

FRANZEN & FRANZEN, LLP

CERTIFIED PUBLIC ACCOUNTANTS

October 27, 2016 – Important 2016 Third Quarter Federal Tax Developments

During the third quarter of 2016, there were many important federal tax developments. Here we highlight some of the more significant developments for you. As always, contact our office if you have any questions.

Tax legislation

After an extended summer recess, Congress returned to work after Labor Day. The House approved in September legislation (5523) to limit the IRS's authority in conducting civil asset seizures and forfeitures in so-called "structuring" cases. The House also approved legislation (HR 3957) to address the tax treatment of costs associated with certain citrus costs and legislation (HR 5946) to generally exempt the value of Olympic and Paralympic prizes and awards from federal taxation, subject to certain limitations.

Meanwhile, the Senate took the lead in passing a stop-gap spending bill to keep the federal government, including the IRS, open after the end of fiscal year (FY) 2016. The Continuing Resolution continues funding for the IRS and other federal agencies through mid-December.

Affordable Care Act

The IRS issued proposed regulations clarifying certain provisions of the Code Sec. 5000A individual shared responsibility requirement and the Code Sec. 36B premium assistance tax credit. The regulations address, among other topics, opt-out payments, and benchmark plans. The IRS reiterated that coverage that provides only limited benefits is not minimum essential coverage for the *Affordable Care Act* (ACA). This includes coverage consisting solely of excepted benefits, such as stand-alone vision care or dental care; workers' compensation; and accident or disability coverage.

The IRS made some changes to forms for ACA-related reporting by applicable large employers and others. The changes affect Forms 1095-B and 1095-C, generally used by ALEs.

Partnerships

The IRS issued temporary and proposed of election for a partnership to opt in to *Act of 2015* (BBA). The election is available to a return filed for a partnership tax year

Partnerships

that provide the time, form, and manner audit regime under the *Bipartisan Budget Act of 2015* that want the new audit regime to apply January 1, 2018.

FACTA

The IRS announced in July that it will stop treating intergovernmental agreements (IGAs) as being in force and effect after December 31, 2016, unless the foreign jurisdiction that entered into the agreement explains why the jurisdiction has not yet brought the IGA into effect, provides a plan for bringing the IGA into effect, and demonstrates firm resolve to bring the IGA into effect. FFIs in jurisdictions

with an IGA in effect will be required to register with the IRS under the Foreign Account Tax Compliance Act (FATCA), unless an exemption applies.

Code Sec. 469

The IRS determined in August that it would not regroup taxpayer's interests in multiple activities as a single activity under the passive loss rules of Code Sec. 469, or otherwise challenge the taxpayer's grouping of activities. The IRS determined that there was more than one reasonable method for grouping taxpayer's activities. The taxpayer's choices did not show a tax avoidance purpose. Code Sec. 469 disallows losses from a passive activity, defined as a trade or business in which the taxpayer does not materially participate.

The Court of Appeals for the Ninth Circuit found that a taxpayer's rental losses were not automatically nonpassive because of her status as a real estate professional *Gragg, 2016-2 ustrc ¶50,370*. The court rejected the taxpayer's argument that she did not need to show material participation in the rental property.

Code Sec. 199

The IRS has concluded, in a technical advice memorandum, that a U.S. construction contractor's activities qualified as construction of real property. Therefore, gross receipts from the projects qualified as domestic production gross receipts (DPGR) under Code Sec. 199. The IRS also determined that a taxpayer could not claim any portion of its gross receipts from the sale of its foreign-manufactured products that might be attributable to advertising from a catalogue it printed in the U.S.

Retirement savings

In August, the IRS unveiled a new self-certification procedure for taxpayers who inadvertently miss the 60-day time limit for certain retirement plan distribution rollovers. The IRS described a number of mitigating circumstances, including situations where an error was committed by the financial institution receiving the contribution or making the distribution or the distribution was deposited into and remained in an account that the taxpayer mistakenly thought was an eligible retirement plan.

The IRS issued final regulations in September that allow qualified plans to facilitate the payment of benefits partly in the form of an annuity and partly as a single sum or other accelerated form. The final regulations generally track proposed regulations issued in 2012 with certain simplifications and clarifications.

Installment agreements

The IRS proposed in August, in response to budgetary pressures, to overhaul user fees related to installment agreement fees. Under the proposal, the fee for entering into a regular installment agreement would be \$225; the fee for entering into a direct debit installment agreement would be \$107; the fee for entering into an online payment agreement would be \$149; the fee for entering into a direct debit online payment agreement would be \$31; and the fee for restructuring or reinstating an installment agreement would be \$89. Special rules would apply for lower-income taxpayers.

Education

The IRS announced in September that only one rollover from a single Coverdell education savings account per individual per year is allowed under Code Sec. 530(d)(5). This conclusion follows in line

with the interpretation provided for the limitations on individual retirement arrangement rollovers from the 2014 decision reached by the Tax Court in *Bobrow, T.C. Memo. 2014-21*, the IRS explained.

The IRS issued proposed regulations that provide detailed guidance to higher education institutions on how to report tuition and other qualified expenses on Form 1098-T, Tuition Statement. The proposed regulations also provide penalty relief for the institution's failure to provide the student's correct taxpayer identification number (TIN). Taxpayers use the information on Form 1098-T to claim education tax breaks.

Corporations

In July, the IRS issued proposed regulations under Code Sec. 355 that tighten the requirements for corporations to spin off controlled corporations tax-free to their shareholders. Among other things, the regulations would impose new bright-line standards for triggering the device test and for satisfying the active trade or business (ATB) test.

Individuals

Final regulations were issued in September to explain that marriage for federal tax purposes encompasses opposite-sex marriage and same-sex marriage. The final regulations generally track proposed regs issued after the Supreme Court's decision on same-sex marriage in *Obergefell, 2015-1 ustc ¶50,357*. In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex. Further, states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Per diem rates

For post-September 30, 2016 travel, the IRS-approved per diem rate for high-cost areas is \$282. For post-September 30, 2016 travel, the IRS-approved per diem rate for all other areas is \$189. The rate for the incidental expenses only deduction is \$5 per day for post-September 30, 2016 travel.

Tax administration

The IRS announced in September that private collection agencies will begin working some taxpayer accounts in spring 2017. Congress revived private tax collection in year-end 2015 legislation.

The Treasury Inspector General for Tax Administration (TIGTA) reported in September that the IRS needs to improve its oversight of Roth IRA conversions. According to TIGTA, the IRS sometimes failed to follow processes that are designed to ensure accuracy in working Roth IRA conversion cases.

The Tax Court held in July that when the date appearing on a levy notice is earlier than the date of mailing, the timeframe during which a taxpayer may request a collection due process (CDP) hearing is determined by reference to the date of mailing (*Weiss, Dec. 60,676*). The taxpayer unsuccessfully argued that the date appearing on the notice controlled.

In July, National Taxpayer Advocate Nina Olson renewed her concerns about the IRS's "Future State" initiative. Olson told lawmakers that many taxpayers will not be able to interact with the IRS as envisioned in the Future State initiative because they lack internet access, cannot complete the authentication process, do not trust the security of the IRS systems, or prefer to speak with an IRS employee.

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