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Don't Be Fooled by the Names – Two New Laws Include Many Tax Provisions

by Christopher C. Scarpa and Kristin M. McKenna

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

President Obama signed into law P.L. 114-41, the "Surface Transportation and Veterans Health Care Choice Improvement Act of 2015" (the Act) on July 31. The Act is primarily a three-month extension of the Highway Trust Fund and related measures, but includes a number of tax provisions. Some highlights are:

- **Revised Due Dates for Partnership and C Corporation Returns**: C corporations normally need to file their tax returns on the 15th day of the third month after the end of the corporation's tax year (a March 15 due date for a calendar-year C corporation). Beginning in tax year 2016 for filing season 2017, the new due date for a calendar-year C corporation's tax return is April 15. Beginning in the 2017 filing season, the Act gives partnerships one less month to file their returns, while increasing the extension period from five months to six months, which leaves the extended due date for partnership returns unchanged.

- **Revised Extended Due Dates for Many Returns**: Effective for returns for tax years beginning after Dec. 31, the Act directs the IRS to modify its regulations to provide, in part, that the maximum extension for (i) the returns of organizations exempt from income tax filing Form 990 (series) will be an automatic six-month period ending on Nov. 15 for calendar-year filers (currently a three-month period); (ii) the returns of employee benefit plans filing Form 5500 will be an automatic three-and-a-half-month period ending on Nov. 15 for calendar-year plans (currently a two-and-a-half-month period); and (iii) the returns of trusts filing Form 1041 will be a five-and-a-half-month period ending on Sept. 30 for calendar-year taxpayers (currently a five-month period).

- **FBAR Due Date Revised**: The Act directs the Treasury to modify its regulations for returns for tax years beginning after Dec. 31, 2015, to provide that the due date of FinCEN Report 114 (Report of Foreign Bank and Financial Accounts — used to report a financial interest in or signature authority over a foreign financial account) will be April 15, with a maximum extension for a six-month period ending on Oct.15.

- **Consistent Basis Reporting for Transfer Tax and Income Tax Purposes**: The Act imposes a new basis consistency standard pursuant to which, generally, the

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basis of property received by reason of death under Section 1014 (section references are to the Internal Revenue Code of 1986, as amended) must equal the value of that property for estate tax purposes. A new information-reporting requirement is intended to ensure that the basis consistency standard is satisfied.

- **Basis Overstatement Is Income Omission for Six-Year Limitations Period**: The Act makes an understatement of gross income by reason of an overstatement of unrecovered cost or other basis an omission from gross income for purposes of the six-year limitations period. This overrules the Supreme Court's decision in *Home Concrete & Supply, LLC*, 132 S. Ct. 1836 (2012), in which the Supreme Court, resolving a split among the circuit courts and the Tax Court, determined that an overstatement of basis is not an omission of gross income for purposes of the six-year limitations period. Also, pursuant to the Act, an understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income for purposes of the six-year limitations period whether or not the amount of unrecovered cost or other basis is disclosed on the return.

Trade Preferences and Extension Act of 2015

The Trade Preferences and Extension Act of 2015 (TPEA) was signed into law by President Obama on June 29. TEPA increases penalties for the failure to file correct information returns (Section 6721) and the failure to furnish statements to payees (Section 6722); see Section 806 of TPEA. Information returns and payee statements potentially subject to the penalties include Forms 1099, W-2, 1098, 1042-S, 1094-B, 1095-B, 1094-C and 1095-C. The penalty for each violation — failure to file and failure to furnish — increases from $100 to $250. The penalty can be eliminated upon a showing of "reasonable cause" or decreased if the failure is corrected within 30 days (the penalty cap for this has doubled from $250,000 to $500,000) or by Aug. 1 (the penalty cap for this has tripled from $500,000 to $1.5 million) of a particular year. TPEA also increases significantly the maximum annual penalty for both the failure to file and the failure to furnish from $1.5 million to $3 million each — so the total annual maximum penalty for violating both Section 6721 and Section 6722 is $6 million. TEPA also increases the lower annual maximum penalty under Section 6721 and Section 6722 for persons with gross receipts of $5 million or less (and the penalty amounts continue to be indexed for inflation). The increased penalties apply to returns and statements required to be filed or furnished after Dec. 31, 2015; therefore, the revised penalties are effective for returns and statements filed in 2016 reporting information for 2015. ■

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