2Q/2017 TAX DEVELOPMENTS WHICH MAY AFFECT A TAX SITUATION

There were a number of important tax developments in the second quarter of 2017. The following is a summary of important tax developments which have occurred in the past three months which may affect you, your family, your investments and your livelihood.

■ Healthcare bill moves through Congress

On May 4, the House of Representatives passed along party lines the American Health Care Act (AHCA), the Republican plan to repeal and replace the Affordable Care Act (ACA, also known as Obamacare), as amended. The House-passed bill would need to be reconciled with the Senate's version of health reform legislation.

The AHCA would repeal virtually all of the ACA tax provisions, including the following. (Except as otherwise provided, the repeal would go into effect in 2017).

- The penalty on individuals who don't carry adequate insurance, retroactively effective beginning in 2016.

- The employer shared responsibility penalty (i.e., the penalty which applies to certain employers who don't offer health care coverage for its full-time employees, or offers minimum essential coverage which is unaffordable or does not provide minimum value). The repeal would be retroactively effective beginning in 2016.

- The premium tax credit which makes health insurance premiums more affordable for certain low-income taxpayers. The repeal would be effective in 2020 (and a modified, age-based tax credit would be provided pending its repeal).

- The 3.8% net investment income tax (NIIT) on certain higher income individuals.

- The 0.9% additional Medicare tax on certain higher income individuals, effective 2023.

- The higher floor beneath medical expense deductions. Under current law, the floor is 10% (effective in 2013 for taxpayers under age 65 and in 2017 for taxpayers 65 and older). The AHCA would reduce the floor to 5.8% for all taxpayers beginning in 2017.

- The small employer health insurance credit, effective 2020.

- The dollar limitation (currently $2,700) on health Flexible Spending Account (FSA) contributions.

- The disallowance of any deduction for compensation in excess of $500,000 for certain health insurance executives.

- The 40% excise tax (the so-called “Cadillac” tax) on high cost employer-sponsored health plans, would be delayed until 2026, but would not be repealed.

On July 13, the Senate leadership released its healthcare bill, renamed the Better Care Reconciliation Act of 2017 (BCRA), as amended, for consideration. It left most of the provisions of the House-passed bill intact, but notably did not call for the repeal of the 3.8% NIIT, the 0.9% additional Medicare tax, or the disallowance of any deduction for compensation in excess of $500,000 for certain health insurance executives. As we know now, the Senate did not vote on its own bill and no changes to Obamacare have been made.

■ Still time to make expensing election on amended returns

The tax law's expensing rules allow a business to elect to currently deduct the cost of business machinery and equipment - up to a dollar limit - instead of recovering its cost via depreciation over a number of years. The Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) made a number of important improvements to the expensing break. The main changes were which the $500,000 annual expensing limitation and $2 million investment ceiling amount were retroactively extended and made permanent (they were to have expired after 2014). Additionally, the PATH Act made the following changes to the expensing break, effective after 2015:

- The $500,000 annual expensing limitation and $2 million investment ceiling amount was made subject to inflation indexing.
- Expensing of qualified real property was made permanent without a complex carryover limitation which applied under prior law.
- The $250,000 expensing limitation which applied to qualifying real property under prior law was eliminated.
- Certain air conditioning and heating units became newly eligible for expensing.

Noting there has been taxpayer confusion about making an expensing election for tax years which begin after 2014, the IRS announced, for any tax year which begins after 2014, a taxpayer may make an expensing election for any expensing-eligible property without the IRS's consent on an amended Federal tax return for the tax year in which the taxpayer places in service the expensing-eligible property.

■ IRS releases next year's inflation adjustments for health savings accounts (HSAs)

Eligible individuals may, subject to statutory limits, make deductible contributions to an HSA. Employers, as well as other persons (e.g., family members), also may contribute on behalf of an eligible individual. A person is an "eligible individual" if he is covered under a high deductible health plan (HDHP) and is not covered under any other health plan which is not a HDHP, unless the other coverage is permitted insurance (e.g., for worker's compensation, a specified disease or illness or providing a fixed payment for hospitalization). The IRS has released the annual inflation-adjusted contribution, deductible and out-of-pocket expense limits for 2018 for HSAs. For calendar year 2018, the limitation on deductions is $3,450 (up from $3,400 for 2017) for an individual with self-only coverage. It's $6,900 (up from $6,750 for 2017) for an individual with family coverage under a HDHP. Each of these amounts is increased by $1,000 if the eligible individual is age 55 or older. For calendar year 2018, an HDHP is a health plan with an annual deductible which is not less than $1,350 (up from $1,300 for 2017) for self-only coverage or $2,700 (up from $2,600 for 2017) for family coverage, and with respect to which the annual out-of-pocket expenses (deductibles, co-payments and other amounts, but not premiums) do not exceed $6,650 (up from $6,550 for 2017) for self-only coverage or $13,300 for family coverage (up from $13,100 for 2017).

- IRS's private debt collection program kicks off

  IRS announced which beginning in April, it will start sending letters to notify “a relatively small group of individuals” with overdue federal tax which their accounts have been assigned to one of four private collection agencies (PCAs). The assignments were authorized by legislation enacted in 2014. PCAs are authorized to discuss payment options, including setting up payment agreements with taxpayers. But, as with cases assigned to IRS employees, any tax payment must be made, either electronically or by check, to the IRS. The IRS also warned taxpayers to be wary of scammers posing as PCAs, and to keep in mind which a legitimate PCA will only be calling about a tax debt which the person has had - and has been aware of -for years and had been contacted about previously in the past by IRS.

- Reissued proposed regulations explain new partnership uniform audit rules.

  A law enacted in 2015 (The Bipartisan Budget Act of 2015, signed into law on November 2, 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. Under these new rules, the IRS generally can't adjust partnership items on a partner's return except by a unified entity-level proceeding, which is binding on all partners and allows the IRS to make the necessary corresponding adjustments on the partners' individual returns. The new rules generally are effective for returns filed for partnership tax years beginning after December 31, 2017, but taxpayers can elect to apply them earlier. Additionally, certain small partnerships can elect out of the new partnership regime.

  Proposed regulations on the new partnership uniform audit rules were issued in January of this year, but were withdrawn by the IRS for further review and approval after President Trump instituted a “regulatory freeze.” Now the IRS has reissued the proposed regulations explaining the new partnership uniform audit rules. These regulations would have a substantial impact on affected partnerships.

This *Hot Topic* is an informative publication for clients and friends of the Firm. It is designed to provide accurate information on the subject matter covered. I recommend you consult with your legal and other advisors to determine if the information is applicable in your specific circumstances. If these advisors are not available to you, please feel free to contact Barry N. Finkelstein, CPA at 903/473-3540.