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IRS Issues Proposed Reliance Regs On ABLE Accounts; Defines Key Terms

IR-2015-91, NPRM REG-102837-15

The IRS has released proposed reliance regs on the establishment, funding, distribution, and reporting of ABLE Accounts under the *Achieving a Better Life Experience (ABLE) Act of 2014*. Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on the proposed regs.

- **Take Away.** The ABLE Act was passed by Congress in late 2014 with significant bipartisan support. The ABLE Act created tax-favored savings accounts for qualified individuals with disabilities (who became disabled before age 26) for tax years beginning after December 31, 2014. The IRS issued initial ABLE Act guidance in Notice 2015-18.
- **Comment.** In Notice 2015-18, the IRS explained that future guidance would confirm that the owner of the ABLE account is the designated beneficiary of the account, and that the person with signature authority over (if not the designated beneficiary of) the account may neither have nor acquire any beneficial interest in the ABLE account and must administer that account for the benefit of the designated beneficiary of that account.

Establishment

The proposed regs reiterate that in order to be a qualified ABLE program, the program must, among other requirements, be established and maintained by a state or state agency or instrumentality; permit the establishment of an ABLE account only for a designated beneficiary who is an eligible individual; limit a designated beneficiary to only one ABLE account; permit contributions to an ABLE account established to meet the qualified disability expenses of the account's designated beneficiary; and limit the nature and amount of contributions that can be made to an ABLE account.

In some cases, the IRS explained that individuals may be unable to establish an account themselves. The proposed regulations clarify that, if the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual.

An individual is an eligible individual for a tax year if, during that year, either the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification meeting specified requirements is filed with the IRS.

Contributions

A qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment. Total contributions to an ABLE account per calendar year cannot exceed the annual gift tax exclusion. Where

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IRS Issues Guidance On Multiemployer Pension Plans Applying For Suspension Of Benefits

TD 9723, NPRM REG-102648-15, Rev. Proc. 2015-34, TDNR JL-10078

Temporary and proposed regs and a revenue procedure describe how multiemployer defined benefit (DB) plans in critical and declining status may apply for suspension of benefits. The guidance package reflects changes made by the Multiemployer Pension Reform Act of 2014 (MPRA).

- **Take Away.** "The IRS will not approve any benefit suspensions until the proposed regs are finalized. There is a delay built into the regs that would take us into 2016 in any event—IRS has 225 days to approve the request. The Pension Benefit Guaranty Corporation (PBGC) has 270 days to approve a petition request, and suggests that if the applicant waits until the PBGC notice of complete filing is received (about 30 days) to file the IRS request, and asks for expedited conditional review, the PBGC will coordinate with the IRS and issue its conditional approval in time for the IRS to act. So you are talking about 255 days from PBGC app to end of IRS review period—that is eight months. By then we should have final regs (given the September hearing date on public comments)," Susan Hoffman, Shareholder, Littler Mendelson, P.C., Philadelphia, told Wolters Kluwer.

MPRA

The MPRA, which was signed into law by President Obama in late 2014, created a new status for multiemployer DB plans: critical and declining status. Generally, a multiemployer DB plan is in critical status if, among other criteria, the plan is projected to become insolvent. The MPRA set in plan benefit suspension rules for plans in critical and declining status.

Suspension of benefits

Under the MPRA, a suspension of benefits is the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits. Any suspension will remain in effect until the earlier of when the plan sponsor provides benefit improvements or when the suspension expires by its own terms. If a suspension does not expire by its own terms, it continues indefinitely.

- **Comment.** Any suspension of benefits must be equitably distributed across the participant and beneficiary population. The MPRA provides factors for plans to take into account.

If a suspension application is approved, plan participants and beneficiaries will vote whether to accept or reject the suspension. If a majority of plan participants and beneficiaries do not vote to reject the suspension, Treasury will authorize the suspension of benefits.

- **Comment.** Some plan participants are protected, including retirees 80 years of age and older (partial protection beginning at age 75), and participants receiving disability benefits.

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ABLE Accounts

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contributions exceed the annual gift tax exclusion, failure to return excess contributions results in a six percent excise tax.

- **Comment.** For 2015, the gift tax exclusion is $14,000.

Distributions

If distributions from an ABLE account do not exceed the designated beneficiary's qualified disability expenses, no amount is included in the designated beneficiary's gross income. Otherwise, the distribution may be subject to income tax and an additional tax.

Qualified expenses

Qualified expenses are expenses that relate to the designated beneficiary's blindness or disability, and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life, the IRS explained. These include expenses for education, housing, transportation, employment training, and personal support services.

- **Comment.** The IRS determined, in order to fully reflect Congress' intent, to broadly interpret the term qualified disability expenses.

Reporting

A qualified ABLE program must report establishment of each ABLE account on new Form 5498-QA: ABLE Account Contribution Information. Information regarding distributions will be reported on new Form 1099-QA: Distributions from ABLE Accounts.

References: FED ¶¶46,351, 49,654; TRC INDIV: 30,550.

REFERENCE KEY

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

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Partnership's Debt As Amount Realized Or COD Income Determined Under Code Sec. 1001, IRS Concludes

CCA 201525010

IRS Chief Counsel has determined that the treatment of a partnership's debt as recourse or nonrecourse is determined under Code Sec. 1001 (amount realized), not Code Sec. 752 (partner's share of partnership debt). The treatment of the debt determines the amount realized on a foreclosure of property in exchange for the cancellation of the debt.

- **Take Away.** The IRS examiner sought to have the debt treated as nonrecourse, so that all of the debt would be treated as an amount realized on the foreclosure of property and none of the debt would be treated as being cancelled. The taxpayer sought recourse treatment, so that the foreclosure could generate cancellation of debt (COD) income that could be excluded by an insolvent taxpayer. Chief Counsel's analysis concluded that Code Sec. 1001 was controlling, which left open the possibility that the debt was nonrecourse.

Background

The taxpayer was taxable as a partnership. The taxpayer was organized to purchase and develop real property by building and selling homes. The taxpayer entered into several loans to finance its activities. One of the loans involved the creation of Notes, which were secured by the following: a second deed of trust on the property, a general assignment of partnership rights in the property, a general assignment of partners' rights in the property, pledges of partnership interests, and each partner's "unlimited, unconditional, and irrevocable guarantees."

The Notes did not state whether they were recourse or nonrecourse to the partnership. When the partnership cancelled the Notes, in a nonjudicial foreclosure, the lenders on the loan did not receive any proceeds.

Because the partners had guaranteed the Notes, the partnership treated the Notes as recourse and reported the cancellation of the Notes as COD income (in part) that was allocated to the partners. Insolvent partners excluded a portion of the COD income under Code Sec. 108 and reduced their attributes. On audit, the IRS questioned

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Multiemployer Plans

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Application procedures

In Rev. Proc. 2015-34, the IRS described how plans seek approval of a proposed suspension of benefits. Applications must be submitted by the plan sponsor (generally, the joint board of trustees of the plan) or by an authorized representative of the plan sponsor. Plans must detail the proposed suspension of benefits, describing the effective date of the proposed suspension, duration of proposed suspension, and identification of categories or groups affected by the proposed suspension. Additionally, a plan must show that it is eligible under the MPRA to suspend benefits.

Certification that the plan is in critical and declining status by the plan's actuary is required and supporting documentation must be included. Similarly, certification must be submitted that the plan is projected to avoid insolvency, taking into account the proposed benefit suspension.

Applications must be submitted to *www.treasury.gov/mpra*. Plans may be asked to submit additional information after submitting their application, the IRS explained. Treasury has appointed a special master to review applications.

Effective dates

The temporary regs are applicable immediately. The date for accepting applications under Rev. Proc. 2015-34 is June 19, 2015.

References: FED ¶¶47,021, 49,653, 46,347, 46,348; TRC RETIRE: 57,212.

AICPA Asks Lawmakers To Exempt Payment Plans, Similar Arrangements From PPACA's Group Health Requirements

The American Institute of Certified Public Accountants (AICPA) recently recommended that Congress exempt employer payment plans from the group health insurance requirements under the *Patient Protection and Affordable Care Act* (PPACA). The AICPA urged the same treatment for similar arrangements provided to partners, more than two-percent shareholders of S corporations and sole proprietors.

- **Comment.** Generally, these plans provide payment or reimbursement by the employer of the employee's premiums for health coverage. Coverage is typically obtained by the employee through the individual market or other sources. These arrangements may be on behalf of an employee's spouse, dependents, and any other person.

Background. The PPACA imposes various market reforms on group health plans and an excise tax for failing to comply with the market reforms. In Notice 2013-54, the IRS described employer payment plans as being health plans subject to the PPACA's market reforms.

- **Comment.** Limited transition relief is available under Notice 2015-17.

AICPA recommendations. The AICPA, in a letter to House and Senate tax writers, recommended that employer payment plans and similar arrangements be made exempt from the PPACA's group health insurance requirements. "The AICPA believes these arrangements support the objective of Congress by expanding affordable health care coverage to employees, partners, more than two-percent S corporation shareholders and sole proprietors by subsidizing the cost of their health coverage."

AICPA Letter, June 18, 2015; TRC HEALTH: 18,108.

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IRS Awards Records Of Completion To Nearly 44,000 Preparers Who Participated In First AFSP

IR-2015-90

The IRS has announced that nearly 44,000 tax return preparers participated in the first Annual Filing Season Program (AFSP). The IRS awarded an AFSP record of completion to return preparers who met the program's continuing education (CE) requirements by December 31, 2014, and listed their names in a new searchable database on *irs.gov* designed to help taxpayers determine return preparer qualifications. The IRS also reminded practitioners of changes to representation rights beginning in 2016.

- **Take Away.** "It is encouraging that so many return preparers participated in the program in the very first year it was offered," IRS Commissioner John Koskinen stated. "Because of the potential benefits of this program for taxpayers, we plan to offer the program annually, as we continue to seek passage of the legislation we have requested. In the interim, we would like to see all 400,000 uncredentialed preparers either obtain the enrolled agent credential or at least commit to participation in the Annual Filing Season Program."

Background

The IRS launched the AFSP in June 2014. The announcement came several months after the IRS decided to abandon the Registered Tax Return Preparer (RTRP) program in light of the U.S. Court of Appeals for the District of Columbia Circuit's decision in *S. Loving, CA-D.C., 2014-1* USTC *¶50,175*. The D.C. Circuit struck down the RTRP as exceeding the agency's statutory authority.

To obtain the AFSP record of completion, participating return preparers completed 11 hours of continuing education. This included a six-hour refresher course, three hours on various federal tax law topics and two hours on ethics, the IRS explained.

Future AFSPs

In 2015 (for the 2016 program) and in future years, return preparers will be required to complete 18 hours of continuing education including, a six-hour refresher course, 10 hours on federal tax law topics and two hours of ethics, the IRS reported. Some return preparers who have passed certain recognized national or state tests, however, may be exempted from the six-hour refresher course and can participate in the program by taking 15 hours of continuing education.

- **Comment.** To receive a record of completion, return preparers will also be required to consent to adhere to specific practice obligations in Subpart B and section 10.51 of Treasury Department Circular No. 230.

Representation

The IRS also announced that the rules about who may represent clients before the agency are scheduled to change, effective from January 1, 2016. Certified public accountants (CPAs), attorneys and enrolled agents will continue to have full representation rights for all clients before all IRS offices. AFSP record of completion holders will have limited representation rights: they will be able to represent clients whose returns they prepare and sign, but only before examination, customer service representatives, and the Taxpayer Advocate Service. Other tax return preparers who do not participate in the AFSP will not be permitted to represent any clients before the IRS for tax returns and claims for refund prepared and signed after December 31, 2015.

Reference: TRC IRS: 3,200.

Partnership Debt

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whether the Notes were nonrecourse and whether the discharge of the debt should be treated entirely as an amount realized.

- **Comment.** Under the IRS approach, none of the amount discharged would be COD income and none would be excludable.

Law

Under Code Sec. 1001, a loan is recourse if the borrower is personally liable for the debt, and is nonrecourse if the borrower is not personally liable for the debt. Otherwise, the Code and regs do not define recourse or nonrecourse under Code Sec. 1001.

If a debt is *nonrecourse*, the entire amount of the debt is treated as an amount realized on the disposition of the property, and none of it is treated as COD income (Reg. §1.1001-2(a)(4)(i)). However, the amount realized on a disposition (including a foreclosure) of property that secures a *recourse* liability may be bifurcated into an amount realized from a sale, up to the fair market value of the property, and as income from the discharge of indebtedness, equal to the excess of the debt over the fair market value.

Code Sec. 752 determines a partner's basis in the partnership. Under Code Sec. 752, a partnership liability is recourse if any partner bears the economic risk of loss, and is nonrecourse if no partner bears the risk of loss. The regs recognize a partner guarantee as a payment obligation.

Chief Counsel's analysis

Chief Counsel determined that the definition of recourse under Code Sec. 752 does not apply to Code Sec. 1001. A loan that is recourse under Code Sec. 752 regulations can be nonrecourse for other tax purposes, including Code Sec. 1001. A partner's guarantee of partnership debt, and the debt's classification under Code Sec. 752, does not determine the debt's treatment to the partnership. The CCA did not decide whether the debt was recourse or not. Ultimately, the status of the debt depends on loan documents and state law

Reference: TRC PART: 21,358.

IRS No-Rule Position On Grantor Trusts Reflects Estate Tax Basis Issue

Rev. Proc. 2015-37

The IRS will not issue private letter rulings on whether assets in a grantor trust receive a step-up in basis under Code Sec. 1014 on the death of the grantor when the trust's assets are not included in the grantor's estate. This no-rule position reflects a long-standing IRS concern that assets should not receive a stepped-up basis if the assets are not part of the gross estate.

- **Take Away.** "There is no bright line rule on the application of carryover basis to a grantor trust," Robert Keebler, Keebler & Associates, LLP, Green Bay, Wisc., told Wolters Kluwer. "The thinking is that property transferred to a grantor trust has a carryover basis, and that when the grantor dies, the property still has a carryover basis. There is a minority view that gain is recognized when the grantor dies. Another minority view is that no gain is recognized, but the property receives a step-up in basis," Keebler said.

- **Comment.** "It is a fundamental rule that if property is transferred at death, there is a change in basis unless the property is income in respect of a decedent under Code Sec. 691," Jonathan Blattmachr, Pioneer Wealth Partners, New York, told Wolters Kluwer.

Code Sec. 1014

Under Code Sec. 1014, the basis of property acquired from a decedent is the property's fair market value on the date of the decedent's death. Property acquired from a decedent is property acquired by bequest, devise or inheritance from the decedent.

Under the grantor trust rules, a grantor that transfers property to the trust but retains certain enumerated powers over the trust corpus or income is taxable on the income of a trust. The rules providing a step-up for property acquired from a decedent also apply to property acquired from certain grantor trusts, such as a revocable trust.

Grantor trusts

Blattmachr, an authority on estate and trust taxation, noted that under Rev. Rul. 85-13, the grantor of a grantor trust is treated as the owner of the trust's assets. Thus, for example, a sale of property by a grantor to the trust is not treated as a sale, because the grantor owns the property both before and after the sale. At the grantor's death, there has been a transfer of the assets for income tax purposes for the first time, he said.

Blattmachr and academic Mitchell Gans take the position that there is a step-up in basis for the assets even though there is no estate tax inclusion. "There are different kinds of grantor trusts. Our position is that there is always a step-up in basis," he said.

Rev. Proc. 2015-37 indicates that the IRS will study the application of Code Sec. 1014 to property in a grantor trust. Blattmachr predicted that the IRS will either conclude that there is no step-up in basis, or will ask for legislation stating this position.

References: FED ¶46,343; TRC ESTTRST: 36,100.

IRS Will Only Issue Estate Tax Closing Letters On Request

FAQs on Estate Taxes, www.irs.gov

The IRS has announced that it will no longer routinely issue estate tax closing letters following the submission of an estate tax return (Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return). For returns filed on or after June 1, 2015, the IRS will only issue a closing letter if requested by the estate, the agency announced. The request should be made no sooner than four months after filing.

- **Take Away.** In the past, the IRS has routinely issued an estate tax closing letter when it accepted the return as filed or as adjusted. The IRS has stated that it issues a closing letter within four to six months after the return is filed or adjusted, but some practitioners say that the IRS may take six to nine months for a routine closing letter.

Returns before June 1, 2015

For estate tax returns filed before June 1, 2015, the IRS will generally continue to issue closing letters. The IRS states that if a return is selected for audit or is being reviewed for statistical purposes, it will take more time to issue a closing letter.

The IRS will not always issue a closing letter for returns filed before June 1, 2015. If the return was filed after January 1, 2015, the IRS will not issue a closing letter if the estate did not meet the filing threshold for an estate and the IRS rejects the estate's "portability" election. The IRS may reject a portability election if the return was filed late or if the estate fails to file a complete and properly-prepared return, as required by Rev. Proc. 2014-18.

- **Comment.** The filing threshold is indexed for inflation and is set at $5,250,000 for 2013; $5,340,000 for 2014; and $5,430,000 for 2015. Portability refers to the ability of a deceased spouse's estate to transfer the estate's unused exclusion amount to the surviving spouse. When the surviving spouse dies, that spouse's estate can add the unused exclusion amount to the survivor's exclusion amount.

Reference:TRC IRS: 18,306.

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IRS Reviews Procedures For Certain Taxpayers Who Failed To File FBARs

Delinquent FBAR Submission Procedures

The IRS recently posted reviewed procedures on its website for certain taxpayers who have not filed required Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 114). The IRS made no changes to the procedures for these taxpayers, who generally do not need to use the IRS Offshore Voluntary Disclosure Program (OVDP) or the Streamlined Filing Compliance Procedures.

- **Take Away.** June 30 is the deadline for U.S. persons with financial interests in or signature authority over foreign financial accounts generally to file the FBAR if, at any point during the 2014 calendar year, the aggregate value of the accounts exceeds $10,000. FinCEN has announced some limited exceptions.

Procedures

The reviewed procedures cover taxpayers who do not need to use either the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who have not filed a required FBAR. Additionally, the taxpayer must not be under a civil examination or a criminal investigation by the IRS, and must not have already been contacted by the IRS about the delinquent FBARs. The IRS instructed qualified taxpayers to take several steps to resolve delinquent FBARs. Taxpayers should file all required FBAR(s) and include an explanation of why the FBAR(s) is late.

Penalties

No penalty for failure to file the delinquent FBAR(s) will be imposed if the taxpayer properly reported on his or her tax return(s), and paid all tax on, the income from the foreign financial accounts reported on the delinquent FBARs, the IRS explained. Additionally, the taxpayer must not have been previously contacted regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted. FBARs will not be automatically subject to audit, the IRS noted. However, FBARs may be selected for audit through the existing audit selection processes that are in place for any tax or information returns.

References: FED ¶46,349; TRC FILEBUS: 9,104.30.

AFRs Issued For July 2015

Rev. Rul. 2015-15

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

Applicable Federal Rates (AFR) for July 2015

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	.48%	.48%	.48%	.48%
110% AFR	.53%	.53%	.53%	.53%
120% AFR	.58%	.58%	.58%	.58%
130% AFR	.62%	.62%	.62%	.62%
Mid-Term				
AFR	1.77%	1.76%	1.76%	1.75%
110% AFR	1.95%	1.94%	1.94%	1.93%
120% AFR	2.12%	2.11%	2.10%	2.10%
130% AFR	2.30%	2.29%	2.28%	2.28%
150% AFR	2.66%	2.64%	2.63%	2.63%
175% AFR	3.10%	3.08%	3.07%	3.06%
Long-Term				
AFR	2.74%	2.72%	2.71%	2.70%
110% AFR	3.01%	2.99%	2.98%	2.97%
120% AFR	3.29%	3.26%	3.25%	3.24%
130% AFR	3.57%	3.54%	3.52%	3.51%

Adjusted AFRs for July 2015

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.48%	.48%	.48%	.48%
Mid-term adjusted AFR	1.67%	1.66%	1.66%	1.65%
Long-term adjusted AFR	2.74%	2.72%	2.71%	2.70%

The Code Sec. 382 adjusted federal long-term rate is 2.74%; 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 2.74%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.52% and 3.22%, 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%; 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 2.2%; and the Code Sec. 7872(e)(2) blended annual rate for 2015 is .45%.

References: FED ¶46,350; TRC ACCTNG: 36,162.05.

Taxpayer Who Failed To Report Listed Transaction Entitled To Refund Of Penalties Paid; IRS Assessment Untimely

May, DC Ariz., June 15, 2015

A federal district court has found that a taxpayer who failed to report a listed transaction under Code Sec. 6011 on his 2004 tax return was entitled to claim a refund of penalties paid. The IRS's penalty assessment against the taxpayer for the failure to disclose was untimely.

- **Take Away.** The IRS acknowledged that it had obtained the information necessary to determine whether the individual engaged in a listed transaction a year prior to the assessment of the penalty.

Background

Code Sec. 6011 requires taxpayers to report certain transactions. Failure to do so can result in a penalty assessment under Code Sec. 6707A. Code Sec. 6501(c)(10)(A) provides the IRS with one year to assess the penalty under Code Sec. 6707A, starting from either the time when the necessary information was furnished or the date that a material advisor meets the requirements of Code Sec. 6112, whichever is earlier.

Court's analysis

The district court rejected the IRS's argument that the limitations period was not triggered since the taxpayer had failed to furnish the information on Form 8886, Reportable Transaction Disclosure Statement. The court found that although Code Sec. 6011 required the use of certain forms to file returns, under Code Sec. 6501(c)(10)(A), the furnishing of information, not submission of the form, triggered the limitations period.

Further, the court also dismissed the IRS's contention that the penalty was timely assessed since the individual agreed in writing to extend the limitations period. The Form 872, Consent to Extend Time to Assess Tax, signed by the individual did not pertain to the tax year for which the penalty was assessed. Therefore, there was no valid extension of time after the one-year period from the date that the 30-day letter had lapsed.

References: 2015-1 USTC ¶50,341; TRC IRS: 27,212.

TAX BRIEFS

Internal Revenue Service

The IRS has announced that all empowerment zone designations remain in effect through December 31, 2014. Empowerment zones are certain urban and rural areas where employers and other taxpayers qualify for special tax incentives. No state or municipality contacted the IRS to decline the extension that was due on May 11, 2015.

IR-2015-88, FED ¶46,342; TRC BUSEXP: 57,054

The IRS has released the inflation adjustment factor for the credit for carbon dioxide (CO_2) sequestration under Code Sec. 45Q for 2015. The inflation adjustment factor is 1.0924, and the credit is $21.85 per metric ton of qualified CO_2 under Code Sec. 45Q(a)(1), and $10.92 per metric ton of qualified CO_2 under Code Sec. 45Q(a)(2).

Notice 2015-44, FED ¶46,344; TRC BUSEXP: 55,600

Jurisdiction

An individual's action for damages against the IRS was dismissed for lack of subject matter jurisdiction and for failure to state a claim. The individual's allegation that the IRS publicly disclosed his Social Security number in the Tax Court and the Claims Court was dismissed for failure to state a claim. Code Sec. 6103 expressly authorizes such disclosure because the proceedings involved the determination of the individual's tax liability and he was a party to both the proceedings.

Diamond, DC Calif., 2015-1 USTC ¶50,338; TRC IRS: 9,206.10

An individual's complaint against the IRS and its employees claiming constitutional violations and seeking damages for wrongful disclosure was dismissed for lack of subject matter jurisdiction. The court disallowed any *Bivens*-type remedy for alleged constitutional violations associated with tax assessment and collection activities.

Ghaffari, DC Calif., 2015-1 USTC ¶50,337; TRC IRS: 9,350

Summons

A petition from a corporation and its managing member to quash two IRS third-party summonses was dismissed and the summonses were ordered enforced. The summonses were issued to banks requesting records and account information relating to them for possible assessment of a trust fund recovery penalty against the member, determination of the corporation's ability to pay taxes and fraudulent transfer of assets. The taxpayers failed to rebut the government's *prima facie* case for summons enforcement.

HP Distribution, LLC, DC Kan., 2015-1 USTC ¶50,339; TRC IRS: 21,108

Income

In a consolidated case, three former firefighters, who received both a length-of-service pension and disability pension for a service connected injury, were properly denied tax refunds on the basis that both of their pensions were nontaxable compensation for personal injuries. Since their service pension exceeded their disability pension, they were required to report it in their gross income pursuant to Code Sec. 104 and Rev. Proc. 80-44, 1980-1 CB 34, even though they received both pensions in one payment.

Campbell, CA-9, 2015-1 USTC ¶50,344; TRC INDIV: 33,406

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Tax Briefs

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The transfer of assets made by married taxpayers to a corporation in which they were the sole shareholders was a capital contribution under Code Sec. 351 and not a sale of asset to the corporation. The taxpayers were required to include distributions received from the corporation's earnings and profits on their Form 1040 as dividend income.

Bell, TC, Dec. 60,327(M), FED ¶48,037(M);TRC CCORP: 3,250

Tax Credits

An individual was not entitled to the American Opportunity Credit. The tax preparer hired by the taxpayer claimed the credit without the taxpayer's knowledge; however, the individual was responsible for the review of the return prior to its being filed.

Devy, TC, Dec. 60,326(M), FED ¶48,036(M); TRC INDIV: 60,162

Liens and Levies

An IRS settlement officer (SO) did not abuse her discretion in sustaining a levy against a physician who failed to present collection alternatives for the outstanding liabilities he owed. Although the taxpayer was obligated to start negotiations regarding a collection alternatives, the taxpayer failed to present any specific proposal for either an installment agreement or an offer-in-compromise. Further, there was no evidence that the taxpayer requested an extension of time to produce documentation. The individual was also liable for the trust fund recovery penalties (TFRPs) that arose out of unpaid employment taxes.

Obiakor, TC, Dec. 60,328(M), FED ¶48,038(M); TRC IRS: 51,056.25

The government was entitled to reduce to judgment an individual's unpaid federal income tax assessments and foreclose federal tax liens upon the individual's property. The Form 4340, Certificate of Assessments and Payments, produced by the government constituted presumptive proof of a valid assessment, which the individual failed to rebut.

Martinez Sr., DC Tex., 2015-1 USTC ¶50,340; TRC IRS: 45,158

Refund Claims

A corporation's claim for refund of taxes was denied and the government was discharged of its liability to pay the refunds. The corporation failed to meet its burden of proving that it was entitled to a refund. The documents submitted by the corporation in support of its claim were two charts prepared for litigation purposes and allegedly showing the refund amount payable to the corporation.

Clark County Bancorporation, DC Wash., 2015-1 USTC ¶50,343; TRC IRS: 33,302

Collection Due Process

The Tax Court properly upheld the IRS's imposition of a federal tax lien on an individual's property. The settlement officer (SO) informed the individual that if he intended to challenge the tax liability reported on his voluntarily filed tax return, he should file an amended return, which the individual failed to do. Moreover, he also failed to offer collection alternatives or financial information during the CDP hearing and only raised frivolous objections.

Green, CA-10, 2015-1 USTC ¶50,342; TRC IRS: 48,058

IRS Highlights Key Circular 230 Provisions To Review; Disciplinary Options

The IRS Office of Professional Responsibility (OPR) has issued a new fact sheet on Circular 230, which lists the regs that govern practice before the agency. The fact sheet features a list of areas where tax professionals are most likely to make errors alongside the relevant corresponding rule.

- The IRS identified key areas where errors are likely to occur:
- Diligence as to Accuracy (10.22)
- Due Diligence Standards for Signing and Advising (10.34)
- Negotiation of Taxpayer Checks (10.31)
- Giving False or Misleading Info (10.51(a)(4))
- Willfully Assisting, Counseling or Encouraging a Client to Evade Taxes or Payment Thereof (10.51(a)(7))
- Conflicting Interests (10.29)
- Due Diligence for Written Advice (10.37)
- Competence (10.35)
- Expedited Suspension (10.82)

Misconduct. The IRS also reminded practitioners the OPR is responsible for evaluating Circular 230 violations and willful, grossly incompetent or reckless conduct; considering disciplinary options; and conducting investigations. Disciplinary options include private reprimand, public censure, suspension of license, disbarment, and/or monetary sanctions.

FS-2015-19, FED ¶46,345; TRC IRS: 3,200.

IRS Extends Disaster Relief To More Oklahoma And Texas Counties

The IRS has updated its May 27, 2015 notice granting tax relief to victims of severe storms, tornadoes, straight-line winds and flooding that took place beginning on May 5, 2015 in parts of Oklahoma. The June 18, 2015, update provides that the previously announced relief is now extended to certain individuals who reside or have a business in Choctaw, Cotton, Rogers and Tillman counties.

The IRS also updated its June 2, 2015, notice granting tax relief to Texas victims of severe storms, tornadoes, straight-line winds and flooding that took place beginning on May 4, 2015. As of June 17, 2015, the previously announced tax relief is now extended to certain individuals in Cooke, Dallas, Fannin, Grayson, Liberty, Nueces and Walker counties.

HOU-04-2015, HOU-05-2015; FED ¶¶46,332, 46,332; TRC FILEIND: 15,204.25.

PRACTITIONERS' CORNER

Gambling Officials And Gambling Public Oppose Lower Reporting Thresholds; Question Proposed Revisions To Reporting Regs

Reporting of gambling winnings and losses has long been a source of contention between gambling establishments, gamblers, and the IRS. Gambling losses must be established by adequate evidence. Gambling establishments, such as casinos, and gamblers both face the challenge of how to substantiate gambling losses so that the IRS and the courts will allow them as a reduction from winnings.

Proposed IRS regs

Proposed regs (NPRM REG-132253-11) again raised the issue of how casinos that provide slot machines can report gambling winnings, and how slot machine users can substantiate their losses from playing slots. The IRS has received extensive (mostly negative) comments on the proposed regs. The agency recently held a hearing on the regs and heard testimony from officials involved in casino slot machine play.

The IRS noted in the preamble to the proposed regulations that gaming industry technology has changed and that some casinos now use electronic slot machines and player cards that permit electronic tracking of wagers and/or winnings. The regs proposed that casinos use electronically-tracked slots play to determine net winnings for slots.

Taxation of gambling winnings

Gambling winnings, whether legal or illegal, are included in gross income. The taxable gains are the amount by which winnings exceed the amount wagered. When the taxpayer cannot establish the amount wagered, the full value of the winnings is included in income.

Gambling winnings can be reduced by wagering losses regardless of whether the underlying transactions are legal or illegal. However, gambling losses can be used only to offset gambling gains during the same year. They cannot be used to reduce taxable income from nongambling sources, and they cannot be used as a carryover or carryback to reduce gambling income from other years.

As a general matter, gambling losses are only deductible to the extent of gambling winnings, and other gambling-related expenses may not be deductible at all. For nonprofessional gamblers, wagering losses are itemized deductions. They are deductible only from adjusted gross income, and only if the taxpayer foregoes the standard deduction. Professional gamblers, who pursue wagering as a full-time activity and not as a hobby, may treat their gambling losses as trade or business expenses, deductible from gross income to arrive at adjusted gross income.

"Proposed IRS regs again raised the issue of how casinos with slot machines can report gambling winnings, and how slot machine users can substantiate their losses from playing slots."

However, the language in Code Sec. 165(d) that limits gambling losses to gambling winnings controls over the language in Code Sec. 162 that allows deductions for trade or business expenses. Thus, loss deductions for both professional and nonprofessional gamblers are all limited to the amount of gambling gains, and excess losses and expenses cannot be carried over to other tax years.

Reporting threshold

Since 1977, IRS regulations have required information reporting on payments of winnings of $1,200 or more from a slot machine or bingo game (gross winnings, not net), and $1,500 (net of wagers) for a keno game. Winnings are reported on Form W-2G, Certain Gambling Winnings.

Previously, the IRS issued special guidance for nonprofessional gamblers who have gains and losses from slot machine play. Nonprofessional gamblers cannot net their gains and losses from slot machine play throughout the year and report only the gain or the loss. They are instead required to determine wagering gains and losses each time tokens are redeemed.

In the proposed regs, the IRS requested comments on whether to allow netting of winnings and wagers for slot machines and bingo. For nonelectronic slots play, reporting is required if the gross winnings are $1,200. The IRS proposed to require reporting of winnings from electronically tracked slot machines when total winnings during a single session, netted against wagers during the same session, are $1,200 or more, and at least one single win is $1,200 or more.

The proposed regs would require reporting for electronically tracked slot machine play as net winnings of $1,200 or more, provided that the winnings from one slot machine play is $1,200 or more. Net winnings are combined slot machine winnings from electronically tracked play during the session reduced by the amount of wagers during the same session.

Change in threshold

The proposed regulations would not alter the reporting thresholds. However, the IRS requested comments on whether advances in technology would justify reducing these thresholds to $600 or would justify a separate reporting threshold for electronically-tracked slot machines. Both written comments and testimony at the IRS hearing were critical of a reduced threshold.

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WASHINGTON REPORT *by the Wolters Kluwer Washington News Bureau*

House votes to nix medical device tax

On June 18, House lawmakers approved the Protect Medical Innovation Bill of 2015 (HR 160), which would repeal the medical device excise tax. The final vote was 280 to 140. The medical device tax was intended to help pay for the Patient Protection and Affordable Care Act (PPACA). It imposes an excise tax on the sale of certain medical devices by the manufacturer or importer of the device (exempting many consumer devices). The Senate may take up the bill before its Independence Day recess. President Obama has issued a veto threat.

TPA bill includes public safety officers retirement provision

By a vote of 218 to 208, the House on June 18 approved the Trade Priorities and Accountability Bill of 2015 (HR 2146) to establish Trade Promotion Authority (TPA). House Republican leaders used a noncontroversial bill as a vehicle for TPA, the Defending Public Safety Employees' Retirement Bill. This measure would allow federal law enforcement officers, fire fighters and air traffic controllers to make penalty-free withdrawals from governmental plans after age 50. The Senate had made a minor adjustment to the bill and sent it back to the House, which then approved the Senate's amendment before holding a vote on TPA. At press time, the Senate is expected to take up the bill before the end of June.

House appropriators cut IRS budget for FY 2016

The House Appropriations Committee on June 17 approved a fiscal year (FY) 2016 appropriations bill to provide $10.1-billion to fund the IRS for FY 2016. The bill represents a cut of approximately $838 million, compared to FY 2015.

Rep. Ander Crenshaw, R-Fla., chair of the Appropriations Subcommittee on Financial Services and General Government, explained that his subcommittee had increased funding for certain initiatives but reduced funding for others. "It requires the IRS to make customer service a big priority," Crenshaw said. Crenshaw added that the cuts would force the IRS to be more efficient in all areas of spending.

The opening remarks of lawmakers regarding the IRS provisions of the budget bill were largely split across partisan lines. Rep. José E. Serrano, D-N.Y. criticized the funding level for the IRS. "Once again, this is a misguided attempt by the majority to do two things: punish the entire agency for the problems regarding Code Sec. 501(c)(4) investigations and prevent the full implementation of the Patient Protection and Affordable Care Act."

Lawmakers voted on amendments to the bill, which will now go to the House floor for consideration. One amendment concerned the IRS and its audits of tax-exempts organized under Code Sec. 501(c)(3). The amendment would prohibit funding for the IRS to audit a faith-based Code Sec. 501(c)(3) tax-exempt organization, unless the audit is approved by the IRS commissioner.

Hatch says no gas tax hike to pay for highway funding

Senate Finance Committee (SFC) Chair Orrin Hatch, R-Utah, has ruled out a gas tax hike to help replenish the Highway Trust Fund. Hatch also dismissed the idea of a so-called repatriation holiday, which, according to the Joint Committee on Taxation (JCT), loses nearly $120 billion over 10 years. Hatch said it was not a "serious proposal" to pay for a long-term highway bill at a hearing on June 18.

Stephen Moore, a visiting Fellow in Economics at the Heritage Foundation, agreed with Hatch on the gas tax, saying it hurts the finances of middle income taxpayers. "The best rule of thumb is that every penny rise in gas prices at the pump takes about $1.5 billion out of the wallets of consumers," Moore said. Moore noted that one idea picking up steam is the notion of an infrastructure bank to fund road, transit, green energy and other brick-and-mortar projects."

Former U.S Transportation Secretary Ray LaHood told lawmakers that many states have proposed legislation to increase the fuel tax, replace the gas tax with a sales tax on fuels or referenda allowing voters to increase local sales taxes. LaHood noted that the federal gas tax has not been raised since 1993. "The cost of everything has gone up since 1993, except for the gas tax," he said.

NSA calls for tax practitioner bill of rights

The National Society of Accountants (NSA) announced on June 16 a "Tax Practitioners Bill of Rights," prompted by recent congressional moves to reduce the IRS's budget. "The tax system is breaking down, and these funding cuts mandated by Congress are a big part of the problem," NSA President Marilyn Niwao said.

The Tax Practitioner Bill of Rights developed by the NSA includes the right to have tax laws and rules passed in a timely manner; the right to quality service from the IRS; and the right to practice without undue IRS demands during tax-filing season. The last item encompasses the right to have an IRS audit moratorium during the three weeks immediately before major tax deadlines, such as March 15, April 15, September 15, and October 15 of each year. The NSA also urged the IRS not to perform software maintenance during critical times.

Niwao noted that, among the provisions in the IRS Taxpayer Bill of Rights, are the right to be informed, the right to quality IRS service and the right to not pay more than the correct amount of tax. "These so-called rights are meaningless if a taxpayer's representative cannot get the information needed from the IRS because Congress has not appropriated sufficient funds to allow the agency to function properly," Niwao said.

Continued from page 309

Casinos and casino groups said that reducing the threshold from $1,200 to $600 would substantially increase their costs and downtime for using slots, discourage customers, and increase their reporting burden. They also projected that a lower threshold would not increase tax revenue, because gamblers would have sufficient wagering costs to offset winnings, and because some casinos would go out of business.

Written comments reiterated that many casinos would go out of business, not only because of extra costs, but because gamblers would choose not to play if the reporting threshold is reduced. Some gamblers wrote that a lower threshold would take the fun out of gambling.

- **Comment.** One can infer from these comments that gamblers who have winnings under the reporting threshold count on being able to avoid reporting their winnings. A lower threshold that makes it more difficult to avoid reporting would therefore discourage gambling.

Play or session

Under the proposed regs, a session includes the first and last wagers on the same type of game on the same calendar day, starting and ending at midnight. Winnings and wagers from different types of games cannot be combined. Bingo, keno and slots are different types of games; electronic and non-electronic slots play are also different types of games.

In Notice 2015-21, the IRS proposed an optional safe harbor for determining a session of play for determining gains and losses from electronically tracked slot machine play. The notice tracks the proposed regs, proposing that a session apply to one calendar day ending at midnight. The notice requested comments on whether a session could apply to a different period instead of a calendar day (with adjustments for December 31, which involves two different reporting years).

At the IRS hearing, several speakers said that treating a calendar day as a complete session would be an artificial period. They testified that a session should continue until the casino closes down for the night or at some other designated time after midnight when a gambler might go to bed (such as 3 A.M. to 6 A.M.). The American Gaming Association opposed the definition of a session as a calendar day. The AGA cautioned that casinos routinely stay open until 3 in the morning or later. Ending the reporting day at midnight is not realistic and would cause a tremendous slowdown in casino operations.

How to report

Casino officials criticized proposed IRS regulations that would modify the reporting of winnings from slot machines. The officials testified that the proposals on electronic tracking of slot machine players would be burdensome and difficult to implement.

A representative of the AGA, which represents casinos and gaming suppliers in 40 states, testified that the current electronic player tracking systems were designed for marketing purposes, not to track tax information. A single tracking card may be used by more than one player and therefore would not identify the winner for tax purposes.

Furthermore, a card may not be used at all times to play the slot machines and therefore may not track all wagers by the card holder. Requiring mandatory reporting and tracking of card users would discourage players from using cards and will lead to disputes with customers as to the amount of winnings and whether they are reportable.

Voluntary tracking

The AGA objected to mandatory player tracking and said that customers should be allowed to decide whether to participate in electronic tracking. The AGA proposed that casinos have the option of participating in a tracking agreement for federal reporting purposes under four conditions:

- Casino participation would be optional;
- Customer participation would be optional;
- Customers who participate would be allowed to use the resulting casino reports as evidence acceptable to the IRS of slot gains and losses; and
- Casinos are given sufficient lead time to develop their systems before any new IRS reporting rules take effect.

A speaker affiliated with one casino said the proposed regulations would create complex, burdensome requirements and will discourage customers who would perceive that the IRS is looking over their shoulder. The speaker suggested that the IRS work with industry to develop a simpler process.

An attorney from Treasury's Office of Tax Policy asked how many casinos would participate in a voluntary system. The AGA responded that the proposal was not meant as a "bait-and-switch." A new tracking system would require significant investment by the casino but would be helpful to the high-end player and would be used by a small number of players, the AGA suggested. The capacity to make changes would be limited in the near term, but there is new technology developed every day and the industry would adapt, the AGA added.

The owner who identified himself as a manufacturer, distributor and operator of slot machines, had a different message. The speaker said that most casinos are already doing what they claim they can't do, such as electronic tracking of "high rollers." He indicated that it is possible to track every player, every play, and every jackpot, so that players could not game the system. New technology is available, is not onerous or expense, and would in fact cost industry less than it pays now.

Tribal concerns

A council member of an Indian tribe in Washington state said that his tribe has great concerns about the proposed regulations. Revenues from the tribe's casino are used to address the needs of tribal members, and that the tribe would suffer without casino revenues. The speaker testified that the regulations would complicate compliance and reporting, and he concurred with the positions taken by the AGA.

The speaker also stated that the regulations violate Executive Order 13175, which requires government agencies to discuss the impact of their proposals on tribal governments and to consult with the tribes before taking action, and he asked that the regulations be withdrawn. Written comments to the IRS on behalf of a number of Indian tribes reiterated these concerns.

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COMPLIANCE CALENDAR

■ June 26

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

■ June 30

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

■ July 1

Employers deposit Social Security, Medicare, and withheld income tax for June 24, 25, and 26.

■ July 6

Employers deposit Social Security, Medicare, and withheld income tax for June 27, 28, 29, and 30.

■ July 8

Employers deposit Social Security, Medicare, and withheld income tax for July 1, 2, and 3.

■ July 10

Employers deposit Social Security, Medicare, and withheld income tax for July 4, 5, 6, and 7.

Employees who received more than $20 in tips during June report them to their employers using Form 4070.

■ July 15

Employers deposit Social Security, Medicare, and withheld income tax for July 8, 9, and 10.

TRC TEXT REFERENCE TABLE

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

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MONTHLY QUIZZER

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

Q1. The *Achieving a Better Life Experience (ABLE) Act* created tax-favored savings accounts for qualified individuals with disabilities for tax years beginning after:

(a) December 31, 2012
(b) January 1, 2013
(c) December 31, 2014
(d) None of the above

Q2. The IRS has issued proposed regs to implement Code Sec. 732(f) by requiring corporations that engage in certain gain elimination transactions to reduce the basis of their corporate assets or to recognize gain. ***True or False?***

Q3. The House approved HR 160 to repeal the:

(a) Medical device excise tax
(b) Employer shared responsibility payment
(c) Alcohol and tobacco tax
(d) None of the above

Q4. Rev. Proc. 2015-13 contains the comprehensive revenue procedure that taxpayers must follow to obtain a change in accounting method. ***True or False?***

Answers:

Q1. *(c), See Issue #26, page 301.*
Q2. *True, See Issue #25, page 290.*
Q3. *(a), See Issue #24, page 286.*
Q4. *True, See Issue #23, page 266.*