4Q/2015 TAX DEVELOPMENTS WHICH MAY AFFECT A TAX SITUATION

The following is a summary of important tax developments which have occurred in the past three months that may affect you, your family, your investments and your livelihood.

- **New tax legislation.**

  While in the past, Congress has been chastised by some for being gridlocked, there was a flurry of new laws containing tax provisions in the last quarter of the year:

  - The Protecting Americans From Tax Hikes (PATH) Act retroactively extended 50 or so taxpayer-favorable tax "extenders" - temporary tax provisions which are routinely extended by Congress on a one- or two-year basis, that had expired at the end of 2014. It made permanent more than a dozen of the extenders (including the enhanced child tax credit, American opportunity tax credit and earned income tax credit; parity for exclusion from income for employer-provided mass transit and parking benefits; the deduction of State and local general sales taxes; the research credit; and 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements). It also contained a delay in the Affordable Care Act's 2.3% excise tax on medical devices and provisions on Real Estate Investment Trusts (REITs), IRS administration, the Tax Court and numerous other rules.

  - The Consolidated Appropriations Act included a delay of the Affordable Care Act's 40% excise tax on high cost employer-sponsored health coverage (i.e., the so-called "Cadillac" tax) and a one-year suspension of the annual fee on health insurance providers, in addition to the extension and phaseout of credits for wind facilities, the election to treat qualified facilities as energy property, the solar energy credit and qualified solar electric and water heating property credits. It also contained a provision that gives independent oil refiners a favorable way of accounting for transportation costs in calculating their domestic production activities deduction.

  - The Fixing America's Surface Transportation (FAST) Act requires the Secretary of State to deny a passport (or renewal of a passport) to a seriously delinquent taxpayer (i.e., generally, a taxpayer with any outstanding debt for Federal taxes in excess of $50,000). It also requires the IRS to enter into qualified tax collection contracts with private debt collectors for the collection of inactive tax receivables and repealed a recently enacted provision which provided for a longer automatic extension of the due date for filing Form 5500.

  - The Bipartisan Budget Act of 2015 eliminated the TEFRA unified partnership audit rules (so-called because they were introduced in the Tax Equity And Fiscal Responsibility Act of '82) and the electing large partnership rules, and replaced them with streamlined partnership audit rules. The new rules are effective for returns filed for partnership tax years beginning after December 31, 2017, but taxpayers can elect to apply them earlier.

- The Protecting Affordable Coverage for Employees Act revised the non-tax definition of small and large employers for purposes of the Affordable Care Act. This, however, also ended up modifying a benefits-related tax rule under permitting certain qualified health plans to be offered through cafeteria plans.

■ **Tax season begins.**

Despite the last minute, year-end tax legislation described above, the IRS announced tax season will begin as scheduled on Tuesday, January 19, 2016. The IRS will begin accepting individual electronic returns and paper returns on that date. The IRS noted that many tax software companies began accepting tax returns earlier in January and will submit them to the IRS on or after January 19. The IRS also noted there is no advantage to people filing tax returns on paper before January 19, instead of waiting for e-file to begin.

■ **Standard mileage rates down for 2016.**

The optional mileage allowance for owned or leased autos (including vans, pickups or panel trucks) decreased by 3.5¢ to 54¢ per mile for business travel after 2015. This rate can also be used by employers to provide tax-free reimbursements to employees who supply their own autos for business use, under an accountable plan, and to value personal use of certain low-cost employer-provided vehicles. The rate for using a car to get medical care or in connection with a move that qualifies for the moving expense decreased by 4¢ to 19¢ per mile.

■ **Rules for ABLE accounts are liberalized.**

For tax years beginning after December 31, 2014, States can create "Achieving a Better Life Experience" (ABLE) programs, which provide for a new type of tax-advantaged account for disabled persons to save for disability-related expenses. In new guidance, having determined that certain requirements set out in recently issued proposed regulations would impose substantial administrative and cost burdens, the IRS has eliminated or significantly modified these requirements. Under the guidance, (1) ABLE programs aren't required to establish safeguards to categorize distributions (including identifying amounts distributed for housing expenses); however, designated beneficiaries will still need to categorize distributions to determine their federal income tax obligations; (2) ABLE programs will not be required to request the taxpayer identification number of contributors to the ABLE account at the time when the contributions are made, if the program has a system in place to reject contributions that exceed the annual contribution limits; and (3) a certification under penalty of perjury that the individual (or the individual's agent under a power of attorney or a parent or legal guardian of the individual) has a signed physician's diagnosis, and that the signed diagnosis will be retained and provided to the ABLE program or the IRS upon request, is adequate to satisfy certification requirements.

In addition, the PATH Act eliminated the residency requirement for ABLE programs (i.e., that the accounts could only be located in the State of residence of the beneficiary). Now, individuals setting up ABLE programs can choose the State program that best suits their needs.

- **Affordable Care Act information reporting deadlines are extended.**

  Under the Affordable Care Act, insurers, self-insuring employers and certain other providers of minimum essential coverage must file information returns with the IRS and furnish certain information to individuals. Information reporting is also required for applicable large employers (ALEs). In guidance, the IRS has extended the due dates for certain 2015 information reporting requirements under the Affordable Care Act. The IRS has also provided guidance to individuals who, as a result of these extensions, might not receive a Form 1095-B or Form 1095-C allowing them to establish that they had minimum essential coverage by the time they filed their 2015 tax returns.

- **Innocent spouse relief.**

  The IRS issued proposed regulations which would make a number of significant changes to the existing innocent spouse rules. In general, a joint filer may obtain relief: (1) where the taxpayer did not have actual or constructive knowledge of the understatement of tax on a return; or (2) if no longer married to the other joint filer, by limiting his liability to his allocable portion of any deficiency; or (3) if ineligible for relief under the above two provisions, where, in view of all the facts and circumstances, it would be inequitable to hold the joint filer liable for any unpaid tax or any deficiency. Under the proposed regulations, when a taxpayer makes a request for relief on Form 8857, Request for Innocent Spouse Relief, he would not be required to elect or request relief under a specific provision of the Code. The proposed regulations would also provide guidance on the judicial doctrine of res judicata (i.e., when a prior court proceeding will be binding on the spouse) and detailed rules on credits and refunds in innocent spouse cases.

- **Health coverage tax credit.**

  The IRS provided guidance on claiming the health coverage tax credit (HCTC) for tax years 2014 and 2015, with particular emphasis on circumstances in which the taxpayer also qualifies for the premium tax credit. Eligibility for the HCTC is limited to displaced workers receiving allowances under the Trade Adjustment Assistance program and Pension Benefit Guaranty Corporation pension recipients who are age 55 or older. For months in tax years beginning in 2014 or 2015, an individual enrolled in a qualified health plan who is both an eligible individual for purposes of the HCTC and the premium tax credit in a month may claim either credit for the month. But once the HCTC election is made for an eligible coverage month, the individual is ineligible to claim the premium tax credit tor the same coverage in that coverage month and for all subsequent months in the tax year for which the individual is eligible for the HCTC.

- **De minimis expensing safe harbor under capitalization regulations is increased.**

  As an alternative to the general capitalization rule, regulations permit businesses to elect to expense their outlays for "de minimis" business expenses. The election is allowed where the amount paid for the property doesn't exceed $5,000 per invoice (or per item as substantiated by the invoice) if the taxpayer has an applicable financial statement (AFS), but a $500 limit applies where the taxpayer does not have an AFS . In new guidance, the IRS has increased, from $500 to $2,500, the de minimis safe harbor limit for taxpayers that don't have an AFS. The increase applies for costs incurred during tax years beginning on or after January 1, 2016, but use of the new limit won't be challenged by the IRS in tax years prior to 2016.

- **Deduction safe harbor for remodeling costs of retail and restaurant businesses.**

  Taxpayers are generally allowed to deduct all the ordinary and necessary expenses paid or incurred in carrying on any trade or business, including repair and maintenance costs, but must generally capitalize amounts paid to acquire, produce, or improve property. Determining how these rules apply to the various components of a remodelling project can be a complex and difficult undertaking. In new guidance, the IRS has provided a safe harbor method which taxpayers engaged in the trade or business of operating a retail establishment or a restaurant may use to determine whether costs paid or incurred to refresh or remodel a qualified building are deductible or must be capitalized. Under the safe harbor, a qualified taxpayer treats 75% of its qualified costs paid as deductible and 25% as expenses that must be capitalized.