

## **4Q/2016 TAX DEVELOPMENTS WHICH MAY AFFECT A TAX SITUATION**

There were a number of important tax developments in the fourth quarter of 2016. The following is a summary of important tax developments which occurred in the last three months of 2016 which may affect you, your family, your investments and your livelihood.

### ■ **New law creates exemption for small employer HRAs**

On December 13, President Obama signed into law the "21st Century Cures Act" which, in addition to providing a medical innovation package which funds medical research and makes significant reforms to the mental health system, also allows an employer with fewer than 50 employees that doesn't offer group health insurance coverage to establish a small employer health reimbursement arrangement (HRA). Such an HRA isn't subject to penalties for failing to satisfy the Code's group health plan requirements - including the group health plan portability, access and renewability requirements initially enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) - and the market reform provisions enacted by the Affordable Care Act (ACA). The new law applies to plan years that begin after December 31, 2016.

The Act also extends the transition relief, to apply for any plan year beginning on or before December 31, 2016. That relief provided that the Code excise tax will not be asserted for any failure to satisfy the market reforms by employer payment plans which pay, or reimburse employees for, individual health policy premiums or Medicare part B or Part D premiums (1) for 2014 for small employers for 2014, and (2) for January 1 through June 30, 2015 for employers that are small employers for 2015.

### ■ **ACA information reporting deadlines are extended**

Under the ACA, 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 extended for 30 days the due date for furnishing to individuals the 2016 Form 1095-B (Health Coverage) and the 2016 Form 1095-C (Employer-Provided Health Insurance Offer and Coverage) to March 2, 2017. However, the IRS isn't extending the due date for filing the 2016 Forms 1094-B (Transmittal of Health Coverage Information Returns), 1095-B (Health Coverage), 1094-C, or 1095-C, which remains February 28, 2017, if not filed electronically, or March 31, 2017, if filed electronically.

### ■ **Premium tax credit regulations**

The IRS issued final regulations that, among other things, cover the rules on a taxpayer's eligibility for the premium tax credit which offsets a taxpayer's health insurance costs. The regulations include several taxpayer-favorable rules or safe harbors which apply in determining whether a taxpayer is eligible for the credit. However, these rules or safe harbors don't apply where an individual, with reckless disregard of the facts, provides incorrect information to an Exchange. The final regulations clarify that the

intentional-or-reckless-disregard-for-the-facts provision only applies to the conduct of the individual attesting to the Exchange. Thus, an individual is only responsible for the information he or she provides to the Exchange and isn't liable for inaccurate information provided by third parties, such as an employer. Further, an individual doesn't act recklessly when following the advice of an authorized advisor - i.e., a navigator, certified application counselor, agent or broker who receives training from the Department of Health and Human Services - so long as the individual provided the authorized advisor with necessary and accurate information.

- **Standard mileage rates down for 2017**

The optional mileage allowance for owned or leased autos (including vans, pickups or panel trucks) decreased by 0.5¢ to 53.5¢ per mile for business travel after 2016. 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 2¢ to 17¢ per mile.

- **Certified professional employer organization**

The IRS provided detailed requirements for a certified professional employer organization (CPEO) to remain certified and laid out the procedures relating to suspension and revocation of CPEO certification. Small businesses often contract with professional employer organizations (PEOs) or employee leasing companies to ensure compliance with workplace laws and regulations. Under the Tax Increase Prevention Act of 2014 (TIPA), a CPEO may be treated as the sole employer of the employees for purposes of responsibility for paying and withholding employment taxes. PEOs can be certified as CPEOs effective January 1, 2017.

- **Cents-per-mile & fleet average FMV maximums**

The IRS has announced the 2017 inflation-adjusted maximum fair market values (FMVs) for employer-provided autos, trucks and vans, the personal use of which can be valued for fringe benefit purposes at the mileage allowance rate (53.5¢ per mile for 2017). For 2017, the FMV can't exceed \$15,900 for autos (same as for 2016) and \$17,800 for trucks and vans - i.e., passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis (up from \$17,700 for 2016). In addition, the 2017 maximum fleet-average vehicle FMVs for autos, trucks and vans for purposes of the use of the annual lease value fringe benefit valuation method for an employer with a fleet of 20 or more vehicles are \$21,100 for a passenger auto (down from \$21,200 for 2016) and \$23,300 for a truck or van (up from \$23,100 for 2016).

- **Syndicated conservation easement transactions are listed transactions**

The IRS determined that syndicated conservation easement transactions which provide investors in a pass-through entity the possibility of a charitable contribution deduction which equals or exceeds two and one-half times the amount of the investor's investment,

and similar transactions, are listed transactions (i.e., transactions identified by the IRS as similar to tax avoidance transactions) that give rise to disclosure obligations by participants and advisors. Subject to penalty for failing to do so, taxpayers must disclose their participation in reportable, tax-shelter-type transactions by, among other things, attaching an information statement to their income tax returns.

■ **Unextended taxpayer-friendly “extenders”**

Congress adjourned for 2016, leaving taxpayers and their advisors uncertain as to whether 35 temporary tax provisions that expired at the end of 2016 will be further extended, made permanent, or left expired. In the past, Congress has regularly acted to extend expired or expiring temporary tax provisions. Collectively, these temporary tax provisions are often referred to as “tax extenders.” Most recently, Congress addressed tax extenders in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), extending all of the 52 provisions which had expired at the end of 2014. Unlike past tax extenders legislation, however, a number of provisions which had expired at the end of 2014 were made permanent. Several others were extended through 2019, while many were temporarily extended for two years, through 2016. The 35 temporary tax provisions which were allowed to expire at the end of 2016 may, as has happened in the past, be retroactively extended, perhaps in the first session of the 115th Congress, or they may not be extended.

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