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HIGHLIGHTS

Final regs drop "timely Form 5472 even though untimely return" rule. IRS has issued final regs that drop the requirement that Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business," be timely filed even when the corresponding income tax return is untimely filed. The final regs contain no substantive changes to proposed regs that were issued this past June.

President's signature sets dates some TIPA provisions go into effect or trigger IRS actions. The President's signature on the "Tax Increase Prevention Act of 2014" sets the effective date of some TIPA provisions and sets the date by which IRS must take certain actions under others.

President's signature sets effective date of pension changes under Appropriation Act. The President's signature on the Appropriations Act has set the effective dates of some multiemployer pension plan provisions included in the Act.

Proposed regs would expand on previous guidance regarding installment obligation dispositions. IRS has issued proposed regs that would consolidate and expand upon rules contained in a reg and a revenue ruling on whether the disposition of an installment obligation results in the recognition of gain or loss.

TEFRA doesn't apply to employment tax examinations or worker classification proceedings. In Legal Advice Issued by Field Attorneys (LAFA), IRS has concluded that the unified partnership audit rules under the Tax Equity and Fiscal Responsibility Act of '82 (TEFRA, (P.L. 97-248)), as codified in Code Sec. 6221 – Code Sec. 6234, don't apply to employment tax examinations or worker classification proceedings for entities that are otherwise subject to TEFRA for income tax purposes. Accordingly, IRS revenue agents do not need to follow any special procedures when conducting employment tax examinations of TEFRA partnerships.

IRS reminder: act by 12/31/14 to claim extended qualified charitable contribution break. An IRS news release reminds eligible taxpayers that, thanks to the recently enacted Tax Increase Prevention Act (TIPA), they have until Wednesday, Dec. 31, 2014, to make qualified charitable distributions (QCDs) from their IRAs. Such distributions, available only to taxpayers age 70-1/2 or older, aren't taxable, but don't yield a charitable deduction. They do count as required minimum distributions (RMDs).

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Wrap-around health coverage could qualify as excepted benefits under pilot program. IRS, EBSA, and the Department of Health and Human Services (HHS) (the Departments) have issued new proposed regs that would create a pilot program for allowing plan sponsors in limited circumstances to offer, as excepted benefits, coverage that wraps around certain individual health insurance coverage in certain circumstances ("wrap-around coverage") that could qualify for exemption from the group health plan requirements imposed by both the Health Insurance Portability and Accountability Act (HIPAA, P.L. 104-191) and the Affordable Care Act (ACA, P.L. 111-148, P.L. 111-152).

IRS rules on depreciation of outdoor advertising displays reclassified as real property. In a private letter ruling, IRS has concluded that where a builder of outdoor advertising displays makes an election under Code Sec. 1033(g) to change its treatment of those displays from personal property to real property, 1) the displays are to be depreciated under a rule that applies when there is a change in use of property, and 2) there is not an accounting method change that requires IRS's consent.

Proposed regs would amend SBC and uniform glossary requirements for health plans. IRS, EBSA, and the Department of Health and Human Services (HHS) (the Departments) have issued proposed regs that would amend final regs concerning disclosure rules for group health plans and health insurance issuers with regard to a "summary of benefits and coverage" (SBC) and a uniform glossary. The proposed regs would clarify when and how a plan or issuer must provide an SBC, and streamline and shorten the SBC template, while also adding certain additional elements that the Departments believe will be useful to consumers. In addition, some enforcement safe harbors and transitions would be made permanent, thereby discontinuing all temporary enforcement policies that the Departments have used as a bridge to a permanent rule.

No homebuyer credit because purchase was on execution of contract, not on final payment. The Tax Court has denied a Code Sec. 36 first-time homebuyer tax credit to an individual who claimed to have purchased a home under a Wisconsin land contract in 2008 (a year during which qualifying purchases were eligible for the credit) when she made final payment under the contract's terms and received a deed to the property. The Court determined that she purchased the property in '93 (when no credit was allowable) when she executed the contract.

IRS updates list of countries with which it has nonresident alien interest reporting agreements. IRS has issued a Revenue Procedure that updates two lists of countries with which the U.S. has in effect an agreement that requires payors to report interest paid to nonresident alien individuals who are residents of the other country. One list is of countries with which the U.S. has in effect an income tax or other treaty or a bilateral agreement; the other is of countries with which IRS has an automatic exchange of information.

Institutions must be governmental entities to allocate Sec. 179D deduction to building designers. In Chief Counsel Advice (CCA), IRS explains that schools, exempts, and non-profits can allocate the newly extended Code Sec. 179D energy efficient commercial building deduction to a designer of energy efficient commercial building property only if they are governmental entities. All other entities are ineligible to make the allocation.

Fund which aggregates amounts deposited with a court is a designated settlement fund. In Chief Counsel Advice (CCA), IRS has concluded that a fund in which a court aggregated cash deposited by litigants as directed by court orders, pending the resolution of litigation, was a disputed ownership fund (DOF) taxed as a designated settlement fund and thus was subject to current income tax.

2015 changes to IRS's Employee Plans determination letter program. IRS has announced several changes to the Employee Plans determination letter program that will take effect in 2015 and that are being adopted as a result of a process improvement strategy designed to promote case processing efficiency. These changes will be reflected in Rev Proc 2015-6, 2015-IRB, which is updated on an annual basis.

IRS and national tax groups join in helping choose the right tax return preparer. In a press briefing, IRS has announced that it was joining with several national tax organizations to provide people with new options to get

information and tips on selecting tax professionals and avoiding unscrupulous return preparers. A Fact Sheet provides additional tips to keep in mind when choosing a return preparer.

Applicable Federal Rates for January. The Applicable Federal Rates for January have been released.

Practice Alert: "Last minute" year-end 2014 tax-saving moves for individuals. Although there is only a week left to go before the year ends, it's not too late to implement some planning moves that can improve a client's tax situation for 2014 and beyond. This *Practice Alert* reviews some actions that clients can take before Dec. 31 to improve their overall tax picture.

RIA Tax Watch 2014. Extenders bill is signed into law; and public law number assigned to Appropriations Act.

Washington Alert—Part I. President Obama wants to see more simplicity and fairness as part of any tax reform; IRS Commissioner Koskinen says the major cut in agency's fiscal year 2015 budget may lead to employee furloughs; IRS schedules January webinars devoted to earned income and refundable tax credits; and certain enrolled agents face Jan. 31 deadline to renew their enrollment.

Washington Alert—Part II. GAO finds several years of budget cuts for IRS have taken their toll on Exempt Organization exams; Bank Leumi agrees to pay U.S. and New York State a total of $400 million to settle tax-related cases; and GAO says IRS should review best practices in business world as part of its efforts to improve handling of call volume on taxpayer service telephone lines.

WG&L Journal Insights

Estate planning for couples entering second marriages − Part 2. The added complexity in family dynamics and potential for greater accumulated wealth present special estate planning needs, as discussed in this Estate Planning article.

Run the basis and catch maximum tax savings — Part 1. This Estate Planning article discusses how the tax focus of estate planning for many clients has shifted from reducing the taxable estate to raising basis in order to decrease future income tax.

Closely held business can enjoy captive insurance opportunity. This Estate Planning article discusses how although associated with large corporations, captive insurance companies can be available and beneficial to closely held businesses too.

New guidance sheds light on economic substance doctrine and related penalties. In Notice 2014-58, the IRS attempts to limit the application of Section 7701(o) 's economic substance doctrine and the related penalty to clearly applicable situations, as discussed in this Journal of Taxation article.

Final regs drop ' 'timely Form 5472 even though untimely return' ' rule

TD 9707, 12/23/2014; Reg § 1.6038A-1, 12/23/2014, Reg § 1.6038A-2, 12/23/2014, Reg § 1.6038A-4, 12/23/2014

IRS has issued final regs that drop the requirement that Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business," be timely filed even when the corresponding income tax return is untimely filed. The final regs contain no substantive changes to proposed regs that were issued this past June.

Background. Form 5472 is filed by a "reporting corporation" with respect to certain related-party transactions. A reporting corporation is:

. . . a 25% foreign-owned domestic corporation; or

. . . a foreign corporation engaged in a "trade or business" within the U.S. at any time during the tax year. (Code Sec. 6038A, Code Sec. 6038C)

Reg § 1.6038A-2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related party with which the reporting corporation has had any reportable transaction during the tax year.

Regs provide that: a) Form 5472 must be filed with the reporting corporation's income tax return for the tax year by the due date (including extensions) of that return (Reg § 1.6038A-2(d)); b) if the reporting corporation's income tax return is untimely filed, (i) Form 5472 nonetheless must be timely filed, and, (ii) when the reporting corporation's income tax return is ultimately filed, a copy of Form 5472 must be attached. (Reg § 1.6038A-2(e)) These regs were finalized in June, 2014 (see Weekly Alert, 06/12/2014) and are effective for tax years ending on or after June 10, 2011. (Reg § 1.6038A-1(n)(2))

At the same time that these regs were finalized, IRS also issued proposed regs that would drop the "timely Form 5472 even though untimely return" rule of Reg § 1.6038A-2(e). See Weekly Alert, 06/12/2014.

Final regs drop the "timely Form 5472 even though untimely return" rule. IRS has now adopted as final regs, without substantive change, the earlier proposed regs that drop the "timely Form 5472 even though untimely return" rule of Reg § 1.6038A-2(e). As a result, Form 5472 must be filed in all cases only with the filer's income tax return for the tax year, by the due date (including extensions) of that return.

Effective date. As a result of the change made by the new regs, Reg § 1.6038A-2(e) applies only to tax years ending on or after June 11, 2011 and before Dec. 23, 2014. (Reg § 1.6038A-1(n)(2))

References: For Form 5472 filing requirements, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ S-5148; U.S. Tax Reporter: Income at ¶ 60,414.001; Tax Desk at ¶ 815,504; RIA's Tax Guide at ¶ 60,606.

President's signature sets dates some TIPA provisions go into effect or trigger IRS actions

On Dec. 19, 2014, the President signed the "Tax Increase Prevention Act of 2014" (TIPA or the Act) into law. The President's signature sets the effective date of TIPA provisions with an effective date geared to the enactment date. It also affects some provisions that require IRS to take certain actions by dates geared to the enactment date.

Treatment of regulated investment company (RIC) as qualified investment entity extended. Gain from the disposition of a U.S. real property interest (USRPI) by a foreign person is treated as income effectively connected with a U.S. trade or business and is subject to tax and to Code Sec. 1445 withholding under the Foreign Investment in Real Property Tax Act (FIRPTA) provisions. A USRPI does not include an interest in a domestically controlled "qualified investment entity."

Under pre-Act law, before Jan. 1, 2014, a RIC that met certain requirements could be treated as a "qualified investment entity."

New law. TIPA retroactively extends the inclusion of a RIC within the definition of a "qualified investment entity" for one year, through Dec. 31, 2014. (Code Sec. 897(h)(4)(A), as amended by Act Sec. 133(a))

The change made by Act. Sec. 133(a) generally takes effect on Jan. 1, 2014, but the Act doesn't impose a withholding requirement under Code Sec. 1445 for any payment made before Dec. 19, 2014 (the date of enactment). A RIC that withheld and remitted tax under Code Sec. 1445 on distributions made after Dec. 31, 2013 and before Dec. 19, 2014 isn't liable to the distributee for such withheld and remitted amounts. (Act Sec. 133(b))

Biodiesel mixture excise tax credit extended. A producer of biodiesel and renewable diesel fuel mixtures can claim an excise tax credit, against the Code Sec. 4081 removal-at-terminal excise tax, for fuels sold or used in the U.S. equal to 50¢ multiplied by the number of gallons of alternative fuel or gasoline gallon sold or used by the taxpayer.

Under pre-Act law, the credit didn't apply to any sale, use, or removal of fuel after Dec. 31, 2013.

New law. TIPA retroactively extends the excise tax credit for one year so that it applies to sales, use, or removal of biodiesel mixtures through Dec. 31, 2014. (Code Sec. 6426(c)(6), as amended by Act Sec. 160(a)(1))

The changes made by Act. Sec. 160 generally apply to fuel sold or used after Dec. 31, 2013. The Act directs IRS to issue guidance not later than Jan. 18, 2015 (i.e., within 30 days of the Dec. 19, 2014 enactment date), that sets out procedures and deadlines for claiming the credit for periods after Dec. 31, 2013 and before Dec. 19, 2014.

Alternate fuels & mixtures excise tax credit extended. A 50¢-per-gallon (or gasoline gallon equivalent for non-liquid fuel) excise tax credit is allowed against the Code Sec. 4041 retail fuel excise tax liability, for alternative fuel sold for use or used by a taxpayer. A credit is also allowed against the Code Sec. 4081 removal at terminal excise tax liability, for alternative fuel used to produce an alternative fuel mixture for sale or use in the taxpayer's trade or business. A taxpayer may claim an excise tax refund (or, in some cases, a credit against income tax) to the extent the taxpayer's alternative fuel or mixture excise tax credit exceeds the taxpayer's Code Sec. 4041 or Code Sec. 4081 liability.

Under pre-Act law, the alternative fuel and alternative fuel mixture excise tax credit, and the refund rules generally didn't apply for any sale or use after Dec. 31, 2013 (after Sept. 30, 2014, for all fuels involving liquefied hydrogen).

New law. TIPA retroactively extends the alternative fuel and alternative fuel mixture tax incentives through Dec. 31, 2014 (including those related to hydrogen). (Code Sec. 6426(d)(5) and Code Sec. 6426(e)(3), as amended by Act Sec. 160(b)(1); Code Sec. 6427(e)(6), as amended by Act Sec. 160(b)(2)) The amendments that pertain to hydrogen apply to fuel sold or used after Sept. 30, 2014. (Act Sec. 160(d)) The Act further directs IRS to issue guidance not later than Jan. 18, 2015 (i.e., within 30 days of the Dec. 19, 2014 enactment date) that sets out procedures and deadlines for claiming the credit for periods after Dec. 31, 2013 and before Dec. 19, 2014. (Act Sec. 160(e))

Some ABLE accounts get bankruptcy exemption. Under pre-Act law, there wasn't a tax-advantaged savings program specifically targeted to persons with disabilities.

New law. As discussed in detail at Weekly Alert, 12/24/2014, for tax years beginning after Dec. 31, 2014, TIPA allows states to establish tax-exempt "Achieving a Better Life Experience" (ABLE) accounts to assist persons with disabilities in building an account to pay for qualified disability expenses. One provision related to ABLE accounts provides that property of a bankruptcy estate doesn't include funds placed in an ABLE account no later than 365 days before the filing date of the bankruptcy petition. (11 USCS 541(b)(10) as amended by Act Sec. 104(a) Div B), but only if the designated beneficiary of the account was the debtor's child, stepchild, grandchild, or step-grandchild for the tax year for which funds were placed in the account. (11 USCS 541(b)(10)(A))

And, the exclusion is limited to $6,225 for funds placed in all ABLE accounts having the same designated beneficiary no earlier than 720 days nor later than 365 days before the filing date. (11 USCS 541(b)(10)(C))

Other rules limit this exemption; one such rule provides that no exemption is provided for contributions in excess of the annual contribution limit, which is the annual gift tax exclusion amount. (11 USCS 541(b)(10)(B))

These provisions apply to bankruptcy cases begun under title 11 of the U.S. Code on or after Dec. 19, 2014. (Act Sec. 104(d) Div B)

Certified professional employer organizations. Under pre-Act law, when a business contracts with a professional employer organization (PEO) to administer its payroll functions, the business customer remains responsible for all withholding taxes with respect to its employees. Thus, even though the PEO pays the employees, the customer remains liable if the PEO fails to withhold or remit the taxes or otherwise comply with related reporting requirements.

New law. For wages paid by a certified PEO for services performed by an employee on or after Jan. 1, 2016, (i.e., the first calendar year beginning more than 12 months after the Dec. 19, 2014 enactment date), the Act authorizes IRS to certify qualifying PEOs, which would allow the PEO to become solely responsible for the customer's employment taxes. To be certified by IRS, a PEO has to satisfy various require-

ments—such as reporting obligations, posting a bond in case the PEO fails to satisfy its employment tax withholding and payment obligations, and submitting audited financial statements—intended to ensure that the PEO properly remits wages and employment taxes. The PEO is also subject to an annual fee of $1,000. (Act Sec. 206 Div B) IRS must establish the PEO certification program not later than July 1, 2015 (i.e., six months before the above effective date).

Exclusion of dividends from controlled foreign corporations from the definition of personal holding company income. Under current law, the personal holding company tax, i.e., an additional 20% tax on personal holding company income (Code Sec. 541), applies to the retained passive income of corporations that are majority-owned by five or fewer individuals and more than 60% of whose income consists of certain types of passive income (Code Sec. 542) such as dividends, interest, and royalties—including dividends derived from an active trade or business of a foreign subsidiary (Code Sec. 543(a)(1)).

New law. For tax years ending on or after Dec. 19, 2014, the Act excludes dividends received from a foreign subsidiary from personal holding company income, though the dividends would remain subject to corporate income tax. (Act Sec. 207 Div B)

Increase in continuous levy. The effect of a levy on "specified payments" payable to or received by a taxpayer is continuous from the date the levy is first made until the levy is released, if the levy is approved by IRS. (Code Sec. 6331(h)(1)) Specified payments include certain government payments and certain amounts otherwise exempt from levy. (Code Sec. 6331(h)(2)) With exceptions not relevant here, this continuous levy attaches to up to 15% of any specified payment due to the taxpayer. (Code Sec. 6331(h)(1))

New law. For payments made after June 17, 2015 (i.e., 180 days after the date of enactment), IRS is authorized to continuously levy up to 30% of specified payments to a Medicare provider. (Act Sec. 209 Div B)

President's signature sets effective date of pension changes under Appropriation Act

On Dec. 16, 2014, the President signed into law the Appropriations Act, i.e., the Consolidated and Further Continuing Appropriations Act of 2015 (H.R. 83; the Act). His signature set the effective date for these multiemployer pension plan provisions that were included, among others, in the Act:

. . . a provision precluding PBGC from using 2015 Appropriations Act funds to take action in connection with an ERISA § 4062(e) event. This provision is effective on Dec. 16, 2014 (the date of enactment). (Act Sec. 109 Div G);

. . . a provision eliminating the sunset provision that would have applied to the automatic five-year extension of the full-funding amortization periods for multiemployer plans under the Pension Protection Act (PPA). This provision is effective on Dec. 16, 2014 (the date of enactment). (Subtitle C of Title II of the PPA, P.L. 109-280, 8/17/2006, as repealed by Act Sec. 101(a) Div O);

. . . a provision stating that, for purposes of ERISA § 4022A(a), in the case of a qualified preretirement survivor annuity payable to the surviving spouse of a participant under a multiemployer plan which becomes insolvent under ERISA § 4245(b) or ERISA § 4281(d)(2), or is terminated, such annuity will not be treated as forfeitable solely because the participant has not died as of the date on which the plan became so insolvent, or the termination date. (ERISA § 4022A(c)(4), as amended by Act Sec. 110(a) Div O) This change is retroactively applicable to multiemployer plan benefit payments becoming payable on or after Jan. 1, '85, except where the surviving spouse has died before Dec. 16, 2014 (the date of enactment); and

. . . a provision allowing trustees of severely underfunded plans to adjust vested benefits without violating the Code Sec. 411(d)(6) "anti-cutback" rule, which may enable deeply troubled plans to survive without a federal bailout. Specifically, if a multiemployer pension plan is in "critical and declining status," the Code Sec. 432(a)(2) rehabilitation plan rules must be applied, and the plan sponsor may by plan amendment suspend benefits if certain requirements are met. This provision is effective on Dec. 16, 2014 (the date of enactment). (Code Sec. 432(a)(3), as amended by Act Sec. 201(b)(1) Div O)

Proposed regs would expand on previous guidance regarding installment obligation dispositions

Preamble to Prop Reg, 12/22/2014; Prop Reg § 1.351-1, 12/22/2014, Prop Reg § 1.361-1, 12/22/

2014, Prop Reg § 1.453B-1, 12/22/2014, Prop Reg § 1.721-1, 12/22/2014

IRS has issued proposed regs that would consolidate and expand upon rules contained in a reg and a revenue ruling on whether the disposition of an installment obligation results in the recognition of gain or loss.

Background. In general, under Code Sec. 453B(a), gain or loss is recognized upon the satisfaction of an installment obligation at other than its face value, or upon the distribution, transmission, sale, or other disposition of the installment obligation. Reg § 1.453-9(c)(2), issued under former Code Sec. 453(d), provides an exception to the general rule. Under Reg § 1.453-9(c)(2), if the Code provides an exception to the recognition of gain or loss for certain dispositions, then gain or loss is not recognized under former Code Sec. 453(d) on the disposition of an installment obligation within that exception. The exceptions identified in Reg § 1.453-9(c)(2) include certain transfers to corporations under Code Sec. 351 and Code Sec. 361, contributions to partnerships under Code Sec. 721, and distributions by partnerships to partners under Code Sec. 731 (except as provided by Code Sec. 736 and Code Sec. 751).

Under Rev Rul 73-423, 1973-2 CB 161, the exceptions in Reg § 1.453-9(c)(2) to recognition of gain or loss under the installment sale rules do not apply to the transfer of an installment obligation that results in a satisfaction of the obligation. The revenue ruling holds that the transfer of a corporation's installment obligation to the issuing corporation in exchange for stock of the issuing corporation results in a satisfaction of the obligation. In that case, the transferor must recognize gain or loss on the satisfaction of the obligation to the extent of the difference between the transferor's basis in the obligation and the fair market value of the stock received, even though gain or loss generally is not recognized on Code Sec. 351 transfers.

Proposed regs would consolidate and expand upon existing rules. The proposed regs would republish in Prop Reg § 1.453B-1(c) the general rule in Reg § 1.453-9(c)(2) under which gain or loss is not recognized upon certain dispositions. In addition, the proposed regs would incorporate and expand the holding of Rev Rul 73-423 to provide that a transferor recognizes gain or loss under Code Sec. 453B(a) when the transferor disposes of an installment obligation in a transaction that results in the satisfaction of the installment obligation. Finally, the proposed regs would amend regs under Code Sec. 351, Code Sec. 361, and Code Sec. 721 to include a cross-reference to the regs under Code Sec. 453B regarding recognition of any gain or loss upon the satisfaction of an installment obligation.

The proposed regs would make the following changes/additions to the previously existing rules:

. . . The circumstances under which a disposition pursuant to Code Sec. 731 would not be shielded from recognition of gain or loss, which previously were limited to circumstances described in Code Sec. 736 and Code Sec. 751 (see above), would also include circumstances described in Code Sec. 704(c)(1)(B) (distributions by partnership of property contributed within the last 7 years) and Code Sec. 737 (recognition of precontribution gain in the case of certain distributions to contributing partner). (Prop Reg § 1.453B-1(c)(1)(i)(C))

. . . The proposed regs would add the following additional example of a disposition that results in a satisfaction of an installment transaction and thus isn't shielded from recognition of gain or loss: The receipt of an interest in a partnership from the partnership in satisfaction of an installment obligation of the partnership. (Prop Reg § 1.453B-1(c)(1)(ii)(B))

Effective date. The proposed regs would apply to satisfactions, distributions, transmissions, sales, or other dispositions of installment obligations after the date the regs are published as final regs in the Federal Register. (Prop Reg § 1.453B-1(c)(2))

References: For disposition of installment obligations, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ G-5450; U.S. Tax Reporter: Income at ¶ 453B4; Tax Desk at ¶ 465,002; RIA's Tax Guide at ¶ 7101.

TEFRA doesn't apply to employment tax examinations or worker classification proceedings

Legal Advice Issued by Field Attorneys 20145001F

In Legal Advice Issued by Field Attorneys (LAFA), IRS has concluded that the unified partnership audit rules under the Tax Equity and Fiscal Responsibility Act of '82 (TEFRA, (P.L. 97-248)), as codified in Code Sec. 6221 – Code Sec. 6234, don't apply to employment tax examinations or worker classification proceedings for entities that are otherwise subject to TEFRA for income tax purposes. Accordingly, IRS

revenue agents do not need to follow any special procedures when conducting employment tax examinations of TEFRA partnerships.

Background. Under the TEFRA partnership procedures, before assessing the tax liability of the partners, IRS determines the tax treatment of partnership items in a partnership-level proceeding. (Code Sec. 6225)

Under the partnership audit rules, the tax treatment of any partnership item (see below), and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, generally is determined at the partnership level. (Code Sec. 6221) A partner whose tax liability might be affected by the outcome of the litigation of partnership items may participate in the proceeding. (Code Sec. 6224) IRS may assess additional tax liability against individual partners within one year of the final conclusion of the partnership's tax determination. (Code Sec. 6229(d))

A partnership item is any item required to be taken into account for the entity's tax year under the Code's income tax provisions, to the extent IRS regs provide that the item is more appropriately determined at the partnership level than at the partner level. (Code Sec. 6231(a)(3)) Reg § 301.6231(a)(3)-1 provides a list of such items. A nonpartnership item is an item that is (or is treated as) not a partnership item. (Code Sec. 6231(a)(4)) An affected item is any item to the extent the item is affected by a partnership item. (Code Sec. 6231(a)(5))

For IRS to adjust any partnership items, it must send a final partnership administrative adjustment (FPAA) to the partners identified as notice partners on the partnership return for the year at issue. (Code Sec. 6223(d)(2)) For 90 days after issuance of an FPAA, the tax matters partner (TMP) has the exclusive right to petition the Tax Court, Court of Federal Claims, or a U.S. District Court for an adjustment of the partnership items. (Code Sec. 6226(a)) Thereafter, other partners have 60 days to file a petition for readjustment. (Code Sec. 6226(b)(1))

Under Code Sec. 7436, if, in connection with the audit of any person, there is an actual controversy involving a determination by IRS as part of an examination that (1) one or more persons performing services for such person are employees of the person for purposes of subtitle C (Employment Taxes and Collection of Income Tax); or (2) the person isn't entitled to treatment under § 530(a) of the Revenue Act of '78 with respect to the individual, then the Tax Court may determine the correctness of IRS's determination and of the amount of employment tax owed following the filing of an appropriate pleading.

Such employment-related proceedings incorporate many procedures that apply to deficiency cases. Specifically, the principles of Code Sec. 6213(a) – Code Sec. 6213(d) (restrictions on deficiencies and Tax Court petitions), Code Sec. 6213(f) (waivers of deficiencies), Code Sec. 6214(a) (Tax Court determinations), Code Sec. 6215 (assessment of deficiencies found by Tax Court), Code Sec. 6503(a) (the suspension of limitation periods), Code Sec. 6512 (limitations in the case of Tax Court petitions), and Code Sec. 7481 (when Tax Court decisions become final) apply in the same manner as if IRS's determination were a Notice of Deficiency. Within those incorporated sections, the only references to TEFRA relate to suspending the statute of limitations and to the overpayments relating to partnership items—see Code Sec. 6503(a), Code Sec. 6512(a)(4), and Code Sec. 6512(b)(3) (flush language). Additionally, the TEFRA statutes make no reference to Code Sec. 7436 or to Subtitle C of the Code.

LAFA's conclusion. IRS determined that a taxpayer, a limited liability company (LLC) treated as a partnership for tax purposes, was subject to TEFRA for income tax purposes, but that the TEFRA procedures didn't apply to employment tax examinations or to worker classification proceedings.

IRS reasoned that the employment tax liabilities that might arise under audit aren't subject to direct determination under the TEFRA procedures. Under Code Sec. 6221 and Code Sec. 6231(a)(3), the TEFRA partnership procedures are limited to "partnership items," which are items under Subtitle A of the Code. Employment taxes are imposed under Subtitle C.

Furthermore, IRS noted that in *Chef's Choice v. Comm., (1990) 95 TC 388*, the Tax Court explained that the intent of the TEFRA provisions was merely to aggregate the partners' income tax deficiency proceedings into a single proceeding insofar as their income tax liability derived from a partnership. Since the partnership does not pay income tax, it is not even a party to the TEFRA proceeding relating to income tax determinations.

Finally, IRS found that an employment tax liability under Chapters 21–25 does not meet the Code Sec. 6211(a) definition of a "deficiency" to which the

TEFRA restriction on assessment under Code Sec. 6225 could apply. Thus, no notice of final partnership administrative adjustment would be required under Code Sec. 6225 in order to make an employment tax assessment.

References: For the unified audit rules for partnerships, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ T-2100 *et seq.*; U.S. Tax Reporter: Income at ¶ 62,214; Tax Desk at ¶ 825,000; RIA's Tax Guide at ¶ 70400.

IRS reminder: act by 12/31/14 to claim extended qualified charitable contribution break

IR 2014-117, 12/23/2014

An IRS news release reminds eligible taxpayers that, thanks to the recently enacted Tax Increase Prevention Act (TIPA), they have until Wednesday, Dec. 31, 2014, to make qualified charitable distributions (QCDs) from their IRAs. Such distributions, available only to taxpayers age 70-1/2 or older, aren't taxable, but don't yield a charitable deduction. They do count as required minimum distributions (RMDs).

Last minute tax break. TIPA, enacted Dec. 19, 2014, extended for 2014 the provision authorizing QCDs. (Code Sec. 408(d)(8)(F), as amended by Act Sec. 108(a)) Under pre-Act law, the provision had expired at the end of 2013.

QCDs aren't subject to the general percentage limitations that apply for making charitable contributions since they aren't included in gross income and can't be claimed as a deduction on the taxpayer's return. Since such a distribution isn't includible in gross income, it doesn't increase AGI for purposes of the phaseout of any deduction, exclusion, or tax credit that is limited or lost completely when AGI reaches certain specified levels.

As IR 2014-117 stresses, the funds must be transferred directly by the IRA trustee to the eligible charity in order to qualify as a QCD. The transfer must be made no later than Dec. 31, 2014. Distributed amounts may be excluded from the IRA owner's income – resulting in lower taxable income for the IRA owner. However, if the IRA owner excludes the distribution from income, no deduction, such as a charitable contribution deduction on Schedule A, may be taken for the distributed amount.

Amounts transferred to a charity from an IRA are counted in determining whether the owner has met the RMD rules.

observation: Taxpayers who haven't yet taken their RMD for 2014 still have time to make the most of this retroactively extended tax break. If any amount distributed directly from a taxpayer's IRA to an eligible charity no later than Dec. 31, 2014, at least equals the amount of his RMD for the tax year, the taxpayer will not be required to take any other 2014 distribution from the IRA.

IR 2014-117 also reminds taxpayers that:

- Not all charities are eligible under the QCD rules. For example, donor-advised funds and supporting organizations are not eligible recipients.
- Where individuals have made nondeductible contributions to their traditional IRAs, a special rule (at Code Sec. 408(d)(8)(D)) treats amounts distributed to charities as coming first from taxable funds, instead of proportionately from taxable and nontaxable funds, as would be the case with regular distributions.
- QCDs are reported on Form 1040 Line 15. The full amount of the QCD is shown on Line 15a ("IRA distributions"). Taxpayers are instructed not to enter any of these amounts on Line 15b ("Taxable amount") but to write "QCD" next to that line.

References: For qualified charitable distributions (QCDs), see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-12253.2; U.S. Tax Reporter: Income at ¶ 4084.03; Tax Desk at ¶ 143,003.2; RIA's Tax Guide at ¶ 8516.

Wrap-around health coverage could qualify as excepted benefits under pilot program

Preamble to Prop Reg, 12/19/2014; Prop Reg § 54.9831-1, 12/19/2014; Proposed Labor Reg § 2590.732(c)(3)(vii)

IRS, EBSA, and the Department of Health and Human Services (HHS) (the Departments) have issued new proposed regs that would create a pilot program for allowing plan sponsors in limited circumstances to offer, as excepted benefits, coverage that wraps around certain individual health insurance coverage in certain circumstances ("wraparound coverage") that could qualify for exemption from the group health plan requirements imposed by both the Health Insurance Portability and Accountability Act (HIPAA, P.L. 104-191) and the Affordable Care Act (ACA, P.L. 111-148, P.L. 111-152).

Background. As enacted by HIPAA, ACA and other statutes, both the Code and ERISA subject group

health plans to a variety of requirements. However, these requirements generally don't apply to "excepted benefits," including limited excepted benefits that (a) are provided under a separate policy, certificate, or contract of insurance; or (b) are otherwise not an integral part of the plan. (Code Sec. 9831(c)(1)) Specifically, the benefits offered separately from a group health plan that may be excepted are:

(1) limited scope dental or vision benefits; (Code Sec. 9832(c)(2)(A))

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of those benefits; (Code Sec. 9832(c)(2)(B))

(3) other similar, limited benefits as specified in regs. (Code Sec. 9832(c)(2)(C))

In September 2014, the Departments finalized proposed regs, which had been issued in December 2013 (see Weekly Alert, 12/26/2013), by adopting rules concerning certain limited excepted benefits, including dental and vision benefits and employee assistance programs. However, the Departments passed on issuing final regs on wraparound coverage, which had been included in those proposals, and stated that they were continuing to take into account extensive comments on their proposals to include some wraparound benefits as excepted benefits, and they intended to publish regs addressing limited wraparound coverage in the future. (See Weekly Alert, 10/9/2014 for more details on the final regs.)

Wraparound coverage. Under ACA, non-grandfathered health plans in the individual and small group markets must cover essential health benefits (EHBs), which include items and services in ten statutorily specified categories that are equal in scope to a typical employer plan. However, self-insured group health plans and health insurance coverage in the large group market often cover items and services in addition to these types of services—including for example, routine adult vision and dental care, long-term/custodial nursing home care, nonmedically necessary pediatric orthodontia, and coverage that extends beyond the benchmark plan's coverage of wellness programs, manipulative treatment, infertility, home health care, private duty nursing, hospice, or certain non-traditional treatments.

According to the Departments, experts suggest that most workers who are offered minimum value employer-sponsored coverage will not meet the criteria for the premiums to be considered to be "unaffordable," so that the premiums will not qualify for the premium tax credit for enrolling in coverage through an Exchange. Nevertheless, in some cases, employer plans may be unaffordable for some employees, so that these individuals might purchase coverage through an Exchange with a premium tax credit. Group health plan sponsors have asked whether "wraparound" coverage could be provided for employees for whom the employer premium is unaffordable and who obtain coverage through an Exchange, which would allow employers to provide these employees with overall coverage that is comparable to the group health plan coverage, taking into account both the wraparound coverage and the Exchange coverage.

In the original proposal, employer-provided wraparound coverage would constitute excepted benefits (limited wraparound coverage), and therefore would not disqualify an employee from eligibility for the premium tax credit and cost-sharing reductions, if five conditions were met. Under the new proposed regs (below), there would be a similar set of five conditions, but there would be two options concerning one of those conditions, as described below. In addition, the proposed regs would include a sunset date and, thus, would operate as a pilot program for the treatment of wraparound coverage.

New proposed regs—conditions for treating wraparound coverage as excepted benefit. The proposed regs set forth five requirements under which limited benefits provided through a group health plan that wrap around either eligible individual insurance or coverage under a multi-state plan (limited wraparound coverage) would constitute excepted benefits. Specifically:

(1) The limited wraparound coverage would have to be specifically designed to wrap around eligible individual health insurance or multi-state plan coverage. In other words, the limited wraparound coverage would have to provide meaningful benefits beyond coverage of cost sharing under the eligible individual health insurance. The limited wraparound coverage would not be permitted to provide benefits solely under a coordination-of-benefits provision and could not be solely an account-based reimbursement arrangement.

(2) The limited wraparound coverage would be limited in amount. Specifically, the annual cost of coverage per employee (and any covered dependents) under the limited wraparound coverage could

not exceed the maximum annual contribution for health FSAs, which is $2,550 in 2015.

(3) The limited wraparound coverage would have to meet three requirements relating to nondiscrimination: (a) the coverage could not impose any preexisting condition exclusion; (b) the coverage could not discriminate against individuals in eligibility, benefits, or premiums based on any health factor of an individual; and (c) neither the primary group health plan coverage nor the limited wraparound coverage could fail to comply with the ban on discrimination in favor of highly-compensated persons.

(4) Individuals eligible for the limited wraparound coverage could not be enrolled in excepted benefit coverage that is a health FSA. In addition, plans would have to comply with one of two alternative sets of standards relating to eligibility and benefits (see below).

(5) Under a reporting requirement, a self-insured group health plan, or a health insurance issuer offering or proposing to offer multi-state plan wraparound coverage, would have to report to the Office of Personnel Management (OPM), information OPM reasonably requires to determine whether the plan or issuer qualifies to offer such coverage or complies with the applicable requirements of the regs. In addition, the plan sponsor of any group health plan offering either limited wraparound coverage that wraps around eligible individual health insurance or multi-state plan coverage would have to report to HHS information that HHS reasonably requires to determine whether the exception for limited wraparound coverage under these proposed regs would allow plan sponsors to provide workers with comparable benefits whether enrolled in minimum essential coverage under a group health plan offered by the plan sponsor, or a qualified health plan with additional limited wraparound coverage offered by the plan sponsor, without causing an erosion of coverage.

Individual insurance or multi-state plan options. As noted above (see Item (4)), under the proposed regs, plans would have to comply with one of two alternative sets of standards relating to eligibility and benefits: (i) a set of plan eligibility requirements that would apply to wraparound benefits offered in conjunction with eligible individual health insurance for persons who are not full-time employees, or (ii) a separate set of standards that would apply to coverage that wraps around certain multi-state plan coverage.

Under the first option, limited coverage that wraps around eligible individual health insurance for an individual who is not a full-time employee would have to satisfy three standards relating to plan eligibility. First, for each year that wraparound coverage is offered, full-time employees would have to be offered coverage that is substantially similar to an offer of minimum essential coverage to at least 95% of its full-time employees, that provides minimum value, and which is reasonably expected to be affordable. Second, eligibility for the limited wraparound coverage would have to be limited to employees who are not full-time employees (and their dependents), or who are retirees (and their dependents). Third, other group health plan coverage, not limited to excepted benefits, would have to be offered to the individuals eligible for the wraparound coverage.

Under the second option, for multi-state plan limited wraparound coverage, four requirements would have to be satisfied. First, the limited wraparound coverage would have to be specifically designed and approved by OPM to provide benefits in conjunction with coverage under a multi-state plan, as authorized by ACA § 1334. Second, the employer would have to have offered coverage in the plan year that begins in 2014 that is substantially similar to an offer of minimum essential coverage to at least 95% of its full-time employees. Third, in the plan year that begins in 2014, the employer must have offered coverage to a substantial portion of full-time employees that provided minimum value and was affordable. Fourth, for the duration of the pilot program, the employer's annual aggregate contributions for both primary and limited wraparound coverage would have to be substantially the same as the employer's aggregate contributions for coverage offered to full-time employees in 2014.

Pilot project. Under the proposed regs, this type of wraparound coverage could be offered as excepted benefits to coverage that is first offered no later than Dec. 31, 2017, and that ends on the later of: (1) the date that is three years after the date wraparound coverage is first offered; or (2) the date on which the last collective bargaining agreement relating to the plan terminates after the date wraparound coverage is first offered (determined without regard to any extension agreed to after the date the wraparound coverage is first offered).

References: For group-health plan portability, access, renewability, and parity rules, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-1325; U.S. Tax Reporter: Income at ¶ 49,80D4; RIA's Tax Guide at ¶ 7617.

IRS rules on depreciation of outdoor advertising displays reclassified as real property

IRS Letter Ruling 201450001

In a private letter ruling, IRS has concluded that where a builder of outdoor advertising displays makes an election under Code Sec. 1033(g) to change its treatment of those displays from personal property to real property, 1) the displays are to be depreciated under a rule that applies when there is a change in use of property, and 2) there is not an accounting method change that requires IRS's consent.

Background. Code Sec. 1033(g)(3)(A) provides that a taxpayer may elect to treat property that constitutes an outdoor advertising display as real property for income tax purposes.

The depreciation deduction is generally determined under Code Sec. 168. A taxpayer computes the depreciation deduction by using a prescribed depreciation method, recovery period, and convention. The applicable recovery period is determined by reference to class life or by statute.

Per Rev Proc 87-56, 1987-2 CB 674, billboards are in asset class 57.1 As such, their applicable recovery period under Code Sec. 168(c) is 15 years, and their applicable depreciation method under Code Sec. 168(b)(2) is the 150% declining balance method of depreciation (switching to the straight-line method of depreciation in the tax year in which that method provides a larger deduction).

Code Sec. 168(i)(5) provides that IRS must, by regs, provide for the method of determining the depreciation deduction with respect to any tangible property for any tax year (and the succeeding tax years) during which such property changes status under Code Sec. 168 but continues to be held by the same person.

Reg § 1.168(i)-4 provides the rules under Code Sec. 168(i)(5). Reg § 1.168(i)-4(d)(1) provides that Reg § 1.168(i)-4(d) applies to a change in the use of MACRS property during a tax year subsequent to the placed-in-service year if the property (i) continues to be MACRS property owned by the same taxpayer, and (ii) as a result of the change in the use, has a different recovery period, a different depreciation method, or both. Reg § 1.168(i)-4(d)(2)(i) provides that a change in the use of MACRS property occurs when the primary use of the MACRS property in the tax year is different from its primary use in the immediately preceding tax year.

Under Reg § 1.168(i)-4(f), a change in computing the depreciation allowance in the year of change for property subject to Reg § 1.168(i)-4 is not a change in method of accounting under Code Sec. 446(e).

Under Reg § 1.446-1(e)(2)(i), except as otherwise expressly provided, a taxpayer who changes a method of accounting must, before computing the taxpayer's income using such new method, secure IRS's consent.

Reg § 1.446-1(e)(2)(ii)(d)(2)(i) specifies that a change in the depreciation or amortization method, period of recovery or convention of a depreciable or amortizable asset is a change in method of accounting. However, Reg § 1.446-1(e)(2)(ii)(d)(3)(ii) provides that a change in computing depreciation or amortization allowances in the tax year in which the use of an asset changes in the hands of the same taxpayer is not a change in method of accounting.

Facts. Taxpayer is in the business of building and maintaining outdoor advertising displays and making available space on such displays to advertisers.

Taxpayer intends to file an election, that will meet the requirements under Code Sec. 1033(g)(3), to treat its permanently affixed outdoor advertising displays as real property for income tax purposes. Taxpayer has classified some of those displays, i.e., its LED displays, as 5-year property and depreciated such displays using a 5-year recovery period and the 200% declining balance method of depreciation, switching to the straight-line method of depreciation.

Following the election under Code Sec. 1033(g)(3), all of Taxpayer's outdoor advertising displays (including the outdoor LED displays) will be classified as 15-year property and will be depreciated using a 15-year recovery period and the 150% declining balance method of depreciation, switching to the straight-line method of depreciation.

Depreciation should be computed under Reg § 1.168(i)-4; no IRS consent needed. IRS noted that, prior to the Code Sec. 1033(g)(3) election, Taxpayer determined that the outdoor LED advertising displays were tangible personal property for depreciation purposes. As a result of its election under Code Sec. 1033(g)(3), Taxpayer's outdoor LED advertising displays will cease to be tangible personal property and will begin to be real property for income tax purposes. This change from tangible personal property to real property will result in its LED advertising displays being reclassified from 5-year property to 15-year property. Accordingly, the change of Taxpayer's out-

door LED advertising displays to real property, as a result of the Code Sec. 1033(g)(3) election, constitutes a change in the use of such property.

Therefore, IRS concluded that:

. . . the depreciation allowance for any of Taxpayer's outdoor LED advertising displays whose applicable recovery period or applicable depreciation method changes as a result of Taxpayer making an election under Code Sec. 1033(g)(3) is to be determined under Reg § 1.168(i)-4(d) for the tax year in which the election is effective and any subsequent tax year; and

. . . the required changes in the determination of the depreciation allowance for any of Taxpayer's outdoor LED advertising displays, as a result of the election under Code Sec. 1033(g)(3), are not a change in method of accounting that requires IRS consent.

References: For election to treat outdoor advertising displays are real property, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ I-3781; U.S. Tax Reporter: Income at ¶ 10,334.26; Tax Desk at ¶ 229,755; RIA's Tax Guide at ¶ 10443.

Proposed regs would amend SBC and uniform glossary requirements for health plans

Preamble to Prop Reg, 12/22/2014; Prop Reg § 54.9815-2715, 12/22/2014; Proposed Labor Reg § 2590.715-2715

IRS, EBSA, and the Department of Health and Human Services (HHS) (the Departments) have issued proposed regs that would amend final regs concerning disclosure rules for group health plans and health insurance issuers with regard to a "summary of benefits and coverage" (SBC) and a uniform glossary. The proposed regs would clarify when and how a plan or issuer must provide an SBC, and streamline and shorten the SBC template, while also adding certain additional elements that the Departments believe will be useful to consumers. In addition, some enforcement safe harbors and transitions would be made permanent, thereby discontinuing all temporary enforcement policies that the Departments have used as a bridge to a permanent rule.

Background. Section 2715 of the Public Health Service Act (PHSA), incorporated by Code Sec. 9815(a)(1) and ERISA § 715(a)(1) as part of the Affordable Care Act (ACA, P.L. 111-148, P.L. 111-152), directs the Departments, in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to "develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage."

Final regs issued in 2012 establish the standards required to be met under PHSA § 2715 and ensure that the information provided in the SBC and the accompanying uniform glossary is presented in clear language, and in a uniform format, so that consumers are better able to understand their coverage and compare coverage options (see Weekly Alert, 2/16/2012). In addition, the Departments have issued a series of Frequently Asked Questions (FAQs) regarding implementation of the SBC provisions related to compliance with the final regs.

Proposed changes. The Departments are issuing the proposed regs, as well as a new set of proposed SBC templates, instructions, an updated uniform glossary, and other materials (available online at http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html), to incorporate some of the feedback the Departments have received and to make some improvements to the template. Among other things, the proposed regs would:

. . . clarify when a health insurance issuer offering group health insurance coverage must provide an SBC again, if the issuer has already provided the SBC before application for coverage. Specifically, if the issuer provides the SBC before application for coverage, the requirement to provide an SBC upon application would be deemed satisfied, and the issuer would not be required to automatically provide another SBC on application to the same entity, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the correct information would have to be provided on application. (Prop Reg § 54.9815-2715(a)(1)(i))

. . . clarify how to satisfy the requirement to provide an SBC when the terms of coverage are not finalized. If the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, the plan or issuer would not be required to provide an updated SBC (unless an updated SBC is requested) until the first day of coverage. The updated SBC would have to

reflect the final coverage terms under the contract, certificate, or policy of insurance that was purchased. (Prop Reg § 54.9815-2715(a)(1)(ii))

. . . add an additional provision ensuring against unnecessary duplication. Where an entity required to provide an SBC with respect to an individual has entered into a binding contract with another party to provide the SBC to the individual, the proposed regs provide that specified conditions must be met for the SBC disclosure requirement to be considered satisfied. (Prop Reg § 54.9815-2715(a)(1)(iii)(A))

. . . end a temporary enforcement safe harbor which permitted statements about minimum essential coverage and minimum value to be included in a cover letter rather than in the SBC. Accordingly, effective for SBCs that are subject to the regs (see "Effective date" below), statements regarding minimum essential coverage and minimum value would have to be included in the SBC. (Preamble to Prop Reg)

. . . require a qualified health plan issuer to disclose on the SBC whether abortion services are covered or excluded and whether coverage is limited to services for which federal funding is allowed (excepted abortion services). Under the draft instruction guide released concurrently with the proposed regs, coverage of abortion services must be described in the "services your plan does not cover" or "other covered services" section of the SBC. (Preamble to Prop Reg)

. . . clarify that while all plans and issuers must include on the SBC contact information for questions, only issuers must also include an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. For the group market only, because the actual "certificate of coverage" is not available until after the plan sponsor has negotiated the terms of coverage with the issuer, an issuer would be permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it would have to be easily available to plan sponsors and participants and beneficiaries via an Internet web address. (Prop Reg § 54.9815-2715(a)(2)(i)(J))

The new SBC template that has been published contemporaneously with the proposed regs would eliminate some information from the SBC that is not required by statute, which would make it easier for plans to include all of the required information in the SBC while also satisfying the statutory page limit.

Effective date. The Departments have proposed that the changes apply, for disclosures with respect to participants and beneficiaries who enroll or re-enroll in group health coverage through an open enrollment period, beginning on the first day of the first open enrollment period that begins on or after Sept. 1, 2015. For disclosures to participants and beneficiaries who enroll in group health coverage other than through an open enrollment period (including those newly eligible for coverage), the revised requirements would apply beginning on the first day of the first plan year that begins on or after Sept. 1, 2015. (Preamble to Prop Reg)

References: For group health plans' obligation to provide an SBC and uniform glossary, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-1325.67A; U.S. Tax Reporter: Income at ¶ 98,154.14.

No homebuyer credit because purchase was on execution of contract, not on final payment

Rose A. Wodack, TC Memo 2014-254

The Tax Court has denied a Code Sec. 36 first-time homebuyer tax credit to an individual who claimed to have purchased a home under a Wisconsin land contract in 2008 (a year during which qualifying purchases were eligible for the credit) when she made final payment under the contract's terms and received a deed to the property. The Court determined that she purchased the property in '93 (when no credit was allowable) when she executed the contract.

Facts. On Aug. 3, '93, the taxpayer, Rose A. Wodack, entered into a seller-financed land contract for a tract of land and a residence (property) with Howard Schlise, an unrelated person. The contract stated that the seller would transfer the property to the purchaser upon full performance of the contract by her. The purchase price was $27,500. It was payable with a $1,000 downpayment and monthly payments of $222.39 over a 5-year term. Interest accrued at the rate of 9%. The contract called for full payment of the outstanding balance by Sept. 1, '98, but allowed the purchaser to renew the contract for additional 5-year terms if she took certain actions and agreed to specified conditions.

Under the contract, Wodack had to pay Schlise annual property taxes, special assessments, and fire and other required insurance premiums. He was to hold these amounts in escrow and apply them to the obligations when they became due. She agreed to keep the improvements on the property insured in an amount at least equal to the balance owed under the contract. She further agreed not to commit waste, to keep the property in good repair, to keep it from superior liens, and to comply with all laws affecting it. In return, Wodack had the right to take possession of the property at the time of the closing and could improve the property without permission.

The contract also vested Schlise with certain rights and obligations. Upon Wodack's paying the principal and interest in full, he had the obligation to execute and deliver a Warranty Deed, in fee simple, of the Property, free and clear of all liens and encumbrances to her. He also had the right, which terminated five years from closing, to repurchase the property at the original purchase price if she put the property up for sale. He also had certain rights upon her default. In addition, he could demand full payment of the remaining balance if Wodack transferred any interest in the property without his permission.

Wodack resided at the property at issue, made timely monthly payments, and renewed the land contract for two additional 5-year terms without issue. Schlise passed away on Aug. 20, 2006. His interest in the property passed to the Schlise Family Trust.

When the contract's third 5-year period was coming to an end in 2008, Wodack requested that the Schlise Family Trust renew the contract for another five years or until such time as she could procure a conventional mortgage.

Schlise's son's attorney chose not to renew the contract for another five years. Wodack therefore decided to pay in full the balance owing upon expiration of the contract. The contract expired in August 2008. Wodack contacted Attorney Philip Johnson to request the payoff figure. On Oct. 31, 2008, he wrote a letter stating that the payoff figure on Nov. 20, 2008, was $19,768.

On Nov. 18, 2008, Wodack obtained a loan through a promissory note with Riverside Finance, Inc., for $25,006. Riverside Finance paid $19,758 (the payoff figure as slightly adjusted downward) by check to the Schlise Trust out of these proceeds. The Schlise Family Trust transferred the deed to Wodack in November 2008.

On her 2008 income tax return, Wodack claimed a first-time homebuyer credit of $2,609. After an examination, IRS sent her a notice of deficiency on Dec. 28, 2011, disallowing the credit. On Mar. 28, 2012, she filed a timely petition in the Tax Court for redetermination.

Background. For qualifying purchases of principal residences in the U.S. after Apr. 8, 2008 and before July 1, 2009, eligible first-time homebuyers could claim a refundable tax credit equal to the lesser of 10% of the purchase price of a principal residence or $7,500 ($3,750 for married individuals filing separately). (Code Sec. 36) (The credit was subsequently modified and extended.)

The credit phased out for individual taxpayers with modified adjusted gross income (MAGI) between $75,000 and $95,000 ($150,000-$170,000 for joint filers) for the year of purchase. (Code Sec. 36(b)(2))

A taxpayer was considered a first-time homebuyer if he (and his spouse, if married) had no present ownership interest in a principal residence in the U.S. during the 3-year period before the purchase of the home to which the credit applied. (Code Sec. 36(c)(1))

Taxpayer denied credit. The Tax Court said that the only issue with respect to the allowance of the credit was whether Wodack purchased the property in 2008. She argued that she purchased it in November 2008 when she paid the Schlise Family Trust the remaining balance under the land contract and received the deed to the property. IRS asserted that she purchased the property on Aug. 3, '93, because (1) under Wisconsin law, she had equitable title to the property upon execution of the land contract, and (2) she had possession of the property and enjoyed the benefits and burdens of ownership beginning in '93.

The Tax Court said that generally, a transfer is complete for Code Sec. 36 purposes upon the earlier of the transfer of title or the shift of the benefits and burdens of ownership. Accordingly, the Tax Court looked to Wisconsin law to determine what rights Wodack had in the property.

Under Wisconsin law, a land contract vendor holds legal title as security for the unpaid balance of the contract, while the land contract vendee holds equitable title. Holding equitable title in effect gives the land contract vendee full rights of ownership. Accordingly, the Tax Court held that under Wisconsin law Wodack became the equitable owner of the property as of Aug. 3, '93, the effective date of the land contract. She obtained the benefits and burdens of ownership at that time. She had the right of possession and made

the property her principal residence. As required by the contract, she paid the real property taxes, assessments, and insurance. She also had an obligation to maintain the property and could improve the property without permission. Under Wisconsin law, she bore the risk of loss. She also had the right to obtain legal title by paying the remaining balance under the contract.

The decision not to renew the contract did not affect Wodack's status as owner of the property, as her rights and obligations under State law did not change at that time. Moreover, there was no indication that the benefits and burdens of ownership shifted briefly to the Schlise Family Trust upon expiration of the contract in August 2008 until she obtained full legal title in November 2008. She continued to reside at the property and presumably was still liable for taxes, insurance premiums, and the like.

Accordingly, the Tax Court found that for Code Sec. 36 purposes Wodack purchased the property on Aug. 3, '93, and thus not after Apr. 8, 2008 and before July 1, 2009, as required by Code Sec. 36(h). She therefore was not entitled to the first-time homebuyer credit.

References: For the first-time homebuyer credit, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ A-4271; U.S. Tax Reporter: Income at ¶ 364; Tax Desk at ¶ 568,851; RIA's Tax Guide at ¶ 1470.

IRS updates list of countries with which it has nonresident alien interest reporting agreements

Rev Proc 2014-64, 2014-53 IRB

IRS has issued a Revenue Procedure that updates two lists of countries with which the U.S. has in effect an agreement that requires payors to report interest paid to nonresident alien individuals who are residents of the other country. One list is of countries with which the U.S. has in effect an income tax or other treaty or a bilateral agreement; the other is of countries with which IRS has an automatic exchange of information.

Background. Reg § 1.6049-4(b)(5) and Reg § 1.6049-8(a), as revised by TD 9584 (see Weekly Alert, 04/19/2012), require the reporting of certain deposit interest paid to nonresident alien individuals on or after Jan. 1, 2013. Reg § 1.6049-4(b)(5) provides that, in the case of interest aggregating $10 or more paid to a nonresident alien individual (as defined in Code Sec. 7701(b)(1)(B)) that is reportable under Reg § 1.6049-8(a), the payor is required to make an information return on Form 1042-S for the calendar year in which the interest is paid. Interest that is reportable under Reg § 1.6049-8(a) is interest described in Code Sec. 871(i)(2)(A) that relates to a deposit maintained at an office within the U.S. and that is paid to a resident of a country that is identified, in an applicable revenue procedure (see Reg § 601.601(d)(2)) as of Dec. 31 prior to the calendar year in which the interest is paid, as a country with which the U.S. has in effect an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of Code Sec. 6103(k)(4).

Rev Proc 2012-24, 2012-20 IRB 913, was published contemporaneously with the publication of TD 9584 to identify those countries with which the U.S. had in force an information exchange agreement, such that interest paid to residents of such countries had to be reported by payors to the extent required under Reg § 1.6049-4(b)(5) and Reg § 1.6049-8(a) (see Weekly Alert, 04/19/2012).

IRS updates the two lists of countries. Rev Proc 2014-64 updates Rev Proc 2012-24 by providing two updated lists of countries. Rev Proc 2014-64, Sec. 3 provides a list of countries with which the U.S. has in effect an income tax or other treaty or bilateral agreement relating to the exchange of tax information within the meaning of Code Sec. 6103(k)(4) pursuant to which the U.S. agrees to provide, as well as receive, information. Rev Proc 2014-64, Sec. 4 provides a list of countries with which an automatic exchange of the information collected under Reg § 1.6049-4(b)(5) and Reg § 1.6049-8(a) has been determined by IRS to be appropriate.

IRS also noted that Rev Proc 2014-64 will be updated by subsequent revenue procedures as appropriate. And, it said, as noted in the preamble to the regs and Rev Proc 2012-24, IRS is not required to exchange information with another country, even if an information exchange agreement is in effect, if there are concerns about confidentiality, safeguarding of data exchanged, the use of the information, or other factors that would make the exchange of information inappropriate.

References: For reporting interest paid to nonresident alien individuals, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at

¶ S-3012.3; U.S. Tax Reporter: Income at ¶ 60,494.05; Tax Desk at ¶ 811,517; RIA's Tax Guide at ¶ 60106.

Institutions must be governmental entities to allocate Sec. 179D deduction to building designers

Chief Counsel Advice 201451028

In Chief Counsel Advice (CCA), IRS explains that schools, exempts, and non-profits can allocate the newly extended Code Sec. 179D energy efficient commercial building deduction to a designer of energy efficient commercial building property only if they are governmental entities. All other entities are ineligible to make the allocation.

Background. Under Code Sec. 179D, taxpayers are allowed a deduction for the cost of "energy efficient commercial building property" placed in service during the tax year. The maximum deduction for any building for any tax year is the excess (if any) of the product of $1.80, and the square footage of the building, over the aggregate amount of the deduction under Code Sec. 179D(a) for the building for all earlier tax years.

As retroactively restored and extended by TIPA (see Weekly Alert, 12/18/2014), the deduction applies for property placed in service before Jan. 1, 2015. (Code Sec. 179D(h))

Under Code Sec. 179D(d)(4), a federal, state, or local government or a political subdivision thereof (governmental entity) can allocate the Code Sec. 179D deduction to a designer of energy efficient commercial building property that is installed on or in property owned by the government entity.

Issue. Can schools, colleges, universities, exempts and non-profits allocate the Code Sec. 179D deduction to the designer of energy efficient commercial building property that is installed on or in property owned by the entity?

IRS response. The CCA says that entities other than a governmental entity that own property on or in which energy efficient commercial building property is installed, cannot allocate the Code Sec. 179D deduction to the designer. As a result, only schools, colleges, and universities that are governmental entities can allocate the Code Sec. 179D deduction to the designer if they own a building on or in which energy efficient commercial building property is installed. Tax-exempt entities and non-profit organizations (such as charities, churches, and hospitals) can't allocate the Code Sec. 179D deduction to the designer if they are not governmental entities.

References: For energy efficient commercial property deduction, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ L-3170; U.S. Tax Reporter: Income at ¶ 179D4; Tax Desk at ¶ 308,100; RIA's Tax Guide at ¶ 16410.

Fund which aggregates amounts deposited with a court is a designated settlement fund

Chief Counsel Advice 201450019

In Chief Counsel Advice (CCA), IRS has concluded that a fund in which a court aggregated cash deposited by litigants as directed by court orders, pending the resolution of litigation, was a disputed ownership fund (DOF) taxed as a designated settlement fund and thus was subject to current income tax.

Background. Code Sec. 468B(g)(1) provides generally that escrow accounts, settlement funds, and similar funds are "designated settlement funds" and are subject to current income tax. Code Sec. 468B(g)(1) also provides that IRS is to prescribe regs providing for the taxation of any such account or fund.

Reg § 1.468B-9 provides for the current taxation of income of a DOF. A DOF is an escrow account, trust, or fund that: (1) is established to hold money or property subject to conflicting claims of ownership; (2) is subject to the continuing jurisdiction of a court; (3) requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant; and (4) is not a qualified settlement fund under Reg § 1.468B-1, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or a liquidating trust under Reg § 301.7701-4(d). (Reg § 1.468B-9(b)(1))

Facts. The B courts continuously maintain numerous interest-bearing court registry items. Several of the B courts currently pool the court registry items into one investment system, Fund. Fund is comprised of an aggregation of court registry items and invests the court registry items in government securities.

The court registry items consist of cash deposited by court orders in the registries of B courts pending the resolution of litigation and are subject to conflicting claims of ownership of various parties. The ownership of the court registry items is considered undefined pending the court's determination of ownership. The

court registry items are held in the name and to the credit of the court.

B claimed that maintaining court registry items that qualify as DOFs on an item-by-item basis would impose costs that are larger than the amounts of interest earned.

B requested that it be able to treat Fund as a single DOF using a single employer identification number for purposes of filing a single federal income tax return, rather than file multiple returns on an individual basis for each court registry item invested in Fund.

IRS agrees to taxpayer's request to treat the fund as a single DOF. IRS concluded that Fund could be considered a single DOF subject to current taxation.

IRS first found that, under Code Sec. 468B(g)(1), a court registry item that qualifies as a DOF is subject to current income taxation. A DOF must be "an escrow account, trust, or fund." (Reg § 1.468B-9(b)(1)) The term "fund" used throughout Code Sec. 468B and accompanying regs is not defined. Code Sec. 468B(g) clearly reflects Congressional intent that such items are subject to current taxation. This legislative intent is not thwarted by, or inconsistent with, treating an aggregation of court registry items as a "fund" under the statute. Even though each court registry item included in Fund could perhaps be a separate DOF if set up that way, that fact does not preclude Fund from qualifying as a DOF itself. Current taxation under Code Sec. 468B(g)(1) is achieved with either the item-by-item or aggregated arrangement. Therefore, under the facts of this case, Fund is a "fund" under Code Sec. 468B.

IRS then concluded that the aggregation of court registry items into Fund is a DOF pursuant to Reg § 1.468B-9(b)(1) because: (1) it is established to hold cash subject to conflicting claims of ownership; (2) it is subject to the continuing jurisdiction of B courts; (3) it requires the approval of a B court to distribute cash to, or on behalf of, a claimant, transferor, or transferor claimant; and (4) it is not a qualified settlement fund, bankruptcy estate, or liquidating trust.

As a result, IRS concluded that Fund may follow the rules contained in Reg § 1.468B-9 as applicable to a single DOF.

References: For taxation of designated settlement funds, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ G-2791; U.S. Tax Reporter: Income at ¶ 468B4; Tax Desk at ¶ 442,025.

2015 changes to IRS's Employee Plans determination letter program

Ann 2015-01, 2015-2 IRB

IRS has announced several changes to the Employee Plans determination letter program that will take effect in 2015 and that are being adopted as a result of a process improvement strategy designed to promote case processing efficiency. These changes will be reflected in Rev Proc 2015-6, 2015-IRB, which is updated on an annual basis.

Background. Although advance IRS approval of employee plans isn't required, it's desirable and customary to seek it by requesting a determination letter on special forms issued by IRS (see below). Determination letters will be issued by directors on the qualified status of pension, annuity, profit-sharing, stock bonus, and employee stock ownership plans, and the exempt status of trusts forming a part of such plans. (Reg § 601.201(c)(5)) The procedures for obtaining determination letters involving Code Sec. 401, Code Sec. 403(a), Code Sec. 409 and Code Sec. 4975(e)(7), and the status for exemption of any related trusts or custodial accounts under Code Sec. 501(a), are contained in Rev Proc 2014-6, 2014-1 IRB 198, Rev Proc 93-10, 1993-1 CB 476, and Rev Proc 93-12, 1993-1 CB 479.

To request a determination letter from IRS for the qualification of a retirement plan, a Form 5300, *Application for Determination for Employee Benefit Plan*, must be filed, and a Schedule Q, *Elective Determination Requests*, may be filed as well. (Rev Proc 2011-6) For master and prototype (M&P) plans (i.e., qualified plans adopted by employers using an IRS-approved prototype) and volume submitter (VS) plans (which also use IRS-reviewed language, but offer more options than a M&P plan), plan sponsors file Form 5307, *Application for Determination Letter for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plan*, with an optional Schedule Q.

New procedures. Among the changes that will be reflected in Rev Proc 2015-6 are:

. . . *Incomplete applications—procedural requirements.* Upon receipt of a timely filed determination letter application, IRS will review it for completeness. For an application to be complete, it must include all of the information and documents required by Rev Proc 2015-6, including, but not limited to, a completed copy of the Procedural Requirements Checklist set forth in

Forms 5300, 5307, 5310 and 5316. If an application is incomplete, IRS will contact the applicant in writing and request the missing information, which the applicant has 30 days from the date of the letter to provide. If the applicant fails to do so, the case will be closed, IRS will retain the incomplete application, and the user fee submitted with the application will not be refunded. The applicant may submit a new on-cycle Application, with a new user fee, by the end of the plan's remedial amendment cycle, unless a later date is specified in IRS's letter informing the applicant that the case has been closed. However, if both the response deadline and the postmark date of any response to the letter identifying the missing information occur after the end of the plan's remedial amendment cycle, the remedial amendment cycle will not be extended and IRS will send the applicant a final disposition letter.

. . . *Reference list.* IRS intends to develop a reference list that applicants may use to indicate the specific provisions in the plan document that reflect the items in the Cycle E Cumulative List. A template of the Reference List will be available at www.irs.gov. The inclusion of a completed Reference List with a determination letter application will facilitate IRS's review of the application and is encouraged. Submission of a reference list is not mandatory in Cycle E, but IRS is considering making the inclusion of the reference list mandatory beginning the following year, in Cycle A.

. . . *Request for additional information—technical review.* IRS won't conduct technical review of a determination letter application until it is procedurally complete (see above). During the course of the technical review, IRS may issue a written request for additional information from the applicant that specifies the time period in which the applicant must supply the required information. If the applicant's response to this request is not timely and complete, IRS will inform the applicant again, in writing, that the applicant must provide the specified information within a specified period of time. If the applicant's response to the second request is not timely and complete, the case will be closed, the documents retained, and the user fee submitted with the application will not be refunded. The applicant may submit a new on-cycle application, with a new user fee, by the end of the plan's remedial amendment cycle, unless a later date is specified in IRS's letter informing the applicant that the case has been closed. However, if both the response deadline and the postmark date of any response to the second request occur after the end of the plan's remedial amendment cycle, the remedial amendment cycle will not be extended and IRS will send the applicant a final disposition letter.

References: For IRS approval of a plan, see Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ T-10500 *et seq.*; U.S. Tax Reporter: Income at ¶ 4014.01; RIA's Tax Guide at ¶ 8125.

IRS and national tax groups join in helping choose the right tax return preparer

IR 2014-116, 12/18/2014, Fact Sheet 2014-11

In a press briefing, IRS has announced that it was joining with several national tax organizations to provide people with new options to get information and tips on selecting tax professionals and avoiding unscrupulous return preparers. A Fact Sheet provides additional tips to keep in mind when choosing a return preparer.

Choosing a tax professional. IRS noted that more than 140 million tax returns were filed last year, and more than half of with them were prepared with the help of a paid return preparer. A tax return preparer is trusted with an individual's most personal information. They know about a person's marriage, income, children and Social Security Numbers—the details of an individual's financial life.

IRS announced that there was new information available on IRS's web site, including a list of consumer tips for selecting a tax professional (see http://www.irs.gov/Tax-Professionals/Choosing-a-Tax-Professional). There will also be a new gateway page with links to national non-profit tax professional groups, which can help provide additional information for taxpayers seeking the right type of qualified help.

To help taxpayers navigate the different types of professional tax help available, IRS has updated its web site, a page that explains the different categories of professionals. Taxpayers will also find a new partner page (IRS-Urges-Taxpayers-to-Choose-a-Tax-Preparer-Wisely--for-the-Filing-Season-Ahead) that provides links to the web sites of national organizations of tax professionals, with additional details about the groups, including state and local organizations or representatives. Organizations that were so listed (or attended IRS's press briefing) include:

. . . the National Association of Enrolled Agents;

. . . the National Society of Tax Professionals;

. . . the National Association of Tax Professionals;

. . . the National Society of Accountants;

. . . the National Conference of CPA Practitioners;

. . . the American Institute of Certified Public Accountants;

. . . the American Association of Attorney-Certified Public Accountants; and

. . . the Council for Electronic Revenue Communication Advancement.

IRS noted that for the upcoming filing season, some taxpayers may want to get help with the new provisions of the Affordable Care Act (ACA), and tax professionals provide one of several options available. The vast majority of people will only have to check a box on their federal income tax return to indicate they had health coverage, but others have Marketplace coverage with tax credits, have exemptions or need them, or may have to make a payment because they could afford to buy health insurance but chose not to. Tax professionals will be able to help guide taxpayers through what they need to do in these circumstances. Commercial software programs will be able to help, too.

IRS offered these basic tips to taxpayers:

- Select an ethical preparer;
- Make sure the preparer signs the return and includes their Preparer Tax Identification Number (PTIN), which all paid preparers are required to have;
- Review your tax return and ask questions before signing; and
- Never sign a blank tax return. (IR 2014-116, 12/18/2014)

A Fact Sheet provided additional tips to taxpayers:

. . . Ask the tax preparer if they have a professional credential (enrolled agent, certified public account, or attorney), belong to a professional organization or attend continuing education classes.

. . . Check on the service fees up front.

. . . Make sure any refund due is sent to the taxpayer's bank account.

. . . Make sure the preparer offers IRS e-file and ask that the return be submitted to IRS electronically.

. . . Make sure the preparer will be available—even after the April 15 due date.

. . . Provide records and receipts.

. . . Ensure the preparer signs and includes their PTIN.

. . . Report abusive tax preparers to IRS. (Fact Sheet 2014-11)

Applicable Federal Rates for January

Rev Rul 2015-1, 2015-2 IRB

The Applicable Federal Rates for January 2015 are reproduced below.

Table 1
Applicable Federal Rates (AFR) for January 2015

	Period for Compounding			
	Annual	Semiannual	Quarterly	Month
		Short-Term		
AFR	.41%	.41%	.41%	.41%
110% AFR	.45%	.45%	.45%	.45%
120% AFR	.49%	.49%	.49%	.49%
130% AFR	.53%	.53%	.53%	.53%
		Mid-Term		
AFR	1.75%	1.74%	1.74%	1.73%
110% AFR	1.92%	1.91%	1.91%	1.90%
120% AFR	2.10%	2.09%	2.08%	2.08%
130% AFR	2.27%	2.26%	2.25%	2.25%
150% AFR	2.63%	2.61%	2.60%	2.60%
175% AFR	3.07%	3.05%	3.04%	3.03%
		Long-Term		
AFR	2.67%	2.65%	2.64%	2.64%
110% AFR	2.94%	2.92%	2.91%	2.90%
120% AFR	3.21%	3.18%	3.17%	3.16%
130% AFR	3.48%	3.45%	3.44%	3.43%

Table 2
Adjusted AFR for January 2015

	Period for Compounding			
	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.41%	.41%	.41%	.41%
Mid-term adjusted AFR	1.36%	1.36%	1.36%	1.36%
Long-term adjusted AFR	2.67%	2.65%	2.64%	2.64%

Table 3
Rates Under Section 382 for January 2015

Adjusted federal long-term rate for the current month	2.67%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months)	2.80%

Table 4
Appropriate Percentages Under Section 42(b)(1) for January 2015

Appropriate percentage for the 70% present value low-income housing credit	7.51%
Appropriate percentage for the 30% present value low-income housing credit	3.22%

Table 5
Rate Under Section 7520 for January 2015

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.2%

Table 6
Deemed Rate for Transfers to New Pooled Income Funds During 2015

Deemed rate of return for transfers during 2015 to pooled income funds that have been in existence for less than 3 tax years.	1.2%

The latest AFRs are available at https://tax.thomsonreuters.com/products/brands/checkpoint/ria-wgl/afr-rates.

Practice Alert

"Last minute'' year-end 2014 tax-saving moves for individuals

Although there is only a week left to go before the year ends, it's not too late to implement some plan-

ning moves that can improve a client's tax situation for 2014 and beyond. This *Practice Alert* reviews some actions that clients can take before Dec. 31 to improve their overall tax picture.

Make HSA contributions. Under Code Sec. 223(b)(8)(A), a calendar year taxpayer who is an eligible individual under the health savings account (HSA) rules for December 2014, is treated as having been an eligible individual for the entire year. Thus, an individual who first became eligible on, for example, Dec. 1, 2014, may then make a full year's deductible-above-the-line contribution for 2014. If he makes that maximum contribution, he gets a deduction of $3,300 for individual coverage and $6,550 for family coverage (those age 55 or older also get an additional $1,000 catch-up amount).

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-1350 *et seq.*; U.S. Tax Reporter: Income at ¶ 2234; Tax Desk at ¶ 289,100 *et seq.*; RIA's Tax Guide at ¶ 7650.

Nail down losses on stock while substantially preserving one's investment position. A taxpayer may have experienced paper losses on stock in a particular company or industry in which he wants to keep an investment. He may be able to realize his losses on the shares for tax purposes and still retain the same, or approximately the same, investment position. This can be accomplished by selling the shares and buying other shares in the same company or another company in the same industry to replace them. There are several ways this can be done. For example, an individual can sell the original holding, then buy back the same securities 31 days later.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ I-3900 *et seq.*; U.S. Tax Reporter: Income at ¶ 10,914; Tax Desk at ¶ 227,000 *et seq.*; RIA's Tax Guide at ¶ 10325.

Accelerate deductible contributions. Individuals should keep in mind that charitable contributions and medical expenses are deductible when charged to their credit card accounts (e.g., in 2014) rather than when they pay the card company (e.g., in 2015).

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ G-2436 ; U.S. Tax Reporter: Income at ¶ 4614.01; Tax Desk at ¶ 441,407; RIA's Tax Guide at ¶ 6162.

Solve an underpayment problem. Because of the additional .9% Medicare tax and/or the new 3.8% surtax on unearned income, more individuals may be facing a penalty for underpayment of estimated tax than in prior years. An employed individual who is facing a penalty for underpayment of estimated tax as a result of either of these new taxes or for any other reason should consider asking his employer—if it's not too late to do so—to increase income tax withholding before year-end. Generally, income tax withheld by an employer from an employee's wages or salary is treated as paid in equal amounts on each of the four estimated tax installment due dates. Thus, if an employee asks his employer to withhold additional amounts for the rest of the year, the penalty can be retroactively eliminated. This is because the heavy year-end withholding will be treated as paid equally over the four installment due dates.

Outside-the-box solution. An individual can take an eligible rollover distribution from a qualified retirement plan before the end of 2014 if he is facing a penalty for underpayment of estimated tax and the increased withholding option is unavailable or won't sufficiently address the problem. Income tax will be withheld from the distribution at a 20% rate and will be applied toward the taxes owed for 2014. He can then timely roll over the gross amount of the distribution, as increased by the amount of withheld tax, to a traditional IRA. No part of the distribution will be includible in income for 2014, but the withheld tax will be applied pro rata over the full 2014 tax year to reduce previous underpayments of estimated tax.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ S-5248; U.S. Tax Reporter: Income at ¶ 66,544.02; Tax Desk at ¶ 571,342.

Accelerate big ticket purchases into 2014 to get sales tax deduction. Unless Congress extends it again, the option for itemizers to deduct state and local sales taxes in lieu of state and local income taxes will expire at the end of 2014. As a result, individuals who are considering the purchase of a big-ticket item (e.g., a car or boat) should do so before year-end if they are planning to elect on their 2014 return to claim a state and local general sales tax deduction instead of a state and local income tax deduction.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ K-4510 *et seq.*; U.S. Tax Reporter: Income at ¶ 1644.03; Tax Desk at ¶ 326,019.1 ; RIA's Tax Guide at ¶ 18115.

Prepay qualified higher education expenses for first quarter of 2015. Unless Congress extends it

again, the up-to-$4,000 above-the-line deduction for qualified higher education expenses will not be available after 2014. Thus, individuals should consider prepaying in 2014 eligible expenses for 2015 courses if doing so will increase their 2014 deduction for qualified higher education expenses. Generally, a 2014 deduction is allowed for qualified education expenses paid in 2014 in connection with enrollment at an institution of higher education during 2014 or for an academic period beginning in 2014 or in the first three months of 2015.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ A-4470 *et seq.*; U.S. Tax Reporter: Income at ¶ 2224; Tax Desk at ¶ 352,000 *et seq.*; RIA's Tax Guide at ¶ 1511.

Lock in the potential to earn tax-free gains. There is no tax on gain from the sale of qualified small business stock (QSBS) that is: (1) purchased after Sept. 27, 2010 and before Jan. 1, 2015, and (2) held for more than five years. Additionally, there's a temporary alternative minimum tax (AMT) break. Normally, there is an AMT preference for a portion of gain from the sale or exchange of QSBS that is excluded from gross income for regular tax purposes. However, the preference doesn't apply to QSBS acquired after Sept. 27, 2010 and before Jan. 1, 2015. To qualify for these breaks, the stock must be issued by a regular (C) corporation with total gross assets of $50 million or less, and a number of other technical requirements must be met.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ I-5001.3 *et seq.*; U.S. Tax Reporter: Income at ¶ 12,024; Tax Desk at ¶ 246,600.1 *et seq.*; RIA's Tax Guide at ¶ 10626.

Be sure to take required minimum distributions (RMDs). Taxpayers who have reached age 70-½ should be sure to take their 2014 RMD from their IRAs or 401(k) plans (or other employer-sponsored retired plans). Failure to take a required withdrawal can result in a penalty of 50% of the amount of the RMD not withdrawn. Those who turned age 70-½ in 2014 can delay the first required distribution to 2015. However, taxpayers who take the deferral route will have to take a double distribution in 2015—the amount required for 2014 plus the amount required for 2015.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-8275.1 *et seq.*; U.S. Tax Reporter: Income at ¶ 4014.153; Tax Desk at ¶ 144,301 *et seq.*; RIA's Tax Guide at ¶ 8116.

Use IRAs to make charitable gifts. Taxpayers who have reached age 70-½, own IRAs, and are thinking of making a charitable gift should consider arranging for the gift to be made directly by the IRA trustee. Such a transfer, if made before year-end, can achieve important tax savings.

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ H-12253.2 *et seq.*; U.S. Tax Reporter: Income at ¶ 4084.03; Tax Desk at ¶ 143,003.2 *et seq.*; RIA's Tax Guide at ¶ 8516.

Make year-end gifts. A person can give any other person up to $14,000 for 2014 without incurring any gift tax. The annual exclusion amount increases to $28,000 per donee if the donor's spouse consents to gift-splitting. Annual exclusion gifts take the amount of the gift and future appreciation in the value of the gift out of the donor's estate, and shift the income tax obligation on the property's earnings to the donee who may be in a lower tax bracket (if not subject to the kiddie tax).

A gift by check to a noncharitable donee is considered to be a completed gift for gift and estate tax purposes on the earlier of:

(1) the date on which the donor has so parted with dominion and control under local law as to leave in the donor no power to change its disposition, or

(2) the date on which the donee deposits the check (or cashes it against available funds of the donee) or presents the check for payment, if it is established that:

. . . the check was paid by the drawee bank when first presented to the drawee bank for payment;

. . . the donor was alive when the check was paid by the drawee bank;

. . . the donor intended to make a gift;

. . . delivery of the check by the donor was unconditional; and

. . . the check was deposited, cashed, or presented in the calendar year for which completed gift treatment is sought and within a reasonable time of issuance.

Thus, for example, a $14,000 gift check given to and deposited by a grandson on Dec. 31, 2014, is treated as a completed gift for 2014 even though the check doesn't clear until 2015 (assuming the donor is still alive when the check is paid by the drawee bank).

References: See Federal Tax Coordinator 2d and RIA's Analysis of Federal Taxes: Income at ¶ Q-1916 ; Tax Desk at ¶ 711,005 ; RIA's Tax Guide at ¶ 40607.

RIA Tax Watch 2014

. . . President signs extenders bill into law. On Dec. 19, President Obama signed into law H.R.5771, the "Tax Increase Prevention Act of 2014" (TIPA). The bill generally provides for a 1-year extension, through 2014, of over 50 expired or expiring individual, business, and energy provisions, many of which have been on the books for years but which technically are temporary because they have a specific end date.

For an article on how the President's signature sets the effective dates of some TIPA provisions, or the dates by which IRS must complete certain actions, see Weekly Alert, 12/24/2014.

For more details on the extenders package, see Weekly Alert, 12/18/2014 (individual provisions), Weekly Alert, 12/18/2014 (business provisions), Weekly Alert, 12/18/2014 (depreciation and expensing provisions), and Weekly Alert, 12/18/2014 (energy provisions). For more details on "Achieving a Better Life Experience" (ABLE) accounts, a new type of tax-advantaged savings program established by H.R.5771 to help in meeting the financial needs of disabled individuals and of families raising children with disabilities, see Weekly Alert, 12/18/2014.

. . . Continuing Appropriations Act assigned Public Law number. The "Consolidated and Further Continuing Appropriations Act, 2015" (H.R.83), which the President signed into law on December 16, has been assigned a Public Law number—P.L. 113-235. For more details on the Appropriations Act, which includes multiemployer pension reform and a provision excluding expatriate health plans from the Affordable Care Act (ACA), see Weekly Alert, 12/18/2014.

Washington Alert —Part I

. . . More simplicity and fairness in the federal tax system are essential components in any tax reform that Congress and the White House may craft, President Barack Obama said at his Dec. 19 press conference. There is no fairness on the corporate tax side when some companies "are paying the full freight, 35 percent," while "there are other companies that are paying zero, because they've got better accountants or lawyers," Obama said. The problem of corporate inversions needs to be fixed, he said, but he did not offer any specifics. "So fairness, everybody paying their fair share, everybody taking responsibility, I think is going to be very important," Obama said. "Some of those principles, I've heard Republicans say they share. How we do that, the devil's in the details."

. . . Serious belt-tightening is now the order of the day for IRS, according to IRS Commissioner John Koskinen, who spoke at a Dec. 18 press conference. The reason is the slash in the agency's appropriation for fiscal year 2015, which was cut earlier this month by Congress to the tune of $346 million. To keep things running and stay within the budgetary constraints, Koskinen did not rule out the option of employee furloughs which he said in his mind would be tantamount to "shutting the place down." However, Koskinen said this would be absolutely the last option that he would use. It is estimated that the agency would save $29 million for each day it shut its doors. The major cut in IRS's budget, grouped with "the fact that we have $250 million in new expenses for a government-wide pay raise," means there is an almost $600 million hole this fiscal year, Koskinen said. Earlier in the week, Koskinen reportedly sent an email to agency employees stating there will be a suspension of overtime and a hiring freeze.

. . . IRS has scheduled a Jan. 7 English-language webinar titled "Keeping Up with Earned Income and Refundable Tax Credits." (e-News for Tax Professionals 2014-51) A similar Spanish-language webinar will be conducted on Jan. 8. Participation in one of these webinars, for which Continuing Education credits are awarded to registered practitioners, will help "keep your tax preparation business in good standing," the agency said. A key focus of the webinars will be learning how to avoid common errors and penalties when determining eligibility for refundable tax credits such as the American Opportunity Tax Credit, Child Tax Credit and earned income tax credit. Emphasis will also be placed on the vital importance of due diligence. In addition, IRS subject matter experts will offer tips and resources to help in the preparation and filing of accurate claims for refundable tax credits. To register for the webinar in English on Jan. 7, go to http://www.visualwebcaster.com/IRS/101122/reg.asp?id=101122. To register for the webinar in Spanish to be held on Jan. 8, go to http://www.visualwebcaster.com/IRS/101129/reg.asp?id=101129.

. . . All enrolled agents with a Social Security number (SSN) ending in 7, 8, or 9, or enrolled agents without an SSN, are required to renew their enroll-

ment during the 2015 Enrollment Renewal Application Period which ends on Jan. 31, 2015, IRS said in a reminder published on Dec. 19. (e-News for Tax Professionals 2014-51) "Without renewal, your current enrollment will expire on Mar. 31, 2015," the agency warned. Additional details can be found at http://www.irs.gov/ Tax-Professionals/ Enrolled-Agent-News.

Washington Alert —Part II

. . . Coinciding with the decline in IRS's budget over the past several years, there has been a notable decrease in the number of full-time equivalents working within the agency's Exempt Organizations (EO), the Government Accountability Office (GAO) said in a recent report. (GAO-15-164) In turn, this has resulted in a steady decrease in the number of charitable organizations examined, the report said. During 2011, the examination rate for charitable organizations was 0.81%. By 2013, it was down to 0.71%, a rate that is lower than the exam rate for other types of taxpayers, such as individuals (1.0%) and corporations (1.4%). "EO is grappling with several challenges that complicate oversight efforts," the report said. "While EO has some compliance information, such as how often exams result in change of tax exempt status, it does not have quantitative measures of compliance for the charitable sector as a whole, for specific segments of the sector (such as universities and hospitals) or for particular aspects of noncompliance (such as personal inurement or political activity)," GAO said. According to the report, without this information and given the uncertainty regarding the current levels of compliance, EO is unable to create quantitative results-oriented goals for increasing compliance. EO is also unable to assess the effect its actions are having on compliance, GAO said. The report is available at http://gao.gov/ assets/670/667595.pdf.

. . . Bank Leumi, Israel's second largest bank, on Dec. 22 admitted in a California federal courtroom that it had engaged in tax-related criminal conduct and agreed to a $270 million settlement with federal authorities. In another venue, it agreed to a $130 million settlement with New York State authorities. A deferred prosecution agreement between the Bank Leumi Group and the Justice Department was filed in the Central District of California "that defers prosecution on a criminal information charging the bank with conspiracy to aid and assist in the preparation and presentation of false tax returns and other documents to the Internal Revenue Service," the Justice Department said in a statement. "The Bank Leumi Group recognized that the writing is on the wall for offshore banking, and cooperating with the government's investigation was the only way to proceed," said James Cole, deputy attorney general. "This deferred prosecution agreement demonstrates both that the Justice Department will hold financial institutions accountable for their crimes, and that we will be fair in recognizing extraordinary cooperation." As part of the bank's agreement with the New York State Department of Financial Services, it will move to terminate and ban individual senior employees who engaged in misconduct and will admit its violations of law for conducting an illegal cross-border scheme to assist U.S. clients in evading federal and state tax. For the Justice Department's press release, see http://www.justice.gov/ opa/pr/bank-leumi-admits-assisting-us-taxpayers-hiding-assets-offshore-bank-accounts.

. . . While offering praise for IRS's timely processing of tax returns during the 2014 filing season, the Government Accountability Office (GAO) still had some tough words regarding the agency's inability to satisfactorily handle the call volume on its taxpayer service telephone lines. (GAO-15-163) "Although IRS received fewer calls in 2014, the percentage of callers seeking help who received it remained low and wait times remained high compared to prior years," GAO said. IRS could improve taxpayer telephone service by comparing its efforts to the best in the business world, the report said. However, the agency has not systemically made such an effort because of budgetary considerations and difficulty in identifying comparable organizations, IRS officials told GAO. "By not comparing itself to other call center operations, IRS is missing an opportunity to identify and address gaps between actual and desired service, and inform Congress about resources needed to close the gap," GAO said. The report noted that IRS did not establish numerical goals or develop a plan to evaluate the impact of service changes it made in 2014. "Such information would help Congress, IRS managers, and others understand the benefits and potential budget tradeoffs associated with IRS service changes," GAO said. The report is located at http://gao.gov/assets/670/667563.pdf.

— WG&L Digests —

Estate planning for couples entering second marriages – Part 2.

Despite tax law changes that limit the reach of federal transfer taxes to only a small portion of the population, estate planning continues to have a future. Far more than many other professions, estate planning comes down to helping people. One segment of the population likely to be in need of such assistance is those entering into second marriages. Part 1 of this article focused mainly on the role of premarital agreements in estate planning and potential areas for conflicts of interest between spouses. In Part 2, other issues are explored that are relevant to representing estate planning clients who are in second marriages. (E.A. Manterfield, 42 Estate Planning, No. 1, 23 (January 2015).)

Run the basis and catch maximum tax savings — Part 1.

In the past, estate planning focused on high-net-worth individuals making inter vivos transfers to avoid the imposition of estate taxes. Today, with increased income tax rates, reduced transfer tax rates, and growing federal transfer tax exemptions, the focus of "estate planning" will increasingly be on the income tax, particularly the potential income tax savings from the "step-up" in basis under Section 1014. As such, one of the focal points of estate planning will be the proactive management of the tax basis of assets held by individuals and maximization of the "step-up" in basis. This two-part article discusses an analytical framework around how to structure estate plans for individuals based on the income tax savings of the "step-up," as measured against the total transfer tax costs for allowing those assets to be includable in the estate. Part 2, which will be published in a future issue of Estate Planning also discusses tax basis management techniques that are designed to maximize the "step-up" in basis, lower the transfer tax costs, and even shift tax basis from one asset to another. (P. S. Lee, 42 Estate Planning, No. 1, 3 (January 2015).)

Closely held business can enjoy captive insurance opportunity.

In the right circumstances, captive insurance companies can provide a variety of tax and nontax benefits to business entities. While the captive insurance arrangement is generally associated with very large corporations, closely held businesses may use the strategy as well. For the owners of these companies, captive insurance company strategies may provide estate planning advantages that are not relevant in the large-corporation context. (B. Eizen and S. S. Poulathas, 42 Estate Planning, No. 1, 15 (January 2015).)

New guidance sheds light on economic substance doctrine and related penalties.

In Notice 2014-58, the IRS provided additional guidance concerning the situations in which it would (and, more importantly, would not) assert that the economic substance doctrine (ESD) and related penalties are applicable to a transaction. The Notice continues the trend in the guidance issued by the IRS to narrow the potential application of the ESD to situations in which it should be applied. Most importantly, the Notice will prevent an agent from asserting the "no fault" penalty under Section 6662(b)(6) when the agent contends that the tax consequences of a transaction should be altered through application of the substance-over-form or step-transaction doctrines. (R.M. Lipton, 121 Journal of Taxation 266 (December 2014).)

In Brief

Here are the latest developments, in Code Section order.

Code Sec. 24

Child tax credits—qualifying child—divorced taxpayers.

This issue wasn't discussed on appeal. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 42

Low-income housing credits—administrative errors and omissions—corrections.

Administrative error occurred which resulted in documents that inaccurately reflected agency's intent and affected taxpayer at time documents were originally completed; and, although agency attempted to correct its error within reasonable time after discovery, it didn't make correction before close of calendar year and correction resulted in numerical change to housing credit dollar amount allocated to stated buildings identified by building identification numbers. So, agency must file Forms 8609 to reflect that low-income housing credit from its stated years' credit ceilings are allocated to each of specified buildings identified by building identification numbers in stated amounts, and to extent that such corrections affect information provided on any previously-filed Form 8610, annual low-income housing credit agencies report, agency must file amended Forms 8610 to provide corrected information consistent with this ruling. (IRS Letter Ruling 201451018)

Code Sec. 61

Gross income—what constitutes income—attorney trust accounts—computations—disbursements—proof.

In deficiency case involving taxpayer/attorney's income from various ins. co. payments, he proved that he made certain disbursements out of payment received from 1 co. to another co. and to client. Proof included taxpayer's credible testimony plus letters and check copies which he kept as part of his business records, and which reflected transactions consistent with his other business dealings. (*Steven E. Hillman v. Commissioner, (2014) TC Memo 2014-250, 2014 RIA TC Memo ¶ 2014-250*)

Code Sec. 108

Discharge of indebtedness income—income exclusions—qualified real property indebtedness—elections; extensions.

Cash method S corp./LLC partner was granted 45-day extension from date this letter was issued to file amended return for stated year, to make election under Code Sec. 108(c)(3)(C) and Reg § 1.108-5(b) to exclude income resulting from discharge of qualified real property business indebtedness, where taxpayer acted reasonably and in good faith and granting relief wouldn't prejudice govt.'s interests. (IRS Letter Ruling 201451006)

Discharge of indebtedness income—income exclusions—qualified real property indebtedness—elections; extensions—basis adjustments.

Provided taxpayer isn't subject to Code Sec. 6662 accuracy-related penalty, taxpayer/partner was granted 45-day extension from date this letter was issued to file amended return to make election under Code Sec. 108(c)(3)(C) and Reg § 1.108-5(b) to exclude income resulting from discharge of qualified real property business indebtedness and to reduce basis of depreciable property, where taxpayer acted reasonably and in good faith and granting relief wouldn't prejudice govt.'s interests. (IRS Letter Ruling 201451023)

Code Sec. 118

Contributions to capital of corp.—exclusions from gross income.

Payments electric and gas utility received from state corporate municipal instrumentality and political subdivision as reimbursement for upgrades to taxpayer's system weren't contributions to taxpayer's capital under Code Sec. 118(a), and thus weren't excludible from its gross income under Code Sec. 61. (IRS Letter Ruling 201451007)

Code Sec. 152

Dependency exemption deductions—divorced taxpayers—noncustodial parent—exemption release.

Tax Court decision denying attorney/taxpayer/noncustodial parent dependency exemption deductions for minor children was affirmed: taxpayer didn't attach to his return written declaration of exemption released signed by his ex-wife/custodial parent. Argument that Full Faith and Credit Clause required IRS to accept his divorce decree as proof was off base. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 162

Business deductions—telephone expenses—law business—client costs—reimbursements; loans and advances—business vs. personal expenses—books, internet service, law license, postage, and office expenses—proof.

Tax Court decision denying attorney/taxpayer business deductions for telephone expenses and ex-

penses for "client costs advanced" was affirmed: unadmitted evidence and unpublished Court decision were insufficient to show that he incurred expenses in use of his telephones; and he didn't prove that client advances weren't nondeductible loans when paid out and nontaxable income when recovered. Further, unadmitted evidence, self-generated notes, and his own unverified testimony failed to substantiate miscellaneous office, postage and law library expenses. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 163

Mortgage interest—deductions—funds paid from joint account.

IRS issued advice regarding cases involving deduction for mortgage interest under Code Sec. 163, and concluded that funds paid from joint account with two equal owners are presumed to be paid equally by each owner, in absence of evidence to contrary. (Chief Counsel Advice 201451027)

Code Sec. 165

Losses—abandonment losses—nuclear generating facilities—deductions.

Corp./regulated public utility sustained abandonment loss under Code Sec. 165(a) with respect to certain large pressurized water nuclear generating facilities where taxpayer effected numerous acts of abandonment and disabled facilities on account of their faulty steam generators. But, given taxpayer's reasonable prospect of recovering damages from ins. cos., its deduction of abandonment loss should be deferred until its arbitration proceedings against ins. cos. conclude and its ins. claims are resolved. (IRS Letter Ruling 201451014)

Losses—installment method—year of deduction.

LLC may claim loss deduction under Code Sec. 165 with respect to sale of its interest in co. in stated year ending stated date, to extent its unrecovered basis at end of stated year exceeds maximum remaining amount it is entitled to receive under agreement. (IRS Letter Ruling 201451004)

Code Sec. 170

Charitable contribution deductions—cash contributions—substantiation—contemporaneous written acknowledgment.

Tax Court decision denying attorney/taxpayer charitable contribution deduction for his alleged cash donation was affirmed: taxpayer, who submitted only self-generated receipt thanking himself but no statement as to whether he received any goods or services in consideration, failed Reg § 1.170A-13(f)(2)'s contemporaneous written acknowledgment requirement for contributions exceeding $250. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 179D

Energy efficient commercial buildings deduction—allocation—non-govt. entities.

Under Code Sec. 179D(d)(4), Code Sec. 179D deduction cannot be allocated by non-govt. entities. (Chief Counsel Advice 201451028)

Code Sec. 199

Domestic production activities deductions—domestic production gross receipts—timber.

Tax Court decision denying attorney/taxpayer domestic production activities deduction for grading and surveying expenses on land parcel was affirmed: taxpayer failed to prove that he earned any income from land. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 213

Medical expense deductions—substantiation—in vitro fertilization—medical care.

Tax Court decision denying attorney/taxpayer medical expense deductions was affirmed: taxpayer offered no evidence that any of alleged care involved him, his spouse, or dependent. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 222

Review of Tax Court decision—what must be proved—deductions—higher education tuition and fees—party entitled to deduction.

Tax Court decision denying attorney/taxpayer deduction for payments for son's tuition expenses was affirmed: taxpayer's uncorroborated testimony failed to show that he had incurred tuition expenses. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 274

Business deductions—auto expenses—standard mileage—substantiation.

Tax Court decision denying attorney/taxpayer deductions based on standard mileage rate for business-related vehicle expenses was affirmed: taxpayer failed to substantiate business mileage claimed or time and business purpose of each use. Although he attempted to use Mapquest to reconstruct his business routes, his alleged deduction wasn't based on these reconstructions; and claim that he could

substantiate his business mileage with bare assertion that 90% of miles he drove were business-related was unsupported. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 280A

Home office deductions—exclusive business use—proof.

Tax Court decision denying attorney/taxpayer home office deduction for use of his apartment as office was affirmed: taxpayer offered "almost no details" about how rooms were used exclusively for his business. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 382

Limitation on net operating loss carryforwards and certain built-in losses following ownership change—stock repurchases—5-percent shareholders—small redemption exception.

Foreign parent corp.'s repurchases of its stock completed during given open trading window and repurchases of its stock made pursuant to agreement complying with Rule 10b5-1 entered into during same open trading window but before beginning of next open trading window will be aggregated and together will be considered to occur "at approximately same time pursuant to same plan or arrangement" for Reg § 1.382-3(j)(14)(v)(A) purposes, and so will be considered single redemption for determining whether that single redemption exceeds Reg § 1.382-3(j)(14)(iii)(A)'s small redemption limitation. (IRS Letter Ruling 201451015)

Code Sec. 401

Employee benefit plans—permitted disparity in plan contributions or benefits—covered compensation tables for 2015.

IRS provided covered compensation tables under Code Sec. 401(l) for 2015 for use in determining contributions to defined benefit plans and permitted disparity. (Rev Rul 2014-34, 2014-52 IRB 954)

Employee benefit plans—determination letters—qualified status.

IRS highlighted changes that are applicable in 2015 to processing of employee plans determination letters. Changes were adopted as result of process improvement strategy designed to promote case processing efficiency, and will be incorporated into annually-revised guidance on same topic. (Ann 2015-01, 2015-2 IRB)

Code Sec. 402

IRAs—waiver of rollover requirement—medical condition of spouse—error by plan.

Pursuant to Code Sec. 402(c)(3)(B), IRS waived 60-day rollover requirement where taxpayer's failure to timely roll over funds was due to distraction caused by his spouse's medical issues and required care during both rollover period and his benefit election period, which was truncated by his plan's failure to timely inform him of his rollover options under Code Sec. 402(f). So, taxpayer was granted 60-day extension from date this letter was issued to contribute stated amount into rollover IRA, which would be considered valid rollover contribution provided all other requirements of Code Sec. 402(c)(3) were met. (IRS Letter Ruling 201451062)

Code Sec. 408

IRAs—distributions to charities.

In light of recent legislative action, taxpayers are reminded that tax-free IRA distributions may be donated to charity through end of 2014. (IR 2014-117)

IRAs—waiver of rollover requirement—medical condition of taxpayer.

Pursuant to Code Sec. 408(d)(3)(I), IRS waived 60-day rollover requirement where taxpayer's failure to timely roll over funds was due to her medical condition that impaired her ability to manage her financial affairs. So, contribution of stated amount into IRA would be considered valid rollover contribution provided all other requirements of Code Sec. 408(d)(3) were met. (IRS Letter Ruling 201451063)

IRAs—waiver of rollover requirement—error by financial advisor.

Pursuant to Code Sec. 408(d)(3)(I), IRS waived 60-day rollover requirement where taxpayer's failure to timely roll over funds was due to error by his financial advisor, who advised him to use IRA funds to invest in 3d-party loan despite his having sufficient non-IRA resources to cover his investment. So, taxpayer was granted 60-day extension from date this letter was issued to contribute stated amount into IRA or other eligible retirement plan, which would be considered valid rollover contribution provided all other requirements of Code Sec. 408(d)(3) were met. (IRS Letter Ruling 201451064)

IRAs—waiver of rollover requirement—error by financial institution.

Pursuant to Code Sec. 408(d)(3)(I), IRS waived 60-day

rollover requirement where taxpayer's failure to timely roll over funds was due to financial institution's failure to deposit funds into rollover IRA as instructed. So, taxpayer was granted 60-day extension from date this letter was issued to contribute stated amount into rollover IRA, which would be considered valid rollover contribution provided all other requirements of Code Sec. 408(d)(3) were met. (IRS Letter Ruling 201451065)

IRAs—waiver of rollover requirement—death of IRA owner.

Pursuant to Code Sec. 408(d)(3)(I), IRS waived 60-day rollover requirement where taxpayer/surviving spouse's failure to timely roll over funds was due to her husband/IRA owner's death. So, taxpayer was granted 60-day extension from date this letter was issued to contribute stated amount into IRA or other eligible retirement plan, which would be considered valid rollover contribution provided all other requirements of Code Sec. 408(d)(3) were met. (IRS Letter Ruling 201451066)

Code Sec. 431

Multiemployer plans—minimum funding standards—unfunded liabilities—extension of amortization periods.

Taxpayer was granted 5-year automatic extension under Code Sec. 431(d)(1) for amortizing unfunded liabilities as of stated date for multiemployer plan. (IRS Letter Ruling 201451067)

Code Sec. 446

Change in accounting method—application for change in accounting method—extensions.

Taxpayer was granted 60-day extension from date this letter was issued to file duplicate copies of Form 3115 requesting permission to change its methods of accounting for software development costs and prepaid ins., prepaid hardware, and software maintenance contracts, where taxpayer acted reasonably and in good faith, and granting relief wouldn't prejudice govt.'s interests. (IRS Letter Ruling 201451008)

Change in accounting method—application for change in accounting method—extensions.

Taxpayer was granted 30-day extension from date this letter was issued to file Form 3115, application to change accounting method, with IRS national office, where taxpayer acted reasonably and in good faith, and granting relief wouldn't prejudice govt.'s interests. (IRS Letter Ruling 201451010)

Change in accounting method—application for change in accounting method—extensions.

Taxpayer was granted 60-day extension from date this letter was issued to file copy of Form 3115, application to change accounting method, where it acted reasonably and in good faith and granting relief won't prejudice govt.'s interests. (IRS Letter Ruling 201451024)

Code Sec. 453

Accounting methods—installment method—sale of partnership interest—unrealized receivables—change in method—IRS discretion—adjustments required by change in method.

Tax Court decision that married taxpayers weren't entitled to use installment method to report unrealized receivables from sale of wife's consulting partnership interest, and that IRS was within its discretion in changing their accounting method and imposing corresponding Code Sec. 481(a) adjustment in subsequent year, was affirmed. Unrealized receivables proceeds were ordinary income that clearly didn't qualify for installment reporting since such didn't arise from sale of property. And since assessment period for stated year had already expired as of time IRS issued deficiency notice, it was entitled to make necessary adjustments in subsequent year to remedy above. Taxpayers' argument for Code Sec. 481(a)(2) exception was rejected. (*Mingo v. Comm., CA 5, 114 AFTR 2d 2014-6886*)

Code Sec. 468A

Nuclear decommissioning funds—revised schedule of ruling amounts.

Plant operator/joint owner's proposed schedule of ruling amounts for payments to nuclear decommissioning fund satisfied Code Sec. 468A requirements and was approved. (IRS Letter Ruling 201451011)

Nuclear decommissioning funds—revised schedule of ruling amounts.

Plant operator/joint owner's proposed schedule of ruling amounts for payments to nuclear decommissioning fund satisfied Code Sec. 468A requirements and was approved. (IRS Letter Ruling 201451013)

Code Sec. 483

Interest on certain deferred payments—test rates—contingent payments treated as payments of interest.
IRS ruled that proper test rate to use in determining portion of each contingent payment pursuant to merger agreement that is treated as payment of interest is test rate as stated for that payment. (IRS Letter Ruling 201451003)

Code Sec. 501

Voluntary employees' beneficiary associations—transfers of assets—disqualified benefits—unrelated business taxable income.
Proposed transfer of assets from trust/VEBA to employer/Code Sec. 501(c)(3) org. upon trust's termination won't result in any "disqualified benefit" under Code Sec. 4976(b)(1)(C) and won't, in and of itself, cause org. to be liable for Code Sec. 4976 penalty excise tax. And, reversion of any of trust's assets to org. won't be UBTI to org. (IRS Letter Ruling 201451044)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(7) org.'s exempt status where org. failed to file protest to proposed adverse determination within requisite 30 days. (IRS Letter Ruling 201451030)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. wasn't operated exclusively for exempt purposes and where org. provided recreational activities, lodging and catering services for fee. (IRS Letter Ruling 201451031)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. wasn't operated exclusively for benefit of public, but rather of private shareholders and individuals. (IRS Letter Ruling 201451032)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(4) org.'s exempt status where org. failed to request referral of case to office of appeals within requisite 30 days. (IRS Letter Ruling 201451033)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. ceased operating as exempt org. and providing activities of any kind. (IRS Letter Ruling 201451034)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. didn't establish it was operated exclusively for exempt purpose, but rather operated for benefit of founders, had deficient internal controls, and there was no evidence of qualified charitable activity. (IRS Letter Ruling 201451035)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status where org. failed to file protest to proposed adverse determination within requisite 30 days. (IRS Letter Ruling 201451036)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status where org. failed to file protest to proposed adverse determination within requisite 30 days. (IRS Letter Ruling 201451037)

Exempt orgs.—exempt status—final adverse determination.
IRS issued final adverse determination revoking Code Sec. 501(c)(6) org.'s exempt status, effective only for stated periods, where org. consented to revocation via signed Form 6018-A. (IRS Letter Ruling 201451038)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(7) org.'s exempt status, effective stated date, where org. consented to revocation via signed Form 6018-A. (IRS Letter Ruling 201451039)

Exempt orgs.—exempt status—final adverse determinations.
IRS issued final adverse determination revoking Code Sec. 501(c)(6) org.'s exempt status where org. failed to file protest to proposed adverse determination within requisite 30 days. (IRS Letter Ruling 201451040)

Exempt orgs.—adjustment of exempt status.
IRS issued report of examination explaining why it believed adjustment of Code Sec. 501(c)(19) org.'s exempt status was necessary, and provided Form 3498 if it wished to appeal IRS's findings. (IRS Letter Ruling 201451041)

Exempt orgs.—adjustment of exempt status.

IRS issued report of examination explaining why it believed adjustment of Code Sec. 501(c)(19) org.'s exempt status was necessary, and provided Form 3498 if it wished to appeal IRS's findings. (IRS Letter Ruling 201451042)

Exempt orgs.—exempt status—final adverse determinations.

IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. failed to establish it operated exclusively for exempt purposes because it served private interests and earnings inured to benefit of private individuals. (IRS Letter Ruling 201451043)

Exempt orgs.—exempt status—final adverse determinations.

IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status, effective stated date, where org. didn't respond to request for documentation to substantiate its activities and fiscal operations, and thus failed to provide evidence that it was currently operated exclusively for exempt purpose. (IRS Letter Ruling 201451046)

Exempt orgs.—exempt status—final adverse determinations.

IRS issued final adverse determination revoking Code Sec. 501(c)(3) org.'s exempt status where org. failed to file protest to proposed adverse determination within requisite 30 days. (IRS Letter Ruling 201451045)

Code Sec. 953

Ins. income—election by foreign ins. co. to be treated as domestic corp.—alternative tax for certain small cos.—extensions.

Foreign ins. co. was granted 60-day extension from date this letter was issued to make election under Code Sec. 953(d) to be treated as domestic corp. for tax purposes, effective for stated tax year ending stated date, where taxpayer acted reasonably and in good faith. And, taxpayer was also granted 60-day extension to elect application of alternative tax imposed by Code Sec. 831(b) for stated tax year ending stated date (IRS Letter Ruling 201451012)

Code Sec. 992

Domestic international sales corp.—election to be treated as interest charge domestic international sales corps.—extensions.

Corp. was granted 60-day extension from date this letter was issued to file Form 4876-A, election to be treated as IC-DISC, with respect to its first taxable year, where taxpayer acted reasonably and in good faith and granting relief wouldn't prejudice govt.'s interest. (IRS Letter Ruling 201451026)

Code Sec. 995

Taxation of DISC income to shareholders—base period T-bill rate.

IRS replaced table of interest factors originally provided for compounding "base period T-bill" rate under Code Sec. 995(f) by table in this revenue ruling.Rev Rul 2014-27, 2014-47 IRB 832 is modified. (Rev Rul 2014-33, 2014-52 IRB 957)

Code Sec. 1001

Capital gains and losses—computations—adjustments and reductions.

These issues weren't discussed on appeal. (*Mingo v. Comm., CA 5, 114 AFTR 2d 2014-6886*)

Code Sec. 1274

Applicable federal rate tables.

IRS provided various applicable federal rate tables for January 2015. (Rev Rul 2015-1, 2015-2 IRB)

Code Sec. 1295

Qualified electing funds—elections—consent to make retroactive election.

U.S. citizen was granted consent to make retroactive QEF election with respect to foreign corp. for stated year under Reg § 1.1295-3(f), provided he complied with Reg § 1.1295-3(g) rules regarding time and manner for making retroactive QEF elections. (IRS Letter Ruling 201451020)

Qualified electing funds—elections—consent to make retroactive election.

U.S. citizen was granted consent to make retroactive QEF election with respect to foreign corp. for stated year under Reg § 1.1295-3(f), provided he complied with Reg § 1.1295-3(g) rules regarding time and manner for making retroactive QEF elections. (IRS Letter Ruling 201451021)

Qualified electing funds—elections—consent to make retroactive election.

U.S. citizen was granted consent to make retroactive QEF election with respect to foreign corp. for stated year under Reg § 1.1295-3(f), provided he complied

with Reg § 1.1295-3(g) rules regarding time and manner for making retroactive QEF elections. (IRS Letter Ruling 201451022)

Code Sec. 1296

Passive foreign investment cos.—mark to market elections—extensions.

Trust/regulated investment co. was granted 60-day extension from date this letter was issued to make Code Sec. 1296 mark-to-market election with respect to its stock in foreign co. for stated year, where it satisfied requirements for extension. (IRS Letter Ruling 201451029)

Code Sec. 1362

S corps.—inadvertent terminations—ineligible shareholders.

Corp. will continue to be treated as S corp. from stated date and thereafter, where possible termination of corp.'s S status was inadvertent under Code Sec. 1362(f) due to trusts becoming ineligible shareholders as result of article in trust agreements that could have paid corpus of trust to someone other than current income beneficiary during beneficiary's life, provided trust beneficiaries each file timely QSST elections, and that election was valid and not otherwise terminated under Code Sec. 1362(d). (IRS Letter Ruling 201451001)

S corps.—inadvertent terminations—ineligible shareholders—failure to file ESBT election for trusts.

Corp. will continue to be treated as S corp. from stated date and thereafter, where termination of corp.'s S status was inadvertent under Code Sec. 1362(f) due to trust's failure to timely file ESBT election, provided that corp.'s election was valid and not otherwise terminated under Code Sec. 1361(d), and that trustees file ESBT election within 120 days from date this letter was issued. (IRS Letter Ruling 201451016)

S corps.—inadvertent terminations—ineligible shareholders—failure to file ESBT election for trusts.

Corp. will continue to be treated as S corp. from stated date and thereafter, where termination of corp.'s S status was inadvertent under Code Sec. 1362(f) due to trusts becoming ineligible shareholders following trustees' failures to properly file ESBT elections, provided that corp.'s election was valid and not otherwise terminated under Code Sec. 1361(d), and that trustees file ESBT elections within 120 days from date this letter was issued. (IRS Letter Ruling 201451017)

S corps.—inadvertent terminations—ineligible shareholders.

Corp. will continue to be treated as S corp. from stated date and thereafter, where termination of corp.'s S status was inadvertent under Code Sec. 1362(f) due to ineligible shareholders, provided S election was valid and wasn't otherwise terminated under Code Sec. 1362(d). (IRS Letter Ruling 201451019)

Code Sec. 1504

Consolidated returns—affiliated groups.

Professional cos. were members of affiliated group within meaning of Code Sec. 1504(a)(1), of which U.S. parent was common parent, and will be permitted to join in filing of consolidated return with parent group. (IRS Letter Ruling 201451009)

Code Sec. 2031

Gross estate—valuation—business interests—limited partnerships—experts.

Tax Court decision redetermining estate tax value of decedent's fractional interest in timber partnership was reversed and remanded for recalculation of valuation. Court's underlying conclusion, insofar as assigning 25% likelihood to possibility of liquidation, was clearly erroneous where based on hypothetical events and contrary to record evidence. Moreover, while it wasn't clear error to use pre-tax cash flows for going concern portion of its valuation or to apply IRS's proposed 25% marketability discount, rather than taxpayer's proffered 35% discount, Court further erred by not adequately explaining its basis for cutting in half taxpayer's expert's proffered co.-specific risk premium. (*Estate of Giustina v. Comm., CA 9, 114 AFTR 2d 2014-6848*)

Code Sec. 2601

Generation-skipping transfer taxes—modification of trusts—retention of exempt status of trust.

Proposed judicial modification and division of trusts into divided trusts won't cause any of trusts or divided trusts to lose its GSTT exemption under Reg § 26.2601-1(b)(4)(i). And, proposed modifications and *pro rata* division of trusts won't cause any portion of assets to be includible in gross estate of any beneficiary under Code Sec. 2035, Code Sec. 2036, Code Sec. 2037, or Code Sec. 2038, and won't constitute transfer of property by any beneficiary subject to gift tax under Code Sec. 2501. (IRS Letter Ruling 201451005)

Code Sec. 2642

Generation-skipping transfer taxes—election to allocate exemption—transfers to trusts—extensions.

Decedent's personal representatives were granted 120-day extension from date this letter was issued to allocate decedent's GSTT exemption to portion of transfers to trusts incorrectly treated as nontaxable for GSTT purposes, effective transfer date, where taxpayer acted reasonably and in good faith and granting relief wouldn't prejudice govt.'s interests. (IRS Letter Ruling 201451025)

Code Sec. 4945

Private foundations—grant-making procedures—taxable expenditures.

Exempt private foundation's procedures for awarding educational grants to orgs. for use in programs that deepen and enrich specified learning opportunities of students and their families, in connection with grant program operator and as additional donor to grant agreement, comply with Code Sec. 4945(g)(3) requirements and expenditures made in accordance with these procedures won't be taxable. (IRS Letter Ruling 201451048, IRS Letter Ruling 201451049, IRS Letter Ruling 201451050, IRS Letter Ruling 201451052, IRS Letter Ruling 201451054, IRS Letter Ruling 201451055, IRS Letter Ruling 201451056, IRS Letter Ruling 201451057, IRS Letter Ruling 201451060, IRS Letter Ruling 201451061)

Private foundations—grant-making procedures—taxable expenditures.

Exempt private foundation's procedures for providing stated portion of funds necessary for eligible students to receive appropriate treatment in private therapeutic environments, where their parents can't afford treatment's full financial commitment, comply with Code Sec. 4945(g)(3) requirements, and expenditures made in accordance with those procedures won't be taxable. (IRS Letter Ruling 201451047)

Private foundations—grant-making procedures—taxable expenditures.

Exempt private foundation's procedures for awarding grants to scientists at domestic and foreign nonprofit academic, medical, and research institutions who are pursuing research projects in stated scientific areas comply with Code Sec. 4945(g)(3) requirements, and expenditures made in accordance with those procedures won't be taxable. (IRS Letter Ruling 201451051)

Private foundations—grant-making procedures—taxable expenditures—income exclusions.

Exempt private foundation's procedures for providing scholarships to students who are residents of stated community and state and who attend specified university comply with Code Sec. 4945(g)(1) requirements, and expenditures made in accordance with those procedures won't be taxable. And, awards are excludable from recipients' gross income if they use them for qualified tuition and related expenses, subject to Code Sec. 117(c) limitations. (IRS Letter Ruling 201451053)

Private foundations—grant-making procedures—taxable expenditures—income exclusions.

Exempt private foundation's procedures for providing scholarships to students who are residents of stated community and state and who attend specified university comply with Code Sec. 4945(g)(1) requirements, and expenditures made in accordance with those procedures won't be taxable. And, awards are excludable from recipients' gross income if they use them for qualified tuition and related expenses, subject to Code Sec. 117(c) limitations. (IRS Letter Ruling 201451058)

Private foundations—grant-making procedures—taxable expenditures—income exclusions.

Exempt private foundation's procedures for awarding scholarships to undergraduate students at stated college comply with Code Sec. 4945(g)(1) requirements, and expenditures made in accordance with those procedures won't be taxable. And, awards are excludable from recipients' gross income if they use them for qualified tuition and related expenses, subject to Code Sec. 117(c) limitations. (IRS Letter Ruling 201451059)

Code Sec. 6011

Return requirements—return preparation—advice selecting return preparer.

IRS and national tax orgs. provided information and tips on selecting tax professionals and avoiding unscrupulous preparers. Taxpayers were reminded to select ethical preparers, to ensure preparer signs return and includes PTIN, to review return and ask questions before signing, and to never sign blank return. (IR

2014-116 , U.S. Tax Reporter: Income at ¶ 86,488)

Code Sec. 6211

Assessment and deficiency procedure—deficiency determination—what constitutes deficiency—definitions and computations—overpayments; credits.

Tax Court properly calculated attorney/taxpayer's deficiency for year at issue. Argument that Court improperly failed to include tax credits or overpayments from other years in its calculations was unsupported. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 6212

Assessment and deficiency procedure—deficiency notice—validity—presumption of correctness.

Tax Court decision denying attorney/taxpayer's claim to invalidate deficiency notice was affirmed: notice was sufficient on its face and taxpayer offered no evidence of misconduct. Argument that IRS issued notice because he failed to attend meeting at tax office was rejected. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 6213

Tax Court jurisdiction—deficiencies and collection due process—notice.

Tax Court lacked jurisdiction, in CDP case involving taxpayer claims for 4 different years, to hear his challenges to deficiencies for 2 years: IRS, which never issued any collection determination notice for those 2 years, issued deficiency notice for 1 of them only after taxpayer filed this suit and issued only non-jurisdiction triggering math error notice for other year. (*Harold P. Kupersmit v. Commissioner, (2014) TC Memo 2014-247, 2014 RIA TC Memo ¶ 2014-247*)

Code Sec. 6330

Collection due process—review of administrative determination—prior opportunity to contest underlying liabilities—notice—summary judgment.

IRS's administrative determination to proceed with collection of pro se taxpayer's liabilities for 2 of 4 years for which he didn't file returns, but for which IRS prepared return substitutes and issued deficiency notices followed by CDP notices, was upheld on summary judgment. Taxpayer, who didn't rebut presumptively correct Forms 3877 showing that notices had been sent to his last known address, wasn't entitled to use these proceedings to dispute his underlying liabilities since he deliberately refused notice delivery. Moreover, settlement officer thoroughly reviewed taxpayer's account and verified that all requirements of applicable law and administrative procedure were met; properly balanced IRS's efficient collection needs against taxpayer's intrusiveness concerns; and properly declined to consider collection alternatives because taxpayer told him that he wasn't interested in pursuing same and didn't submit necessary financial information. (*Harold P. Kupersmit v. Commissioner, (2014) TC Memo 2014-247, 2014 RIA TC Memo ¶ 2014-247*)

Collection due process—review of administrative determination—offer-in-compromise.

IRS's supplemental administrative determination to reject OIC and proceed with collection of solar co. CEO's self-reported liabilities was upheld on summary judgment: settlement officer conducted thorough review of taxpayer's account, determined that tax was properly assessed, verified that all other legal and procedural requirements were met, and properly balanced taxpayer's intrusiveness concerns against IRS's efficient collection needs. Argument that officer abused his discretion in rejecting OIC was belied by facts that taxpayer had not kept current on his obligations and that OIC was for amount that was both lower than amount taxpayer had proposed in earlier OIC and substantially below his reasonable collection potential. (*Anthony E. Clifford v. Commissioner, (2014) TC Memo 2014-248, 2014 RIA TC Memo ¶ 2014-248*)

Collection due process—review of administrative determination—installment agreements—summary judgment.

IRS's administrative determination to proceed with collection of married attorneys' self-reported liabilities, for 2 of multiple years for which they had not paid their balances due, was upheld on summary judgment: although there was unresolved fact issue as to whether parties agreed after CDP hearing to have follow-up discussion on certain date, that issue wasn't material and didn't itself preclude summary judgment; and taxpayers otherwise failed to raise any material fact dispute that would require trial and instead, record showed that officer properly verified all requirements of applicable law and administrative procedure had been met. Also, argument that taxpayers didn't receive distinct IRS letter scheduling CDP hearing for 2d year at issue was meritless as that year was contemplated in their hearing; installment agreement rejection was reasonably based on facts taxpayers had previously defaulted on num-

ber of agreements and had sufficient assets to pay their liabilities in full; their speculative claim that officer should have withdrawn lien because such complicated their supposed real estate sales plan was unpersuasive; and officer gave them more than ample time to come forward with "serious proposal," but they never did. (*Spencer Hosie, et ux. v. Commissioner, (2014) TC Memo 2014-246, 2014 RIA TC Memo ¶ 2014-246*)

Code Sec. 6651

Failure to timely file returns penalties—burden of proof and production—reasonable cause.

Failure to timely file returns penalty was upheld against taxpayer/attorney for year for which he didn't file valid, signed return until after due date: IRS met its burden of production with proof of above; and taxpayer didn't show any reasonable cause for same. (*Steven E. Hillman v. Commissioner, (2014) TC Memo 2014-250, 2014 RIA TC Memo ¶ 2014-250*)

Code Sec. 6662

Accuracy-related substantial understatement penalties—burden of proof and production—reasonable cause; good faith.

Accuracy-related substantial understatement penalty was upheld against taxpayer/attorney for year for which he filed late amended return showing no tax due: IRS met its burden of production with proof that, even taking into account partial income reduction to which taxpayer proved he was entitled, he still had understatement that exceeded greater of 10% of tax required to be shown on return or $5,000; and he didn't show reasonable cause for same. (*Steven E. Hillman v. Commissioner, (2014) TC Memo 2014-250, 2014 RIA TC Memo ¶ 2014-250*)

Accuracy-related negligence penalties—burden of proof and production—reasonable cause—reliance on tax professional.

Tax Court decision upholding accuracy-related negligence penalty against attorney/taxpayer for year for which he claimed improper deductions was affirmed: IRS met its burden of production with proof that taxpayer failed to substantiate most of his deductions or keep adequate records and that he had repeated variations in his claims; and he failed to show reasonable cause for same. Argument that IRS erroneously refused to use his amended returns failed where even if it had, amended returns wouldn't have benefited him because they asserted lower tax due than his original return. Alternative argument that taxpayer hired accountant to prepare amended returns also failed where he didn't show that accountant was competent professional or that he relied on accountant's advice in good faith. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Accuracy-related substantial understatement penalties—burden of proof and production—estate tax understatements—reasonable cause; good faith.

These issues weren't discussed on appeal. (*Estate of Giustina v. Comm., CA 9, 114 AFTR 2d 2014-6848*)

Code Sec. 6672

Tax claims in bankruptcy—objection to proof of claim—computations and payments.

Bankruptcy court decision, denying taxpayer's objections to IRS's proof of claim to hold him liable as "responsible person" for his co.'s unpaid trust fund taxes, was affirmed: documentation govt. provided was sufficient to establish claim's presumptive validity; and taxpayer, although repeatedly arguing that there were number of payments for which govt. had not accounted, never provided proof of same. Also, argument that court improperly ruled on taxpayer's objection without 1st holding evidentiary hearing was belied by fact that court wasn't required to hold formal hearing. Moreover, court gave taxpayer ample opportunities to submit additional evidence. So, given that plus fact that he didn't respond to govt.'s request for supporting evidence over 3-year period, it was proper for court to conclude that he had not overcome claim's presumptive validity. (*Drake, Jr. v. U.S., DC NY, 114 AFTR 2d 2014-6881*)

Code Sec. 7212

Tax crimes—corrupt interference with tax law administration; willful failure to file returns—jury instructions—evidence.

Taxpayer/tax scheme promoter's conviction for willfully failing to file his returns and for corrupt interference with tax law administration, relating to his helping clients obstruct IRS investigations, was affirmed. Although district court erred in not instructing jury that taxpayer could only be convicted on corrupt interference charge if he was aware of pending IRS action, error was harmless because even properly instructed jury would have concluded that taxpayer was so aware at time he committed much of his culpable conduct. Moreover, argument that Code Sec. 7212(a) was unconstitutionally vague and overbroad was belied by facts that statute applied only to conduct committed corruptly

and that evidence was sufficient to support conviction. And although portion of IRS agent's testimony, opining on taxpayer's intent, was erroneously admitted, that error was also harmless in light of overall other evidence indicating that taxpayer's purpose in engaging in stated conduct, which included creating so-called "IMF decoding" program and constructing trusts, was to impede IRS's ability to locate and recover taxable assets. (*U.S. v. Miner, CA 6, 114 AFTR 2d ¶ 2014-5523*)

Code Sec. 7402

Collection actions—discovery—contempt.

Following earlier decision that taxpayer was in contempt of discovery order in collection case, district court determined that taxpayer had still not provided full and complete discovery responses as ordered, was therefore still in contempt, and that bench warrant for his arrest and imprisonment should issue forthwith. To extent report his attorney submitted was intended as motion to hold proceedings in abeyance pending taxpayer's attempt to sell real estate to satisfy his liabilities, motion was denied. (*U.S. v. Loreno, et al., DC PA, 114 AFTR 2d 2014-6871*)

Actions by U.S.—injunctions—conduct hindering tax law enforcement—employment taxes.

Stipulated permanent injunction was entered, requiring trucking and waste hauling co. pres. and affiliated cos. to make timely employment and unemployment tax payments and deposits and to deliver to IRS officer signed declarations of compliance for 1 year, and then email her spreadsheets showing same for 5 years thereafter. Taxpayers were also required to timely file returns, not make any property assignments or disbursements before meeting their tax obligations, not close any of their cos. and then reopen new one within stated locale or that served substantially same customers without govt. consent, not engage in fraudulent or deceptive practice that interfered with tax law administration, and immediately notify govt. counsel of identity and TIN of any new entity they came to own or control within next 3 years. (*U.S. v. Watts, et al., DC IA, 114 AFTR 2d 2014-6896*)

Code Sec. 7403

Collection actions—procedure—motion to dismiss—res judicata; law of case.

Magistrate judge recommended that pro se taxpayers' repeat motion to dismiss govt.'s collection complaint be denied: motion was based on same underlying invalid assessments and no-duty-to file returns arguments that had already been litigated and decided in another/companion case, and as such was barred by res judicata. Or, to extent taxpayers were seeking to re-argue other defenses that were rejected in earlier proceedings in this case, they were barred by law of case doctrine. And in any event, their arguments and defenses were insufficient to support dismissal motion. (*U.S. v. Bogart, et al., DC PA, 114 AFTR 2d 2014-6860*)

Collection actions—motions—sanctions.

Magistrate judge denied married taxpayers' F.R.Civ.P. 11 motion to sanction govt. for unexplained misconduct it allegedly engaged in incident to collection suit: taxpayers, who were apparently using motion to relitigate merits of another/companion suit that was decided against them, failed to show govt. counsel acted with improper purpose in this suit; rather, fact that govt. prevailed in companion suit indicated that its posture in this case wasn't sanctionable. (*U.S. v. Bogart, et al., DC PA, 114 AFTR 2d 2014-6864*)

Collection actions—advisory opinions.

Magistrate judge denied self-styled motion for judicial determination of law that married taxpayers filed in response to 1 of 2 companion collection suits govt. was pursuing against them: motion was effectively asking for impermissible advisory opinion on legal propositions that were based on hypothetical set of facts. (*U.S. v. Bogart, et al., DC PA, 114 AFTR 2d 2014-6867*)

Collection actions—discovery; assessment authority; tax protesters—jury trial—jurisdiction—conference call recordings.

Magistrate judge denied taxpayers reconsideration of decision denying their motion to compel discovery in collection suit: reconsideration wasn't warranted where taxpayers didn't show intervening change in controlling law, availability of new evidence, or clear legal or factual error, and instead were effectively just disagreeing with prior decision. But, discovery was stayed pending resolution of number of other pending and potentially dispositive motions. (*U.S. v. Bogart, et al., DC PA, 114 AFTR 2d 2014-6868*)

Collection actions—pleadings and procedure—motion to strike; motion to dismiss.

Govt. was granted motion to strike surreply and new evidence that taxpayers and others filed in collection suit in connection with their dismissal motion. Also, dismissal motion was denied where it was based on

meritless argument regarding state statutes involving creditor rights. (*U.S. v. Rudd, Jr., et al., DC WA, 114 AFTR 2d 2014-6885*)

Collection actions—assessments reduced to judgment—limitations periods—summary judgment.
Taxpayer's summary judgment motion, seeking to dismiss govt.'s collection complaint as time-barred, was denied, and govt.'s cross-motion for judgment on same was granted. Govt., which supported its motion with IRS officer declaration and official IRS records that substantiated subject assessments, timely filed suit day before collection period expired. And taxpayer failed to effectively rebut same where making only meritless claim that govt. wrote off balance due after period expired. (*U.S. v. Hamilton, DC MD, 114 AFTR 2d ¶ 2014-5529*)

Collection actions—lien foreclosure—default judgment.
Magistrate judge's unopposed recommendation to grant govt. default judgment against 3d parties to collection suit, and to extinguish any interest they held in property on which govt. was seeking to foreclose liens, was adopted, based on magistrate's reasoning. (*U.S. v. Stikes, et al., DC CA, 114 AFTR 2d 2014-6859*)

Code Sec. 7407

Return preparer penalties—injunctions.
Return preparer, who consented to immediate revocation of PTINs and EFINs, was permanently enjoined from acting as preparer, supervising or managing preparers, or assisting in preparation or filing of returns and related documents for others; representing clients whose tax liabilities were under IRS examination or investigation; and engaging in conduct that was subject to penalty under Code Sec. 6701, Code Sec. 6694, and Code Sec. 6695, that helped clients avoid assessment or collection or claim improper refunds, or that otherwise substantially interfered with tax law enforcement. (*U.S. v. Chertos, DC MI, 114 AFTR 2d 2014-6853*)

Code Sec. 7422

Refund actions—jurisdiction—prerequisites to suit—administrative claims—summary judgment.
Ranch partnership co-partners' refund complaint, seeking return of portion of property sale proceeds escrow co. remitted to IRS to release liens for multiple tax periods against partnership, 1 of partners individually, and that partner's sole proprietorship, was denied on summary judgment. Taxpayers didn't meet administrative claim prerequisite as to partnership's liabilities for some periods at issue, in respect to which they claimed to have submitted informal letters to IRS but credible evidence of which they failed to submit. Similarly, partner who owned sole proprietorship failed to submit credible evidence that he made any overpayments for remaining periods. Although he did offer chart drafted by his attorney, plus some returns and checks, evidence on which chart was based wasn't submitted and returns and checks weren't properly authenticated. (*Rashidian, et al. v. U.S., DC CA, 114 AFTR 2d 2014-6850*)

Refund actions—pleadings; jurisdiction—damages—Court of Federal Claims.
Incarcerated taxpayer's CFC complaint for refund and damages relating to govt.'s alleged violation of various laws and executive orders was dismissed: taxpayer didn't allege wage amount for which he was seeking refund, submit any Form W-2 or 1099-R showing same, or otherwise make out viable claim for same; or even if he did, he didn't show that he met jurisdictional full payment and administrative claim filing prerequisites to refund suit. He also failed to identify any applicable money-mandating sources of law for damage claims, and instead just cited to such inapplicable things as National Emergency Banking Relief Act, executive orders and senate reports. And suit otherwise failed under Prison Litigation Reform Act. (*Cearley v. U.S., Ct Fed Cl, 114 AFTR 2d 2014-6876*)

Refund actions—res judicata.
District court decisions, dismissing married taxpayers' repeat refund suit and denying their motion for reconsideration, were affirmed. Res judicata barred taxpayers from relitigating their claims for stated years because Court of Federal Claims previously issued final judgment on merits with respect to same. And they didn't show any grounds for reconsideration. (*Larson v. U.S., CA 9, 114 AFTR 2d 2014-6850*)

Code Sec. 7430

Administrative and litigation costs—substantial justification for IRS's position.
Taxpayer/attorney, who engaged in and promoted various listed transactions, wasn't entitled to recover administrative and litigation costs incurred disputing IRS's deficiency determinations relating to his unreported income from foreign bank account: IRS's position, although eventually modified to reflect concession that number of taxpayer's account transfers weren't in fact income, was substantially justified where based on bank deposits analysis and facts that account was solely in taxpayer's name, that he

had signatory authority over it, and that he didn't comply with IRS's reasonable request for 3d-party documentation to corroborate his position. (*Larry J. Austin v. Commissioner, (2014) TC Memo 2014-249, 2014 RIA TC Memo ¶ 2014-249*)

Code Sec. 7433

Actions against U.S., IRS agents, and employers—sovereign immunity—wrongful collection; failure to release liens; compliance with levies—civil rights violations—failure to state claim for relief.

Pro se tax-protester's collection-related constitutional, civil rights and related claims against U.S., IRS agents and employer were dismissed: no sovereign immunity waiver applied as to claims against govt. or officers in their official capacities, save for potential waiver under Code Sec. 7432 or Code Sec. 7433, but taxpayer didn't exhaust his administrative remedies thereunder; and Code Sec. 6332 provided immunity for employer from any liability relating to its compliance with IRS levy. Also, criminal statutes to which taxpayer cited didn't provide for private right of action; 42 USCS 1983 claims couldn't stand since none of defendants were acting under color of state law; 42 USCS 1985 or 42 USCS 1986 claims failed due to lack of any well-pleaded factual allegations suggesting that any defendant demonstrated racial, class-based, or other invidiously discriminatory animus; and remaining claims for such things as trespass on case were inadequately pleaded and/or legally frivolous. (*Scheuering v. U.S., DC NY, 114 AFTR 2d 2014-6872*)

Code Sec. 7463

Appeal from Tax Court decision—small tax cases.

Taxpayer's appeal from Tax Court decision in small tax case was dismissed for lack of jurisdiction: Code Sec. 7463 explicitly precluded review of decisions in small tax cases. (*Rayle v. Comm., CA 7, 114 AFTR 2d 2014-6858*)

Code Sec. 7482

Appeals from Tax Court decision—stipulated decisions.

Stipulated Tax Court deficiency decision against pro se married taxpayers was affirmed. Although taxpayers sought to appeal, they were deemed to have waived same pursuant to rule that parties can't appeal from decisions entered by consent absent applicable exception. (*Hanson v. Comm., CA 9, 114 AFTR 2d ¶ 2014-5526*)

Code Sec. 7491

Review of Tax Court decision—burden of proof—burden shifting—substantiation.

Tax Court decision denying attorney/taxpayer's claim to shift burden of proving deductions for various expenses to IRS under Code Sec. 7491(a) was affirmed: taxpayer didn't meet Code Sec. 7491(a)'s substantiation requirements. (*Longino v. Comm., CA 11, 114 AFTR 2d ¶ 2014-5524*)

Code Sec. 7602

Summons enforcement—procedure.

Magistrate judge recommended enforcing IRS summons on taxpayer for information relating to investigation of his tax liabilities: govt. established prima facie enforcement case with IRS agent's affidavit that summons was issued pursuant to stated investigation, that summoned information was relevant to same and not already in IRS's possession, and that all administrative steps were followed. Taxpayer's claim that he believed he had previously provided all requested materials to other IRS employees, and believed that those employees would transmit materials to agent, didn't show why summons shouldn't be enforced. He was warned that failure to comply could result in contempt. (*U.S. v. Terrell, DC GA, 114 AFTR 2d 2014-6880*)

Summons enforcement—procedure.

Magistrate judge's recommendation to enforce IRS summons on taxpayer was adopted. Accordingly, taxpayer was ordered to comply. Or, if he didn't, he could be found in contempt. (*U.S. v. Terrell, DC GA, 114 AFTR 2d 2014-6898*)

Summons enforcement—procedure.

Govt.'s petition to enforce IRS summons on taxpayer was granted following his failure to show cause why such shouldn't be enforced. (*U.S. v. Brown, DC NJ, 114 AFTR 2d 2014-6879*)

Code Sec. 7704

Publicly traded partnerships—qualifying income.

Income derived by limited partnership from refining and processing of oil and natural gas was Code Sec. 7704(d)(1)(E) qualifying income. (IRS Letter Ruling 201451002)

Code Sec. 7803

Organization of IRS—Industry Issue Resolution.

IRS announced that it has accepted request under IIR Program to issue guidance on capitalization

rules in restaurant business. (IR 2014-118)

Judicial proceedings

FOIA—IRS records—adequate search—confidential source exemption—summary judgment.

Govt. was granted summary judgment on taxpayer's FOIA claim for disclosure of return information regarding estate of decedent in respect to whom she claimed to be heir: IRS showed through employee affidavits and declarations that it conducted adequate search for responsive documents based on all TINs and names provided by taxpayer and that search was without any date restrictions and was designed to locate information about IRS liens; IRS wasn't required to search documents not in its possession and wasn't liable for failing to produce information destroyed before taxpayer made her FOIA request; and taxpayer's exhibits merely provided background information about estate but failed to show that search wasn't reasonable. Also, in camera declarations and district court's in camera review of 2 withheld documents showed that they were entitled to confidential sources exemption. (*Kohake v. Dept. of Treas., DC OH, 114 AFTR 2d 2014-6855*)

Tax crimes—filing false returns—experts.

District court properly denied retired professional football player's request for appointment and funding of neuropsychologist to evaluate him and testify in tax crimes case involving his Code Sec. 7206(1) offenses: evidence showed that taxpayer wasn't indigent and that proposed expert testimony about whether he had mental impairment that contributed to good faith belief that returns he filed were truthful wasn't necessary for his defense. Notably, evidence regarding taxpayer's decades-old football career and interactions with his lawyer in year he was indicted were irrelevant to his mens rea in year he filed false returns; and there was no evidence that any mental health professional, physician, family member, or colleague had raised concerns about his cognitive abilities or suggested that any cognitive defects impaired his ability to perform his job as independent consultant in years at issue. (*U.S. v. Boyd, CA 5, 114 AFTR 2d 2014-6890*)

Tax crimes—filing false returns—evidence—jury instructions—willfulness—prosecutorial and judicial misconduct—ineffective assistance of counsel.

Retired professional football player's conviction for filing false returns for years for which he filed zero returns was affirmed: admission of taxpayer's tax transcripts and returns from earlier and later years, which reflected that he had previously complied with his tax obligations but continued to file zero returns even after IRS warned him that his filings were based on frivolous legal positions, was proper where such documents were relevant to issue of his willfulness. Also, above plus facts that he hired and paid accountant to prepare his return for 1st year at issue, but instead delayed filing his returns for another year/after he completed and filed returns at issue, and that he received Forms 1099 reporting his taxable income for each those years, was sufficient to support conviction. And willfulness instructions were proper; prosecutorial and district court judge's statements regarding taxpayer's no-tax theory didn't give rise to plain error requiring reversal where theory's unreasonableness was supported by theory itself and witness testimony; and court's response to jury note that previously announced schedule continued to apply to their deliberations was proper. Alternative ineffective assistance of counsel claim which taxpayer sought to raise on appeal couldn't be heard as it had not been developed in record. (*U.S. v. Boyd, CA 5, 114 AFTR 2d 2014-6890*)

Tax crimes—filing false returns—U.S. Sentencing Guidelines.

Retired professional football player's sentence for filing false returns was affirmed: sentence, which was within statutory maximum, was both presumptively reasonable and sufficiently explained. Argument that sentence was disparate from sentences of other defendants based on survey taxpayer compiled of sentences in allegedly similar tax cases failed where court had little information about defendants in survey. (*U.S. v. Boyd, CA 5, 114 AFTR 2d 2014-6890*)

Limitations periods on tax crimes indictments—corrupt interference with tax law administration; filing false returns.

Taxpayer's motion to dismiss as time-barred 1 Code Sec. 7212(a) count of multi-count indictment was denied: under relevant statutes and case law, it was clear that Code Sec. 6531(6)'s 6-year, not Code Sec. 6531's more general 3-year, period applied to crimes charged under Code Sec. 7212(a) and was open at time indictment was filed. Although Code Sec. 6531(6)'s parenthetical language referred to intimidation of officers and employees of U.S., that language was meant to be descriptive only, not to limit statute to intimidation offenses.

(*U.S. v. Croteau, DC FL, 114 AFTR 2d ¶ 2014-5522*)

Tax claims in bankruptcy—avoidable transfers—preferential transfers—fraudulent conveyances—payroll servicing companies—liability for taxes withheld or collected.

Bankruptcy court remand decision that Chap. 7 trustee wasn't entitled to avoid as preferential transfers under 11 USCS 547(b) multimillion dollar payments which debtor-payroll servicing co. made out of defrauded clients/taxpayers' funds to IRS was affirmed: under Maryland law, payments didn't meet 11 USCS 547(b) prerequisite that they comprise transfer of debtor/co.'s property since co. held funds in express trust and had no equitable interest in same or discretion as to their application. Trustee's argument that upon transfer to co., tax funds became debt co. owed to its clients and not trust property was belied by co.'s and clients' services agreements, showing funds were intended to be used for limited purpose of satisfying clients' tax obligations; and fact that funds received from each client had been commingled with funds intended for payment of all clients' employees' wages, payment of co. for its payroll services and payment of other clients' taxes didn't defeat trust's creation where tax funds were traceable and connected to trust. (*Wolff v. U.S., CA 4, 114 AFTR 2d ¶ 2014-5525*)

Tax claims in bankruptcy—declaratory relief—standing—jurisdiction.

These issues weren't discussed on appeal. (*Wolff v. U.S., CA 4, 114 AFTR 2d ¶ 2014-5525*)

Appeals from bankruptcy court—objection to proof of claim; standing to object.

Taxpayer wasn't barred on standing grounds from appealing bankruptcy court decision that upheld IRS's proof of claim to hold taxpayer liable as "responsible person" for his co.'s unpaid trust fund taxes: even if surplus was doubtful/if this was no-surplus Chap. 7 case, facts that taxpayer was challenging nondischargeable debt for which he would be ultimately and directly responsible showed direct financial interest sufficient to warrant standing. (*Drake, Jr. v. U.S., DC NY, 114 AFTR 2d 2014-6881*)