2Q/2015 TAX DEVELOPMENTS WHICH MAY AFFECT A TAX SITUATION

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

- **Supreme Court upholds subsidies for health care purchased on Federal Exchange.**

  The Supreme Court, by a 6-3 vote, determined premium tax credits, also known as health insurance subsidies under the Affordable Care Act (ACA), are not limited to taxpayers who live in States which have established their own health insurance Exchange but are also available to taxpayers living in States which rely on a Federal Exchange. While acknowledging the challengers' arguments were strong, the Supreme Court found the language of the law was ambiguous in light of the context and structure of the premium tax credit provisions, as well as the role of the subsidies in the ACA as a whole. With these considerations in mind, the Supreme Court concluded allowing the subsidies for insurance purchased on any Exchange was consistent with the purpose of the ACA.

- **Supreme Court declares nationwide right to same-sex marriage.**

  The Supreme Court, in a 5-4 decision, struck down four state-wide bans on same-sex marriage, holding that the Fourteenth Amendment requires all States to license a marriage between two people of the same sex. And, since same-sex couples may now exercise the fundamental right to marry in all States, the Court ruled there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State. Tax ramifications of this decision include simplified tax filing for some taxpayers, and new filing choices for those who were in a State-sanctioned domestic partnership or civil union before the Supreme Court's decision.

- **New trade laws include wide variety of tax provisions.**

  On June 29, President Obama signed into law two major trade bills: (1) the Trade Preference Extension (TPE) Act of 2015; and (2) and the Trade Priorities and Accountability (TPA) Act of 2015. These new laws contain a variety of tax provisions including the following:

  - The refundable health coverage tax credit (HCTC) makes health insurance more affordable for certain trade-affected workers, Pension Benefit Guaranty Corporation (PBGC) payees and their families by paying part of their health insurance premiums. The HCTC had expired at the end of 2013. The TPE Act provides the HCTC applies before January 1, 2020. Thus, the credit is generally retroactively extended six years through 2019. The TPE Act also makes certain changes to the HCTC, including how the health coverage tax credit interacts with the Affordable Care Act's premium tax credit.

- Qualifying taxpayers can claim a $1,000 child tax credit, which is phased out if modified adjusted gross income exceeds certain levels. The child tax credit is refundable, within certain limits. Effective for tax years beginning after December 31, 2014, the TPE Act provides that any taxpayer who takes advantage of the foreign earned income exclusion for a tax year can't claim the refundable portion of the child tax credit for that year.

- Pre-age-59-1/2 withdrawals from retirement plans generally are subject to a 10% penalty tax unless one of several exceptions applies. Under one of these exceptions, distributions from a government pension-type plan aren't subject to the penalty tax if made upon separation from service after age 50 to state or local police, firefighters or emergency medical services personnel. Effective for distributions made after December 31, 2015, the TPA Act broadens the category of eligible governmental workers who can qualify for the penalty tax exception to include specified federal law enforcement officers, customs and border protection officers, federal firefighters and air traffic controllers who reach age 50 and separate from service. Additionally, the TPA Act expands the types of plans from which distributions eligible for the exception can be made

- The tax rules impose a penalty on taxpayers who fail to file correct information returns (such as IRS Form 1099) with the IRS. There's a separate, but parallel, penalty on taxpayers who fail to provide the payee with a correct copy of the information return which was required to be filed with the IRS. The penalties are based on the duration of the delinquency and whether the delinquency was intentional, and are subject to maximums that depend on the size of the taxpayer. Effective for 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 TPE Act increases the per-return penalty from $30 to $50 and the maximum penalty for any calendar year, for certain "small" taxpayers, from $75,000 to $175,000.

■ Regulations explain new tax-advantaged ABLE accounts.

For tax years beginning after December 31, 2014, states may establish tax-exempt "Achieving a Better Life Experience" (ABLE) accounts, which can be created by disabled individuals to support themselves or by families to support their disabled dependents. Contributions to the accounts are made on an after-tax basis (i.e., contributions aren't deductible), but assets in the account grow tax free. Withdrawals are tax-free if the money is used for qualified disability-related expenses. A nonqualified distribution is subject to income tax and a 10% penalty on the part of the distribution attributable to earnings. Each disabled person is limited to one ABLE account, and total annual contributions by all individuals to any one ABLE account can be made up to the inflation-adjusted gift tax exclusion amount ($14,000 for 2015).

Comprehensive IRS regulations provide details on how ABLE accounts work, including the following:

- A qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment or other similar method of payment.

- If the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual.

- An eligible individual must present the disability certification, accompanied by the diagnosis, to the qualified ABLE program, and that certification will be treated as filed with the IRS once the qualified ABLE program has received the disability certification.

- Qualified disability expenses are not limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism.

■ **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 subject to the contribution limitation. 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 provided the annual inflation-adjusted contribution, deductible and out-of-pocket expense limits for 2016 for health savings accounts (HSAs). For calendar year 2015, the limitation on deductions is $3,350 (no change from 2015) for an individual with self-only coverage. It's $6,750 (up from $6,650 for 2015) 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 2016, an HDHP is a health plan with an annual deductible that is not less than $1,300 (no change from 2015) for self-only coverage or $2,600 (no change from 2015) 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 $6,550 (up from $6,450 for 2015) for self-only coverage or $13,100 for family coverage (up from $12,900 for 2015).

■ **Certain taxpayers can file delinquent FBARs without penalty.**

"U.S. persons" (U.S. citizens or residents as well as many entities) who have financial interests in or signature authority over certain financial accounts maintained with financial institutions located outside of the U.S. must file a Report of Foreign Bank and Financial Accounts (FBAR) if the aggregate maximum values of the foreign financial accounts exceed $10,000 at any time during the calendar year. The FBAR is a calendar year report and must be filed on or before June 30 of the year following the calendar year being reported. Those required to file an FBAR but who fail to properly file one may be subject to a civil penalty. The IRS's Offshore Voluntary Disclosure Program (OVDP) offers people with unreported taxable income from offshore financial accounts or other foreign assets an opportunity to fulfill their tax and information reporting obligations, including the FBAR. In addition, streamlined filing compliance procedures are available to certain persons.

The IRS said U.S. persons should file delinquent FBARs if they don't need to use either the OVDP or the streamlined filing procedures, have not filed required FBARs, are not under a civil examination or a criminal investigation by the IRS and have not already been contacted by the IRS about the delinquent FBARs. The IRS will not impose a penalty for the failure to file the delinquent FBARs if the taxpayer: (a) properly reported on its U.S. tax returns, and paid all tax on, the income from the foreign financial accounts reported on the delinquent FBARs; and (b) has not previously been contacted regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted.

- **Monday, April 18 will be 2016 tax deadline for most individual taxpayers.**

  When April 15 falls on a Saturday, Sunday or legal holiday (which includes a legal holiday observed in the District of Columbia), a return is considered timely filed if filed on the next succeeding day which is not a Saturday, Sunday or legal holiday. April 15, 2016, will fall out on a Friday, but the Emancipation Day holiday will be observed in the District of Columbia on that day. As a result, the IRS announced most taxpayers will have until the next business day, Monday, April 18, 2016, to file their Form 1040s. However, because of a special rule for Patriot's Day observance on Monday, April 18, 2016, taxpayers in Maine and Massachusetts will have until Tuesday, April 19, 2016, to file their tax returns.