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## **2015 2<sup>nd</sup> Quarter Federal Tax Developments**

Dear Client:

During the second quarter of 2015, 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 June, President Obama signed two trade bills that included tax provisions affecting individuals and businesses. The Trade Preferences Extension Act of 2015 renews the health care tax credit (HCTC); provides that taxpayers must possess a valid information return (Form 1098-T, Tuition Statement) to claim the tuition and fees deduction, the American Opportunity Tax Credit, and the Lifetime Learning credit; overhauls the penalty structure for information returns; limits the child tax credit for taxpayers who elect to exclude from gross income for a tax year any amount of foreign earned income or foreign housing costs; and includes a corporate estimated tax shift. The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 gives certain federal public safety officers an exemption from the 10-percent penalty on early distributions from a qualified retirement plan.

In April, President Obama signed the Medicare Access and CHIP Reauthorization Act of 2015, also known as the "doc fix" bill. The new law, among other measures, provides the IRS with enhanced levy authority to collect unpaid taxes from Medicare providers.

### Affordable Care Act

In a 6 to 3 decision, the U.S. Supreme Court held in June that the Code Sec. 36B premium assistance tax credit is not limited to enrollees in state-run Health Insurance Marketplaces (previously referred to as Exchanges) (King, June 25, 2015). Enrollees in federally-facilitated Marketplaces may also claim the credit, if eligible, the Supreme Court held. Writing for the majority, Chief Justice John Roberts explained that Code Sec. 36B allows tax credits for insurance purchased on any Marketplace created under the

Affordable Care Act (ACA). The dissent would have struck down the IRS regulations as contrary to the language of the ACA.

### Same-sex marriage

Two years after the U.S. Supreme Court first addressed same-sex marriage, the Court held in June that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex (Obergefell, June 26, 2015). Further, states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. In light of this decision, states that did not recognize same-sex marriage will presumably have to treat married same-sex married couples the same as married opposite-sex couples for tax filing purposes.

### ABLE accounts

The IRS released proposed reliance regulations on the establishment, funding, distribution, and reporting of ABLE Accounts under the Achieving a Better Life Experience (ABLE) Act of 2014 in June. The ABLE Act created tax-favored savings accounts for qualified individuals with disabilities (who became disabled before age 26) for tax years beginning after December 31, 2014.

### Partnerships

The Treasury Inspector General for Tax Administration (TIGTA) reported in May that although the IRS has taken steps to improve the process for auditing partnership businesses and decrease the no-change rate, it lacks the ability to measure the amount of additional tax assessed as a result of partnership audit. Without this data, the IRS cannot adequately plan the proper level of examination coverage for partnership returns, TIGTA explained. TIGTA noted that since fiscal year (FY) 2010, the IRS has failed to assess taxable partners with approximately \$14.5 million in taxes, interest, and penalties resulting from audits of partnership returns.

The IRS issued proposed regulations intended to clarify the qualifying income of a publicly traded partnership (PTP) in May. The guidance provides an exclusive list of the qualifying activities that make up the exploration, development, mining or production, processing, refining, transportation, and marketing of minerals or natural resources. The IRS also described when support activities are treated as qualifying activities.

### Pension plans

In June, the IRS issued temporary and proposed regulations and a revenue procedure describing how multiemployer defined benefit (DB) plans in critical and declining status may apply for suspension of benefits. The guidance reflects changes made by the Multiemployer Pension Reform Act of 2014 (MPRA). The MPRA created a new status for multiemployer DB plans: critical and declining status.

## Individuals

The U.S. Supreme Court held in May that the state of Maryland must give full credit for out-of-state income taxes (Comptroller of the Treasury of Maryland, May 18, 2015). Maryland residents who earned pass-through income from an S corporation that earned income in several states had not been allowed to claim a full income tax credit against county taxes on their Maryland income tax return for taxes paid to those other states. Writing for the majority, Justice Samuel Alito explained that the dormant Commerce Clause precludes states from discriminating between transactions on the basis of some interstate element.

The IRS Statistics of Income (SOI) Division released its Spring 2015 Bulletin, which contains preliminary data gleaned from the more than 145 million individual income tax returns filed for the 2013 tax year. The IRS reported that 2013 saw a number of important tax changes, including the expiration of the Bush-era tax cuts, imposition of the new Additional Medicare tax and net investment income (NII) tax, an increase in the top long-term capital gains tax rate, and more. The preliminary data for 2013 reveal a corresponding increase in tax liability across all tax brackets and a slight decrease in the amount of charitable contributions deducted.

### Charitable contributions

In April, the Tax Court denied a charitable deduction for donations of household items made in batches of less than \$250 (Kunkel, TC Memo. 2015-71). The taxpayers unsuccessfully argued that the donations did not require a contemporaneous written acknowledgment because they were made in batches below the \$250 threshold. The court found it implausible that taxpayers had made the purported donations on nearly 100 distinct occasions in one year.

### Broker reporting

Responding to requests from taxpayers, the IRS announced in June that it would move the effective date for reporting certain information by brokers on transfers of debt instruments by six months to January 1, 2016. Previous guidance provided for a June 30, 2015 effective date.

### Transferee liability

The Tax Court in April rejected the IRS's two-step approach to determine transferee liability under Code Sec. 6901 (Stuart Jr., 144 TC No. 12). The court reiterated that Code Sec. 6901 requires an independent basis under state law, contrary to the IRS's approach.

### Rents

In April, the Tax Court upheld the IRS's recharacterization of rents as nonpassive (Williams, TC Memo. 2015-76). The Tax Court found that income from the rental of commercial real estate that the taxpayers claimed as passive income for tax years 2009

and 2010 should be recharacterized as nonpassive under Reg. §1.469-2(f)(6). The court rejected the taxpayers' argument that Code Sec. 469 does not apply to S corporations.

### Spinoffs

In May, the IRS Office of the Associate Chief Counsel (Corporate) indicated it is reevaluating whether it will continue to issue private letter rulings (PLRs) on Code Sec. 355 spinoffs where the corporation being spun off owns minimal assets in an active trade or business (ATB). The issue is one of avoiding double taxation on the distribution of appreciated passive assets.

### Repair regulations

In May, several tax professional associations urged the IRS to revisit the de minimis safe harbor threshold amount under the final repair regulations for taxpayers without an applicable financial statement (AFS). For acquisitions of tangible property, a de minimis safe harbor allows taxpayers to deduct certain items. The safe harbor applies to items that cost \$5,000 or less (per item or invoice) and that are deductible in accordance with the company's AFS. IRS regulations also provide a \$500 de minimis safe harbor threshold for taxpayers without an applicable financial statement.

### Estate tax

The IRS released final regulations on the estate tax portability election in June. The estate of a decedent survived by a spouse makes the portability election by timely filing a complete and properly prepared estate tax return. The IRS reiterated that the question of whether an estate tax return is complete and properly prepared is to be determined on a case-by-case basis.

### Tax scams

After the end of the 2015 filing season, the IRS announced that some 104,000 taxpayers had been victims of a new identity theft scheme. Criminals obtained taxpayer information through the IRS's online "Get Transcript" application. After discovering the scheme in mid-May, the IRS disabled the online application and alerted affected taxpayers.

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