The Norton Tax Bulletin

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Recent Tax Developments

Dear Clients, family and friends,

The following is a summary of important tax developments that 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 that premium tax credits (*also known as health insurance subsidies)* under the Affordable Care Act (ACA – or Obamacare of often labeled), are not limited to taxpayers who live in States that have established their own health insurance Exchange but are also available to taxpayers living in States that rely on a Federal Exchange. While acknowledging that the challengers' arguments were strong, the Supreme Court found that 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 that 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 that 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 that the HCTC applies before Jan. 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 Dec. 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 Dec. 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 that fail to file correct information returns (*such as IRS Form 1099*) with the IRS. There's a separate, but parallel, penalty on taxpayers that fail to provide the payee with a correct copy of the information return that 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 Dec. 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 (ouch!!).

  If you have a business (*self-employed, partnership or corporation*) and you pay non-employees $600 or more during the calendar year, you are generally liable for issuing the individual a 1099-MISC by January 31st, and sending a copy to the IRS by February 28th. If this applies to you, don’t get caught not following the law!!

Regulations explain new tax-advantaged ABLE accounts. For tax years beginning after Dec. 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 (*similar to a ROTH account*). 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. 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 that 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 that can be very significant in amount. 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 that 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 that 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 that 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.

IRS Published 2015 changes

The IRS published its list of changes of most interest to taxpayers for their 2015 tax returns. It is reprinted below:

The tax items for tax year 2015 of greatest interest to most taxpayers include the following dollar amounts -

- The tax rate of 39.6 percent affects singles whose income exceeds $413,200 ($464,850 for married taxpayers filing a joint return), up from $406,750 and $457,600, respectively. The other marginal rates – 10, 15, 25, 28, 33 and 35 percent – and the related income tax thresholds are described in the revenue procedure.
- The standard deduction rises to $6,300 for singles and married persons filing separate returns and $12,600 for married couples filing jointly, up from $6,200 and $12,400, respectively, for tax year 2014. The standard deduction for heads of household rises to $9,250, up from $9,100.
- The limitation for itemized deductions to be claimed on tax year 2015 returns of individuals begins with incomes of $258,250 or more *($309,900 for married couples filing jointly*).
- The personal exemption for tax year 2015 rises to $4,000, up from the 2014 exemption of $3,950. However, the exemption is subject to a phase-out that begins with adjusted gross incomes of $258,250 *($309,900 for married couples filing jointly*). It phases out completely at $380,750 ($432,400 for married couples filing jointly.)
- The Alternative Minimum Tax exemption amount for tax year 2015 is $53,600 ($83,400, for married couples filing jointly). The 2014 exemption amount was $52,800 ($82,100 for married couples filing jointly).
- The 2015 maximum Earned Income Credit amount is $6,242 for taxpayers filing jointly who have 3 or more qualifying children, up from a total of $6,143 for tax year 2014. The revenue procedure has a table providing maximum credit amounts for other categories, income thresholds and phaseouts.
- Estates of decedents who die during 2015 have a basic exclusion amount of $5,430,000, up from a total of $5,340,000 for estates of decedents who died in 2014.
- For 2015, the exclusion from tax on a gift to a spouse *who is not a U.S. citizen* is $147,000, up from $145,000 for 2014.

- For 2015, the foreign earned income exclusion breaks the six-figure mark, rising to $100,800, up from $99,200 for 2014. This typically applies to U.S. citizens working abroad) in a foreign country with limited time spent in the U.S. during the taxable year.
- The annual exclusion for gifts remains at $14,000 for 2015. This means that one person can give another
- The annual dollar limit on employee contributions to employer-sponsored healthcare flexible spending arrangements (FSA) rises to $2,550, up $50 dollars from the amount for 2014.
- Under the small business health care tax credit, the maximum credit is phased out based on the employer's number of full-time equivalent employees in excess of 10 and the employer's average annual wages in excess of $25,800 for tax year 2015, up from $25,400 for 2014

If you have a specific question on the topics included in this letter, or tax law in general, be sure to ask me at your earliest convenience.

Very truly yours,

Dick Norton

> ***This newsletter is not intended or written by me to constitute written advice that you may rely upon to avoid penalties that may be imposed by any taxing authority. A written opinion from a qualified professional addressing your specific circumstances generally would be required as evidence of having relied upon professional advice.***