

# 2015 Post-Filing Season Update

April 17, 2015

Special Report

## HIGHLIGHTS

- Audit Coverage Continues To Decline
- NII Tax Captures Many Taxpayers
- “Repair Reg” Relief For Small Businesses
- Transition Relief For Code Sec. 4980D Excise Tax
- Supreme Court Takes Up 36B Regs
- More Code Sec. 199 Guidance
- IRS Revives PTP Letter Ruling Requests
- OVDP To Continue
- More Guidance In Pipeline

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## Filing Season Developments Preview Tax Changes Ahead

The 2015 return filing season began with some ominous predictions of slowdowns in return processing, delayed refunds and poor customer service because of cuts to the IRS’s budget. Further complicating the filing season were new reporting requirements under the *Patient Protection and Affordable Care Act*, complex new “repair regs,” year-end tax legislation in 2014, and much more. While the IRS’s customer service did experience a significant decline in performance, return processing and the issuance of refunds appeared to be on par with previous years. The IRS, along with other federal agencies, issued a steady stream of outreach on the Affordable Care Act. Much-welcomed relief for small businesses under the repair regulations was announced mid-way through the filing season.

The 2015 filing season also brought important and potentially far-reaching developments out of Capitol Hill. The new leaders of the House and Senate tax writing committees repeatedly expressed their commitment to achieving comprehensive tax reform during the 114th Congress. Before summer, the House is poised to take up more tax bills.

**IMPACT.** *The 2015 filing season brought new questions and, in most cases answers, but many areas still need clarification. For the first time, return filers needed to report if they carried minimum essential health coverage in 2014, were exempt or were liable for a shared responsibility payment. How well taxpayers understood this new requirement has yet to be analyzed by the IRS. For individuals and businesses, the one-year renewal of*

*the tax extenders left open the question of whether these popular tax breaks will be available in 2015 and beyond, adding to complexity in tax planning.*

## IRS CHALLENGES

The IRS entered the filing season with fewer employees than in past years, which was reflected in declining customer service and enforcement. IRS Commissioner John Koskinen frequently said that the agency is “doing less with less” because of recent budget cuts.

**Audits.** Latest audit coverage statistics from the IRS in March showed that, for all types of businesses, the FY 2014 audit coverage rate was 0.57 percent, representing a decline from 0.71 percent in FY 2012 and 0.61 percent in FY 2013. Audits of large corporations experienced the steepest decline, according to the IRS. Approximately 0.9 percent of individual taxpayers were audited last year, the lowest rate in over six years. Within those statistics, higher-income individuals with incomes of between \$200,000 and \$1 million were audited only at a rate of 2.2 percent, also representing an overall drop. Audit focus on foreign-based taxpayers, nevertheless, reportedly is on the rise.

**IMPACT.** *IRS Commissioner Koskinen attributed the decline in audit coverage to recent cuts in the agency’s budget. The IRS budget has fallen by more than \$1.2 billion in the last five years, Koskinen said in March. Like overall IRS staffing, the number of compliance employees who conduct audits has also fallen sharply during this period. Nevertheless, the IRS*

*also touts new computer data-driven metrics that result in “smart,” more productive audits.*

## AFFORDABLE CARE ACT

The IRS announced at the start of the filing season that it would provide help to taxpayers with questions about taxes and the Patient Protection and Affordable Care Act. The agency also issued more guidance during the filing season on key components of the Affordable Care Act.

**Code Sec. 36B Litigation.** The Supreme Court heard oral arguments in March in *King v. Burwell*, 2014-2 USTC ¶50,367, where the plaintiffs argued that the IRS erred in extending the Code Sec. 36B premium assistance tax credit to enrollees in federally-facilitated Marketplaces. According to the plaintiffs, the Affordable Care Act limits the credit to enrollees in state-run Marketplaces.

**IMPACT.** *If the Supreme Court strikes down the regulations, the court could make its ruling prospective. The Obama administration has declined to say if it has contingency plans in the event the Court rules in favor of the plaintiffs.*

**IMPACT.** *The decision may affect the Affordable Care Act’s employer shared responsibility requirement (employer mandate), which is tied to eligibility for premium tax credits.*

**Penalty Relief.** The IRS announced in January penalty relief for taxpayers who, after reconciling advance payments of the Code Sec. 36B premium assistance tax credit, discover they have a balance due (Notice 2015-9). The penalty relief is only available for the 2014 tax year.

**IMPACT.** *The IRS will waive the Code Sec. 6651(a)(2) penalty for failure to pay, and the Code Sec. 6654(a) estimated tax penalty (where applicable), for qualified taxpayers.*

**Small Employers.** In February, the IRS announced transition relief for small employers from the Code Sec. 4980D excise tax for certain health care payment plans (Notice 2015-17). The IRS also reported that it is exploring additional guidance on the application of market reforms under the Affordable Care Act to a two-percent shareholder-employee healthcare arrangement.

**IMPACT.** *The relief is welcome news for many small employers, which have traditionally funded a health benefit to their employees through these arrangements.*

**IMPACT.** *A small employer generally must have employed an average of at least 50 full-time employees, including full-time equivalent employees, on business days during the preceding calendar year.*

**Forms 1095-A.** The Treasury Department announced relief for taxpayers with incorrect Forms 1095-A, Health Insurance Marketplace Statement. Affected taxpayers will not need to refund any overpayment resulting from information on an incorrect Form 1095-A. Affected taxpayers also not need file amended returns and the IRS will not pursue the collection of any additional taxes from these individuals based on updated information in the corrected forms.

**COMMENT.** *In February, the U.S. Department of Health and Human Services (HHS) announced that some enrollees in the Health Insurance Marketplace received incorrect Forms 1095-A describing their coverage for 2014.*

**Cadillac Plans.** The IRS previewed possible approaches to the Code Sec. 49801 excise tax under the Affordable Care Act (also known as the excise tax on “Cadillac plans”) in March (Notice 2015-16). The IRS asked taxpayers to submit suggestions on, among other topics, the determination of the cost of applicable coverage; and the treatment of individuals engaged in high-risk occupations.

**Nonprofit Health Insurance Issuers.** The IRS issued final regulations in January that

authorize it to prescribe procedures for qualified nonprofit health insurance issuers (QNHIs) to obtain tax-exempt status under Code Sec. 501(c)(29) (TD 9709).

**Wraparound Coverage.** The IRS released final regulations on wraparound coverage in March (TD 9714). Under the final regulations, limited wraparound coverage is permitted for a limited time.

**COMMENT.** *Limited wraparound coverage is employer-sponsored coverage that is offered to employees for whom the employer’s primary coverage is unaffordable and who obtain coverage through the individual market, including the Health Insurance Marketplace.*

**Summary Plan Benefits.** The IRS issued proposed regulations on the summary of benefits and coverage (SBC) requirements under the Affordable Care Act (NPRM REG-145878-14). The agency also issued a new set of SBC templates, instructions and revised uniform glossary.

## INDIVIDUALS

A number of developments impacted individuals during the filing season. These include tax legislation, preliminary rules for new ABLE Accounts, and more.

**Donations To Benefit Slain Officers.** President Obama on April 1 signed into law the *Slain Officer Family Support Act of 2015* (P.L. 114-7), which allows taxpayers to claim, as itemized deductions on either their 2014 or 2015 returns, deductible cash contributions between January 1, 2015, and April 15, 2015, to charities providing relief for the families of slain New York Police Department (NYPD) Detectives Wenjian Liu and Rafael Ramos.

**ABLE Accounts.** The IRS announced in March that it will provide transition relief for Achieving a Better Life Experience (ABLE) accounts authorized by the *Tax Increase Prevention Act of 2014* (Notice 2015-18). The IRS assured states that may soon enact enabling legislation.

**Net Investment Income (NII) Tax.** Many higher-income individuals were surprised to learn the full impact of the 3.8 percent net investment income (NII) tax on their overall tax liability only during the 2014 and 2015 filing seasons. Now, IRS statistics confirmed that recent run ups in the financial markets, combined with the NII tax's non-inflation adjusted thresholds, have increased the need to implement NII tax reduction strategies. In addition, IRS officials have admitted the need for further guidance on the NII tax to resolve issues that have been arising dealing with real estate, trust management and other hot button areas.

**Pain and Suffering Payments.** A taxpayer's compensation for pain and suffering from her voluntary decision to be an egg donor was not excludible as damages under Code Sec. 104(a)(2), the Tax Court found in *Perez, Dec. 60,218*. The court rejected the taxpayer's interpretation of "damages."

## IDENTITY THEFT

The IRS's campaign against tax-related identity theft moved forward during filing season with taxpayer education and outreach. The IRS urged taxpayers—and return preparers—to be on guard for scams.

**Identity Verification Website.** The IRS reminded taxpayers who receive Letter 5071C that its identity verification website, *idverify.irs.gov*, offers the "fastest, easiest" way for those taxpayers to provide the information requested (IR-2015-54). A taxpayer receives Letter 5071C when the IRS has stopped processing what it considers to be a suspicious return that has indications of identity theft but contains a real taxpayer's name and/or Social Security number.

**COMMENT.** *The Treasury Inspector General for Tax Administration (TIGTA) reported in April that identity theft victims are experiencing long delays, up to an average of 278 days, before their identity theft issues are resolved.*

## RETIREMENT DEVELOPMENTS

A number of retirement-related developments before and during filing season continue to impact taxpayers. In his fiscal year (FY) 2016 budget proposals, President Obama set forth a number of enhanced and new recommendations, reflecting a renewed emphasis on encouraging taxpayers to save for retirement.

**IRA Rollovers.** To reflect the Tax Court's decision in *Bobrow, Dec. 59,823(M)*, starting in 2015, an individual cannot make an IRA-to-IRA rollover if the individual had made a rollover involving any of the individual's IRAs in the preceding one-year period. The IRS provided transition relief under which rollover distributions in 2014 do not count against 2015 rollovers

"The IRS entered the filing season with fewer employees than in past years, which was reflected in declining customer service and enforcement."

**COMMENT.** *Trustee-to-trustee transfers are often referred to as "rollovers," but the Bobrow decision does not apply to trustee-to-trustee transfers.*

**Longevity Annuity Contracts.** In January, the IRS issued a final version of new Form 1098-Q, Qualifying Longevity Annuity Contract (QLAC) Information, for issuers of QLACs to report the contracts to the IRS and to the contract participant (Form 1098-Q and Draft Instructions). The IRS also issued draft instructions for Form 1098-Q.

**Tax Reform Proposals.** In his FY 2016 budget proposals, President Obama proposed to provide additional tax relief to small

businesses that newly offer a retirement plan, such as a Code Sec. 401(k) plan, or that start automatically enrolling workers in their plan. President Obama also proposed to allow all inherited plan and IRA balances to be rolled over within 60 days.

## REPAIR RULES/ ACCOUNTING METHOD CHANGES

Small businesses and practitioners welcomed guidance during the filing season on the "repair regs." The IRS also issued guidance on accounting method changes.

**Simplified Repair Regs Compliance.** In March, the IRS announced simplified requirements for small businesses to adopt the "repair regs" for 2014 tax year returns (Rev. Proc. 2015-20, IR-2015-29). Small businesses can change their accounting methods automatically, without filing Form 3115 and without having to go back to prior years and make full Code Sec. 481 adjustments.

**IMPACT.** *Small business taxpayers are defined for purposes of this relief as businesses with total assets of less than \$10 million and average annual gross receipts of \$10 million or less in the three preceding tax years. The criteria for relief are applied separately to each of the taxpayer's trades or businesses.*

**IMPACT.** *Under a transition rule, a qualifying taxpayer that previously filed Form 3115 for 2014 may withdraw the filed form on or before the due date of the taxpayer's timely filed return (including extensions).*

**COMMENT.** *The IRS requested written comments by April 21, 2015, on the issue of whether the \$500 per item deduction limit under the de minimis safe harbor of Reg. §1.263(a)-1(f) should be increased.*

**FAQs.** The IRS had been finding that the language and examples in the repair regulations did not answer all taxpayer questions. In March, the IRS posted frequently

asked questions (FAQs) on its website about the final tangible property regulations. The FAQs discuss elections and safe harbors, as well as other simplifying provisions. The FAQs also discuss procedures for changing accounting methods to comply with the regulations.

**IMPACT.** *Taxpayers have until the extended due date of the 2014 tax return to file Form 3115 and comply with change-in-method-of-accounting rules required under the repair regulations. Those dates include September 15 for business entities and October 15 for individuals.*

**Accounting Method Changes.** The IRS updated and made significant changes to the general Code Sec. 446(e) procedures to obtain advance and automatic consent to change a method of accounting for federal income tax purposes. The IRS has also updated the comprehensive list of accounting methods to which the automatic change procedures apply.

**IMPACT.** *Rev. Procs. 2015-13 and 2015-14 together represent the principal “roadmap” to be consulted whenever a change of method of accounting may be involved. They clarify and modify rules applicable to a change in a method of accounting in several dozen areas. They also provide practitioners with a single, up-to-date*

### TOP TEN TAX ISSUES FOR THE REST OF 2015

- #1. Timing and extent of an extenders package
- #2. Affordable Care Act
- #3. International tax compliance
- #4. Repair regulations
- #5. IRS operations
- #6. Net investment income (NII) tax
- #7. Retirement planning
- #8. Identity theft
- #9. Preparer oversight
- #10. Tax reform

*go-to resource for dealing with change of accounting method rules and compliance under Form 3115.*

## OTHER BUSINESS DEDUCTIONS/ CREDITS

The IRS released guidance on a number of business-related items during the filing season, including the Code Sec. 199 deduction, the research tax credit and more. 2015 vehicle depreciation caps were also announced.

**Code Sec. 199 Deduction Activities.** A new directive from the IRS Large Business and International (LB&I) Division provided guidance to examiners on whether certain activities qualify for the Code Sec. 199 domestic production activities deduction (*LB&I 04-0315-001*).

**Compensation.** The IRS issued final regulations in March to clarify the exception for performance-based compensation from the deduction limits on compensation exceeding \$1 million (TD 9716).

**Research Credit.** The IRS issued proposed regulations on the research tax credit with respect to computer software developed for internal use (TDNR JL-9744; NPRM REG-153656-03) in March.

**ASC Election.** Final regulations on the alternative simplified [research] credit (ASC) issued in February (TD 9712) affirm the ability of taxpayers to elect the ASC on an amended return, as provided in temporary regs issued in 2014.

**Vehicle Depreciation/Benefit Limits.** The IRS released in February the inflation-adjusted limitations on depreciation deductions for business-use passenger automobiles, light trucks, and vans first placed in service during calendar year 2015 (Rev. Proc. 2015-9).

**Controlled Groups.** The IRS issued final, temporary and proposed regulations that simplify the requirements for allocating

the Code Sec. 41 research credit among the members of a controlled group of corporations in April (TD 9717, NPRM REG-133489-13).

**Production Tax Credit.** The IRS issued guidance in March extending the date by which a taxpayer must commence construction of a qualified facility to be eligible for either the Code Sec. 45 renewable electricity production tax credit (PTC) or the Code Sec. 48 energy investment tax credit (ITC) (Notice 2015-25).

**AFR Adjustments Proposed.** The IRS issued proposed regs (NPRM REG-136018-13) describing a new method for determining the adjusted applicable federal rates (AFRs) under Code Sec. 1288 to take into account the tax exemption for interest on tax-exempt obligations and the long-term tax-exempt rate and the adjusted federal long-term rate under Code Sec. 382(f).

**Empowerment Zones.** The IRS issued guidance reflecting the one-year extension of the termination date for empowerment zone designations under Code Sec. 1391 under the *Tax Increase Prevention Act of 2014* (Notice 2015-26).

**Partnership COD Income and Bankruptcy.** The IRS announced in February its non-acquiescence in several Tax Court decisions that allowed individual general partners to exclude their shares of the partnership’s cancellation of debt (COD) income from each partner’s gross income (AOD 2015-1).

**Installment Obligations.** Proposed regulations (NPRM REG-109187-11) incorporate the holding of the Rev. Rul. 73-423 that requires recognition of gain on the disposition where the transferor of the obligation receives stock in satisfaction of the obligation; and also applies it to the receipt of a partnership interest.

**Abandoned Securities.** Reversing the Tax Court, the Court of Appeals for the Fifth Circuit (*Pilgrim’s Pride Corp., 2015-1 USTC ¶50,211*) found that a taxpayer can claim an

ordinary loss for abandoned securities, even though the securities were not worthless and could have been sold to another party.

**PTP Letter Ruling Requests.** The IRS announced in March that it was lifting its nearly year-long pause in issuing private letter rulings on publicly traded partnerships (PTPs) (IRS Statement, March 9, 2015). The agency also announced that proposed regs on Code Sec. 7704(d)(1)(E) are expected to be released in the near future.

**Wind Energy Property.** The IRS provided revised performance and quality standards in January for small wind energy property to qualify for the energy credit under Code Sec. 48 (Notice 2015-4).

## EMPLOYER/EMPLOYEE

Aside from dealing with the Affordable Care Act, employers also need to be aware of a changing environment within the employment tax and benefits areas impacted by several recent developments.

**FICA Refund Claims.** The IRS issued a proposed revenue procedure in February describing employee consents to support *Federal Insurance Contributions Act* (FICA) and *Railroad Retirement Tax Act* (RRTA) refund claims under Code Sec. 6402 (Notice 2015-15).

**Severance-Pay FICA Refunds.** The IRS announced in February (Ann. 2015-8) that, following the Supreme Court's 2014 decision in *Quality Stores, 2014-1 USTC ¶50,228*, it will disallow claims for refunds of FICA taxes paid with respect to severance payments that do not satisfy a narrow exclusion under Rev. Rul. 90-72.

**WOTC.** Qualified employers that hired a member of a group targeted by the Work Opportunity Tax Credit (WOTC) during 2014 have until April 30, 2015, under transition relief, to satisfy the pre-screening requirements under Code Sec. 51(d) and claim the credit, the IRS announced in February (Notice 2015-13).

**Transit Benefits.** The IRS clarified in early January how employers should address the retroactive increase for 2014 in the monthly exclusion for transit passes and van pooling benefits under the *Tax Increase Prevention Act of 2014* (TIPA) (Notice 2015-2).

## PENSION/BENEFIT PLANS

During the filing season, the IRS issued guidance in a number of areas related to pension and benefit plans.

**EPCRS.** The IRS updated and made improvements to its Employee Plans Correction Resolution System (EPCRS), for retirement plans that intend to satisfy requirements for qualified plans, tax-sheltered annuities, and IRA-related plans in April (Rev. Proc. 2015-27). The IRS also announced modifications to EPCRS safe harbor correction methods for automatic contribution features in Code Sec. 401(k) and Code Sec. 403(b) plans (Rev. Proc. 2015-28).

**Closed Defined Benefit Plans.** The IRS announced in March a one-year extension of temporary relief for certain closed defined benefit (DB) pension plans (Notice 2015-28).

**Determination Letters.** For 2015, the IRS announced (Ann. 2015-01) a number of changes to the determination letter program in Employee Plans. For an application to be treated as complete, it must include all of the information and documents required by Rev. Proc. 2015-6.

**Takeover Plans.** The IRS provided in January a new, automatic approval for a change in a defined benefit's funding method following a change in the plan's enrolled actuary services, provided the new funding method satisfies a four-part safe harbor (Announcement 2015-3).

**Charter School Employees.** The IRS announced transition rules in January in anticipation of including rules for charter

school employees who participate in state and local government retirement plans in proposed regs under Code Sec. 414(d) (Notice 2015-7).

## TAX-EXEMPT ENTITIES/ BONDS

In the tax-exempt area, the IRS released guidance for nonprofit hospitals along with guidance for issuers of tax-exempt bonds.

**Nonprofit Hospitals.** The IRS finalized in Rev. Proc. 2015-21 a procedure that allows tax-exempt hospitals to correct and disclose violations that are not willful or egregious for purposes of Code Sec. 501(r).

**Energy Bonds.** The IRS announced that it will accept applications for allocations of new clean renewable energy bonds (New CREBs) under Code Sec. 54C (Notice 2015-12).

**IMPACT.** *Complete applications for allocations for projects to be owned by public power providers must be submitted on or before June 3, 2015.*

**501(c)(3) Bond Issuers.** The IRS unveiled in January a simplified process for issuers of qualified Code Sec. 501(c)(3) bonds to request a voluntary closing agreement where the borrower of the proceeds of the bonds had its exempt status revoked and then had it reinstated but not retroactively (Announcement 2015-02).

**IMPACT.** *Issuers must request a closing agreement within 12 months of the date of the reinstatement letter. If the reinstatement letter is dated before December 30, 2014, the issuer has 12 months from December 30, 2014 to submit a closing agreement.*

**Qualified Mortgage Bonds.** The IRS released guidance on the computation of the housing cost-to-income ratio used by issuers of qualified mortgage bonds (QMBs) and mortgage credit certificates (MCCs) (Rev. Proc. 2015-23).

## REPORTING REQUIREMENTS

Recent laws have expanded reporting requirements for many taxpayers. The IRS issued guidance in several of these areas during the filing season.

**Consolidated Group Changes.** The IRS issued proposed regulations (NPRM REG-100400-14) intended to tighten the rules for reporting income and deductions that accrue on the day that a corporation joins or leaves a consolidated group. The regs would revise the so-called “end of the day rule” and “next day rule” to clarify the reporting period.

**Sick Pay.** The IRS announced in January that third parties and employers must use Form 8922, Third-Party Sick Pay Recap, to report total payments of certain sick pay paid by third parties on or after January 1, 2014 (Notice 2015-6).

**Gambling Winnings.** The IRS issued proposed reliance regs in March to update and simplify the filing of information returns to report winnings from bingo, keno, and slot machine play (NPRM REG-132253-11, Notice 2015-21). The IRS also released a proposed safe harbor for individuals who engage in electronically tracked slot machine play.

**Broker Reporting Of Debt Instruments.** The IRS issued final, temporary and proposed regulations (TD 9713, NPRM REG-143040-14) on information reporting by brokers under Code Secs. 6045 and 6049. The guidance addresses a variety of issues on the reporting of income and basis for “covered securities,” including debt instruments and options.

## FOREIGN TAXATION

Plugging the revenue loss from undeclared foreign income from both individuals and businesses has been a major focal point of Treasury and the IRS. These efforts have seen an uptick in 2015, as have the successes from them.

**Offshore Accounts.** The IRS announced it will continue its offshore voluntary disclosure program (OVDP) “for an indefinite period until otherwise announced.” There have been over 50,000 disclosures, and the IRS has collected more than \$7 billion since the OVDP opened.

**IMPACT.** *Under the OVDP, taxpayers enter into a closing agreement with the IRS to disclose their accounts and pay back taxes and interest, plus a penalty of 27.5 percent. In return, taxpayers avoid criminal prosecution.*

**FBAR Filers.** Treasury’s Financial Crimes Enforcement Network (FinCEN) launched a web page to assist those individuals and institutions required to file a Report of Foreign Bank Account (FBAR).

**FATCA Data Exchange Service.** The IRS announced in early January the official opening of the International Data Exchange Service (IDES) for the provision of information required by the *Foreign Account Tax Compliance Act* (FATCA) (IR-2015-1). Foreign financial institutions (FFIs) and foreign tax authorities will use IDES to send information reports on foreign financial accounts and assets held by U.S. persons.

**Foreign Tax Credit Splitter Rules.** The IRS issued final regulations on foreign tax credit splitting events, applicable to foreign taxes paid or accrued in tax years ending after February 9, 2015 (TD 9710). The temporary regulations apply for prior years beginning on or after January 1, 2012; taxpayers may also apply the temporary regs to taxes paid or accrued in the first tax year ending after February 9, 2015.

**Joint Account Withholding Option.** The IRS announced an extension of the deadline from June 30, 2014, to June 30, 2015, for qualified intermediaries (QIs), withholding foreign partnerships (WPs), and withholding foreign trusts (WTs) to apply the joint account option to a partnership or trust.

**Foreign Financial Institutions.** In a Q&A on its website, the IRS reaffirmed the

requirement under FATCA that a foreign financial institution (FFI) must provide a Global Intermediary Identification Number (GIIN) to a withholding agent for payments made on or after January 1, 2015.

**Captive Insurance.** IRS Chief Counsel determined that an arrangement involving a group of corporations and an affiliated insurance company did not involve insurance for federal tax purposes (CCA 201511021). Protection against currency fluctuations addressed an investment risk, not an insurance risk.

**Form 5472 Filing.** Final regulations removed the requirement for separate filing of Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (TD 9707).

## IRS PROCEDURES

Several rules and guidance items released during the filing season described IRS procedures.

**Ruling Requests, Technical Advice, and No-Rule Procedures.** The IRS issued its annual revisions to the general procedures for ruling requests, technical advice memoranda (TAM), determination letters, and user fees, as well as areas on which the agency will not rule (Rev. Procs. 2015-1 through 8) in January. The new and revised procedures are generally effective beginning January 2, 2015. Some updated user fees are effective February 2, 2015.

**Consolidated Group Agents.** The IRS issued final regs describing how to determine the corporation that will act as the agent for a consolidated group (TD 9715) in April. The IRS also issued Rev. Proc. 2015-26 at the same time, which provides instructions for communications concerning the determination of the agent.

**Undisclosed Listed Transactions.** The IRS issued final regulations adopting the proposed rules on the interaction of the

one-year limitations period under Code Sec. 6501(c)(10) for assessing tax related to an undisclosed listed transaction with the general three-year period of limitations on assessment under Code Sec. 6501(a) (TD 9718) in April.

## RETURN PREPARERS

Developments in Congress and by the IRS affected return preparers during the filing season and beyond.

**Regulation.** Proposed legislation giving the IRS authority to regulate paid tax return preparers has been introduced in the Senate. The proposed Taxpayer Protection and Preparer Proficiency Bill of 2015 defines a return preparer as any person who prepares a return for compensation, or who employs one or more persons to prepare a return for compensation.

**Online Directory.** The IRS launched an online searchable database of tax return preparers in February (IR-2015-22). Individuals can access the database on the IRS website.

**Form 1099-C as Collection Tool.** The IRS Office of Professional Responsibility (OPR) reviewed the implications under Circular 230, Rules of Practice, for a tax professional who, as an alternative to pursuing collection of an earned fee from a client, proposed to file Form 1099-C, Cancellation of Debt, reporting the amount of the client's unpaid bill as a discharged debt (OPR Alert 2015-02). Practitioners, OPR cautioned, must use an appropriate level of care and thought in submitting forms or other documents to the IRS or to a client, compatible with the letter and spirit of the regs governing practice.

## LOOKING AHEAD: INSIDERS PREDICT MORE GUIDANCE IN PIPELINE

During the filing season, Treasury, IRS and other government officials hinted at developments in the guidance pipeline. Some of

these guidance projects were revealed during the filing season; others remain works in various stages of progress.

**Affordable Care Act.** Earlier this year, a Treasury official predicted that guidance under Code Sec. 105(h) relating to non-discrimination within health plans will be issued in 2015. The Treasury official added that more guidance on the Affordable Care Act's market reforms also is likely. In related news, an official with the U.S. Department of Health and Human Services (HHS) indicated that there will not be a repeat in 2016 of this year's filing season special enrollment period for coverage in the ACA Marketplace.

**Code Sec. 7704 Regs.** Much-anticipated guidance under Code Sec. 7704 could be issued this year, an IRS attorney said in March. Proposed regulations are expected to provide guidance on Code Sec. 7704(d)(1)(E) concerning qualifying income from the exploration, development, mining and production, processing, refining, transportation and marketing of minerals and natural resources.

**International Taxation.** A Treasury official said in February that the Obama

administration supports binding, mandatory arbitration to resolve intractable competent authority disputes in the Base Erosion and Profit Sharing (BEPS) project of the Organisation for Economic Co-operation and Development (OCED).

**Net Investment Income (NII) Tax.** In February, an IRS official said that the agency is reviewing the relationship between the net investment income (NII) tax and trusts and estates. According to the official, the IRS is aiming to clarify a number of issues, including classification of income from a family business owned by a trust.

**Hybrid Plan Regs.** In January, speakers at an IRS hearing on proposed regs under Code Sec. 411(b)(5) urged the agency to either finalize quickly the proposed regs or delay their effective date. According to the speakers, plans would need a year or more to implement any design changes in response to the regs. IRS officials appeared to acknowledge the speakers' concerns.

**Bitcoin.** In February, a Treasury official indicated that the Obama administration continues to study its approach to bitcoin. The official noted that bitcoin is evolving

## SELECTED TAX DEVELOPMENTS: BY THE NUMBERS

The IRS and the courts did not rest during the January 1 - April 15, 2015 filing season. The tax developments that were released include:

Development type	Number
Revenue Rulings (Rev. Rul.)	12
Revenue Procedures (Rev. Proc.)	28
Internal Revenue Releases (IR)	70
Notices	30
Tax Court Opinions (TC)	13
Tax Court Memo Opinions (TC Memo.)	73
TC Summary Opinions (TCS)	25
USTC (Federal Tax) Cases	164
Letter Rulings	258

and any regs in this area would need to stand the test of time.

**Identity Theft.** In March, an IRS official said that the IRS is reviewing how it assists victims of identity theft. The IRS has developed several programs, including the identity protection personal identification number (IP PIN) to help victims of identity theft. Updates to these programs could be posted this year.

## UPTICK IN TAX LEGISLATION

There has been no shortage of tax bills introduced since the beginning of 2015,

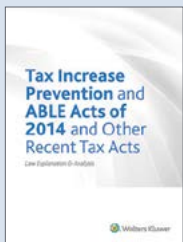
some new and some that have been previously offered. Moreover, there appears to be room for compromise on some aspects of tax reform, especially in the area of business tax reform.

**Tax Extenders.** Tax extenders will need to be addressed as the *Tax Increase Prevention Act of 2014* merely extended the incentives through 2014. Democrats and Republicans generally agree that the research tax credit should be made permanent, but they split on things such as tradeoffs from enhancing the earned income credit (EIC) and other credits aimed at families. Extension of enhanced Code Sec. 179 expensing, as well as bonus depreciation, is also discussed frequently.

**Family Incentives.** A group of lawmakers in March introduced legislation that would enhance the child tax credit, earned income credit, EIC, American Opportunity Tax Credit and the child and dependent care credit, plus create a new tax incentive for working parents.

**Small Business.** In February, the House passed America's Small Business Tax Relief Bill (HR 636), which would expand and make permanent enhanced Code Sec. 179 expensing. President Obama has proposed to permanently extend the 100 percent exclusion from tax by a non-corporate taxpayer for capital gains realized on the sale of qualified small business stock.

# RESOURCES YOU CAN COUNT ON for the latest legislative coverage



## Tax Increase Prevention and ABLI Acts of 2014 and Other Recent Tax Acts: Law, Explanation & Analysis

Understand how these Acts affect your clients.

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- New rules relating to IRS levies and penalties under the ABLI Act
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