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November 11, 2015 – Bipartisan Budget Act of 2015

Tax-related legislation often is included in non-tax bills, and a new law–the Bipartisan Budget Act of 2015–is one. On November 2, President Obama signed the 2015 Budget Act, which repeals the TEFRA unified partnership audit rules and replaces them with streamlined procedures. The Budget Act also repeals automatic enrollment in certain employer-sponsored health plans, extends defined benefit (DB) pension stabilization provisions, increases premiums paid to the Pension Benefit Guaranty Corporation (PBGC), and more. The 2015 Budget Act does not, however, extend the so-called tax extenders, which will likely wait for Congressional action later this year.

Spending cuts and revenue raisers

Four years ago, Congress passed and President Obama signed the Budget Control Act of 2011. The 2011 Budget Control Act imposed sequestration (across the board spending cuts) on federal spending for defense and non-defense programs. The 2015 Budget Act eases sequestration and avoids some of the deepest spending cuts.

To offset the additional spending, lawmakers needed new revenue. Congress and the White House looked to TEFRA partnership audit repeal as a major revenue source. TEFRA repeal is expected to generate more than $9 billion over 10 years from enhanced compliance activities. Extension of pension stabilization is projected to raise $6.5 billion over 10 years. The Budget Act was approved by a vote of 266 to 167 in the House on October 28 and by a vote of 64 to 35 in the Senate on October 30; and signed into law by President Obama on November 2.

Partnership audits–TEFRA

Before the 2015 Budget Act, three different regimes generally applied for auditing partnerships:

Partnerships with more than 10 partners are audited under unified TEFRA procedures that are then binding on the partners;

Partnerships with 100 or more partners that elect to be treated as Electing Large Partnerships (ELPs) are subject to a unified audit under which any adjustments are reflected on the partners' current year return rather than on an amended prior-year return; and

Partnerships with 10 or fewer partners, which are audited as part of each partner's individual audit.

TEFRA partnership-level audit procedures apply to partnerships that have more than 10 partners. If any partner is not an individual, C corporation or the estate of an individual, or if any partner is a nonresident alien, the TEFRA unified procedure applies without regard for the number of partners. Since enactment, the universe of partnerships has changed. Partnerships have grown in number and complexity. The IRS often finds it hard to determine whether a partnership is a TEFRA partnership. If the IRS applies the wrong procedures, it may jeopardize any assessment it makes.

Electing large partnerships

An electing large partnership (ELP) is, for any partnership tax year, any partnership if the number of persons who were partners in the partnership in the preceding partnership tax year equaled or exceeded 100, and the partnership elects the application of the large partnership procedures. The audit procedures for electing large partnerships are similar to the TEFRA procedures in that adjustments to partnership items by the IRS are determined at the partnership level.

Repeal and streamlined procedures

Under the 2015 Budget Act, the TEFRA and ELP rules are repealed. In their place, the 2015 Budget Act provides a streamlined structure for auditing partnerships and their partners at the partnership level. Generally, the IRS would examine the partnership's items of income, gain, loss, deduction, credit and partners' distributive shares for a particular year of the partnership (the so-called "reviewed year"). Any adjustments would be taken into account by the partnership, not the individual partners, in the year that the audit or any judicial review is completed (the so-called "adjustment year"). The 2015 Budget Act allows partnerships with 100 or fewer qualifying partners to opt-out of the new audit regime. Partnerships that opt-out will be audited under the general rules applicable to individual taxpayers.

The 2015 Budget Act delays the effective date of TEFRA repeal to returns filed for partnership tax years beginning after 2017. However, subject to certain exceptions, partnerships may choose to apply the new regime to any partnership tax year beginning after the date of enactment (November 2, 2015).

As with all tax laws, the IRS will need to issue regulations and guidance about repeal of TEFRA and the ELP rules. Our office will keep you posted on developments.

Family partnerships

The 2015 Budget Act also clarifies that Congress did not intend for the family partnership rules to provide an alternative test for whether a person is a partner in a partnership. The determination of whether the owner of a capital interest is a partner should be made under the generally applicable rules defining a partnership and a partner. Further, the 2015 Budget Act clarifies that a person is treated as a partner in a partnership in which capital is a material income-producing factor whether the interest was obtained by purchase or gift and regardless of whether the interest was acquired from a family member.

Automatic enrollment

The ACA generally required employers with more than 200 full-time employees to automatically enroll new full-time employees in one of the employer's health benefits plans (subject to any authorized waiting period), and to continue the enrollment of current employees in a health benefits plan offered through the employer. The ACA directed the IRS and the U.S. Departments of Health and Human Services (HHS) and Labor (DOL) to develop regulations and guidance to implement automatic enrollment. In 2012, the agencies announced they would delay the issuance of guidance. So, to date, no guidance has been issued. The 2015 Budget Act repeals the automatic enrollment provision, effective as of the date of enactment (November 2, 2015).

Pension funding stabilization

Employers maintaining DB plans generally are required to make a contribution for each plan year to fund plan benefits. The minimum funding rules for single-employer DB plans specify the interest rates and other actuarial assumptions that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target. Present value is determined using three interest rates, called segment rates.

The Moving Ahead for Progress Act (MAP-21) provided for segment rate stabilization on the funding of single-employer DB plans. Generally, the segment rates under the single-employer plan funding rules are adjusted under the MAP-21 rules if the rate determined under the regular rules is outside a specified range of the average of the segment rates for the preceding 25-year period. The Bipartisan Budget Act extends the funding stabilization rules for DB plans through 2019.

In related news, the 2015 Budget Act gives DB plans some flexibility in their use of mortality tables. Present values and related age calculations are determined by use of mortality tables issued by the IRS that reflect actual pension plan experience and projected trends based on that experience. In lieu of these tables, an employer may use mortality tables that are specific to its own plan if the employer receives prior approval from the IRS to use the tables. The Bipartisan Budget Act expands the availability of private sector DB plans to use separate mortality tables for plan years beginning after December 31, 2015.

Disability Trust Fund

The Disability Trust Fund pays for disability benefits under Social Security. The federal government had projected that the Disability Trust Fund would be insolvent after 2026 because of the increasing number of beneficiaries relative to the number of workers paying into the system. To avoid insolvency, the 2015 Budget Act changes the allocation of payroll taxes between the Disability Trust Fund and the Old-Age and Survivors Insurance Trust Fund. The new law allocates to the Disability Insurance Trust Fund an additional 0.57 percentage points (for a total of 2.37 percentage points of the total combined 12.4 percent payroll tax) in 2016, 2017 and 2018.

Pension Benefit Guaranty Corporation

The Pension Benefit Guaranty Corporation (PBGC) is the pension provider of last resort for many individuals. The PBGC insures pensions and provides benefits when a private plan no longer can make those payments. The PBGC is funded by premiums paid by pension plans. The 2015 Budget Act increases these premiums. The PBGC's single-employer fixed premium will increase to $68 for 2017, $73 for 2018, and $78 for 2019, and subsequently re-indexed for inflation. The variable rate premium will continue to be indexed for inflation, but will be increased by an additional $2 in 2017, an additional $3 in 2018, and an additional $3 in 2019.

The 2015 Budget Act also accelerates when payments must be made. For plan years beginning in 2025, the due date for premiums will be the 15th day of the ninth calendar month beginning on or after the first day of the premium payment year.

Tax extenders

Notably absent from the 2015 Budget Act are the tax extenders. These popular tax breaks are temporary and, under current law, expired after 2014. They include the state and local sales tax deduction, higher education tuition and fees deduction, teacher's classroom expense deduction, research tax credit, bonus depreciation, Indian employment credit, transit benefits parity, film and television production special expensing, and more. Unless extended, these incentives will be unavailable for 2015. The expectation is that Congress will extend the tax breaks but the question is when. Some observers predicted the extenders would be part of the 2015 Budget Act. One stumbling block to their extension is their cost. Many lawmakers want to offset the cost of the extenders with either more spending cuts or new revenue raisers. Our office will keep you posted of developments.

If you have any questions about the 2015 Budget Act, please contact our office.