

# CLIENT LETTER

## 2017 Second Quarter Federal Tax Developments

Dear Client:

During the second quarter of 2017, 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 reform**

President Trump proposed a tax reform plan that would reduce individual tax rates, abolish the alternative minimum tax (AMT) and federal estate tax, and more. Individual rates under the President's proposal would be 10, 25 and 35 percent. At the same time, the President proposed to double the standard deduction and protect the home ownership and charitable gift tax deductions. The President also proposed to provide unspecified tax relief to families with children and dependents. The President's proposal calls for a 15 percent corporate tax rate. The 15 percent rate would also be available to small and mid-size pass-through businesses, White House officials said.

Further, the President called for elimination of unspecified tax breaks for special interests. Democrats in Congress said the President's plan favored high-income taxpayers and did not deliver enough tax breaks to lower and middle-income taxpayers. As tax reform moves into the latter half of 2017, the chances of a retroactive tax cut to include the 2017 tax year are lessened but not entirely removed from consideration. Tax planning for the balance of the year therefore should remain flexible.

### **Partnerships**

Proposed regulations implementing the new centralized partnership audit regime under the Bipartisan Budget Act of 2015 (BBA) were released in June. The BBA regime replaces the current TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) procedures beginning for 2018 tax year audits, with an earlier "opt-in" for electing partnerships. Originally issued on January 19, 2017 but delayed by a January 20, 2017 White House regulatory freeze, the re-proposed regulations carry with them much of the same criticism leveled against them back in January, as well as several minor modifications. Many partnerships should start looking at their partnership agreements to pro-actively address these new audit procedures.

### **Spinoffs**

The IRS announced in May that it will once again rule on whether tax-free treatment under Code Secs. 355 or 361 applies to a corporation's distribution of controlled corporation stock in exchange for retiring debt of the distributing corporation issued in anticipation of a spinoff distribution. Although the IRS reported that it will continue to study issues arising within

leveraged spinoffs, it concluded that issuing private letter rulings or determination letters in these situations will be "in the interest of sound tax administration."

### **Health care**

In May, the House approved the GOP's American Health Care Act (AHCA) (HR 1628), a repeal and replacement plan for the Affordable Care Act (ACA). The AHCA, as approved, would eliminate most of the ACA's taxes, including payments connected with the individual and employer mandates. No House Democrats voted for the AHCA. Meanwhile, the Senate continued to debate the GOP's Better Health Care Act, which would also repeal and replace the ACA.

### **Research expenses**

The IRS unveiled interim guidance describing for small businesses the new payroll tax credit election for increasing research expenses. The IRS also provided a special rule for 2016 for small businesses that did not claim the credit but want to claim the credit before year-end 2017. The interim guidance reflects changes made to the research credit by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

### **Exempt organizations**

The IRS issued final regulations in June that allow streamlined tax-exempt status applications to continue, officially moving forward use of Form 1023-EZ and adopting, with certain changes, temporary and proposed regulations issued in 2014. The final regulations spell out the IRS's short-cut process for eligible, smaller organizations to apply for tax exempt status under Code Sec. 501(c)(3).

### **Tax regulations**

In April, President Trump signed Executive Order 13789 in April. The Executive Order instructs the Treasury Department to review all significant tax regulations issued on or after January 1, 2016. Treasury identified eight regulations for review.

### **Tax collection**

Private collection agencies are working some taxpayer accounts, the IRS announced in April. Legislation passed in 2015 directed the IRS to contract with private collection agencies to collect inactive tax receivables.

### **Filing season**

The IRS reported in April that 2017 filing season ended with no major systems malfunctions or slowdowns affecting the filing of returns and the issuance of refunds. Some early filers experienced delayed refunds because of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). The PATH Act generally required the IRS to hold refunds until February 15 where taxpayers were claiming the earned income tax credit (EITC) and/or additional child tax credit (ACTC). The IRS made up ground in processing refunds after mid-February. The IRS also reported an increase in the number of taxpayers filing for extensions, thus extending the 2017 filing season to October 16 for many individuals.

## **Estate tax**

In response to taxpayer requests, the IRS announced an extension of a simplified method to elect portability. The simplified method is to be used in lieu of obtaining a letter ruling, the IRS explained.

## **Health savings accounts**

The IRS announced the annual inflation adjustments for limits on deductible contributions to health savings accounts (HSAs) for the 2018 calendar year. For calendar year 2018, the annual limitation on deductions under Code Sec. 223(b)(2)(A) for an individual with self-only coverage under a high-deductible health plan (HDHP) is \$3,450. For calendar year 2018, the annual limitation on deductions under Code Sec. 223(b)(2)(B) for an individual with family coverage under an HDHP is \$6,900.

## **Education**

A software engineer, who worked as a project manager, was not entitled to deduct expenses related to her executive masters of business administration (EMBA) (*Creigh, TC Summary Opinion 2017-26*). The Tax Court found that the education qualified her for a new trade or business. One determining factor was that the taxpayer's employment was largely unrelated to her EMBA coursework.

In April, the IRS posted additional questions and answers on its website about the breach into its Data Retrieval Tool (DRT) used in connection with Free Application for Federal Student Aid (FAFSA). In what it describes as a precautionary step, the agency is notifying by letter about 100,000 taxpayers who could be affected, as well as offering them free credit monitoring.

## **Employers**

In June, the Tax Court found that a professional sports team could deduct the full cost of pre-game meals for away games (*Jacobs, 148 TC No. 23*). The Tax Court held that the meals qualified as de minimis fringe benefits associated with the direct conduct of their business.

The IRS reminded employers about the differences between tips and service charges for tax reporting. Tips are discretionary and optional payments determined by a customer, which employees receive from customers.

## **Deductions**

The Tax Court found that the owner of a bed and breakfast failed to substantiate his repair and maintenance activities for the property (*Cooke, TC Memo. 2017-74*). The taxpayer had used the property for personal purposes more than 14 days during the tax years in dispute. The IRS properly denied his claimed deductions, the court held.

## **Retirement plans**

The U.S. Supreme Court has held that a defined benefit (DB) plan maintained by a principal-purpose organization, one controlled by or associated with a church for the administration or

funding of a plan for the church's employees, qualifies as a church plan, regardless of who established it under ERISA (*Advocate Health Care Network v. Stapleton, SCT., June 5, 2017*). The IRS and other federal agencies have long-exempted plans like the plans in this case from ERISA, the Court observed. Justice Kagan delivered the Court's unanimous opinion.

A taxpayer persuaded the Tax Court that his struggle with depression qualified him for a hardship waiver of the 60-day retirement account rollover rule (*Trimmer, 148 TC No. 14*). The court rejected the IRS's argument that it could not consider a hardship waiver.

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

Sincerely yours,

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