

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

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IRS Grants Penalty Relief for Certain Late-Filed Partnership Returns

The IRS issued Notice 2017-47; 2017-38 IRB 1 (<https://www.irs.gov/pub/irs-drop/n-17-47.pdf>) to provide penalty relief to partnerships that filed certain untimely returns or untimely requests for extension of time to file those returns for the first taxable year that began after Dec. 31, 2015, by the 15th day of the fourth month following the close of that taxable year.

Section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), Public Law 114-41, 129 Stat. 443 (2015), amended Section 6072 and changed the date by which a partnership must file its annual return. (See our prior coverage here (<http://www.stradley.com/insights/publications/2015/08/tax-advisor-august-2015>)). (Section references are to the Internal Revenue Code of 1986, as amended.) The due date for filing the annual return of a partnership changed from the 15th day of the fourth month following the close of the taxable year (April 15 for calendar-year taxpayers) to the 15th day of the third month following the close of the taxable year (March 15 for calendar-year taxpayers). The new due date applies to the returns of partnerships for taxable years beginning after Dec. 31, 2015. The date change applies to Form 1065, “U.S. Return of Partnership Income,” and Form 1065-B, “U.S. Return of Income for Electing Large Partnerships.” Certain partnerships may also file Form 8804, “Annual Return for Partnership Withholding Tax (Section 1446),” Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax,” and Form 5471, “Information Return of U.S. Persons With Respect to Certain Foreign Corporations,” which are also due on the same date as the Form 1065 or Form 1065-B. Failure to file the above-named forms may result in penalties to the partnership, including, but not limited to, penalties imposed under Sections 6698, 6651, 6721 and 6722.

The IRS suggests in the notice that many partnerships filed their returns for the first taxable year beginning after Dec. 31, 2015, by the date previously required by Section 6072. If not for the Surface Transportation Act, these returns and requests for extension of time to file would have been timely. Accordingly, for any return described above, the IRS will grant relief from the previously outlined penalties for the first taxable year of any partnership that began after Dec. 31, 2015, if either of the following conditions are satisfied:

1. The partnership filed the Form 1065, 1065-B, 8804, 8805 or 5471, or other return required to be filed with the IRS, and furnished copies (or Schedules K-1) to the partners (as appropriate) by the date that would have been timely under Section 6072 before amendment by the Surface Transportation Act (April 18, 2017, for calendar-year taxpayers, because April 15 was a Saturday and April 17 was a legal holiday in the District of Columbia).
2. The partnership filed Form 7004 to request an extension of time to file by the date that would have been timely under Section 6072 before amendment by the Surface Transportation Act and files the return with the IRS and furnishes copies (or Schedules K-1) to the partners (as appropriate) by the 15th day of the ninth

month after the close of the partnership’s taxable year (Sept. 15, 2017, for calendar-year taxpayers). If the partnership files Form 1065-B and was required to furnish Schedules K-1 to the partners by March 15, 2017, it must have done so to qualify for relief.

This relief will be granted automatically for penalties for failure to timely file Forms 1065, 1065-B, 8804 or 8805, and any other returns, such as Form 5471, for which the due date is tied to the due date of Form 1065 or Form 1065-B.

IRS Updates Report of Foreign Bank and Financial Accounts (FBAR) Reference Guide

The IRS has updated the FBAR Reference Guide (Guide) (https://www.irs.gov/pub/irs-utl/IRS_FBAR_Reference_Guide.pdf), which is intended to educate and assist U.S. persons who have the obligation to file the FBAR and for

the tax professionals who prepare and electronically file FBAR reports on behalf of their clients. The Guide also supports IRS examiners in their efforts to consistently and fairly administer the FBAR examination and penalty programs.

IRS Corrects Final Regulations on Post-Inversion Tax-Avoidance Deals

The IRS has issued corrections to the final regulations (T.D. 9812 (<https://www.gpo.gov/fdsys/pkg/FR-2017-09-07/pdf/2017-18983.pdf>)) that identify certain stock of a foreign corporation that is disregarded in calculating ownership of the foreign corporation for purposes of determining whether it is a surrogate foreign corporation. The corrections are limited but include a change in a reference to an example and certain clarifications. See our prior coverage here (<http://www.stradley.com/insights/publications/2017/01/tax-insights-january-18-2017>).



Christopher C. Scarpa



Kristin M. McKenna

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Kristin M. McKenna at 215.564.8145 or kmckenna@stradley.com.

Stradley Ronon’s Tax Practice Group

Todd C. Vanett, Chair.....	215.564.8070	tvannett@stradley.com
Zachary P. Alexander	215.564.8043	zalexander@stradley.com
Jacquelyn Gordon	215.564.8176	jgordon@stradley.com
Kristin M. McKenna	215.564.8145	kmckenna@stradley.com
William R. Sasso.....	215.564.8045	wsasso@stradley.com
Christopher C. Scarpa.....	215.564.8106	cscarpa@stradley.com
Roger Wise.....	202.419.8436	rwise@stradley.com