3Q/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.

- **New tax legislation.**

On July 31, 2015, President Obama signed into law the "Surface Transportation and Veterans Health Care Choice Improvement Act of 2015" (the Transportation Act), which extended the Highway Trust Fund and included a number of important tax changes.

The most important tax changes in the Transportation Act are those which adjust tax-filing deadlines for partnerships and C corporations. Specifically, for tax years beginning after December 31, 2015:

- Partnerships and S corporations must file their returns by the 15th day of the third month after the end of the tax year. Thus, entities using a calendar year will have to file by March 15 of the following year. Therefore, the filing deadline for partnerships will be accelerated by one month, but the filing deadline for S corporations will stay the same.

- C corporations must file by the 15th day of the fourth month after the end of the tax year. Thus, C corporations using a calendar year must file by April 15 of the following year. Therefore, the filing deadline for C corporations will be deferred for one month. Under a special rule for C corporations with fiscal years ending on June 30, the change won't apply until tax years beginning after December 31, 2025.

- Due dates for extensions have been adjusted as well, effective generally for returns for tax years beginning after December 31, 2015. For example, the new law creates the following exceptions to the 6-month extension that generally applies to corporations:

  1) For any return for a tax year of a C corporation which ends on December 31 and begins before January 1, 2026, the automatic extension period is 5 months.

  2) For any tax year of a C corporation which ends on June 30 and begins before January 1, 2026, the automatic extension period is 7 months.

  3) And, the maximum extension for the returns of partnerships filing Form 1065 will be a 6-month period (ending on September 15 for calendar year taxpayers) (not 5 months).

Other tax changes included in the Transportation Act include the following:

- Veterans with VA or TRICARE health care coverage aren't counted for purposes of

the 50-full-time-employee threshold used to determine if an employer is subject to the Affordable Care Act employer shared responsibility penalty. This change is retroactively effective for months beginning after December 31, 2013.

- Effective for months beginning after December 31, 2015, otherwise eligible veterans are not disqualified from contributing to health savings accounts (HSAs) on a pre-tax basis merely because they receive medical care under any laws administered by the VA for a service-connected disability.

- Effective for returns required to be made and statements required to be furnished after December 31, 2016, lenders must report more information on mortgages, including the origination date, the amount of outstanding principal and the property's address.

- The 6-year statute of limitations applies in cases where any overstatement of basis results in a substantial (25% or more) omission of income.

- Effective for property with respect to which an estate tax return is filed after July 31, 2015, large estates (i.e., those required to file a federal estate tax return) are required to provide the IRS with the value of property included in the gross estate, to ensure consistent reporting for income and estate tax purposes.

■ **Home mortgage interest deduction doubled for unmarried co-owners.**

The Ninth Circuit Court of Appeals, reversing a Tax Court decision, concluded the tax law's limits on the amount of debt eligible for the home mortgage interest deduction ($1 million of mortgage "acquisition" debt and $100,000 of home equity debt) are applied on a per-individual basis, and not a per-residence basis as the IRS has long maintained. Thus, for the unmarried co-owners in the case, their collective limit for the home mortgage interest deduction doubled from a maximum of $1.1 million to a maximum of $2.2 million acquisition and home equity debt.

■ **Simplified per-diem increase for post-September 30, 2015 travel.**

An employer may pay a per-diem amount to an employee on business-travel status instead of reimbursing actual substantiated expenses for away-from-home lodging, meal and incidental expenses (M&IE). If the rate paid doesn't exceed IRS-approved maximums, and the employee provides simplified substantiation, the reimbursement isn't subject to income- or payroll-tax withholding and isn't reported on the employee's Form W-2. In general, the IRS-approved per-diem maximum is the GSA per-diem rate paid by the federal government to its workers on travel status. This rate varies from locality to locality. Instead of using actual per-diems, employers may use a simplified "high-low" per-diem, under which there is one uniform per-diem rate for all "high-cost" areas within the continental U.S. (CONUS), and another per-diem rate for all other areas within CONUS. The IRS released the "high-low" simplified per-diem rates for post-September 30, 2015, travel. The high-cost area per-diem increases $16 to $275, and the low-cost area per-diem increases $13 to $185.

- **New accounting safe haven.**

  The IRS has provided a new safe harbor which allows accrual method recipients of services to treat economic performance as occurring ratably for contracts where services are provided on a regular basis. Thus, under the safe harbor, a taxpayer can ratably expense the cost of regular and routine services as the services are provided under the contract. The IRS also provided procedures for obtaining the IRS's automatic consent to change to this accounting method, which is effective for tax years ending on or after July 30, 2015. Absent an exception or safe harbor such as this, a liability is generally incurred and taken into account by a taxpayer under an accrual accounting method only in the tax year in which: (1) all the events have occurred which establish the fact of the liability; (2) the amount of the liability can be determined with reasonable accuracy (these first two items are collectively referred to as the all events test); and (3) economic performance has occurred.

- **Lump sum payments from defined benefit plans.**

  The IRS announced it will change the required minimum distribution (RMD) regulations to provide that qualified defined benefit plans generally are not allowed to replace, with a lump sum payment or other accelerated form of distribution, any joint and survivor, single life or other annuity that is currently being paid. The required distribution rules for pension plan annuities were crafted to provide an administrable way to ensure a distribution of the employee's benefit will not be unduly tax-deferred. In addition, under the regulations, a defined benefit pension plan cannot permit those currently receiving pension benefits to commute annuity payments to a lump sum or otherwise accelerate those payments, except in a narrow set of circumstances specified in the regulations, such as in the case of retirement, death, or plan termination. If a participant has the ability to accelerate distributions at any time, then the actuarial cost associated with that acceleration right would result in smaller initial benefits, which contravenes the purpose of the required distribution rules. The IRS intends these amendments to the regulations, with some exceptions, will apply as of July 9, 2015.

- **Bonus depreciation.**

  The IRS provided guidance on the retroactive extension of the 50% additional first-year bonus depreciation deduction, and the corporate election to not claim the 50% additional deduction for property placed in service in 2014 and instead increase the alternative minimum tax (AMT) limitation, in light of changes made by the Tax Increase Prevention Act of 2014. The additional first-year depreciation deduction is allowed for both regular tax and AMT purposes, but is not allowed for purposes of computing earnings and profits. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. Most of the guidance is centered on "late" elections to claim or not claim bonus depreciation under TIPA, and on "late" elections by corporations to not claim bonus depreciation in favor of AMT credits.

- **Residential energy efficient property credit.**

  The IRS has privately ruled that an individual can claim a residential energy efficient property credit for the cost of solar panels (and a partial ownership interest in related

equipment) installed in an off site community-shared solar project. An individual can claim a 30% credit for qualified solar electric property expenditures made by him during the year. A qualified solar electric property expenditure is an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the U.S. and used as a residence by the taxpayer. This ruling is significant because it is the first one allowing the energy efficient property credit for owners of solar panels in a shared, off site array.

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