refund on any 529 plan qualified expenses to redeposit those funds into their 529 plan in a timely manner, without penalty. "I have no doubt that the changes to 529 plans will only make these plans a more attractive way to save for higher education expenses, ending in more American families setting money aside for higher education," Rep. Lynn Jenkins, R-Kansas, chief patron of the bill, said in a statement. House Speaker John Boehner, R-Ohio, has indicated his support for the bill.

Transportation Secretary promotes tax reform

Transportation Secretary Anthony Foxx said on February 17 that President Obama's proposal to use savings from corporate tax reform for transportation and infrastructure investment is vital. Foxx called the President's plan, unveiled in his fiscal year (FY) 2016 budget proposals, "pro-growth" business tax reform. "Any time you have a pay-for for something as massive as transportation, there are going to be warts on any given proposal. We think this one meets the test of not raising tax rates, not raising deficits, but putting significant dollars into the system," Foxx said.

Levin questions House tax reform bills

House Ways and Means Committee Ranking Member Sander Levin, D-Mich., recently questioned the mark-up of several tax reform bills by the committee. In recent weeks, the Ways and Means Committee has approved bills making permanent enhanced small business expensing, some charitable giving incentives, and more. Levin criticized Republicans for approving the bills without offsetting their costs. Levin charged that "Republicans feared that trying to pay for their tax cuts by shifting to the highly uncertain dynamic scoring may not be enough." Levin also pointed out that, when Ways and Means Chairman Paul Ryan, R-Wisc., was chair of the House Budget Committee, he never assumed tax extenders would be a permanent part of the Tax Code.

Wyden describes abuses of federal excise taxes

Senate Finance Committee ranking member Ron Wyden, D-Oregon, said on February 20 that the U.S. is falling behind other nations in combatting illicit tobacco sales and abuse of excise taxes on tobacco. Excise tax abuse could have resulted in the loss of up to $3.7 billion in revenues since 2009, Wyden reported. "The U.S. is falling behind on tobacco tax laws and enforcement while costing federal, state and local governments billions in revenue," Wyden said. Wyden highlighted recommendations by the National Academy of Sciences to improve tobacco tax enforcement, such as more information-sharing among agencies and jurisdictions, dedication of tobacco-specific enforcement efforts, harmonization of tax rates, and implementation of tracking and tracing programs.

IRS paid $5.8 billion in fraudulent refunds

The Government Accountability Office (GAO) reported on February 19 that the IRS paid $5.8 billion in fraudulent refunds in 2013. Refund fraud, GAO detailed, occurs due to the vulnerability of personal information, thieves' ability to exploit the IRS's current compliance model, and the attractiveness of refund fraud as a target. While the IRS has improved its anti-fraud processes, more work remains to be done, GAO told lawmakers. GAO recommended that the IRS improve its fraud estimates and document the economic costs, benefits and risks of possible options for taxpayer authentication.

In related news, Sen. Mark Warner, D-Va., asked the IRS what steps it is taking to curb refund fraud. "Data thieves only need a taxpayer's name and Social Security Number (SSN) to perpetuate a fraudulent refund. Last year alone, hackers stole more than 6.5 million Social Security numbers," Warner told IRS Commissioner John Koskinen. Warner also urged the IRS to reform its process notifying taxpayers and law enforcement when the IRS identifies a case of potential fraud. "The IRS often uncovers an incident of identity theft before the victim does when a data thief files a fraudulent tax return using a stolen SSN. Unfortunately, the agency has interpreted privacy laws as prohibiting the IRS from warning taxpayers that their SSN may have been stolen," Warner wrote.

FinCEN launches web page to help FBAR filers

Treasury's Financial Crimes Enforcement Network (FinCEN) has launched a web page to assist those individuals and institutions required to file a Report of Foreign Bank Account (FBAR). FinCEN explained that an FBAR filer is considered an individual when he/she personally owns (or jointly owns with a spouse) a reportable foreign financial account that requires the filing of an FBAR for the reportable year. Individuals may electronically file their FBAR through the FinCEN e-filing system without registering for an e-filing account. Attorneys, certified public accountants, or enrolled agents filing the FBAR on behalf of a client must register to become an e-filer and file as an institution rather than an individual, FinCEN explained.

Practitioners' Corner

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concern was that some businesses may never have filed Form 3115 to make an accounting method change, so filling it out could be a burden.

Relief—Code Sec. 481

Rev. Proc. 2015-20 allows a small business that is changing a method of accounting for tax years beginning on or after January 1, 2014, to make the change on a cutoff basis, by taking into account only amounts paid or incurred, and dispositions, in their 2014 tax year. The IRS relief effectively permits taxpayers to change their accounting methods prospectively.

Auclair: This is welcome guidance. Under Rev. Proc. 2015-20, I'm still implementing the rules in 2014 but I don't need to be concerned about the prior method that I used. That's the cutoff method. There was a concern about the impact on small businesses to implement the repair regs.

Wallace: The relief is fantastic for nonprofits and for small Schedule C's. But if you have real estate, you should file a Form 3115. The final tangible property regulations have not changed. Rev. Proc. 2015-20 only addresses the issues associated with implementation of those regulations for taxpayers that qualify. Rev. Proc. 2015-20 stands for the proposition that taxpayers can employer the regulations as of 1-1-14 and after.

Relief—Form 3115

Under Rev. Proc. 2015-20, taxpayers may change their methods of accounting solely by filing a federal tax return, without filing a Form 3115 or separate statement. Under a transition rule, a qualifying taxpayer that previously filed Form 3115 for 2014 may withdraw the filed form on or before the due date of the taxpayer's timely filed return (including extensions). However, the government decided that taxpayers would not be entitled to audit protection for tax years before 2014.

Auclair: The other part of the relief is not filing Form 3115. But you can still file the form. If you do, the IRS provides audit protection, because the method change would take those costs into account.

Manousos: Not providing audit protection is against the norm. The government is protecting its interests. But that type of taxpayer [small business] is not likely to have a material amount of changes that would show up in an audit. So in light of what small business is getting, this could be considered a small price to pay for the relief provided.

Wallace: There is no audit protection for transactions before 2014, which can be a very big deal. But if the taxpayer files Form 3115, the practitioner can be assured that the client is not exposed.

Decisions to be made

Auclair: There are still some decisions for small businesses. If the taxpayer is concerned about exposure, the taxpayer may want to file a Form 3115. If a taxpayer is just implementing the regs for 2014, the form isn't needed. Some taxpayers may consider the cutoff method less favorable. We have a fair number of clients that may have underdeducted and overcapitalized costs. They want to go back and adjust their treatment. This could increase their cash flow for 2014. Some businesses say it's not worth it. Others do. Some of our clients may have significant fixed assets. A number of clients are affected by the rules; some will qualify for relief.

Auclair: These rules allow partial dispositions. The old rules required that the taxpayer had to dispose of the entire asset to recover the entire basis. The new rules allow the recovery of partial asset basis. To avail of the opportunity, there is a burden. Repair costs were capitalized, not deducted. Is it worth the burden relative to the benefit?

Auclair: We're very busy: we trained our staff; put together tools and templates. This is a big deal—there are few businesses that don't have tangible assets. We are doing assessments for all our clients. Each client is different. There are a number of elections to manage for the back years/look back method. There are ways to reduce the burden, but the benefit is not as great. What's the current method? What's the new method? Is it favorable or unfavorable? There are lots of new definitions. We hope to help clients understand that in implementing the rules, there are options, especially for small business. Does audit protection matter?

Auclair: We want to help the client make an informed decision. Some may have used unfavorable methods, so they don't want to change. Another factor – how good are the client's records? There are different systems. The farther back the record, the less reliable it may be. The quality of data matters. You can include [in your 481 adjustment] whatever you have records to support.

Wallace: Taxpayers using Rev. Proc. 2015-20 can be giving up a huge negative 481 adjustment (which is taxpayer-beneficial). The regs are tremendously beneficial; why wouldn't you go back? If there is any benefit, you should file Form 3115. Practitioners have got to get up to speed. The way that the IRS gives us (Rev. Proc. 2015-20) is not a "get out of jail free" card. The regulations haven't changed.

Wallace: This is not the "out" we were all hoping for; it's a dangerous out if we use it. File Form 3115 and get audit protection.

Wallace: I'm going to protect my clients. Without filing the Form 3115, I can't deduct removal costs; can't get rid of duplicate assets, such as roofs. Roofs are on the books for 39 years—why would you want to continue to carry them? This is a nice opportunity to protect clients—a ticket and an opportunity.

Wallace: Rev. Proc. 2015-20 also said that "While some small business taxpayers may choose to file a Form 3115 in order to retain a clear record of a change in method of accounting . . . . ." So without a Form 3115, the taxpayer does not have a clear record of a change in method of accounting.

Note: Wallace conducts seminars on the repair regs for CCH. On March 2, 2015, Wallace will present "Rev. Proc. 2015-20: Repair Regs Relief—But At What Cost"; on March 5, Wallace will present "Form 3115 Case Studies Under the Repair Regs."

Compliance Calendar

February 27

Employers deposit Social Security, Medicare, and withheld income tax for February 21, 22, 23, and 24.

March 2

Businesses file information returns for certain payments made during 2014. These payments include, *but are not limited to*: cash payments for fish; compensation for workers who are not considered employees; dividends and other corporate distributions; interest; rent; royalties; profit-sharing distributions; retirement plan distributions; and original issue discount.

March 4

Employers deposit Social Security, Medicare, and withheld income tax for February 25, 26, and 27.

March 6

Employers deposit Social Security, Medicare, and withheld income tax for February 28, March 1, 2, and 3.

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 9,108	77	IRS 6,106	56
ACCTNG 21,104	67	FILEIND 15,200	37	IRS 12,250	68
ACCTNG 36,162.05	101	FILEIND 15,200	91	IRS 12,350	80
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Monthly Quizzer

The following questions (with answers at the bottom of the column) will help you review some of the important developments in Federal Tax Weekly during the past month.

Q1. The IRS recently issued a temporary simplified procedure for small businesses under the repair regulations that, if followed, allows small businesses to avoid the requirement to file which form?

(a) Form 1040
(b) Form W-2
(c) Form 3115
(d) None of the above

Q2. The IRS launched a new directory that is a searchable, sortable listing featuring: the name, city, state and zip code of CPAs, attorneys, EAs, and individuals who have completed the requirements for the Annual Filing Season Program. *True or False?*

Q3. HHS announced that some individuals received incorrect versions of which form?

(a) Form 1095-A, Health Insurance Marketplace Statement
(b) Form 8962, Premium Tax Credit
(c) Form 8999, Exemption Tax Credit
(d) None of the above

Q4. Employer-sponsored group health plans are not required to include coverage of inpatient hospitalization services to have "minimum value" as required by the PPACA. *True or False?*

Answers:

Q1. *(c), See Issue #8, page 85.*
Q2. *True, See Issue #7, page 73.*
Q3. *(a), See Issue #9, page 98.*
Q4. *False, See Issue #9, page 101.*