WIDE ASSORTMENT OF NEW TAX PROVISIONS ENACTED IN TRADE BILLS

On June 29, 2015, President Obama signed into law two major trade bills: (1) the Trade Preference Extension Act of 2015; and (2) and the Trade Priorities and Accountability Act of 2015. The bills contain a variety of tax provisions including extending the health coverage tax credit, limiting who can take the refundable child tax credit, increasing penalty amounts for failures to file information returns and accelerating estimated tax payments for large corporations.

- Health Coverage Tax Credit Extended and Modified

The health coverage tax credit (HCTC) is a refundable income tax credit equal to 72.5% of the amount the taxpayer (an "eligible individual") pays for qualified health insurance (generally COBRA continuation coverage, certain state-based coverage, and certain individual health insurance) for the taxpayer and qualifying family members (spouse and dependents) for eligible coverage months beginning in the tax year. Qualifying family members can continue claiming the HCTC for up to 24 months after the eligible individual enrolls in Medicare, divorces or dies.

An eligible individual is an (1) "eligible Trade Adjustment Allowance (TAA) recipient"; (2) "eligible alternative TAA recipient"; or (3) "eligible PBGC pension recipient" (i.e., an individual who had reached age 55 as of the first day of the month (but wasn't entitled to Medicare) and was receiving a benefit for the month that is, in any part, paid by the Pension Benefit Guaranty Corporation (PBGC) under title IV of the Employee Retirement Income Security Act of '74, dealing with plan terminations.

Eligibility is determined on a monthly basis. A month is an eligible coverage month if, on the first day of the month, the taxpayer is an eligible individual, is covered by qualified health insurance for which he pays the premium, doesn't have other specified subsidized coverage, and isn't imprisoned under federal, state, or local authority. Married taxpayers filing separate returns can claim the credit. For joint returns, the eligibility requirements are considered met for any month if one spouse meets them. An individual can't claim the HCTC if he could be claimed as a dependent on another's tax return.

Under pre-TPE Act law, the HCTC wasn't available after December 31, 2013.

New law. The TPE Act extends and modifies the HCTC. The Act provides that the HCTC applies before January 1, 2020. Thus, the credit is generally retroactively extended six years through 2019.

As modified, the HCTC credit doesn't apply for any eligible coverage month unless the taxpayer elects the application of the credit for that month. Except as IRS provides, the election for an eligible coverage month in a tax year must be made no later than the due date (including extensions) for the tax return for the tax year. (For a transition rule, see below.) An election for an eligible coverage month will apply for all subsequent eligible coverage months in the tax year and, once made, will be irrevocable with respect to such months.

For coverage months in tax years beginning after December 31, 2015, individual health insurance is defined for purposes of qualified health insurance to mean insurance other than coverage enrolled in through an Exchange established under the Affordable Care Act.

- *Coordination with premium tax credit*. An eligible coverage month for which the HCTC election applies won't be treated as a coverage month for purposes of Code Sec. 36B premium tax credit with respect to the taxpayer. The tax of a taxpayer who makes the HCTC election for an eligible coverage month in a tax year, or on behalf of whom any advance HCTC payment is made under the Code with respect to a month in such tax year, is increased by the excess, if any, of:

  1. The sum of any advance payments made on behalf of the taxpayer for the premium tax credit under the Affordable Care Act for months during the tax year, over

- The sum of the HCTC credits allowed and the for the tax year.

Further, the TPE Act provides that the inclusion of excess advance premium tax credit payments in income won't apply for the taxpayer for such a tax year. However, if the taxpayer received any advance payments for any month in the tax year and is later allowed a credit for the tax year, the limit on the amount added to the tax with respect to excess advance premium tax credit payments is determined by substituting the increased tax amount determined in (1) and (2), above for the excess advance premium tax credit payments under the Code.

■ Child Tax Credit Not Refundable for Taxpayers Who Exclude Foreign Earned Income

Under the Code, for each qualifying child of a taxpayer for whom the taxpayer is allowed a dependency deduction, a $1,000 child tax credit is allowed against the taxpayer's income tax for the tax year. The amount of the allowable credit is phased out for taxpayers with modified AGI in excess of certain threshold amounts.

For tax years beginning before January 1, 2018, the child tax credit is refundable, but only to the extent of the greater of: (1) 15% of taxable earned income above $3,000, or (2) for a taxpayer with three or more qualifying children, the excess of his social security taxes for the tax year over his earned income credit for the year.

Under the Code's foreign earned income exclusion, a U.S. citizen or resident who lives abroad and meets certain requirements may be eligible to elect to exclude from U.S. taxable income certain foreign earned income regardless of whether any foreign tax is paid on the foreign earned income. For 2015, the maximum amount of foreign earned income that an individual may exclude is $100,800.

New law. Effective for tax years beginning after December 31, 2014, any taxpayer who elects to exclude foreign earned income for a tax year may not claim the refundable portion of the child tax credit for that year.

- Federal Public Safety Workers Can Take Penalty-Free Early Distributions from Governmental Plans

In general, any amount paid or distributed out of an individual retirement plan is included in the gross income of the payee or distributee as provided in the Code. The Code imposes an additional 10% "early withdrawal" tax on distributions from qualified retirement plans, taken before the individual reaches age 59-1/2, unless the distribution falls within a statutory exception.

One such exception is for distributions from a defined benefit governmental plan made to a "qualified public safety employee" who has separated from service after attaining age 50. An individual is a qualified public safety employee for this purpose only if he is an employee of a state or political subdivision (like a county or city) and his principal duties include services requiring specialized training in the area of police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state (or political subdivision).

Another exception to the early withdrawal tax is for distributions which are part of a series of "substantially equal periodic payments" made at least once per year for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and his designated beneficiary. However, if this exception initially applies but the series of payments is later modified (other than because of death of disability), the early withdrawal tax will be imposed if the distribution method is changed either: (i) both before the close of the 5-year period that begins with the date of the first payment and after the employee reaches age 59-1/2; or (ii) before the employee reaches age 59-1/2.

New law. Effective for distributions made after December 31, 2015, the category of eligible governmental workers who can qualify for the Code exception is broadened to include specified federal law enforcement officers, customs and border protection officers, federal firefighters, and air traffic controllers who have similarly reached age 50, and the types of plans from which distributions eligible for the exception can be made is broadened to include defined contribution plans and other types of governmental plans. The Code, as amended by TPA Act. Additionally, the fact that a Federal public safety worker takes such newly permissible distributions won't constitute a modification of substantially equal periodic payments under the Code.

- Statement from School is Requirement for Education Credits, Deduction

Individual taxpayers may qualify for tax credits - the American Opportunity Tax Credit and the Lifetime Learning Credit - or an above-the-line deduction, for qualified tuition and related expenses.

Higher education institutions must provide a return to IRS and a statement to the student, which indicate, among other things, the amount paid by or billed to the student for qualified tuition and related expenses for the tax year. Form 1098-T (Tuition

Statement) is used for this purpose.

Under pre-Act law, there was no requirement, in order to qualify for the credits or the deduction, that the taxpayer receive a Form 1098-T.

New law. Effective for tax years that begin after June 29, 2015, the TPE Act requires, as a condition of receiving the credits or the deduction, a taxpayer receive a Form 1098-T which contains all of the information required by that form.

- No Penalty for Schools That Try But Fail to Get Student TIN

Higher education institutions must provide a return to IRS and a statement to the student, that indicate, among other things, the amount paid by or billed to the student for qualified tuition and expenses for the tax year and that include the student's taxpayer information number (TIN). Form 1098-T (Tuition Statement) is used for this purpose.

The Code imposes penalties for not properly and completely preparing Form 1098-T.

New law. Effective for returns required to be made, and statements required to be furnished, after December 31, 2015, the TPE Act waives the penalty on educational institutions that fail to file Forms 1098-T with accurate TINs of students attending the educational institution if the institution certifies, under penalty of perjury, that it properly requested TINs from the students as required under Treasury regsulations.

- Increased Penalties for Failure to File Correct Information Returns

The Code imposes a penalty on taxpayers who fail to file correct information returns (e.g., IRS Form 1099) with IRS, as well as a separate, but parallel, penalty on taxpayers who fail to provide the payee with a correct copy of the information return filed with IRS. The penalties are based on the duration of the delinquency and whether the delinquency was intentional and are subject to maxima that depend on the size of the taxpayer.

New law. Effective with respect to returns and statements required to be filed after December 31, 2015, the TPE Act increases these penalties. For example, where an unintentional delinquency is corrected no more than 30 days after the return due date, the Act increases the per-return penalty from $30 to $50 and the maximum penalty for any calendar year, for a "small" taxpayer, from $75,000 to $175,000.

- Accelerated 2020 Estimated Tax Payment for Large Corporations

Generally, under the Code, corporations must pay estimated income tax for each tax year in four equal installments due on the 15th day of the 4th, 6th, 9th, and 12th months of the tax year.

New law. The TPE Act provides that, in the case of a corporation with assets of at least $1 billion (determined as of the end of the previous tax year), the amount of any required installment of corporate estimated tax otherwise due in July, August or Septtember 2020 is increased by 8% of that amount. The amount of the next required installment after an increased installment must be appropriately reduced to reflect the amount of the increase. Thus, the amount of the next installment after the increase is reduced to 92% of the amount otherwise due.

Observation: The required annual payment of a corporation is unchanged. The effect of the above rule is to shift 8% of the required installment which otherwise would have to be paid by December 15, 2020, to the required installment due on Sept. 15, 2020.

Corporations with a fiscal year that begins July 1 will not be affected by the above rule because they do not have any estimated tax payments due in July, August, or September.

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