

# FEDERAL TAX WEEKLY

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## Year-End Tax Legislation Impacts Extenders, ACA, IRS, And More

*Protecting Americans from Tax Hikes Act of 2015 (PATH Act); Consolidated Appropriations Act, 2016*

Year-end legislation makes permanent a number of tax extenders for individuals and businesses. Year-end tax legislation delays two excises taxes and one fee under the Affordable Care Act: the excise tax on high dollar health plans, the medical device excise tax, and the health insurance provider fee. Lawmakers also approved an increase in the IRS's FY 2016 budget to improve customer service and cybersecurity, along with curbing identity theft.

■ **Take Away.** "The passage of a permanent, strengthened research tax credit is a big win for taxpayers, especially for many small- to mid-sized companies that will benefit by important new provisions that will allow them to more easily utilize the credit," Joe Stoddard, CPA, partner, Eide Bailly LLP, Salt Lake City, told Wolters Kluwer. "The intended incentive effect of the research credit has historically been dampened by the uncertainty companies have faced because of the temporary nature of the credit. At long last, the research credit is a permanent provision of the tax law."

■ **Comment.** Both the House and Senate approved the Protecting Americans from Tax Hikes Act (PATH Act) and the FY 2016 omnibus by wide margins, and President Obama signed the bills into law on December 18.

### Some extenders made permanent

The PATH Act makes permanent and in some cases modifies:

- Reduced earnings threshold for additional child tax credit
- Earned income credit modifications
- Teachers' classroom expense deduction
- State and local sales tax deduction
- Transit benefits parity
- Special rule for qualified conservation contributions
- Tax-free distributions from IRAs for charitable purposes for individuals age 70 ½ and older
- Enhanced Code Sec. 179 expensing
- Research tax credit
- Tax treatment of certain payments to controlling exempt organizations
- Basis adjustment to stock of S corporations making charitable contributions of property
- Employer wage credit for employees who are active duty members of the uniformed services
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements
- Treatment of certain dividends of regulated investment companies
- Exclusion of 100 percent of gain on certain small business stock
- Reduction in S corp recognition period for built-in gains tax
- Subpart F exception for active financing income

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## Year-End Legislation

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- Temporary minimum low-income housing tax credit rate for non-federally subsidized buildings
- Military housing allowance exclusion for determining whether a tenant in certain counties is low-income
- RIC qualified investment entity treatment under FIRPTA
- Charitable deduction for contributions of food inventory
- **Comment.** “The enhanced ability for small businesses to use the research credit will now result in more immediate cash benefits for many of these companies, where in prior years credits generated in one year may not have been used until many years in the future,” Stoddard told Wolters Kluwer. “Permitting certain businesses to use the credit to offset Alternative Minimum Tax (AMT) will especially benefit many pass-through companies where the owners are often subject to AMT.”

## Extenders extended through 2019

The PATH Act extends, and in some cases modifies, *through 2019*, the New Markets Tax Credit, Work Opportunity Tax Credit, bonus depreciation, and look-through treatment of payments between related controlled foreign corporations

## Extenders extended through 2016

- The PATH Act extends, and in some cases modifies, *through 2016 (not an exhaustive list)*:
- Exclusion from gross income of discharges of acquisition indebtedness on principal residences
  - Mortgage insurance premiums treated as qualified residence interest

- Deduction for qualified tuition and related expenses
- Indian employment tax credit
- Qualified zone academy bonds
- Seven-year recovery period for motorsports entertainment complexes
- Special expensing rules for certain film and television productions
- Energy efficient commercial buildings deduction
- Excise tax credits and payment provisions relating to alternative fuel
- **Comment.** The FY 2016 omnibus extends the wind production tax credit (subject to phase-down) and incentives for solar power (also subject to phase-down).

## ACA changes

The FY 2016 omnibus provides for a two-year delay of the excise tax on high-cost employer-sponsored health coverage (known as “Cadillac” plans). Under the FY 2016 omnibus, the excise tax on high-cost plans will first be effective in 2020 rather than in 2018, as originally scheduled. The FY 2016 omnibus makes the excise tax on high-cost plans deductible as a business expense. The FY 2016 omnibus also provides for a one-year moratorium (2017) on ACA’s health insurance provider fee. Further, the PATH Act imposes a two-year moratorium (2016 and 2017) on the ACA’s excise tax on qualified medical devices.

## IRS

Along with allocating \$290 million to improve IRS customer service and cybersecurity, and combat identity theft, Congress also imposed new requirements for individual tax identification numbers (ITINs), increased the penalty for paid tax preparers who engage in willful or reckless conduct and made other admin-

istrative changes. For IRS employees, the PATH Act codifies the agency’s Taxpayer Bill of Rights, prohibits the use of personal email for official business, provides for termination of employment for taking official actions for political purposes, and more.

- **Comment.** The year-end legislation includes a number of provisions affecting how the IRS reviews and grants applications for Code Sec. 501(c)(4) status and the issuance of regs for Code Sec. 501(c)(4) organizations.
- **Comment.** The PATH Act also makes some administrative changes to the Tax Court, impacting areas such as the filing period for interest abatement cases, venue for appeal of spousal relief and collection cases, and judicial conduct.

## REITs

The PATH Act makes a number of changes to real estate investment trusts (REITs). These include restrictions on tax-free spinoffs, repeal of a preferential dividend rule for publicly offered REITs, treatment of certain services provided by taxable REIT subsidiaries, and more.

## Revenue measures

The PATH Act contains a handful of revenue raisers. The revenue provisions are updated standards for the energy efficient commercial buildings deduction, excise tax equivalency for liquefied petroleum gas and liquefied natural gas, exclusion from gross income of certain clean coal power grants, clarification of valuation rule for early termination of certain charitable remainder unitrusts, prevention of transfer of certain losses from tax indifferent parties, and treatment of certain persons as employers with respect to motion picture projects.

### 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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# IRS Releases 2016 Standard Mileage Rates For Automobile Use; Business Rates Drop Four Cents, Medical And Moving Rates Drop 3.5 Cents

IR-2015-137, Notice 2016-1

The IRS has issued the 2016 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, medical, moving and charitable purposes. The optional business standard mileage rate will drop from 57.5 cents to 54 cents per mile, a decrease of 3.5 cents. The optional standard mileage rate for medical and moving expenses will drop from 23 cents to 19 cents per mile, a decrease of four cents.

■ **Take Away.** The business rate had increased by 1.5 cents in 2015, while the medical and moving rates dropped slightly (by 0.5 cents) in 2015, but with gas prices remaining low and vehicle prices holding steady, the optional mileage rates for business, medical and moving expenses dropped to the lowest rates in five years. The optional standard mileage rate for

charitable expenses is set by statute and remains at 14 cents per mile.

## Background

Rev. Proc. 2010-51 provides rules for computing deductible costs of operating an automobile. Taxpayers using the optional standard rates must comply with Rev. Proc. 2010-51. Proper use of the business standard mileage rate takes the place of all operating and fixed costs of the automobile allocable to business use, such as depreciation, maintenance and repairs, tires, gasoline, oil, insurance, and license and registration fees.

■ **Comment.** A taxpayer may not use the business standard mileage rate after using a depreciation method under Code Sec. 168 or after claiming the Code Sec. 179 deduction for that vehicle. A taxpayer may not use the business rate for more than four vehicles at a time.

A taxpayer is not required to use the optional mileage rates, but instead may substantiate its expenses using actual allowable expense amounts, provided the taxpayer maintains adequate records or other evidence.

## Other amounts

For automobiles used for business, a taxpayer must use 24 cents per mile as the portion of the standard mileage rate treated as depreciation for 2016. For prior years, these amounts are 24 cents for 2015; 22 cents for 2014; and 23 cents for both 2012 and 2013. These amounts are used to calculate basis reductions for depreciation taken under the standard mileage rate.

To compute the allowance under a fixed and variable rate plan, the standard automobile cost may not exceed \$28,000 for cars or \$31,000 for trucks and vans.

References: FED ¶¶ 46,204, 46,205;  
TRC BUSEXP: 24,506.05.

# IRS Provides Inflation Adjustments For Civil Penalties For Failures To File Returns Or Furnish Statements

Rev. Proc. 2016-11

The IRS has announced inflation-adjusted penalty levels for certain civil penalties under the Tax Code for failures to file returns and to both file and furnish certain information statements. The adjusted penalties will apply to 2015 returns and statements required to be filed after December 31, 2015.

■ **Take Away.** To ensure that the impact of certain penalties does not diminish, the *Tax Increase Prevention Act of 2014* and the *Achieving a Better Life Experience (ABLE) Act*, provided for inflation adjustments for penalties under Code Secs. 6651, 6652(c), 6695, 6698, and 6699. Similarly, the *Small Business Jobs Act of 2010*, the *ABLE Act*, and the *Trade Preferences Extension Act of 2015* adjusted penalties under Code

Secs. 6721 and 6722 for inflation and increased the tax penalty amounts.

## Failure to file return

Under Rev. Proc. 2016-11, the Code Sec. 6651(a) penalty for failure to file a return with 60 days of the due date (including extensions) will not be less than the lesser of \$135 or 100 percent of the required tax. The Code Sec. 6698(b)(1) penalty or failing to file a partnership return is \$195. The Code Sec. 6699(b)(1) for failure to file an S corporation return is also \$195.

## Exempt organizations

The Code Sec. 6652(c) penalties for failure to file a return required under Code Sec. 6033(a)(1) (exempt organizations) or

Code Sec. 6012(a)(6) (political organizations) include a daily penalty of \$20 for the organization's filing; for public inspection of returns and reports; and for public inspection of applications.

The maximum penalties are, respectively, the lesser of \$10,000 or 5 percent of gross receipts for the year; \$10,000 for public inspection of returns/reports; and no limits or applications. For organizations with gross receipts over \$1,015,500, the daily filing penalty rises to \$100 minimum and \$50,500 maximum. For managers, the daily minimum is \$10; the maximum is \$5,000.

## Preparers

Penalties on preparers under Code Sec. 6695 range from \$50 per return or refund claim to

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# IRS Proposes Regs To Require Country-by-Country Reporting By U.S.-Owned Multinational Corporations To Address BEPS Concerns

NPRM REG-109822-15

The IRS has issued proposed regs that would require country-by-country (CbC) reporting by U.S.-owned multinational business enterprises (MNEs). Under CbC reporting, the multinational group would be required to provide a report on its business activity in each country where it owns and operates a business entity.

CbC reporting is an outgrowth of the Organisation for Economic Cooperation and Development's base erosion and profit shifting (BEPS) project. The IRS stated that CbC reports will assist in better enforcement of U.S. tax laws, particularly for transfer pricing.

■ **Take Away.** Republicans leaders in Congress expressed concern that the BEPS project in general and CbC reporting in particular target U.S. corporations under the guise of addressing "harmful tax practices."

## IRS goals

The IRS explained that the categories of information required by its proposed CbC reporting are based on a model template developed in cooperation with other members of the OECD and the Group of Twenty (G20). The IRS expects other countries to adopt CbC reporting based on the model template.

■ **Comment.** The IRS explained that the model template was developed after extensive consultations with stakeholders, including U.S. MNEs in particular.

The IRS expects to enter into agreements with the competent authorities of other countries to automatically exchange CbC reports. The information will be treated as confidential by both parties. The information cannot be disclosed or exchanged for any non-tax purpose. The information's use will be limited to assessing transfer pricing and other tax risks, and for economic and statistical analysis.

## CbC reporting

The "ultimate parent entity" of a U.S. MNE group will be required to file an IRS form entitled Country-by-Country Report, if the MNE group has revenues of \$850 million or more for its preceding annual accounting period. An ultimate parent entity of a U.S. MNE is a U.S. business entity (not an individual) that controls a group of entities, at least one of which is organized or is a tax resident outside the U.S. The report will require information for each business entity ("constituent entity") of a U.S. MNE group.

■ **Comment.** A business entity is not a resident if it is liable for taxes in a ju-

isdiction solely with respect to income from sources in that jurisdiction.

The required information includes the entity's tax jurisdiction of residence, jurisdiction of organization or incorporation, and primary business activity or activities. Nine categories of information must be reported for each jurisdiction where one or more business entities is a resident, including: revenues from other entities of the U.S. MNE group; other revenues; total profit or loss; income taxes paid and accrued for all jurisdictions; accumulated earnings; number of full-time equivalent employees; and book value of tangible assets.

The report must be filed with the ultimate parent entity's timely-filed income tax return. The regs are proposed to apply to tax years of the parent entity beginning on or after the date of final regs.

References: FED ¶49,675; TRC INTL: 18,150.

## Penalties

Continued from page 611

a maximum of \$25,000 for failures to furnish a copy to the taxpayer, failure to sign the return or furnish identifying number, failure to retain a copy or list, and failure to file correct information returns. Penalties for negotiation of checks or lack of earned income credit diligence are \$505 per incident, with no limits.

## Other penalties

Rev. Proc. 2016-11 also provides penalties for trust returns (Code Sec. 6034 and 6043(b)); disclosure of tax-exempt entities (Code Sec 6033(a)(2)); failure to file correct information returns (Code Sec. 6721), including failures due to intentional disregard; and failures to furnish correct payee statements under Code Sec. 6722. The revenue procedure also corrects the penalty amounts under Code Sec. 6721, for tax years beginning in 2016, for intentional disregard of Code Sec 6050V filing requirements.

References: FED ¶46,206;  
TRC PENALTY: 3,052.

## 2016 Filing Season To Open January 19

The IRS has announced the 2016 filing season will open as scheduled on January 19, 2016. Year-end tax legislation did not delay the start of the filing season.

■ **Comment.** Late tax legislation has, in past years, delayed the start of the filing season. Congress passed the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) and the *Consolidated Appropriations Act, 2015* in mid-December. Despite the late legislation, the IRS reported the 2016 filing season would open without delay.

The IRS reported that it expects to receive more than 150 million individual returns in 2016. More than four out of five returns are expected to be prepared using tax return preparation software and filed electronically. The IRS added that it has been working with the tax return preparation industry and state tax authorities to provide stronger protections against identity theft.

IR-2015-139; TRC FILEIND: 18,052.

# IRS Finalizes Code Sec. 36B Premium Assistance Tax Credit Regs

TD 9745

The IRS has issued final regs on the Code Sec. 36B premium assistance tax credit. The final regs generally track earlier guidance with some clarifications for affordability, minimum value, household income, wellness programs, and more.

■ **Take Away.** Sen. Orrin Hatch, R-Utah, has asked the U.S. Department of Health and Human Services (HHS) for details about how the agency verifies an individual's income for purposes of the Code Sec. 36B credit. The health insurance Marketplace makes the initial determination of eligibility for the credit.

## Background

Individuals who obtain health insurance coverage through the ACA Marketplace may be eligible for the Code Sec. 36B credit to help offset the cost of coverage and is payable in advance to insurers. Eligibility for the Code Sec. 36B credit is determined, among other criteria, by the relationship of the taxpayer's household income to the federal poverty level (FPL) and the affordability/minimum value of employer coverage, if offered.

## Household income

The proposed regs clarified that when a parent makes an election under Code Sec. 1(g)(7), household income includes the child's gross income included on the parent's return only. The final regs, the IRS explained, are intended to further clarify that the modified adjusted gross income of a parent who makes the Code Sec. 1(g)(7) election includes the child's modified adjusted gross income.

## Wellness programs

Generally, an employer-sponsored plan provides minimum value only if the plan's share of the total allowed cost of benefits is at least 60 percent and the plan provides substantial coverage of inpatient hospital services and physician services. Under the final regs, wellness incentives unrelated to tobacco use are treated, in most cases, as unearned and wellness incentives related to tobacco use are treated as earned in determining affordability.

## HRAs

The final regs clarify that amounts newly made available under an HRA reduce an employee's required contribution (or, for purposes of Code Sec. 36B, count towards providing minimum value) if the HRA would have been integrated with eligible employer-sponsored coverage had the employee enrolled in the primary plan. The final regs make further clarifications related to HRAs.

References: FED ¶47,005;  
TRC HEALTH: 6,100.

## AFRs Issued For January 2016

Rev. Rul. 2016-1

The IRS has released the short-term, mid-term, and long-term applicable interest rates for January 2016.

### Applicable Federal Rates (AFR) for January 2016

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	.75%	.75%	.75%	.75
110% AFR	.83%	.83%	.83%	.83%
120% AFR	.90%	.90%	.90%	.90%
130% AFR	.98%	.98%	.98%	.98%
<b>Mid-Term</b>				
AFR	1.81%	1.80%	1.80%	1.79%
110% AFR	1.99%	1.98%	1.98%	1.97%
120% AFR	2.17%	2.16%	2.15%	2.15%
130% AFR	2.35%	2.34%	2.33%	2.33%
150% AFR	2.72%	2.70%	2.69%	2.68%
175% AFR	3.17%	3.15%	3.14%	3.13%
<b>Long-Term</b>				
AFR	2.65%	2.63%	2.62%	2.62%
110% AFR	2.91%	2.89%	2.88%	2.87%
120% AFR	3.18%	3.16%	3.15%	3.14%
130% AFR	3.45%	3.42%	3.41%	3.40%

### Adjusted AFRs for January 2016

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.57%	.57%	.57%	.57%
Mid-term adjusted AFR	1.46%	1.45%	1.45%	1.45%
Long-term adjusted AFR	2.65%	2.63%	2.62%	2.62%

The Code Sec. 382 adjusted federal long-term rate is 2.65%; 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 2.65%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.51% 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%; 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 2.2%.

References: FED ¶46,208; TRC ACCTNG: 36,162.05.

# Final Regs For Type III Supporting Organizations Retain Distribution Requirements

TD 9746

The IRS has issued final regs on Type III supporting (exempt) organizations that require the organization to satisfy an annual distribution requirement based on either income or assets. The regs adopt without substantial change 2012 temporary regs that were due to expire.

■ **Take Away.** The distribution requirement was enacted in the *Pension Protection Act of 2006* (PPA), to ensure that Type III supporting organizations pay a significant amount to supported organizations if they are not functionally integrated with the supported organization.

## Distribution requirement

A supporting organization is tax-exempt under Code Sec. 509(a)(3) if it supports one or more supported organizations de-

scribed in Code Secs. 509(a)(1) or (2). The supporting organization must satisfy four tests to demonstrate its status. One test, the relationship test, requires annual distributions to the supported organization.

The PPA required distributions of a percentage of income or assets. Prior to the PPA, organizations had to distribute 85 percent or more of their income to supported organizations. Proposed regs issued in 2009 would have replaced this with a five percent of income requirement. Proposed and temporary regs issued in 2012 proposed a distribution requirement of the greater of 85 percent of adjusted net income or 3.5 percent of the value of non-exempt-use assets, based on amounts from the preceding year.

## Final regs

The 2015 final regs adopt the 2012 distribution requirement without change. The IRS indicated that it intends to issue proposed

regs in the near future for Type III supporting organizations. The regs will propose to eliminate the provision that reduces the distributable amount by the taxes imposed by Subtitle A (income taxes) on the organization in the preceding year. The proposed regs will also address Type III organizations that support governmental support organizations.

The IRS rejected a comment that it remove the 85 percent of income test and rely on the 3.5 percent asset test. The IRS also declined to waive the asset-based test for certain organizations that may invest in non-liquid assets.

The IRS declined to adopt a comment that the definition of adjusted net income exclude dividend income that results from a distribution of long-term capital gain property to a supported organization by a corporate subsidiary. The IRS rejected a suggestion that the valuation rules applied to real property be modified to allow the use of state property tax valuations.

*References: FED ¶147,006; TRC EXEMPT: 21,210.*

# IRS Clarifies Various ACA Provisions

Notice 2015-87

The IRS has released additional guidance in question and answer (Q&A) format on various provisions in the Affordable Care Act (ACA). The IRS clarified, among other provisions, the ACA's employer-related provisions.

■ **Take Away.** The clarifications affect a number of regs under the ACA, previously issued guidance and frequently asked questions (FAQs) posted by the IRS and other agencies.

## Employers

The IRS addressed how contributions to an HRA and flex contributions to a cafeteria are taken into account for purposes of determining whether an applicable large employer (ALE) has made an offer of affordable minimum value coverage. These items may impact an individual's eligibility for the Code Sec. 36B premium assistance tax credit and the employer's liability for

any employer shared responsibility payment, the IRS explained. The IRS also clarified hour of service for certain provisions under Code Sec. 4980H.

■ **Comment.** Generally, periods during which an individual is not performing services but during which he or she receives payments due to short-term disability or long-term disability result in hours of service. Periods during which the employee is not performing services but is receives workers comp payments do not result in hours of service.

## HRAs

To facilitate transition to compliance with the group market reforms through the use of integrated HRAs, the IRS explained that it will not treat an HRA available for the expenses of family members not enrolled in an employer's other group health plan for plan years beginning before January 1, 2016, as failing to be integrated with an employer's

other group health plan for plan years beginning before January 1, 2016. The IRS also will not treat an HRA and group health plan that otherwise would be integrated based on the terms of the plan as of December 16, 2015 as failing to be integrated with an employer's other group health plan for plan years beginning before January 1, 2017, solely because the HRA covers expenses of one or more of an employee's family members even if those family members are not also enrolled in the employer's other group health plan.

## Davis-Bacon Act

The *Davis-Bacon Act* generally requires that workers employed on certain federal contracts be paid prevailing wages and fringe benefits. The IRS advised that an employer generally can satisfy its fringe benefit obligations by providing a particular benefit or benefits, as determined by the employer.

*References: FED ¶146,203; TRC HEALTH: 9,116.*

# TAX BRIEFS

## Internal Revenue Service

The IRS has reminded taxpayers about its Get Transcript function app, which is available on its website. The agency also issued a fact sheet that provides information on how taxpayers may obtain a tax transcript. The IRS added that if a taxpayer is applying for financial aid, they are encouraged to use the IRS Data Retrieval Tool on the FAFSA website to easily import their tax return information to their financial aid application.

*IR-2015-140, FED ¶46,212  
FS-2015-28, FED ¶46,213; TRC IRS: 9,302*

The IRS has issued guidance regarding the Health Coverage Tax Credit (HCTC). The guidance provides information on who may claim the HCTC, the amount of the HCTC and how to claim the HCTC. Guidance is also provided for HCTC eligible individuals who enroll in a qualified health plan through a health insurance Marketplace and who claim or are eligible to claim the tax credit under Code Sec. 36B.

*Notice 2016-2, FED ¶46,211;  
TRC HEALTH: 15,154*

Rev. Proc. 2015-55, I.R.B. 2015-49, 788, which provided 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, has been corrected by the IRS.

*Announcement 2015-35, FED ¶46,207;  
TRC FILEBUS: 12,052.10*

## Over- And Underpayment Interest Rates Remain Same For First Quarter 2016

The IRS has announced that the interest rates on overpayments and underpayments of tax for the calendar quarter beginning January 1, 2016 will remain unchanged.

The IRS reported that the rates will be:

- 3 percent for overpayments, in cases other than corporations
- 2 percent for overpayments in the case of a corporation (except 0.5 percent for the portion of a corporate overpayment exceeding \$10,000); and
- 3 percent for underpayments (except 5 percent for large corporate underpayments).

*IR-2015-138; Rev. Rul. 2015-23; FED ¶¶46,209, 46,210; TRC PENALTY: 9,152.*

## Jurisdiction

An individual's claims for damages and injunctive relief were dismissed for lack of subject matter jurisdiction and for failure to state a claim. The IRS Appeals officer's alleged misconduct during a collection due process (CDP) hearing was not related to tax collection and injunctive relief was barred by the Anti-Injunction Act.

*Agility Network Services, Inc., DC Mich.,  
2016-1ustc ¶50,106; TRC IRS: 45,152*

## Summonses

A couple's petition to quash an IRS third-party summons issued to a bank requesting their financial records was dismissed. The government had not waived its sovereign immunity or consented to being sued; therefore, the federal district court lacked subject matter jurisdiction.

*Kaebel, DC Tex., 2016-1ustc ¶50,108;  
TRC IRS: 21,106*

An IRS administrative summons issued to an individual to appear, testify and produce documents in connection with his tax liability was ordered enforced. The government established its *prima facie* case for summons enforcement under *Powell*, which the individual failed to rebut.

*Moscoso, DC Calif., 2016-1ustc ¶50,107;  
TRC IRS: 21,300*

## Income

A citizen of Pakistan who participated in an internal medicine residency program in the U.S. was not entitled to exclude from

income wages he received from the program under the U.S.-Pakistan Treaty. The individual was not a professor or teacher temporarily visiting the U.S. for the purpose of teaching. The individual also was not present in the U.S. under any arrangement with a governmental agency.

*Bhutta, TC, CCH Dec. 60,476, FED ¶47,909;  
TRC INTL: 3,200*

An employee's pay out from the merger of his employer with another corporation was primarily taxable as ordinary income. The payout compensated the individual for future services to be rendered to his new employer based on the employment and assignment agreements; therefore, the payout constituted ordinary income, and not capital gains.

*B.K. Brinkley, CA-5, 2016-1ustc ¶50,112;  
TRC COMPEN: 18,304*

The net accumulated cash value of a life insurance policy held by a nonexempt employee trust was taxable income to a married couple in the year the employer's participation in the trust was terminated.

*O'Connor, TC, CCH Dec. 60,474(M),  
FED ¶47,907(M); TRC COMPEN: 15,102*

Married individuals, who were heavily involved in several real estate businesses, were required to treat their not-for-profit horse activity as a separate undertaking. According to the court, the taxpayers' primary concern was to promote their daughter as a horse rider and any intent to earn a profit was secondary.

*Judah, TC, CCH Dec. 60,473(M),  
FED ¶47,906(M); TRC BUSEXP: 15,150*

## Liens and Levies

An IRS settlement officer (SO) did not abuse her discretion by sustaining a proposed levy to collect an individual's outstanding tax liabilities or by determining that the individual was not entitled to a collection alternative. The taxpayer raised no genuine dispute as to any material fact.

*Hawkins, TC, CCH Dec. 60,475(M),  
FED ¶47,908(M); TRC IRS: 51,056.20*

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## Tax Briefs

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An IRS settlement officer (SO) did not commit an abuse of discretion in sustaining a proposed levy to collect an individual's trust fund recovery penalties arising out of unpaid employment taxes. The taxpayer failed to submit financial information to support her claimed expenses.

*Raida, TC, CCH Dec. 60,472(M),  
FED ¶47,905(M); TRC IRS: 51,056.15*

Tax assessments against several members of the same family and a trust were reduced to judgment and tax liens were foreclosed upon real properties held by nominees. The tax assessments were presumptively correct and the individuals failed to prove that the assessments were incorrect. Further, the federal tax liens attached to properties that were held by various trusts as nominees.

*Sollenberger, DC Pa., 2016-1ustc ¶50,115;  
TRC IRS: 45,158*

### Collection

The Tax Court properly sustained the IRS's collection activities against an individual. The individual's challenge to the existence or amount of his tax liability was barred under Code Sec. 6330 and by the doctrine of *res judicata* because his tax liability was previously litigated in the Tax Court and a final decision was entered.

*Holdner, CA-9, 2016-1ustc ¶50,105;  
TRC LITIG: 3,052*

### Penalties and Fines

A former major league baseball player was liable for failure to file and pay penalties. He brought the failure to timely file and the inability to pay upon himself by failing to supervise his agents. Therefore, he failed to show reasonable cause under Code Sec. 6651.

*Vaughn, CA-6, 2016-1ustc ¶50,110;  
TRC FILEIND: 15,208*

The Tax Court properly refused to reconsider its decision upholding accuracy-related penalties the IRS assessed against a couple. The couple raised the argument that disallowed credits are not underpayments for purposes of the underpayment penalty in their reconsideration motion.

*Morales, CA-9, 2016-1ustc ¶50,113;  
TRC LITIG: 6,952.10*

The IRS's offset of an individual's tax overpayment against a criminal fine owed by him was not an illegal exaction. The individual's criminal fine was properly considered past-due since it was not paid immediately. Moreover, the IRS's notice of intent to offset was sent to the individual more than 60 days before the offset took place and he received a written notice one month after the offset was carried out.

*Greene, FedCl, 2016-1ustc ¶50,118;  
TRC IRS: 33,304.10*

### Employment Taxes

An exotic dance club was not entitled to dismiss three bartenders' complaint alleging that the club issued fraudulent Forms W-2. The bartenders alleged that, for every year of their employment, the club knew that it had underreported their earnings and that it did so to avoid Federal Insurance Contributions Act (FICA) payments, to reduce costs and gain a competitive advantage, which was sufficient to allege a cause of action under Code Sec. 7434.

*A. Bolling v. PPE&G Inc., DC Md., 2016-1ustc  
¶50,120; TRC FILEBUS: 9,202*

The government was not entitled to summary adjudication of a CFO's liability as a responsible person for trust fund recovery penalties. The CFO asserted that he did not have signatory authority and could not order those who had such authority to pay the tax obligations.

*Hudak, DC Md., 2016-1ustc ¶50,119;  
TRC PAYROLL: 6,306.05*

### Exempt Organizations

A federal district court properly held that the lower corporate overpayment interest rate provided for under Code Sec. 6621(a) (1) applied to a nonprofit corporation teaching hospital. The hospital claimed that the lower interest rate did not apply to nonprofits organized as corporations under state (New York) law. However, the ordinary meaning of the term "corporation" includes nonprofit entities formed as corporations.

*Maimonides Medical Center, CA-2, 2016-1ustc  
¶50,117; TRC PENALTY: 9,152*

A nonprofit, nonreligious, pro-life organization was not entitled to an injunction granting it the religious-employer exemption or

prohibiting the government from applying the contraception mandate to the organization or its insurer in a way that required them to maintain coverage for services that contradicted its moral or religious beliefs or that penalized them for not offering such coverage. The organization was not entitled to the religious-employer exemption because it was not a religious employer.

*Real Alternatives, Inc. v. Burwell, DC Pa.,  
2016-1ustc ¶50,111; TRC HEALTH: 9,114.25*

### Tax Crimes

A former police officer was not entitled to a new trial after his conviction for corruptly endeavoring to obstruct and impede the internal revenue laws. The individual was not entitled to a unanimity instruction on the particular means he employed to obstruct or impede the internal revenue laws because he failed to request one and such a charge was not warranted.

*Adams, DC D.C., 2016-1ustc ¶50,114;  
TRC IRS: 66,356*

A federal district court erred by dismissing several workers' claims against their employer for willfully filing fraudulent information returns. Their allegation that the employer intentionally filed fraudulent tax documents stated a claim for statutory damages.

*Cuellar-Aguilar v. Deggeller Attractions, Inc., CA-8,  
2016-1ustc ¶50,109; TRC FILEBUS: 9,202*

### Procedure

The owners of a medical-marijuana dispensary were not entitled to a *Writ of Mandamus* overturning a Tax Court order compelling them to produce documents about their business. The individuals failed to offer a convincing reason to think that without an immediate remedy they faced irreparable injury.

*Feinberg, CA-10, 2016-1ustc ¶50,116;  
TRC LITIG: 9,254*

### Bankruptcy

A Chapter 7 trustee was required to abandon his interest in the portion of tax refund it retained as an asset of a couple's bankruptcy estate. The wife's postpetition withdrawal of funds from her retirement account was exempt income; therefore, the refund, which resulted from withholding on her withdrawal, was also exempt.

*In re Perkins, BC-DC Ohio, 2016-1ustc ¶50,121;  
TRC IRS: 57,060*

## Sample Client Letter On 2015 Year-End Tax Legislation

*In mid-December, Congress passed and President Obama signed two new laws: the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) and the Consolidated Appropriations Act, 2015 (known as the fiscal year (FY) 2016 omnibus). Practitioners can email this letter to clients to alert them to many of the tax provisions in the new laws that affect individuals and businesses, and invite them to consult further about the new tax laws.*

### Re: 2015 Year-End Tax Legislation

#### Dear Client:

In mid-December, Congress passed and President Obama signed two new laws: the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) and the *Consolidated Appropriations Act, 2015* (known as the fiscal year (FY) 2016 omnibus). The tax provisions in the new laws impact all types of taxpayers. This letter presents a high level overview of the tax provisions in the new law. Keep in mind that every taxpayer's situation is unique. Some taxpayers may benefit more from certain changes in the new laws than others. That's why it is important to carefully study the changes made to the tax laws by the PATH Act and the FY 2016 omnibus. The first quarter of 2016 provides a good opportunity to review the new tax laws and their potential impact on your tax-strategy. Please contact our office to schedule a time to discuss the new tax laws in detail and how we can adjust your tax strategy.

### Tax extenders

The tax extenders are popular but traditionally temporary tax breaks. There are more than 50 extenders, which in past years have routinely been extended for one or two years. The PATH Act takes a different approach. *The PATH Act extends permanently some, but not all, of the extenders.* The permanent extenders include:

- Reduced earnings threshold for additional child tax credit

- Earned income credit modifications
- Teachers' classroom expense deduction
- State and local sales tax deduction
- Transit benefits parity
- Special rule for qualified conservation contributions
- Tax-free distributions from IRAs for charitable purposes for individuals age 70 ½ and older
- Enhanced Code Sec. 179 expensing
- Research tax credit
- Tax treatment of certain payments to controlling exempt organizations

**Extenders extended through 2019.** The PATH Act also extends, and in some cases modifies, *through 2019*, the New Markets Tax Credit, Work Opportunity Tax Credit, bonus depreciation, and look-through treatment of payments between related controlled foreign corporations.

**Extenders extended through 2016.** Additionally, the PATH Act extends, and in some cases modifies, *through 2016*, the:

- Exclusion from gross income of discharges of acquisition indebtedness on principal residences

*“Practitioners can email this letter to clients to alert them to many of the tax provisions in the new laws that affect individuals and businesses, and invite them to consult further about the new tax laws.”*

- Basis adjustment to stock of S corporations making charitable contributions of property
- Employer wage credit for activated military reservists
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements
- Treatment of certain dividends of regulated investment companies
- Exclusion of 100 percent of gain on certain small business stock
- Reduction in S corp recognition period for built-in gains tax
- Subpart F exception for active financing income
- Temporary minimum low-income housing tax credit rate for non-federally subsidized buildings
- Military housing allowance exclusion for determining whether a tenant in certain counties is low-income
- RIC qualified investment entity treatment under FIRPTA
- Charitable deduction for contributions of food inventory
- Mortgage insurance premiums treated as qualified residence interest
- Deduction for qualified tuition and related expenses
- Indian employment tax credit
- Qualified zone academy bonds
- Seven-year recovery period for motorsports entertainment complexes
- Accelerated depreciation for business property on an Indian reservation
- Election to expense mine safety equipment
- Special expensing rules for certain film and television productions
- Code Sec. 199 deduction for Puerto Rico
- Empowerment zone tax initiatives
- Increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands
- Increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands

### Energy extenders

Included in the PATH Act are extensions of extenders intended to encourage

*continued on page 619*

## Congress eyes tax reform in 2016

Passage of the *Consolidated Appropriations Act, 2015* and the *Protecting Americans from Tax Hikes Act 2015* (PATH Act) have lawmakers predicting growing momentum for tax reform in 2016. Congressional tax writers are starting to assemble agendas for 2016 in the House and Senate.

The chairs of the House and Senate tax-writing committees both highlighted tax reform in statements after passage of the PATH Act. Senate Finance Committee (SFC) Chair Orrin Hatch, R-Utah, said “the PATH Act lays the groundwork for comprehensive tax reform moving forward.” House Ways and Means Chair Kevin Brady, R-Texas, added that Congress now has “even more momentum to pass pro-growth tax reform.”

House Speaker Paul Ryan, R-Wisc., acknowledged that lawmakers failed to pass agency-specific appropriations bills as in past years and had to approve a FY 2016 omnibus spending bill, a practice he had criticized in the past. Ryan said that, after he became Speaker of the House, “he went to work to make the best of this process.”

## McCarthy predicts House ACA repeal vote in 2016

Congress will reconvene in January and leaders are already announcing plans. “In one of our first actions next year, the House will vote on a budget reconciliation bill, sending Republican priorities to POTUS’s desk,” McCarthy posted on social media. McCarthy said that these priorities include repealing the *Affordable Care Act* (ACA). The year-end 2015 legislation delayed, for various periods of time, the ACA’s health insurance provider fee, the medical device excise tax and the excise tax on high-dollar health plans (known as “Cadillac” plans).

## Schumer applauds expansion of expensing rules

The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) expanded special expensing rules for certain television and film

productions to qualified stage productions. The extension drew praise from Sen. Charles Schumer, D-N.Y. “Finally, Congress will give its regards to Broadway. Investing in live theater is absolutely fundamental to the nurturing and growth of this critical sector of our national economy,” Schumer said. Under the PATH Act, qualified stage productions may expense a certain amount of costs similar to the special expensing treatment offered to qualified film and television productions. The special expensing rules for qualified stage productions are temporary, Schumer noted.

## IRS’s online authentication procedures need improvement, TIGTA reports

The IRS has not established a Service-wide approach to effectively manage the online authentication of taxpayer accounts, according to the Treasury Inspector General for Tax Administration (TIGTA). TIGTA performed an audit to assess the IRS’s efforts to authenticate taxpayers’ identities at the time tax returns were filed and when services were provided.

The IRS has established two groups that focus on taxpayer authentication. However, TIGTA found that these groups did not provide for cross-functional management, oversight and continued evaluation of the IRS’s existing authentication processes. In addition, TIGTA reported that the IRS’s authentication methods used for current online services did not comply with Government Information Security Standards.

“It is critical that the methods the IRS uses to authenticate individuals’ identities ensure that tax information and services are provided only to individuals who are entitled to receive them,” Treasury Inspector General for Tax Administration J. Russell George said in a statement. “The unauthorized disclosure of tax information can enable identity thieves to prepare identity theft tax returns that more accurately reflect a valid return, increasing the risk that fraudulent returns will not be detected by the IRS,” he added.

TIGTA recommended that the IRS: (1) develop a service-wide strategy that establishes consistent oversight of all authentication needs across IRS functions and programs;

(2) ensure that the level of authentication risk for all current and future online applications accurately reflects the risk; and (3) make certain that the authentication processes meet Government Information Security Standards. The IRS agreed to implement these recommendations from TIGTA.

## Programming error generated erroneous refunds, TIGTA discovers

The Treasury Inspector General for Tax Administration (TIGTA) has reported that, because of an IRS programming error, millions of dollars in refunds were erroneously issued. The error impacted more than 13,000 returns from tax year (TY) 2013, according to TIGTA.

The IRS’s Return Integrity and Compliance Services organization is responsible for identifying, evaluating and preventing the issuance of improper refunds. TIGTA reported that, because of a programming error, more than \$27 million in refunds were erroneously issued for 13,043 TY 2013 tax returns. TIGTA also identified 3,910 TY 2013 returns that the IRS selected for verification with no indication that tax examiners had verified the returns. In a statement, Treasury Inspector General for Tax Administration J. Russell George said, “While the IRS has made important strides in its programs that prevent the issuance of fraudulent refunds, our auditors found that it is not always ensuring that tax examiners timely complete their verification work before releasing refunds.”

TIGTA recommended that the IRS: (1) correct its programming error; (2) develop a process to ensure that refunds associated with identified potentially fraudulent tax returns are not erroneously released; (3) develop a process to ensure that tax examiners verify a potentially erroneous refund claimed by a taxpayer within the refund hold period or place a refund hold on the taxpayer’s account until verification can be completed as required; and (4) identify why refund holds placed on some accounts were not delaying processing of the returns and address the causes. The IRS agreed with all of TIGTA’s recommendations and stated that it was taking corrective action.

## Practitioners' Corner

Continued from page 617

energy conservation and the development of non-fossil fuel energy sources. These incentives include the Code Sec. 25C credit for nonbusiness energy property, credit for alternative fuel vehicle refueling property, second generation biofuel producer credit, biodiesel and renewable diesel incentives, credit for the production of Indian coal facilities, credit for energy-efficient new homes, special allowance for second generation biofuel plant property, energy efficient commercial buildings deduction, special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities, excise tax credits and payment provisions relating to alternative fuel, and credit for fuel cell vehicles. The FY 2016 omnibus provides for an extension of the wind production tax credit (subject to phase-down) and certain incentives for solar power (also subject to phase-down).

### 529 plans

Code Sec. 529 plans are popular vehicles to save for higher education. The PATH Act provides that qualified higher education expenses for 529 plans include the purchase of computers and software. The PATH Act also revises the rules for aggregation and refunds. The PATH Act also makes some taxpayer-friendly changes to ABLE accounts.

### Affordable Care Act

When Congress passed the *Affordable Care Act* (ACA) in 2010, lawmakers included a number of revenue raisers to help offset the cost of health care reform. The ACA imposes an excise tax on qualified medical devices. The ACA also imposes an excise tax on high-cost employer-sponsored health insurance. Additionally, the ACA imposes a fee on health insurance providers. These three provisions in the ACA are modified by the PATH Act and the FY 2016 omnibus.

The PATH Act imposes a two-year moratorium (for sales in 2016 and 2017) on the ACA's excise tax on qualified med-

ical devices. The FY 2016 omnibus provides for a two-year delay of the excise tax on high-cost employer-sponsored health coverage (also known as "Cadillac" plans). Under the FY 2016 omnibus, the excise tax on high-cost plans will first be effective in 2020 rather than in 2018, as originally scheduled by the ACA. The FY 2016 omnibus also makes the excise tax on high-cost plans deductible as a business expense.

### Employee benefits

Included in the PATH Act are clarifications for church plans and certain governmental plans. The PATH Act also affects rollovers into SIMPLE IRAs. Another provision relates to retirement benefits for certain federal law enforcement officials.

### IRS budget and operations

Many taxpayers experienced problems contacting the IRS during the 2016 filing season. The IRS could not answer all of the calls it received from taxpayers with questions. In fact, customer service levels fell to new lows. According to the IRS, cuts to its budget in recent years contributed to its poor customer service. The FY 2016 omnibus allocates an additional \$290 million above FY 2015 levels to the IRS to improve customer service. Congress also directed the IRS to use the additional funds to improve cybersecurity and continue to uncover and prevent tax-related identity theft and refund fraud.

Lawmakers also codified the agency's Taxpayer Bill of Rights, prohibited the use of personal email for official business, and provided for termination of employment for taking official actions for political purposes, among other changes for agency employees. The year-end legislation also includes a number of provisions affecting how the IRS reviews and grants applications for Code Sec. 501(c)(4) status and the issuance of regulations for Code Sec. 501(c)(4) organizations.

### Tax Court

Congress also tweaked the rules for the U.S. Tax Court. The PATH Act provides for certain administrative changes to the

Tax Court's operations, impacting areas such as the filing period for interest abatement cases, venue for appeal of spousal relief and collection cases, judicial conduct, and judicial conferences.

### REITs

The PATH Act makes a number of changes to real estate investment trusts (REITs). These include restrictions on tax-free spinoffs, repeal of a preferential dividend rule for publicly offered REITs, treatment of certain services provided by taxable REIT subsidiaries, and more.

### Revenue provisions

Included in the year-end legislation are several measures treated as revenue raisers. These provisions include updated standards for the energy efficient commercial buildings deduction, excise tax equivalency for liquefied petroleum gas and liquefied natural gas, exclusion from gross income of certain clean coal power grants, clarification of valuation rule for early termination of certain charitable remainder unitrusts, prevention of transfer of certain losses from tax indifferent parties, and treatment of certain persons as employers with respect to motion picture projects.

### Looking ahead

Passage of the PATH Act and the FY 2016 omnibus has some lawmakers predicting that Congress will tackle comprehensive tax reform in 2016. On the table are numerous tax reform proposals to overhaul individual and business taxation, lower the corporate tax rate, revise the rules for international taxation, and much more. Our office will keep you posted of any progress with comprehensive tax reform in 2016.

The PATH Act and the FY 2016 omnibus include other provisions not described here. There are a number of provisions targeted to specific taxpayers, just touched on here. As always, please contact our office for more details about the PATH Act and the FY 2016 omnibus.

Sincerely yours,

# COMPLIANCE CALENDAR

## ■ January 11

Employees who received \$20 or more in tips during December, report them to their employer.

## ■ January 13

Employers deposit Social Security, Medicare, and withheld income tax for January 6, 7, and 8

## ■ January 15

Deadline to make a final payment of estimated tax for 2015, using Form 1040-ES, Estimated Tax for Individuals.

Employers deposit Social Security, Medicare, and withheld income tax for January 9, 10, 11, and 12.

If the monthly deposit rule applies, employers deposit the tax for payments in December 2015.

## ■ January 21

Employers deposit Social Security, Medicare, and withheld income tax for January 13, 14, and 15

## ■ January 22

Employers deposit Social Security, Medicare, and withheld income tax for January 16, 17, 18, and 19.

# MONTHLY QUIZZER

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

**Q1.** For taxpayers without an applicable financial statement, the IRS increased the de minimis safe harbor deduction under the repair regs to:

- (a) \$1,000
- (b) \$1,500
- (c) \$2,000
- (d) \$2,500

**Q2.** What recent legislation addressed tax extenders?

- (a) *Surface Transportation and Veterans Health Care Act*
- (b) *Protecting Americans from Tax Hikes Act*
- (c) *Defense of Marriage Act*
- (d) *Bipartisan Congressional Trade Priorities and Accountability Act*

**Q3.** The IRS issued guidance on same-sex marriage for retirement plans and health and welfare plans. **True or False?**

**Q4.** Under an IRS initiative to help employers keep current with payroll taxes, the IRS may contact an employer by letter, phone, or office visit. **True or False?**

### Answers:

**Q1.** (d), See Issue #49, page 573.

**Q2.** (b), See Issue #52, page 609.

**Q3.** True, See Issue #51, page 597.

**Q4.** True, See Issue #51, page 599.

# TRC TEXT REFERENCE TABLE

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

ACCTNG 36,162.05	566	HEALTH 6,100	613	LITIG 6,130.35	564
ACCTNG 36,162.05	613	HEALTH 6,106	599	PAYROLL 3,352	599
BUSEXP 9,092	561	HEALTH 9,116	614	PAYROLL 9,104	553
BUSEXP 9,104.15	573	HEALTH 18,000	556	PENALTY 3,052	611
BUSEXP 12,304.05	553	HEALTH 18,108	551	PENALTY 3,110.25	601
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BUSEXP 18,808	579	INDIV 33,408	577	PENALTY 9,100	576
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CCORP 6,054	603	INTL 18,150	612	RETIRE 9,050	597
DEPR 3,504.05	575	INTL 30,082.05	562	RETIRE 39,058.20	552
DEPR 15,162.85	587	INTL 33,054.25	593	RETIRE 51,102.05	602
DEPR 15,210	575	INTL 3,100	565	SALES 3,154	555
ESTGIFT 3,068	602	IRS 3,106	554	SALES 9,104.10	600
EXEMPT 21,210	614	IRS 6,106.05	551	SALES 39,000	567
FILEBUS 9,104	601	IRS 33,302.05	603	SALES 51,056.15	588
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FILEIND 18,054	580	IRS 66,305	554		