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CERTIFIED PUBLIC ACCOUNTANTS

May 4, 2017 – 2017 First Quarter Federal Tax Developments

During the first quarter of 2017, 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 reform

Tax reform discussions continue in Washington, D.C. House Republicans have detailed their tax reform plans in their Blueprint for Tax Reform. The White House is expected to release more details about its tax proposals before Memorial Day. GOP leaders in the Senate have indicated that they are crafting tax reform proposals. Tax reform proposals are expected to impact taxpayers of all types. President Trump has discussed consolidating and reducing the tax rates for individuals, lowering the corporate tax rate, abolishing the federal estate tax, and eliminating the alternative minimum tax (AMT). Democrats have proposed some small business tax incentives. Both Democrats and Republicans have discussed making tax incentives part of an infrastructure package. At the same time, various House and Senate committees have looked at agriculture tax policy, small business tax policy, and more.

Health care

In February, the IRS announced that it will continue to process individual returns that do not report the taxpayer's health coverage status under the ACA. The agency will accept returns that fail to indicate coverage, an exemption or a shared responsibility payment. The IRS had planned to reject these returns (known as "silent returns") this filing season after having accepted them in past years. Taxpayers may, however, be contacted later, the IRS added.

Vehicles

The IRS has released the inflation-adjusted limitations on depreciation deductions for business-use passenger automobiles, light trucks, and vans first placed in service during calendar year 2017. All limitations are inflation-adjusted based upon October 2016 CPI amounts, with rounding conventions that account for almost all 2016 limits remaining the same for 2017 (only the third-year limitation for light trucks and vans rose, from \$3,350 to \$3,450 in 2017).

Corporations

The IRS confirmed in February that a new revision of the Instructions for Form 7004 correctly reflects that calendar year C corporations are eligible for an automatic six-month extension. The six-month extension is granted under Code Sec. 6081(a), the IRS explained.

The Tax Court declined in March to expand the economic hardship relief rules to challenge a proposed levy on a corporation's assets (*Lindsay Manor Nursing Home, Inc.*, 148 TC No. 9, TC Memo 2017-

50).). The court rejected the taxpayer's argument that corporations as well as individuals should be able to claim economic hardship relief from levy.

Information returns

The IRS described the de minimis safe harbor for information return penalties created by the *Protecting Americans from Tax Hikes Act of 2015* (PATH). The IRS also clarified that the safe harbor does not apply to intentional errors and in cases where the payor fails to file an information return or furnish a payee statement. Generally, a de minimis error need not be corrected if the error for any single amount does not exceed \$100. The PATH Act provides for a lower threshold of \$25 for errors with respect to the reporting of an amount of withholding or backup withholding.

FATCA

The IRS issued final and temporary *Foreign Account Tax Compliance Act* (FATCA) regulations governing information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts, that is reinforced by 30 percent withholding on certain payments when certain information reporting regimes are not followed. The final regulations adopt 2104 temporary regulation with modifications. Final and temporary regulations also correct and make modifications to 2013 guidance.

Transfer pricing

The Tax Court has rejected the IRS's use of a discounted cash-flow (DCF) methodology to determine a U.S. parent's determination of the value of a "buy-in payment" by a foreign subsidiary for use of pre-existing intangible assets (*Amazon.Com, Inc. & Subsidiaries, 148 TC No. 8*). In holding for a taxpayer in the second case to come before it on virtually the same issue, the Tax Court allowed use of the more taxpayer-favorable comparable uncontrolled transaction (CUT) method.

Filing season

In March, an IRS official told Congress that the filing season has not experienced any significant delays or hurdles. Measurements, such as customer/telephone service and the agency's efforts to curb tax-related identity theft, show improvement, the official reported.

The IRS also reminded taxpayers that a law passed in 2015 slowed the processing of some refunds this filing season. The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) law generally requires that no refund will be made to a taxpayer before the 15th day of the second month following the close of that tax year, if the taxpayer claimed the earned income tax credit (EITC) or the advance child tax credit (ACTC) on his or her return. As a result, many early filers this year experienced delayed refunds.

Offers-in-compromise

The IRS reminded taxpayers and tax professionals about its updated policy covering Offer in Compromise (OIC) applications. OIC applications received on or after March 27, 2017, will now be returned without further consideration in instances where the taxpayer has not filed all required tax returns, the agency explained. The application fee will be returned and any required initial payment submitted with the OIC will be applied to outstanding tax debt. This new policy, however, does not apply to current year tax returns if there is a valid extension on file.

Students

The IRS Data Retrieval Tool (DRT) is offline, the agency announced in March. The DRT provides tax data that automatically fills in information for part of the Free Application for Federal Student Aid (FAFSA) as well as the Income-Driven Repayment (IDR) plan application. The IRS reminded applicants filling out the FAFSA or applying for an IDR plan that they can manually provide the requested financial information from copies of their tax returns.

Whistleblowers

The IRS Whistleblower Office made awards to some 400 whistleblowers in fiscal year (FY) 2016, the agency reported in January. The awards totaled more than \$61 million.

The Tax Court permitted an individual to proceed anonymously in his or her whistleblower action seeking review of the IRS's denial of an award claim (*Whistleblower 12568-16W, 148 TC No. 7*). However, the court explained that as the suit progressed, societal interests in knowing the whistleblower's identity may outweigh any interests to protect it.

Audit coverage

Audit coverage rates are at low levels, the IRS has reported. According to the IRS, the audit coverage rate for individuals fell 16 percent from FY 2015 to FY 2016. The 0.7 percent audit coverage rate for individuals was the lowest coverage rate in more than a decade.

Retirement plans

The U.S. Department of Labor (DOL) has proposed a 60-day delay to the applicability date of guidance defining who is a "fiduciary," as well as related provisions that tighten disclosure and conflict-of-interest rules. The original guidance is set to apply April 10, 2017.

In related news, the IRS announced a temporary excise tax nonapplicability policy. The IRS explained that it will not apply Code Sec. 4975 and related reporting obligations with respect to any transactions or agreement to which the DOL's temporary enforcement policy, or other subsequent related enforcement guidance, would apply.

Reversing the Tax Court, the Sixth Circuit Court of Appeals held that a DISC-Roth IRA arrangement that allowed a Roth IRA to sidestep annual Roth contribution limits must be respected (*Summa Holding, Inc., CA-6, February 16, 2017*). Congress created both a Domestic International Sales Corporation (DISC) and Roth Individual Retirement Accounts (Roth IRAs) to lower taxes, reasoned the court; any unintended text-driven consequence was up to Congress to remedy rather than through the application of the substance-over-form doctrine.

Small business

In February, the IRS announced that small employers will have more time to inform eligible employees about qualified small employer health reimbursement arrangements (QSEHRAs). The agency has extended the initial written notice requirement.

Interim guidance describes the new payroll tax credit election for increasing research expenses. The PATH Act enhanced the credit for qualified small businesses.

IRS budget

In March, President Trump unveiled an outline of his proposals for the fiscal year (FY) 2018 federal government budget. The president proposed to reduce the IRS's budget by some \$239 million.

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