May 18, 2016 – Important 2016 First Quarter Federal Tax Developments

During the first quarter of 2016, there were many important federal tax developments. This letter highlights some of the more significant developments for you. As always, contact our office if you have any questions.

Tax Legislation

In his final federal budget, President Obama proposed a mix of old and new tax measures, which, if enacted, would generate some $2.8 trillion in revenue over the next 10 years. The tax measures included revisions to the Affordable Care Act's net investment income (NII) tax and excise tax on high-cost health insurance plans, a new oil fee to fund infrastructure investments, a new community college partnership tax credit, and a package of business and international tax reforms. President Obama also urged Congress to increase the IRS's operating budget.

In March, President Obama signed the *Trade Facilitation and Trade Enforcement Act of 2015* (Trade Act), which includes an increase in the penalty for failure to file a return. For taxpayers who fail to file their returns more than 60 days after the due date or extended due date, the Trade Act increases the minimum penalty from not less than the lesser of $135 or 100 percent of the amount required to be shown as tax on such return to the lesser of $205 or 100 percent of the amount required to be shown as tax on such return. The new law makes the increase in the penalty effective for returns required to be filed in calendar years after 2015.

Also in March, the House Ways and Means Committee on March 16 approved along party lines a bill (HR 4722), which would require that taxpayers claiming the refundable portion of the child tax credit provide a Social Security number (SSN) for the taxpayer or spouse (for a joint return) on their tax return. Another bill approved by the committee (HR 4723) would require that taxpayers who received the advance Code Sec. 36B premium assistance tax credit, and who are later found to owe an excess credit, must repay the full amount of the excess credit to the IRS.

Affordable Care Act

The IRS announced an automatic extension of filing deadlines for certain 2015 information returns under the Affordable Care Act (ACA). The extension affected Code Sec. 6055 reporting by insurers, self-insuring employers and other providers of minimum essential coverage and Code Sec. 6056 reporting by applicable large employers (ALEs).

Partnerships

In March, the IRS requested comments on the new partnership audit regime following repeal of the TEFRA and electing large partnership (ELP) rules in the *Budget Control Act of 2015*

(Budget Act). The Budget Act repealed the TEFRA and electing large partnership rules and provides a streamlined structure for auditing partnerships and their partners at the partnership level. The IRS also advised taxpayers to delay making the election to apply the new audit rules to tax years beginning after November 2, 2015 until guidance is issued on the election.

Depreciation

The IRS released inflation-adjusted Code Sec. 280F depreciation limits for business automobiles, light trucks and vans placed in service in 2016. For vehicles for which bonus deprecation is allowed, the first-year depreciation limit is $8,000 higher than the general non-bonus depreciation limits.

Fair Market Value Amounts

In February, the IRS issued the maximum fair market value (FMV) amounts that designate the proper valuation rule for employers calculating fringe benefit income from employer-provided automobiles, trucks, and vans first made available for personal use in 2016. The maximum 2016 FMV amounts for use of the cents-per-mile valuation rule are $15,900 for a passenger automobile (down from $16,000 for 2015); and $17,700 for a truck or van, including passenger automobiles such as minivans and sport utility vehicles, which are built on a truck chassis (up from $17,500 for 2015).

FATCA

In January, the IRS provided relief to foreign financial institutions (FFIs) for several reporting requirements under the *Foreign Account Tax Compliance Act* (FATCA), such as certifications for preexisting accounts. The IRS also provided relief to withholding agents under Chapter 3 of the Tax Code for relying on certain electronic withholding forms.

In February, the IRS issued final regulations under Code Sec. 6038D that require "specified domestic entities" to report their interests in specified foreign assets under FATCA. Unlike the reporting requirements for U.S. individuals with interests in specified foreign assets, which have taken effect, the rules for specified domestic entities do not take effect until tax years that begin after December 31, 2015.

FBAR

In March, Treasury's Financial Crimes Enforcement Network (FinCEN) issued proposed regulations that would exempt holders of signature authority over foreign financial accounts from having to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (known as the "FBAR") in most circumstances, provided they have no financial interest in the account. The proposed regulations make another significant change by eliminating rules that currently limit the information that must be reported by filers with 25 or more foreign financial accounts.

Tax-Avoidance Transactions

In March, the IRS adopted final regulations under Code Sec. 367 that target transactions involving transfers to foreign corporations that are designed to inappropriately reduce U.S. taxes. The IRS has issued a series of regulations under Code Sec. 367 to combat inversions and other transactions that could be used to repatriate foreign earnings tax-free.

Estate Taxes

The IRS has issued temporary and proposed reliance regulations on the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for estate tax purposes. The *Surface Transportation and Veterans Health Care Act of 2015* (Transportation Act) created the new requirement. The IRS also extended the due date for statements under new Code Sec. 6035, also put in place by the Transportation Act.

Retirement Plans

The IRS issued proposed reliance regulations for governmental plans to determine normal retirement age (NRA). Many qualified plan requirements do not apply to governmental plans, such as most of the vesting requirements under Code Sec. 411. Instead, pre-ERISA vesting rules apply.

In February, the IRS issued proposed regulations that describe how a multiemployer defined benefit pension plan in a distressed condition would be allowed to reduce the benefits it must pay. The *Multiemployer Pension Reform Act of 2014* (MPRA) allows sponsors of a multiemployer plan to reduce benefits if the plan is in "critical and declining status." The plan sponsor must obtain the approval of Treasury, the Labor Department (DOL), and the Pension Benefit Guaranty Corporation (PBGC), before the plan can suspend any benefits.

The Tax Court found in *McGaugh, TC Memo. 2016-28,* that a taxpayer was a mere "conduit" of IRA funds used to purchase stock for the account and did not receive a taxable distribution, the Tax Court has held. The taxpayer was not a payee or distributee of any amount and the 60-day rollover rule did not apply. Money received as a mere agent or conduit is not includible in gross income, the court observed.

Tax Shelters

The U.S. Supreme Court declined in March to review three tax shelter cases, including two involving the Structured Trust Advantaged Repackaged Securities (STARS) tax shelter. In each case, a federal court of appeals had concluded that the transaction lacked economic substance and the taxpayer was not entitled to claim foreign tax credits. In its March 7 order, the Supreme Court denied certiorari in the following cases: *Bank of New York Mellon (BNY), CA-2, September 9, 2015, 2015-2 ustc ¶50,473; American International Group, Inc. (AIG), consolidated opinion with Bank of New York Mellon; and Salem Financial Inc. (Salem), CA-FC, May 14, 2015,2015-1 ustc ¶50,304.*

Tax Administration

The *Fixing America's Surface Transportation Act of 2015* (FAST Act) requires the IRS to contract with private collection agencies to work some taxpayer accounts. In January, IRS Commissioner John Koskinen said that the agency is committed to designing a program within Congress' 90-day target but indicated that the agency would not be able to implement the program until later in 2016.

In February, the IRS announced that hardware failure resulted in the temporary shutdown of Modernized e-File (MeF) and some online applications. The shutdown lasted approximately 24 hours. The IRS predicted that the hardware failure would not have a major disruption on the processing of refunds.

Exempt Organizations

The IRS's Exempt Organizations (EO) office revised its audit procedures to instruct auditors that they can only propose to revoke the tax-exempt status of an exempt organization, rather than propose that the organization change its status and be tax-exempt under a different subsection of Code Sec. 501(c). The organization can file a new application with the IRS for a different status, or can seek a judicial determination of its current status. The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) grants the right, to all organizations that are tax-exempt under Code Sec. 501(c) and (d) to seek a declaratory judgment of their tax-exempt status.

If you have any questions about these or other federal tax developments, please contact our office.