Sec. 9010 of the Patient Protection and Affordable Care Act (P.L. 111-148)

IRS releases temporary and proposed regulations on the health insurance provider fee

The IRS issued temporary and proposed regulations that affect the definition of “covered entity” for purposes of the annual fee imposed on health insurance providers by Act Sec. 9010 of the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148).

T.D. 9711, NPRM REG-143416-14, ETR ¶62,164

31 USC 5311-5330

Interim guidance for report of foreign bank and financial accounts (fbar) penalties

The IRS issued interim changes to the Internal Revenue Manual (IRM) to improve the administration of the FBAR compliance program. These changes are effective upon issuance and apply to all open cases where the FBAR penalty is considered. The IRS has the burden of showing that an FBAR violation occurred and, for willful violations, that the violation was in fact willful. The IRS must determine the appropriate FBAR penalty amount based on the facts and circumstances of each case. A Civil FBAR Penalty Case File Checklist is include to help ensure consistency in FBAR penalty case file information.


Code Sec. 25

IRS releases guidance for computation of housing cost/income ratio by issuers of qualified mortgage bonds and mortgage credit certificates

The IRS released guidance regarding the computation of the housing cost/income ratio by issuers of qualified mortgage bonds (QMBs) and mortgage credit certificates (MCCs).

Rev. Proc. 2015-23

Code Sec. 32

Earned income tax credit fact sheet released for Eitc awareness day

The IRS released a fact sheet that provides information on who qualifies for the credit, how much the credit is worth, how to determine eligibility and how to claim the credit. The IRS urges employees, business owners and farmers who earned $52,427 or less in 2014 to see if they qualify by using the EITC Assistant. To get the EITC, workers need to file a return and specifically claim the credit even if they aren’t required to file.

FS-2015-4, IR-2015-15
Code Sec. 36B

IRS provides penalty relief for balances resulting from advance payment of premium tax credit reconciliation

The IRS provided limited relief for taxpayers who have a balance due on their 2014 income tax return as a result of reconciling advance payments of the premium tax credit against the premium tax credit allowed on the return. If a taxpayer meets certain requirements, the taxpayer is relieved of the penalty under Code Sec. 6651(a)(2) for failure to pay income tax. The relief applies only to the 2014 tax year, and does not apply to any underpayment of the individual shared responsibility payment resulting from application of Code Sec. 5000A.

Notice 2015-9

Proposed regulations require employer-sponsored group health plans to include in-patient hospitalization and physician services

The IRS issued proposed regulations providing that an eligible employer sponsored group health plan does not provide minimum value, as defined under Code Sec. 36B(c)(2)(C)(ii), if it excludes substantial coverage to employees for in-patient hospitalization services or physician services (or both).

NPRM REG-143800-14

Code Sec. 41

Proposed R&D credit regulations clarify, modify tests for internal use computer software

The Treasury and IRS have released proposed regulations governing the credit for increasing research activities (the research and development or R&D credit) with respect to computer software for internal use. The proposal also withdraws a prior advanced notice of proposed rulemaking, and asks for public comments.

NPRM REG-153656-03

Final regs cover time and manner of electing alternative simplified research credit

The IRS issued final regulations relating to the time and manner of electing to use the alternative simplified credit (ASC) under Code Sec. 41(c)(5) to compute the credit for increasing research activities. The final regulations are substantially identical to previously issued temporary regulations (T.D. 9666

T.D. 9712

Code Sec. 46

Unrecoverable precious metals used in manufacturing processes are depreciable

The IRS ruled that the capitalized cost of unrecoverable precious metals that are used in a manufacturing process are depreciable under the Modified Accelerated Cost
Recovery System (MACRS). The capitalized cost of the recoverable portion of such metals is not depreciable.

*Rev. Rul. 2015-11*

**Code Sec. 61**

**IRS releases 2015 standard mileage rates**

The IRS released the 2015 optional standard mileage rates that employees, self-employed individuals, and other taxpayers can use to compute deductible costs of operating automobiles for business, medical, moving and charitable purposes.

*Notice 2014-79, IR-2014-114*

**Individual taxable on unreported income, liable for some penalties, not liable for others**

An individual was subject to tax on unreported income, was liable for a penalty for failure to file a return and an additional tax for an early retirement plan distribution, and was not liable for penalties for failing to timely pay tax or for maintaining a frivolous position in Tax Court. The taxpayer received wage income and took a loan from his retirement plan which had a taxable portion under Code Sec. 72(p)(2)(A), but did not file a return or pay tax for the year at issue.

*R.S. El., 144 T.C. No. 9*

**Retired police officer’s unused vacation and sick leave not excludable from income**

Payments for unused vacation and sick leave received by a retired police officer upon his retirement were not excludable from income. The taxpayer argued that some portion of the unused vacation and sick leave accrued when he was on temporary disability leave from the police department and, therefore, payments for that leave constituted excludable worker’s compensation. However, the vacation time and sick leave the taxpayer accrued while on temporary disability leave did not provide him with an immediate benefit that he could use to support himself while on such leave. Thus, the payments were fundamentally different from the normal temporary disability allowance paid under the state (California) Workers’ Compensation Act.

*C.W. Speer, 144 T.C. No. 14*

**Welfare plan was split-dollar insurance arrangement; accuracy-related penalties applied**

A welfare-benefit plan entered into by seven corporations to provide life insurance for employees was, in reality, a split-dollar life insurance arrangement benefitting the companies’ owners. The companies were denied deductions for premiums paid and the value of the economic benefits received were includible in the owners’ gross income.

*Our Country Home Enterprises, Inc., 145 T.C. No. 1*
IRS provides some relief to data breach victims

The IRS will not assert that an individual, whose personal information may have been compromised in a data breach, must include in gross income the value of identity protection services provided by the entity that experienced the data breach. In addition, the IRS will not assert that an employer, whose employees’ data may have been compromised in a data breach of the employer, must include the value of identity protection services in the employees’ gross income.

*Announcement 2015-22*

**Code Sec. 101**

**IRS will not issue rulings relating to treatment of basis adjustment of trust assets**

The IRS amplified previous procedures related to areas in which the IRS will not issue letter rulings or determination letters. In the new revenue procedure, the IRS adds an issue to section 5.01 of Rev. Proc. 2015-3, which lists areas under study in which rulings will not be issued until the IRS resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise. The added issue is whether the assets in a grantor trust receive a Code Sec. 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when the assets are not includible in the gross estate of the owner under the estate tax provisions of the Internal Revenue Code.

*Rev. Proc. 2015-37*

**Code Sec. 104**

**Compensation for egg donation not excluded from income**

The compensation received by a woman for donating her eggs to infertile couples was not excludable from income under Code Sec. 104 because the woman’s pain and suffering resulted from consensual performance of a service contract. Both of the individual’s donation contracts specified that the payments were compensation for her good-faith compliance with the egg donation procedure. Moreover, her compensation depended solely on how far into the egg donation process she went; therefore, she was not being compensated for selling her eggs.

*N.G. Perez, 144 T.C. No. 4*

**Code Sec. 106**

**Transition relief and guidance for small employers with health reimbursement plans**

The IRS provided transition relief and guidance for employers that reimburse employees for the cost of individual health coverage. This latest guidance offers transition relief, and clears up some confusion arising from previous IRS guidance.

*Notice 2015-17*
Code Sec. 132

Guidance on qualified transportation fringe benefits provided through smartcards

The IRS issued guidance for employers who wish to provide transit pass benefits to employees through the use of a smartcard (a plastic card with an imbedded memory chip). The guidance modifies and supersedes Rev. Rul. 2006-57, 2006-2 CB 911, regarding the use of transit cards and debit cards, and when an employer may use a bona fide cash reimbursement arrangement to provide a qualified transportation fringe benefit.

Rev. Rul. 2014-32

Guidance issued on application of retroactive increase in excludable transit benefits

The IRS issued guidance on the application of the retroactive increase in excludable transit benefits under Code Sec. 132(f)(2)(A) from $130 per participating employee to $250 per participating employee for the period January 1, 2014, through December 31, 2014, as enacted by section 103 of the Tax increase Prevention Act of 2014 (TIPA), (P.L. 113-295).

Notice 2015-2

Code Sec. 145

Simplified closing agreement process for exempt bond borrowers receiving prospective reinstatement

The IRS provided a simplified process for issuers of qualified bonds to request a closing agreement in situations where the borrower of the bond proceeds received prospective reinstatement after its tax-exempt status was automatically revoked under Code Sec. 6033(j)(1).

Announcement 2015-2

Code Sec. 148

IRS partially withdraws proposed rules on definition of issue price for purposes of arbitrage restrictions


NPRM REG-138526-14
Code Sec. 162

Safe harbor methods provided to distinguish between cable system capital expenditures and repairs

The IRS issued a revenue procedure that provides several safe harbor methods for accounting for various property costs paid by cable system operators that provide video, high-speed internet, or voice-over-internet-protocol (VOIP) phone services.

Rev. Proc. 2015-12

Other References:

2015 luxury auto depreciation caps and lease inclusion tables issued;

The IRS issued “luxury car” depreciation caps for passenger automobiles, trucks and vans first placed in service during calendar year 2015. For cars, the deduction limitations for the first three tax years are $3,160, $5,100, and $3,050, respectively, and $1,875 for each succeeding year. For trucks and vans first placed in service in 2015, the depreciation limitations for the first three years are $3,460, $5,600, and $3,350, respectively, and $1,975 for each succeeding year.

Rev. Proc. 2015-19

Amended regulations address deduction limitation for certain employee remuneration in excess of $1,000,000

The IRS finalized regulations relating to the deduction limitation for certain employee remuneration in excess of $1,000,000 under Code Sec. 162(m). The final regulations adopt proposed regulations (NPRM REG-137125-08) issued on September 7, 2011, with minor clarifications.

T.D. 9716

Code Sec. 163

Horse Farm Was For-Profit Activity; Business Interest Deductible; Negligence Penalty Imposed for Failure to Report Sale Income

A married couple operated their S corporation horse farm with the intent to make a profit, business interest they paid was deductible and the negligence penalty was imposed for their failure to report income from the sale of one of their farms.

H.J. Metz, TC Memo. 2015-54

Tax shelter investor properly subject to penalties; transaction lacked business purpose and economic substance

Foreign tax credits generated by a structured trust advantaged repackaged securities (STARS) trust transaction were properly disallowed because the transaction lacked economic substance. There was no meaningful economic activity by the participating U.S. financial institution. The transaction did not expose the institution to any economic risk and it had no realistic prospect of producing a profit other than from the foreign tax credits it generated. The artificiality of the transaction was shown by its unlimited
capacity to generate gains, without any additional exposure or resources. Therefore, the transaction was correctly characterized as lacking economic reality and allowing foreign tax credits for such an arrangement would be inconsistent with the purposes of the foreign tax credit statute.

*Salem Financial, Inc., (CA-FC)*

**Mortgage-interest deduction debt limits applied to unmarried co-owners on per-taxpayer basis**

The Ninth Circuit Court of Appeals held that the mortgage-interest deduction debt limits applied to unmarried co-owners on a per-taxpayer, not a per-residence, basis. The IRS calculated each taxpayer’s mortgage interest deduction by applying the limitation ratio to the total amount of mortgage interest each taxpayer paid in each tax year. The Tax Court affirmed the IRS’s determination, concluding that the limitations in Code Sec. 163(h)(3)(B)(ii) and (C)(ii) on the amount that may be treated as acquisition and home-equity indebtedness with respect to a qualified residence applied on a per-residence basis. The appeals court rejected the Tax Court’s reasoning and determined that the Code Sec. 163(h)(3) debt-limit provisions apply on a per-taxpayer basis to unmarried co-owners of a qualified residence.

*B.H. Voss, (CA-9), reversing C.J. Sophy, 138 T.C. 204*

**Code Sec. 165**

*Reversing the Tax court, the Fifth Circuit held that a taxpayer is entitled to claim ordinary loss deduction for abandonment of securities*

A corporation’s loss from its abandonment of securities was an ordinary, not a capital, loss. Contrary to the Tax Court’s holding, Code Sec. 1234A did not apply to the abandonment loss because it only applies to the termination of contractual or derivative rights. The securities were abandoned for no consideration when the corporation’s board determined that an abandonment loss would be worth more than the offered redemption price. Since the corporation abandoned the securities, not a right or obligation with respect to them, Code Sec. 1234A(1) did not apply.

*Pilgrim’s Pride Corporation, CA-5, Reversing 141 TC No. 17*

**Code Sec. 168**

*IRS delivers relief from form 3115 repair regulation filing (Rev. Proc.)*

The IRS issued a revenue procedure that offers significant relief to small business taxpayers from the requirements of filing a Form 3115, Application for Change in Accounting Method, to comply with the final repair regulations and certain MARS disposition regulations.

*Rev. Proc. 2015-20, IR-2015-29*
Code Sec. 199

Temporary and proposed regulations address domestic production activity deduction

The IRS released temporary and proposed regulations governing the domestic production activities deduction (DPAD). The temporary regulations relate to the calculation of W-2 wages when a trade or business is acquired or disposed of, as well as for short tax years. They are effective for tax years beginning after August 27, 2015, but can also be applied to earlier tax year that are still open.

*T.D. 9731, NPRM REG-136459-09*

Code Sec. 223

2016 deduction limits for HSAs released

The IRS released the 2016 inflation-adjusted amounts for health savings accounts under Code Sec. 223. For calendar year 2016, the annual limitation on deductions under Code Sec. 223(b)(2) for an individual with self-only coverage under a high-deductible plan is $3,350 ($6,750 for an individual with family coverage). A “high-deductible health plan” is defined in Code Sec. 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,300 for self-only coverage or $2,600 for family coverage and annual out-of-pocket expense limits (deductibles, copayments and other amounts, but not premiums) that do not exceed $6,550 for self-only coverage or $13,100 for family coverage.

*Rev. Proc. 2015-30*

Code Sec. 269B

Final regulations issued on qualification of transactions as “F” reorganizations and treatment of outbound “F” reorganizations

The IRS issued final regulations providing guidance on the qualification of transactions as “F” reorganizations and the treatment of outbound “F” reorganizations. The final regulations under Code Sec. 368 adopt, with changes, proposed regulations issued in 2004 (NPRM REG-106889-04) (2004 proposed regulations). The final regulations under Code Sec. 367(a) regarding outbound “F” reorganizations adopt, without substantive changes, proposed regulations issued in 1990 (INTL-704-87) (1990 proposed regulations) and make conforming revisions to other regulations. The final regulations apply generally to transactions occurring on or after September 21, 2015.

*T.D. 9739*

Code Sec. 338

Final regulations revise agency rules for consolidated groups

The IRS issued final regulations that revise the current agency rules for consolidated groups. The final regulations provide guidance regarding the identity and scope of authority of the agent for a consolidated group, and apply to consolidated return years
beginning on or after April 1, 2015. The IRS has simultaneously issued a revenue procedure that provides instructions regarding the manner of making all communications that relate to the identification of an agent under the final regulations.

*T.D. 9715, Rev. Proc. 2015-26*

**Code Sec. 351**

**Transfer of foreign operating subsidiary’s stock followed by d reorganization was code sec. 351 transfer**

The IRS ruled that a transaction was properly treated as a Code Sec. 351 transfer of a foreign operating subsidiary’s stock, followed by Code Sec. 368(a)(1)(D) reorganization

*Rev. Rul. 2015-9*

**Transaction followed by d reorganization was code sec. 351 stock transfer**

The IRS ruled that a transaction was properly treated as two Code Sec. 351 transfers of stock, followed by a Code Sec. 368(a)(1)(D) reorganization

*Rev. Rul. 2015-10*

**Code Sec. 382**

**IRS releases proposed regulations on afr adjustments for tax-exempt obligations**

The IRS issued proposed regulations that provide the method to be used to adjust the applicable federal rates (AFRs) under Code Sec. 1288 for tax-exempt organizations, as well as the method to be used to determine the long-term tax-exempt rate and the adjusted federal long-term rate under Code Sec. 382.

*NPRM REG-136018-13*

**Code Sec. 401**

**Procedures modified for issuing opinion and advisory letters on pre-approved employee plans**

The IRS updated its procedures for issuing opinion and advisory letters regarding the acceptability of pre-approved employee retirement plans and volume submitter under Code Secs. 401, 403(a), and 4975(e)(7).

*Rev. Proc. 2015-36*

**Code Sec. 402**

**IRS updates safe harbor explanations that accompany eligible rollover distributions**

The IRS updated its five-year-old safe harbor explanations that can be used to satisfy the requirements imposed on employer plans to provide information to recipients of eligible rollover distributions. The amendments update the safe harbor explanations in
Notice 2009-68, 2009-2 CB 423, with respect to changes in the law occurring after September 28, 2009, and to make certain other clarifying changes.

Notice 2014-74

Code Sec. 412

**IRS issues transition guidance for CSEC and eligible charity plans**

The IRS issued guidance on application of the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) (P.L. 113-97). The CSEC Act, which was enacted on April 7, 2014, specifies minimum funding requirements and related rules that apply with respect to certain defined benefit pension plans maintained by groups of cooperatives and related entities and groups of charities.

Notice 2015-58

Code Sec. 432

**Regulations and application procedures for reduction of multiemployer plan benefits; special master appointed**

The IRS and Treasury issued temporary and proposed regulations governing the suspension of benefits by multiemployer pension plans under Code Sec. 432(e)(9), which was added by the Multiemployer Pension Reform Act of 2014 (P.L. 113-235). It also issued a revenue procedure outlining the application process for a plan seeking approval of a reduction of benefits. A Special Master has been appointed.


**New election administration regulations for multiemployer plan benefits suspensions**

The IRS issued temporary and identical proposed regulations providing election administration rules for multiemployer plans in critical and declining status that are seeking approval of a benefits suspension from participants and beneficiaries. The temporary regulations apply on or after June 17, 2015, and expire on June 15, 2016.

T.D. 9735, NPRM REG-123640-15

Code Sec. 446

**IRS releases final, temporary, and proposed regulations on notional principal contracts**

The IRS released final, temporary and proposed regulations amending the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts. The final regulations provide that, subject to certain exceptions, a notional principal contract with a nonperiodic payment must be treated as two separate transactions consisting of one or more loans and an on-market, level payment swap. The temporary regulations concern an exception from the definition of “United States property.” These regulations affect parties making and receiving payments under
notional principal contracts, including United States shareholders of controlled foreign corporations and tax-exempt organizations

_T.D. 9719, NPRM REG-102656-15,_

**Code Sec. 453B**

*Proposed regulations issued regarding nonrecognition of gain or loss on disposition of installment obligations*

The IRS issued proposed regulations relating to the nonrecognition of gain or loss on certain dispositions of an installment obligation under Code Sec. 453B

_NPRM REG-109187-11, 2015FED ¶49,635_

**Code Sec. 482**

*Rule requiring U.S. corp to share stock-based compensation costs with foreign subsidiary invalid under cost-sharing agreement because it was arbitrary*

Reg. §1.482-7(d)(2), which requires controlled parties entering into qualified cost-sharing agreements (QCSAs) to share stock-based compensation (SBC) costs, was arbitrary and capricious and, therefore, invalid. The Treasury’s conclusion that the rule was consistent with the arm’s-length standard was unreasonable because it failed to support its belief that unrelated parties would share SBC costs with any evidence in the administrative record, failed to articulate why all QCSAs should be treated identically and failed to respond to significant comments. Thus, the regulation failed to satisfy the reasoned decision-making standard articulated in Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29 (1983). Moreover, the Treasury’s conclusion that the final rule was consistent with the arm’s-length standard was contrary to all of the evidence before it. Therefore, the harmless error rule did not apply because it was not clear that the Treasury would have adopted the final rule had it concluded that it was inconsistent with the arm’s-length standard.

_Altera Corporation and Subsidiaries, 145 T.C. No. 3_

**IRS plans to issue built-in gain, allocation regulations for transfers to partnerships with related foreign partners**

The IRS will issue regulations under Code Sec. 721(c) to ensure that when a U.S. person transfer property with built-in gain to a partnership that has foreign partners related to the transferor, income or gain attributable to the property will be taken into account by the transferor. The IRS will also issue regulations under Code Secs. 482 and 6662 applicable to controlled transactions involving partnerships to ensure the appropriate valuation of these transactions.

_Notice 2015-54_
Code Sec. 501

Final rules issued for charitable hospital organizations

The IRS issued final regulations that provide guidance on the requirements described in Code Sec. 501(r), the entities that must meet those requirements, and the related reporting obligations under Code Sec. 6033. The regulations are effective on December 29, 2014.

_T.D. 9708_

Procedures updated for applying for and issuing determination letters on exempt status

The IRS updated procedures for certain small U.S. organizations applying for, and the issuing of determination letters on, exempt status under Code Sec. 501(c)(3).

_Rev. Proc. 2015-5_

Organizations lacked standing to challenge IRS’s policy; anti-injunction act did not bar relief

An organization’s claims that it was targeted by the IRS based on its conservative views when it applied for tax-exempt status were dismissed in part. The organization failed to make a prima facie showing that the court could exercise personal jurisdiction over the director of the IRS’s Exempt Organizations Division because it failed to prove that she took or directed any actions in the state (Texas) relevant to its complaint. The fact that a federal official has supervisory responsibilities over an office in the forum state is insufficient to establish personal jurisdiction over that official.

_Freedom Path, Inc., (DC Tex.)_

Code Sec. 581

Money services business not a bank; ineligible for ordinary loss deductions for worthless securities

A money services business was not allowed ordinary loss deductions on the disposition of certain securities because such ordinary loss treatment under Code Sec. 582 is only available to banks, and the taxpayer’s business did not have the essential characteristics of a bank.

_Moneygram International, Inc., 144 T.C. No. 1_

Code Sec. 597

Proposed regulations modify treatment of federal financial assistance to troubled bank and thrift institutions

The IRS proposed rules intended to modify and clarify the treatment of certain transactions in which Federal Financial Assistance (FFA) is provided to troubled banks and thrift institutions and related parties. The proposed amendments restate all of Reg.
§1.597-1 through §1.597-7 in order to include not only the substantive changes but also non-substantive updates to make the reading of the regulations more user-friendly. Minor amendments are also made to facilitate e-filing.

*NPRM REG-140991-09*

**Code Sec. 642**

**Charitable contribution not permanently set aside by estate**

A decedent’s estate could not deduct a charitable contribution because the estate did not “permanently set aside” the funds for a charitable contribution under Code Sec. 642(c)(2)

*E.S. Belmont Est., 144 T.C. No. 6*

**Code Sec. 704**

**Final regulations on foreign tax credit splitter rules issued**

The Treasury and IRS have issued final regulations addressing the foreign tax credit splitter rules. The final regulations make a limited number of changes to the temporary regulations adopted in 2012 (T.D. 9577). Clarifying changes are made to definitions of reverse hybrid splitter arrangements, loss-sharing splitter arrangements and hybrid instrument splitter arrangements. A clarifying change was also made to the mechanical rules for tracking income and split taxes. The final regulations adopt the proposed regulations under Code Sec. 704, without change

*T.D. 9710*

**Partnership transaction transferring built-in losses lacked economic substance; penalty imposed**

A limited liability company partnership (LLC) was liable for deficiencies resulting from disallowed losses generated by distressed asset/debt (DAD) transactions. The Final Partnership Administrative Adjustments (FPAA) properly determined that the transactions lacked economic substance and the adjustments made by the IRS were correct.

*Russian Recovery Fund Ltd., (FedCl)*

**Code Sec. 706**

**IRS issues new final, proposed regulations on determining partner’s distributive share when its partnership interest changes**

The IRS issued final and proposed regulations under Code Sec. 706(d) to address the allocation of partnership items among partners whose interests in the partnership change during the partnership’s tax year.

*T.D. 9728, NPRM REG-109370-10*
Code Sec. 817

Insurance account asset income currently taxable; investor control doctrine applied

An individual venture capitalist was the owner for tax purposes of the assets in certain trust accounts because he exercised “investor control” over the assets and, therefore, he was liable for tax on the income earned, but he was not liable for the accuracy-related penalty because he reasonably relied on professional advice.

*J.T. Webber, 144 T.C. No. 17*

Code Sec. 831

Arrangement constituted insurance in commonly-accepted sense

A taxpayer was an insurance company within the meaning of Code Sec. 831(c) and the company’s “residual value insurance” contracts were insurance contracts for federal income tax purposes. The insured parties under these contracts were either the lessors of passenger vehicles, commercial real estate and/or commercial equipment, or they provided the financing for such leasing transactions. The contracts insured against the risk that the leased property’s value was significantly lower at the end of the lease than had been estimated at the lease’s inception.

*R.V.I. Guaranty Co., Ltd. & Subsidiaries, 145 T.C. No. 9*

Code Sec. 871

Final and temporary regulations issued on dividend equivalent amounts

The IRS adopted, with changes, 2013 proposed regulations on the payment of dividend equivalent amounts to nonresident alien individuals and foreign corporations.

*T.D. 9734, NPRM REG-127895-14*

Code Sec. 932

U.S. Citizen was bona fide resident of U.S. Virgin islands, VIBIR returns satisfied filing obligation

A U.S. citizen became a resident of the U.S. Virgin Islands (USVI) in order to work with a USVI limited partnership as a consultant, and met his U.S. tax obligations by filing returns with the U.S. Virgin Islands Bureau of Internal Revenue (VIBIR). The taxpayer built his own company to manufacture and distribute surge suppression devices, located in Florida. The taxpayer’s attorney and other individuals formed a company in the USVI to take advantage of certain economic incentives offered by the USVI and asked the taxpayer to join their enterprise as a consultant and limited partner. The taxpayer’s employment agreement required that he become a USVI resident. For the three years at issue, the taxpayer filed tax returns with the VIBIR, but did not file any returns with the IRS.

*T.L. Sanders Est., 144 T.C. No. 5*
**Code Sec. 937**

**Proposed regulations on U.S. territory bona fide residence presence test issued**

The Treasury and IRS proposed amendments to Reg. §1.937-1, which sets forth the rules for determining whether an individual is a bona fide resident of a U.S. territory.

*NPRM REG-109813-11*

**Code Sec. 965**

**Corporation Did Not Agree to Treat Accounts Receivable as Indebtedness in Closing**

The U.S. parent of a foreign corporation did not agree to treat accounts receivable created by a transfer pricing adjustment as indebtedness in its closing agreement with the IRS. Therefore, it was not required to reduce the amount of repatriated dividends eligible for the Code Sec. 965 dividends received deduction. Contrary to the Tax Court’s holding, the accounts receivable, which the corporation established under Rev. Proc. 99-32, 1999-2 CB 296, did not constitute increased related-party indebtedness for purposes of Code Sec. 965(b)(3)

*BMC Software, Inc., CA-5, reversing 141 TC No.*

**Code Sec. 988**

**Final regulations issued on integrated hedging transactions of foreign currency debt**

The IRS issued final regulations with respect to integrated transactions that involve foreign currency denominated debt instruments and multiple associated hedges. The final regulations are effective September 3, 2015. The temporary regulations (T.D. 9598) were adopted without substantive change.

*T.D. 9736*

**Code Sec. 1001**

**Final regulations determine basis in CRT term interests on disposition of entire CRT interest**

Final regulations provide rules for determining the basis in certain charitable remainder trusts (CRT) term interests that are transferred as part of a transaction in which all of the CRT interests are transferred. The regulations adopt without change proposed regulations that were published on January 16, 2014 (NPRM REG-154890-03, I.R.B. 2014-6, 504).

*T.D. 9729*
Code Sec. 1014

IRS provides guidance on new basis reporting requirements

The IRS issued guidance on the delayed application of new basis reporting requirements enacted by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41).

Notice 2015-57

Code Sec. 1361

Proposed regulations revise rules for reporting items of corporations that join or leave consolidated groups

The IRS issued proposed regulations that revise the rules for reporting certain items of income and deduction of corporations that join or leave a consolidated group. The proposed changes address uncertainties in the appropriate application of these rules under the current regulations.

NPRM REG-100400-14

Code Sec. 1471

IRS launches international data exchange service for FATCA and intergovernmental agreements

The IRS announced the opening of the International Data Exchange Service (IDES) for enrollment. Financial institutions and host country tax authorities will use IDES to securely send their information reports on financial accounts held by U.S. persons to the IRS under the Foreign Account Tax Compliance Act (FATCA) or pursuant to the terms of an intergovernmental agreement (IGA). Where a jurisdiction has a reciprocal IGA and the jurisdiction has the necessary safeguards and infrastructure in place, the IRS will also use IDES to provide similar information to the host country tax authority on accounts in U.S. financial institutions held by the jurisdiction’s residents.

FATCA IDES Technical FAQs, IR-2015-1

Code Sec. 1502

Proposed consolidated return regulations address absorption of members’ losses and circular basis adjustments

The IRS issued proposed consolidated return regulations that revise the rules concerning the use of a consolidated group’s losses in a consolidated return year in which stock of a subsidiary is disposed of. The proposed regulations provide guidance on the absorption of members’ losses in a consolidated return year, and eliminate the circular basis problem in a broader class of transactions. The proposed regulations also make a conforming amendment to the Code Sec. 6402 regulations to revise the definition of separate net operating loss (NOL) of a member.

NPRM REG-101652-10
Code Sec. 2001

Final regulations issued on portability of deceased spousal unused exclusion amount; 2012 temporary regulations removed

The IRS issued final regulations providing guidance on the following: (1) the estate and gift tax applicable exclusion amount, in general; (2) the requirements for electing portability of a deceased spousal unused exclusion amount (DSUEA) to the surviving spouse; and (3) the applicable rules for the use of the DSUEA by the surviving spouse.

T.D. 9725

Code Sec. 2801

Proposed regulations on covered gifts or bequests issued

Proposed regulations under Code Sec. 2801, which imposes a tax on covered gifts and covered bequests received by a citizen or resident of the United States from a covered expatriate, have been issued. Proposed Reg. §28.2801-1 provides the general rules of liability imposed by Code Sec. 2801. For purposes of Code Sec. 2801, domestic trusts and foreign trusts electing to be treated as domestic trusts are treated as U.S. citizens.

NPRM REG-112997-10

Code Sec. 3402

Guidance provided on third-party sick pay reporting

The IRS provided guidance on reporting third-party sick pay paid on or after January 1, 2014. Form 8922, Third-Party Sick Pay Recap, must be used by third parties and employers to report total payments of sick pay when the liability for the Federal Insurance Contributions Act (FICA) taxes on the sick pay is split between the employer and the third party under applicable regulations. Form 8922 must be filed instead of the Form W-2 and Form W-3 third-party sick pay recaps, that were filed with the Social Security Administration (SSA) for third-party sick pay paid before January 1, 2014.

Notice 2015-6

Code Sec. 4371

IRS updates procedures for insurers claiming a treaty-based exemption from tax on policies issued by foreign insurers

The IRS updated Rev. Proc. 2003-78, 2003-2 CB 1029, which gives instructions for claiming an exemption from the Code Sec. 4371 excise tax on insurance premiums paid to a foreign insurer or reinsurer.

Rev. Proc. 2015-46
Code Sec. 4942

Regulations on determining whether foreign charity is not a private foundation amended

The IRS amended the standards in Reg. §§53.4942(a)-3 and 53.4945-5 for making “good faith determinations” to make it easier and less costly for foundations to obtain written advice from a broader spectrum of qualified tax practitioners to assure that a grant will be considered a qualifying distribution (and not a taxable expenditure). These changes are accomplished by expanding the class of professionals on whose written advice a foundation may base a good faith determination. The benefits of this change are (1) a decrease in the cost of seeking professional advice regarding these determinations, (2) enabling foundations to engage in international philanthropy in a more cost-effective manner, and (3) to encourage more foundations to obtain written tax advice, thus promoting the quality of the determinations being made.

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