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INSIDE THIS ISSUE

IRS Announces 2016 COLA Limits For 401(k)/Other Qualified Retirement Plans; Many Amounts Unchanged

IR-2015-118

Nearly all retirement plan contribution and benefit limit amounts will remain the same for 2016 as for 2015, the IRS has announced. The 2016 cost of living adjustments (COLAs) affect a wide range of retirement savings vehicles, including defined contribution plans, defined benefit plans, employee stock ownership plans (ESOPs), and individual retirement arrangements (IRAs).

- ***Take Away.*** "For the first time in several years, limits impacting tax-qualified retirement plans, including the social security wage base which impacts plans that utilize so-called 'integrated' formulas, remain entirely unchanged," Todd Solomon, McDermott Will & Emery LLP, Chicago, told Wolters Kluwer. "Therefore, benefit plan participants will not have any additional retirement savings opportunities in 2016. However, limits impacting IRA holders did increase, as did the qualified pre-tax parking benefit that favorably impacts many commuters."

Background

Code Sec. 415 provides both dollar limitations on benefits and contributions under qualified retirement plans, along with a requirement that the IRS annually adjust these limits to reflect increases in the cost of living.

Benefit plans

Elective deferrals. The limits on elective deferrals for employees who participate in 401(k), 403(b), certain 457, and Thrift Savings Plans will remain $18,000 for 2016.

Catch-up contributions. Eligible individuals age 50 and above may make catch-up contributions to IRAs, 401(k)s and other savings arrangements. The catch-up amount for 401(k), 457, 403(b), and SEPs, remains $6,000 for 2016. The IRA catch-up amount remains at the flat $1,000 level specified under Code Sec. 219(b)(5)(B).

Defined contribution plans, defined benefit plans and ESOPs. The limitation for Code Sec. 415(c)(1)(A) defined contribution plans will remain $53,000 for 2016, the same as for 2015. The annual benefit limit under a Code Sec. 415(b)(1)(A) defined benefit plan (the maximum amount a plan may pay a participant each year) remains $210,000 for 2016. The amount for determining the maximum ESOP account subject to a five-year distribution period also remains the same, at $1,070,000 for 2016. The dollar amount used to determine the lengthening period of the five-year distribution remains $210,000 for 2016.

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IRS Releases Official 2016 Inflation-Adjusted Tax Brackets, Other Amounts

IR-2015-119, Rev. Proc. 2015-53

The IRS has issued a long list of cost of living adjustments (COLAs) for various Tax Code provisions in 2016 dependent upon the CPI-U index average from September 2014 through August 2015. The Tax Code requires that federal income tax brackets and certain other figures be adjusted annually for inflation. Despite a low rate of inflation during 2015, many provisions will increase for 2016. Some, however, remain the same due to rounding conventions.

- ***Take Away.*** Wolters Kluwer correctly projected the 2016 inflation-adjusted amounts and 2016 tax brackets for individuals and trusts and estates in September. (*For details see the September 24, 2015 issue of this newsletter*).

Official 2016 amounts

In addition to the inflation-adjusted tax bracket amounts for 2016, the IRS released the official 2016 figures for the following tax benefits and limitations, among others:

Personal exemptions. Personal and dependency exemptions will increase from $4,000 in 2015 to $4,050 for 2016.

Standard deductions. Standard deductions will remain the same for 2016, with the exception of the standard deduction for heads of household. That increases to $9,300 for 2016, up from $9,250 for 2015.

Limitation on itemized deductions. For 2016, the amount of itemized deductions that can be claimed will begin to phase out for certain taxpayers whose income exceeds $311,300 (married joint filers); $285,350 (heads of household); $259,400 (single filers); or $155,650 (married separate filers).

Estate and gift tax. The gift tax annual exemption will remain the same for 2016, at $14,000. However, the estate and gift tax applicable exclusion will increase to $5,450,000 for 2016 from $5,430,000 for 2015.

AMT exemption amounts. For 2016, the alternative minimum tax (AMT) exemption for married joint filers and surviving spouses will be $83,800 (up from $83,400 for 2015). For heads of household and unmarried single filers, the exemption will be $53,900 (up from $53,600 for 2015). For married separate filers, the amount will be $41,900 (up from $41,700 for 2015).

Saver's Credit. For 2016, the saver's credit will be available based on maximum AGI limit and filing status as follows: joint filers: $37,000, AGI for a 50-percent credit, $40,000 for a 20-percent credit, and $61,500 for a 10-percent credit; heads of household: $27,750, AGI for a 50-percent credit, $30,000 for a 20-percent credit, and $46,125 for a 10-percent credit; other filers: $18,500 AGI for a 50-percent credit, $20,000 for a 20-percent credit, and $30,750 for a 10-percent credit.

References: FED ¶¶46,433, 46,434; TRC FILEIND: 15,054.05.

2016 COLAs

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Annual compensation limit. The annual compensation limit under Code Secs. 401(a)(17) (relating to the maximum compensation counted for an eligible employee in a qualifying plan), 404(l) (addressing the deductibility of employer contributions), 408(k)(3)(C) (nondiscrimination rules for simplified employee pensions (SEPs)) and 408(k)(6)(D)(ii) (the deferral percentage for SEPs) remains $265,000 for 2016. The annual compensation limit under Code Sec. 401(a)(17) for eligible participants in certain governmental plans that allowed COLA adjustments under the plan as in effect on July 1, 1993 also remains the same, at $395,000.

Additional COLA-based benefits

For 2016, the maximum deductible amount under Code Sec. 219(b)(5)(A) for an individual making qualified retirement contributions to IRAs and similar plans will remain $5,500. The allowable IRA deduction will phase out when modified AGI is between $61,000 and$71,000 for single taxpayers who are active participants in an employer-sponsored retirement plan (the same as for 2015). For married couples filing a joint return, where the spouse making the IRA contribution is an active participant in an employer-sponsored retirement plan, the income phase-out range is $98,000 to $118,000 (the same as for 2015). However, for married joint filers where only one spouse is an active participant in an employer-sponsored retirement plan, the income phase out increases to $184,000 through $194,000 for 2016.

Contributions to a Roth Individual Retirement Account (IRA) are limited for taxpayers with adjusted gross income above certain limits adjusted annually for inflation. For 2016, the allowed Roth IRA contribution amount phases out for married taxpayers filing jointly with income between $184,000 and $194,000 (up from $183,000 and $193,000 for 2015). For heads of household and unmarried filers, the phaseout range is between $117,000 to $132,000 (up from $116,000 to $131,000 for 2015).

References: FED ¶46,367; TRC COMPEN: 27,252.10.

REFERENCE KEY

FED references are to ***Standard Federal Tax Reporter***
USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***
TRC references are to ***Tax Research Consultant***

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IRS Releases Proposed Regs On Same-Sex Marriage Reflecting *Obergefell* Decision

NPRM REG-148998-13

The IRS has issued proposed regs to implement the Supreme Court's decision in *Obergefell, 2015-1* USTC *¶50,357,* which extended same-sex marriage nationwide. The proposed regs reflect and clarify earlier guidance that treated same-sex married couples the same as opposite-sex married couples for federal tax purposes. The IRS also reiterated that domestic partners are not married for federal tax purposes.

- ***Take Away.*** "The entire area presents new opportunities for planning and possible new challenges," Alan Straus, CPA, JD, former chair of the New York State Society of CPAs Committee on Personal Financial Planning, told Wolters Kluwer. "These regulations, and the law, do not recognize domestic partnerships but I do not see that as any particular deficiency or shortcoming, since, based on the Supreme Court decision, all states will need to recognize same sex marriage and there will be no need for the domestic partnership laws."

Background

In *Windsor, 2013-2* USTC *¶50,400,* the Supreme Court struck down Section 3 of the *Defense of Marriage Act* (DOMA). Section 3 of DOMA had defined the word "marriage" as a legal union between one man and one woman as husband and wife, and the word "spouse" as a person of the opposite sex who is a husband or a wife.

The IRS responded to *Windsor* by issuing Rev. Rul. 2013-17. The IRS announced that it would treat all legally married same-sex couples as married for all federal tax purposes, including income and gift and estate taxes, regardless of whether a couple resides in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize same-sex marriage. The IRS also announced that for tax year 2013 and going forward, same-sex spouses generally must file using a married filing separately or jointly filing status.

In *Obergefell,* the Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. State laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

Proposed regs

The proposed regs provide that, for federal tax purposes, marriages of couples of the same-sex are treated the same as marriages of couples of the opposite-sex. The proposed regs amend current regs under Code Sec. 7701 to provide that, for federal tax purposes, the terms "spouse," "husband," and "wife" mean an individual lawfully married to another individual, and the term "husband and wife" means two individuals lawfully married to each other. These definitions, the IRS explained, apply regardless of sex.

The proposed regs further provide that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by any state, possession, or territory of the United States. The IRS explained that whether a

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IRS Develops New Tools For 2016 Filing Season To Curb Refund Fraud

IR-2015-117, FS-2015-23, FS-2015-24

The IRS has announced it will have new measures in time for the 2016 filing season to curb tax related identity theft and refund fraud. At the same time, the IRS also encouraged return preparers to create a security plan to safeguard taxpayer information from theft by criminals.

- ***Take Away.*** Jim Buttonow, chair of the IRS Electronic Tax Administration Advisory Committee (ETAAC), said that two of the greatest concerns for ETAAC are tax-related identity theft and the delivery of taxpayer services. Identity thieves continue to become more sophisticated, Buttonow said at the Fall Meeting of the Council for Electronic Revenue Communication (CERCA) in Arlington, Va.

Background

Earlier this year, the IRS began a collaborative effort with tax preparation firms, software providers, payroll and financial product processors, and state officials. The IRS and various stakeholders have developed and continue to develop new approaches to curb tax-related identity theft.

New tools

The IRS and stakeholders have identified numerous new data elements that can be shared at the time of filing to help authenticate a taxpayer and detect refund fraud. The IRS explained that there are more than 20 new data components. These data components will be submitted with the return transmission for the 2016 filing season.

- ***Comment.*** These data elements include reviewing the transmission of the tax return, including the improper and/or repetitive use of Internet Protocol numbers and reviewing the time it takes to complete a tax return, so computer mechanized fraud can be detected.

Taxpayers using tax preparation software will also encounter more vigorous security features. New password standards to access tax software will require a minimum of eight characters with upper case, lower

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IRS Narrows Definition Of Reportable Transactions Involving Basket Option Contracts And Basket Contracts

Notice 2015-73, Notice 2015-74

The IRS has reissued two notices that require investors to report information on tax shelter transactions involving basket option contracts and basket contracts. Notice 2015-73 identifies basket option contracts as listed or tax avoidance transactions; Notice 2015-74 identifies basket contracts as transactions of interest that have the potential for tax avoidance or evasion.

- ***TakeAway.*** The IRS previously identified these transactions as reportable transaction in Notices 2015-47 and 2015-48. Comments expressed concern that the descriptions of the reportable transactions were overly broad and would trigger the reporting of routine transactions. The new notices narrow the definitions of the transactions to be reported.

Transactions

In a basket option contract, the investor enters into a contract identified as an option with a counterparty (a bank) to receive a return based on the performance of a notional basket of traded personal property. The investor can change the assets in the reference basket. The assets in the basket would typically generate ordinary income and short-term gains and losses if held directly by the investor. The basket option has a stated term of more than one year. A basket contract is similar, with the investor receiving a return based on a notional basket of assets.

The investor claims that if the contract is held for more than one year, the entire gain is long-term capital gain. The IRS is concerned that taxpayers are using the contracts to defer income inappropriately or to convert ordinary income and short-term capital gain into long-term capital gain.

An important feature of the contracts is that the investor has discretion to change the assets in the reference basket or to make other changes that will alter the investments. The notices explain that certain routine actions that do not involve changes in the assets are not treated as discretion. The notices also describe certain transactions that are not treated as the same as, or substantially similar to, the reportable transactions. These excluded contracts include contracts listed on a national securities exchange, a domestic board of trade, or a comparable foreign exchange or board of trade. Contracts involving contingent payment debt instruments are also excluded.

Other requirements

Basket option contracts in effect on or after January 1, 2011 are reportable, provided the statute of limitations (SOL) has not expired as of October 21, 2015. Basket contracts entered into on or after November 2, 2006 and entered into on or after January 1, 2011 are reportable, provided the SOL is still open. Disclosure is required within 90 days of the notices. For prior years, taxpayers may change their method of accounting by filing an amended return, but may not make a change that is prospective only.

References: FED ¶¶46,435, 46,436; TRC FILEBUS: 9,458.10.

Refund Fraud

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case, alpha, numerical and special characters. Security will also include the addition of three security questions.

Preparers

The IRS also reminded return preparers that the records of their clients are attractive targets for criminals. To safeguard client information, preparers should have a security plan, the agency emphasized. The IRS urged preparers to use security software that includes a firewall, anti-malware and anti-virus programs; make sure they are set to automatically update so that the software can stay current against the latest threats; and consider having firewalls for both hardware and software.

References: FED ¶46,431; TRC IRS: 66,360.10.

Same-Sex Marriage

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marriage conducted in a foreign jurisdiction will be recognized for federal tax purposes depends on whether that marriage would be recognized in at least one state, possession, or territory of the U.S.

Domestic partners

In Notice 2013-17 and subsequent guidance, the IRS explained that registered domestic partners, individuals in a civil union, or similar relationships are not married for federal tax purposes because these individuals are not married under the laws of any jurisdiction. The proposed regs continue this approach. For federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a relationship.

- ***Comment.*** "I believe you have to recognize that if these people are still domestic partners and not married it is by their choice," Fred Slater, CPA, a member of MS1040 LLC, New York, told Wolters Kluwer. "The Supreme Court decision did not affect this part of the law. There are people who choose not to marry. It has some tax savings and it has some tax costs."

Effective date

The proposed regs would obsolete Rev. Proc. 2013-17. However, taxpayers may continue to rely on guidance applying Rev. Proc. 2013-17 to employee benefit plans. The proposed regs would be applicable when finalized.

References: FED ¶49,671; TRC FILEIND: 3,202.

Cash Distributions Received In Spinoff Not Taxable To Parent D

LTR 201542004

The IRS has issued favorable rulings on a series of transactions that involve a spinoff under Code Sec. 355 and corporate reorganizations under Code Sec. 368. The rulings issued by the IRS address several discrete issues involved in the proposed transactions, but do not address the overall tax consequences of the transactions under the corporate tax provisions.

- ***Take Away.*** IRS Associate Chief Counsel (Corporate) has temporarily stopped issuing rulings on spinoffs that involve a small amount of business assets or a large amount of investment assets, while it studies the area. The IRS has indicated that it has an active project to consider guidance on spinoffs. The IRS's willingness to issue this private letter ruling indicates that the IRS viewed the proposed transaction as an appropriate spinoff of business assets and not as a device to distribute earnings and profits to shareholders.

Background

A parent corporation ("Distributing") conducts various businesses, including Business B, and has outstanding debt ("Distributing Debt"). The corporation formed a subsidiary corporation ("Controlled"). An unrelated corporation, which conducts businesses complementary to Business B, also establishes a subsidiary corporation. The four corporations entered into a merger agreement in which unrelated's subsidiary will merge into Controlled under Code Sec. 368(a)(1)(A).

For good business reasons, the parties will undertake the following transaction steps. Distributing will contribute Business B to Controlled in exchange for stock, the assumption of Business B liabilities, cash, and Controlled Securities (the "Securities Exchange"). Distributing may retain some of the cash that may be taxable under Code Sec. 368(b)(1)(B). Distributing will also use the cash to make distributions to its shareholders; to repurchase shares; and to pay liabilities.

Controlled may assume additional liabilities of Distributing. Controlled may also borrow additional cash to be distributed to Distributing (the "Additional Cash Distribution"). Unrelated financial institutions will acquire Distributing Debt and then will exchange an amount of debt for certain Controlled Securities.

Representations

The parties represented that:

- Any Distributing debt exchanged for Controlled Securities was not incurred in anticipation of the distribution;
- The amount of cash received by Distributing from the other corporation's subsidiary will be less than 20 percent of

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AFRs Issued For November 2015

Rev. Rul. 2015-22

The IRS has released the short-term, mid-term, and long-term applicable interest rates for November 2015.

Applicable Federal Rates (AFR) for November 2015

Short-Term	Annual	Semiannual	Quarterly	Monthly
AFR	.49%	.49%	.49%	.49%
110% AFR	.54%	.54%	.54%	.54%
120% AFR	.59%	.59%	.59%	.59%
130% AFR	.64%	.64%	.64%	.64%
Mid-Term				
AFR	1.59%	1.58%	1.58%	1.57%
110% AFR	1.75%	1.74%	1.74%	1.73%
120% AFR	1.91%	1.90%	1.90%	1.89%
130% AFR	2.06%	2.05%	2.04%	2.04%
150% AFR	2.38%	2.37%	2.36%	2.36%
175% AFR	2.79%	2.77%	2.76%	2.75%
Long-Term				
AFR	2.57%	2.55%	2.54%	2.54%
110% AFR	2.83%	2.81%	2.80%	2.79%
120% AFR	3.08%	3.06%	3.05%	3.04%
130% AFR	3.35%	3.32%	3.31%	3.30%

Adjusted AFRs for November 2015

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.49%	.49%	.49%	.49%
Mid-term adjusted AFR	1.49%	1.48%	1.48%	1.48%
Long-term adjusted AFR	2.57%	2.55%	2.54%	2.54%

The Code Sec. 382 adjusted federal long-term rate is 2.57%; the long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months) is 2.64%; the Code Sec. 42(b)(2) appropriate percentages for the 70% and 30% present value low-income housing credit are 7.48% and 3.20%, respectively, however, the appropriate percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before January 1, 2015, shall not be less than 9%; and the Code Sec. 7520 AFR for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest is 2.0%.

References: FED ¶46,430; TRC ACCTNG: 36,162.05.

IRS Announces FY 2016 Sequestration Rate On The Alternative Minimum Tax Credit for Corporations

www.irs.gov

Payments made to corporations making the Code Sec. 168(k)(4) election but not claiming a refund of prior year minimum tax credits are subject to sequestration, the IRS has announced on its website. Payments will be reduced by the fiscal year (FY 2016) sequestration rate of 6.8 percent.

- ***Take Away.*** This "haircut" is in effect for FY 2016 (payments made on or after October 1, 2015 and on or before September 30, 2016). However, Congress could reduce or eliminate the sequestration rate during FY 2016, which, in turn, would affect these payments. The pending budget deal between the White House and the GOP in Congress could make such a change.

Background

The *Budget Control Act of 2011* amended the *Budget and Emergency Deficit Reduction Act of 1985* to provide for budget sequestration (across-the-board spending cuts). The 2011 Budget Act reduced discretionary spending over 10 years, half for defense spending and half for nondefense spending.

Corporations

Generally, a corporation that can claim an additional first-year depreciation deduction under Code Sec. 168(k) can choose instead to accelerate the use of its prior year minimum tax credits, treating the accelerated credits as refundable credits. These payments are subject to sequestration.

The 6.8 percent FY 2016 sequestration rate will be applied irrespective of when the taxpayer's original or amended return was filed, the IRS explained. Refund payments processed on or after October 1, 2015, and on or before September 30, 2016, will be reduced by the FY 2016 sequestration rate of 6.8 percent.

- ***Comment.*** The IRS instructed corporations making the Code Sec. 168(k)(4) election and claiming a refund of prior year minimum tax credits to complete Form 8827, Credit for Prior Year Minimum Tax—Corporations. Corporations will be notified that a portion of their requested refund is subject to sequestration, the IRS added.

Reference: TRC FILEIND: 30,452.

Amounts Paid By Business To Charitable Organizations Can Be Deducted As Business Expenses Under Code Sec. 162, IRS Concludes

The IRS has concluded, in Chief Counsel Advice, that payments by a business to various charitable and tax-exempt organizations may be deducted as trade or business expenses under Code Sec. 162. The IRS also concluded that the payments were made by the business and not by its customers.

Background. The taxpayer was engaged in the business of providing services and operated Program X since its incorporation. The taxpayer made payments to selected recipients, including tax-exempt organizations, other nonprofit organizations, and for-profit entities.

Issue 1. The IRS determined that taxpayer's customers do not have a right to share in amounts from Program X. Thus, it does not appear that funds in Program X belong to its customers, and the customers do not donate the funds. The funds would be paid by the customers if the taxpayer was an agent or conduit for the funds, but determining this would require additional factual development.

Issue 2. No deduction is allowed under Code Sec. 162 for a contribution or gift that is deductible under Code Sec. 170. However, under Reg. §1.170A-2(c)(5), a transfer of property to an organization described in Code Sec. 170(c) which bears a direct relationship to the taxpayer's trade or business and which is made with a reasonable expectation of commensurate financial return may be deductible under Code Sec. 162. Since it appears that the taxpayer acted with a reasonable belief that making donations through Program X would enhance and increase its business, the donations are deductible as business expenses under Code Sec. 162.

CCA 201543013; TRC BUSEXP: 3,050.

Distributions

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the value of Controlled stock; and

- Distributing will recognize gain on any retained additional Cash Distribution.

Rulings

The IRS ruled as follows:

- The cash distribution will be treated as distributed pursuant to the Controlled Plan of Reorganization under Code Sec. 361(b)(1)(A) (distributions of property received) and 361(b)(3) (transfers to creditors) and will therefore be tax-free to Distributing.
- The Securities Exchange will be tax-free to Distributing.
- Distributing liabilities will be excluded in determining the amount of liabilities assumed by Controlled under Code Sec. 357(c) and 358(d).
- The receipt of shares of the unrelated corporation by a shareholder of Distributing will be treated as if the shareholder received Controlled Shares and exchanged them for shares of the unrelated corporation.
- The receipt of cash by a Controlled shareholder in lieu of fractional shares will be treated as a distribution of fractional shares and then a sale by the Controlled shareholder in a taxable exchange under Code Sec. 1001.

Reference:TRC REORG: 100.

TAX BRIEFS

Internal Revenue Service

The Treasury and IRS have released the first quarter update to the 2015–2016 Priority Guidance Plan. The first quarter update reflects seven additional projects that have become priorities and guidance that was published from July 16, 2015, through September 30, 2015. The IRS intends to update the plan quarterly to consider comments received from taxpayers and tax practitioners relating to additional projects and to respond to developments arising during the plan year.

Treasury/IRS 2015–2016 Priority Guidance Plan First Quarter Update, FED ¶46,437; TRC IRS: 12,350

Jurisdiction

Several individuals and a limited liability company's (LLC's) untimely wrongful levy and quiet title claims were dismissed for lack of subject matter jurisdiction. The claimants failed to file their wrongful levy claim within 12 months from the date of filing their administrative appeal. In addition, the claimants failed to support their allegations that equitable tolling or equitable estoppel applied to the limitations period under Code Sec. 6532(c). Although the claimants made a passing reference to the doctrine of equitable tolling, they did not provide any facts to support its application.

M.O.R.E., LLC, DC Calif., 2015-2 USTC ¶50,522; TRC IRS: 51,156.20

Income

An individual's trading losses were capital losses because he failed to make a valid mark-to-market election for the tax year at issue. The taxpayer filed a late return on which he claimed that he made a mark-to-market election but he did not attach a Form 3115, Application for Change in Accounting Method. Thus, the taxpayer failed to comply with the election procedures prescribed under Rev. Proc. 99-17, 1999-1 CB 504, by failing to file a mark-to-market election by the due date of the return.

Poppe, TC, Dec. 60,431(M), FED ¶48,141(M); TRC SALES: 45,360

Deductions

A medical marijuana dispensary was not entitled to deduct its operating expenses because it was in the trade or business of trafficking a controlled substance. The taxpayer argued that its actions could not be considered "trafficking" for the purposes of Code Sec. 280E because

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Supreme Court Denies Petition For Review Of Two Circuit Court Decisions

The U.S. Supreme Court has denied certiorari for two recent decisions. In one (*Rogers*), the Court of Appeals for the District of Columbia held that a flight attendant stationed in Hong Kong, whose duties were performed in and out of the United States, could not exclude all of her income using the foreign earned income exclusion. The District of Columbia Circuit found that only that portion of her wages attributable to services performed in a foreign country was excludable. Pursuant to Reg. §1.911-3(a), income earned over international waters is not income earned "in a foreign country or countries." The reg was not procedurally defective, arbitrary or capricious, or manifestly contrary to the language of Code Sec. 911 and, therefore, was binding on the court.

The other petition (*Karagozian*) was for review of the Second Circuit's decision upholding the IRS's determination to proceed with a levy to collect an individual's delinquent income taxes. The Tax Court and Second Circuit had rejected the individual's claim that the statute of limitations did not apply to his refund claim. The IRS's letter did not waive the limitations period or grant the individual a refund, but merely instructed him to file amended tax returns, informed him that reclassification could affect his tax liability and clearly stated that the limitations period could bar certain prior year tax refunds.

Rogers, CA-D.C., 2015-1 USTC ¶50,273; Karagozian, CA-2, 2015-1 USTC ¶50,216.

IRS Issues Draft 2015 Form 8962, Premium Tax Credit (PTC)

The IRS has issued the 2015 draft form that individual taxpayers must use to either claim the premium assistance tax credit (PTC) for 2015 or reconcile any advance PTC payments with the amount to which they are actually entitled for the year.

What's new. The draft instructions remind taxpayers that employers who offered health coverage for 2015 are required to send them information statements (Form 1095-C, Employer-Provided Health Insurance Offer and Coverage) containing information about this health insurance coverage. In some cases taxpayers who received such an offer chose to obtain their coverage through a Health Insurance Marketplace and may wish to claim a PTC to help them offset the cost of this coverage. In that case, the Form 1095-C contains the information necessary for completing Form 8962 to see whether the individual is eligible for the PTC.

- ***Comment.*** During the 2015 filing season, some individuals who obtained coverage through the Health Insurance Marketplace and were eligible for the Code Sec. 36B credit experienced problems with their Form 1095-A, Health Insurance Marketplace Statement. The Health Insurance Marketplace issued Forms 1095-A reporting incorrect benchmark plans and related information. Affected taxpayers were advised to wait to file their 2014 returns until the Health Insurance Marketplace issued corrected Forms 1095-A. Treasury has assured taxpayers that it is working with the Health Insurance Marketplace to avoid a similar problem with Forms 1095-A during the 2016 filing season.

www.irs.gov; TRC HEALTH: 3,300.

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its activities were not illegal under state (California) law. However, the taxpayer regularly bought and sold marijuana, which constituted trafficking even when permitted by state law.

Canna Care, Inc., TC, Dec. 60,432(M), FED ¶48,142(M); TRC BUSEXP: 18,808

Liens and Levies

The government was entitled to foreclose federal tax liens against a couple's property and a condominium held by the husband as tenants in common with his nonliable son and sell the properties at auction. The sale of a partial interest in the property would be prejudicial to the government and since the son did not reside in the property, the sale proceeds were sufficient compensation.

Adent, DC Wis., 2015-2 USTC ¶50,526; TRC IRS: 45,160

Refund Claims

A multinational corporation's request for reconsideration of the dismissal of its refund claim was denied. Because contested taxes are not "deemed accrued other than by reason of Code Sec. 904," Reg. §1.904-2(c) applied. The corporation's interpretation of "actually accrued" would lead to the anomalous result that contested taxes would be taken as credits in the year of origin, but would be counted toward the credit limit in the contest resolution year.

Albemarle Corporation, CA-FC, 2015-2 USTC ¶50,524; TRC INTL: 36,150

A group of medical residents' action against their healthcare employer seeking damages for its failure to seek withholding tax refunds was properly dismissed. The residents sought a refund of taxes and had failed to exhaust their administrative remedies. The employer had a reasonable belief that it was required to withhold FICA taxes from the residents' pay and there was no allegation that the employer gave away something it did not possess. Further, the damages sought were equivalent to the FICA taxes withheld. Thus, the residents' were essentially seeking a tax refund, not charging that the employer committed an independent wrong. Since the residents were seeking a refund, they were required by Code Sec. 7422 to file an administrative refund claim with the IRS before filing suit.

Chalfin, M.D. v. St. Joseph's Healthcare System, CA-3, 2015-2 USTC ¶50,525; TRC LITIG: 9,062

Information Disclosure

A married couple was entitled to statutory damages for the IRS's wrongful disclosure of their tax return information. The IRS mailed an examination report regarding the couple's audit to an unrelated third-party. Because the couple had no actual damages, they were entitled to recover $1,000 each as statutory damages. Their argument that the statutory damages should be calculated by treating each piece of return information as a separate act of disclosure was rejected, however, the IRS's disclosure was the result of willful misconduct or gross negligence.

Minda, DC N.Y., 2015-2 USTC ¶50,523; TRC IRS: 9,350

Applications For 2016 Allocation For New Markets Tax Credit Now Open

The Community Development Financial Institutions Fund (CDFI Fund) has announced the availability of applications for the 2016 allocation round for the New Markets Tax Credit (NMTC). Up to $5 billion of NMTC investment authority is available for the 2016 allocation round, subject to Congressional authorization.

Background. Congress originally established the New Markets Tax Credit (NMTC) Program in the *Community Renewal Tax Relief Act of 2000*.. The NMTC is part of the general business credit and is intended to spur private investment in low-income or economically disadvantaged areas.

There are national, calendar year limitations on the amount of investments that can be used to claim the NMTC. Treasury is authorized to allocate these investments to qualified Community Development Entities (CDEs). If the yearly limitation is not fully allocated, the excess is carried over and added to the next calendar year's limitation. However, no amount can be carried beyond the year 2019.

Applications. Electronic applications must be received by 5:00 p.m. ET on December 16, 2015. The CDFI Fund will only accept applications and attachments electronically. Applications sent by mail, facsimile or other form will not be accepted.

Applications must meet all eligibility and other requirements and deadlines set forth in the notice. NMTC allocation applicants that are not yet certified as CDEs must submit an application for CDE certification through the CDFI Fund's Awards Management Information System (AMIS) on or before 5:00 p.m. ET on November 6, 2015.

www.treasury.gov; TRC BUSEXP: 54,900.

Federal Budget Negotiators Propose Partnership Audit Reforms And More

At press time, a pending federal budget agreement between President Obama and the GOP-controlled House would revise the current TEFRA and Electing Large Partnership (ELP) rules. The budget deal would also repeal language in the Affordable Care Act (ACA) on automatic enrollment.

Partnerships.The pending agreement would streamline the partnership audit rules into a single set of rules for auditing partnerships and their partners at the partnership level. The proposal would allow partnerships with 100 or fewer qualifying partners to opt out of the new rules.

ACA. The proposed budget deal would repeal a provision in the ACA that requires employers with more than 200 employees to automatically enroll new full-time equivalents into a qualifying health plan if offered by that employer, and to automatically continue enrollment of current employees.

For more details about the progress of the budget agreement, see Tax Day on IntelliConnect and next week's issue of this newsletter.

H.R. ____ Discussion Draft, October 27, 2015; TRC PART: 60,650.

PRACTITIONERS' CORNER

What's New On 2015 Form 1040?

The 2016 filing season is quickly approaching. Along with year-end planning, taxpayers and practitioners are taking a preliminary look at the draft 2015 Form 1040, Individual Income Tax Return. The draft Form 1040 for 2015 reflects some important changes, most significantly the addition of the new requirements related to the *Affordable Care Act* (ACA). This Practitioners' Corner highlights some of the key changes on 2015 Form 1040 and on some of its Schedules.

- ***Comment.*** At press time, a host of popular but temporary tax incentives, known as extenders, are unavailable for 2015 because they expired after December 31, 2014, or were only retroactively extended through that date. Relevant for Form 1040 individual filers are the following extenders: the higher education tuition and fees deduction (Line 34) and the teachers' classroom expense deduction (Line 23). Draft Form 1040 has reserved the lines where filers would have claimed these deductions.
- ***Comment.*** Draft Form 1040, Schedule A has also reserved lines for the currently expired state and local sales tax deduction (Line 5b) and mortgage insurance premium deduction (Line 13).

2015 Form 1040

Line 21, Other income. New for this year, taxpayers must report any taxable distributions from an "ABLE" account, established under the *Achieving a Better Life Experience (ABLE)* Act (passed in mid-December 2014). An ABLE account is a new type of savings account under Code Sec. 529A that is similar to a college tuition savings account under Code Sec. 529.

Individuals with disabilities may contribute to the ABLE account and receive contributions, which will grow tax-free provided that distributions are made to pay for the account beneficiary's qualified disability expenses. Distributions that are not used for qualified disability expenses are taxable and must be reported on this line.

- ***Comment.*** Taxable distributions from an ABLE account are generally subject to income tax on the portion of the distribution attributable to earnings. That portion would also likely be subject to a 10-percent penalty, which must be computed on Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, and reported on Form 1040, Line 59, Additional tax on IRAs, other qualified retirement plans, etc.

"This Practitioners' Corner highlights some of the key changes on 2015 Form 1040 and on some of its Schedules."

Line 26, Moving expenses. The 2015 standard mileage rate for moving expenses is $0.23 per mile.

- ***Comment.*** The 2015 rate is five cents lower than the 2014 rate.

Line 32, IRA deduction. Although both the maximum amount of deductible contributions that can be made to an IRA ($5,500) and the increased contribution amount for taxpayers age 50 and over ($6,500) will remain the same for 2015, the phaseout ranges have increased from 2014.

- ***Comment.*** The above-the-line deduction for traditional IRA contributions will begin to phase out for married joint filers whose income is greater than $98,000 if both spouses are covered by a retirement plan at work (up from $96,000 for 2014). If only one spouse is covered by a retirement plan at work, the phaseout begins when modified adjusted gross income reaches $183,000 (up from $181,000 for 2014). The phaseout is complete for these taxpayers at levels of $118,000 and $193,000, respectively (up from $116,000 and $191,000 for 2014). For heads of household and unmarried filers who are covered by a retirement plan at work, the 2015 income phaseout range for deductible IRA contributions is $61,000 to $71,000, up from $60,000 to $70,000 for 2014.

Line 40, Itemized deductions or standard deduction. The 2015 standard deduction will rise by $100 for single taxpayers to $6,300, from $6,200 for 2014. For married joint filers, the standard deduction will rise to $12,600, up from $12,400 for 2014. For heads of household, the standard deduction will be $9,250, up from $9,100 for 2014. The additional standard deduction for blind and aged married taxpayers will increase to $1,250 (up from $1,200 for 2014). For unmarried taxpayers who are blind or aged, the amount of the additional standard deduction remain the same as for 2014 ($1,550).

For higher-income taxpayers who itemize their deductions, the limitation on itemized deductions will be imposed as follows:

- For married couples filing joint returns or surviving spouses, the income threshold will be $309,900.
- For heads of household, the threshold will be $284,050 in 2014.
- For single taxpayers, the threshold will be $258,250.
- For married taxpayers filing separate returns, the 2015 threshold will be $154,950.

Line 42, Exemptions. The 2015 personal exemption will increase by $50, to $4,000, up from $3,950 for 2014. The phaseout of the personal exemption for higher income taxpayers will begin after taxpayers pass the same income thresholds set forth for the limitation on itemized deductions.

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WASHINGTON REPORT *by the Wolters Kluwer Washington News Bureau*

White House, GOP negotiate two-year budget deal

At press time, President Obama and Congressional Republicans are reportedly nearing agreement on a two-year federal budget. The IRS, along with other federal agencies, is operating under a stop-gap budget bill scheduled to expire in mid-December. It is unclear if the budget deal will include the tax extenders. The extenders expired after 2014. The amount of funding for the IRS under the possible agreement for fiscal years (FY) 2016 and 2017 has not yet been released.

One proposal would streamline the partnership audit rules into a single set of rules for auditing partnerships and their partners at the partnership level. The proposal would allow partnerships with 100 or fewer qualifying partners to opt out of the new rules. The proposal would also repeal the automatic enrollment provisions under the *Affordable Care Act* (ACA). This provision generally requires employers with more than 200 employees to automatically enroll new full-time equivalents into a qualifying health plan if offered by that employer, and to automatically continue enrollment of current employees.

Bipartisan bill would enhance farm equipment depreciation

Senators Amy Klobuchar, D-Minn., and Pat Roberts, R-Kan., have introduced legislation to permanently set a five-year depreciation schedule for certain agricultural equipment. "Changing the depreciation schedule for agricultural equipment to five years would make the Tax Code more consistent and support rural development by aligning the length of time that farmers can take a depreciation deduction with the average useful life of that property," the lawmakers said in a statement.

Generally, taxpayers are allowed a depreciation deduction to allow them to recover the costs of investing in certain property, such as farm machinery and farm-use motor vehicles. "The recovery period for the deduction should match the useful life and financing of that property. On average farmers and ranchers finance farm equipment and machinery for five years," the lawmakers added.

Koskinen links budget cuts to audit rate drop

IRS Commissioner John Koskinen predicted another drop in audit coverage rates due to funding reductions. "The constraints of limited funding have a severe impact on enforcement," Koskinen told the Fall 2016 Meeting of the Council for Electronic Revenue Communication (CERCA) in Arlington, Va., on October 23.

"For 2015, we expect another drop in audit rates and a drop in revenue," Koskinen said. Earlier this year, Koskinen highlighted the drop in business audits. At that time, Koskinen reported that for all types of businesses, the FY 2014 audit coverage rate was 0.57 percent. That represented a decline from 0.71 percent in FY 2012 and 0.61 percent in FY 2013.

Since 2010, the IRS has absorbed deep and dramatic funding reductions. The IRS has reduced its workforce by 15,000 full time employees through attrition. These include 5,000 key enforcement personnel.

DOJ closes investigation into IRS

A U.S. Department of Justice (DOJ) official told Congress on October 23 that the agency has closed its investigation into the IRS's improper handling of applications for tax-exempt status and will not pursue criminal charges against former employees of the IRS. DOJ told lawmakers that its investigation uncovered "mismanagement, poor judgment and institutional inertia." DOJ added that it found no evidence that any IRS official acted based on "political, discriminatory, corrupt or other inappropriate motives that would support a criminal prosecution."

Treasury official highlights pilot run of myRAs

After a successful pilot run of myRAs, the Treasury Department is ready for a wider launch, Melissa Koide, deputy assistant secretary, Office of Consumer Policy, Treasury, said on October 23. Koide spoke at the Fall 2015 Meeting of the Council for Electronic Revenue Communication Advancement (CERCA) in Arlington, Va.

MyRAs generally operate similarly to Roth IRAs, Koide explained. A myRA can have a maximum balance of $15,000 or a lower balance for up to 30 years. When either of these limits is reached, savings must be transferred to a private-sector Roth IRA. MyRAs are not intended, Koide explained, to compete with other retirement savings vehicles. MyRAs are intended to serve a population not served by existing products.

Treasury has piloted MyRAs during 2015, Koide said. Treasury has worked with large and small employers during the pilot program. According to Koide, the pilot program discovered interest in myRAs among all age ranges of individuals. Among businesses, employees of small businesses had great interest, Koide added.

HHS anticipates smoother Form 1095-A process

The U.S. Department of Health and Human Services (HHS) expects fewer problems with Form 1095-A, Health Insurance Marketplace Statement, an HHS official said on October 23. The official spoke at the Fall 2015 Meeting of the Council for Electronic Revenue Communication Advancement (CERCA) in Arlington, Va., on October 23.

All individuals who enrolled in minimum essential coverage through the Marketplace for 2014 received Form 1095-A, describing their coverage and the amount, if any, of advance payments of the Code Sec. 36B credit. In February, HHS reported that approximately 20 percent of enrollees received incorrect Forms 1095-A. The incorrect forms referenced Marketplace benchmark plans for 2015 rather than 2014. Treasury subsequently provided relief for certain taxpayers.

Continued from page 521

The phaseout of the personal exemption will be complete at the following income levels:

- For married couples filing joint returns or surviving spouses, the ceiling threshold will be $432,400.
- For heads of household, the ceiling threshold will be $406,550 in 2015.
- For single taxpayers, the ceiling threshold will be $380,750.
- For married taxpayers filing separate returns, the 2015 ceiling threshold will be $216,200.

Line 45, Alternative minimum tax. For 2015, the AMT exemption for married joint filers and surviving spouses will be $83,400. For heads of household and unmarried single filers, the exemption will be $53,600. For married separate filers, the exemption will be $41,700. For estates and trusts, the exemption will be $23,800.

Line 61, Health Care: Individual Responsibility. Beginning January 1, 2014, individuals were required to carry minimum essential health coverage or make an individual shared responsibility payment, unless exempt. A tax filer must use Line 61 to indicate whether he or she (and all members of the household listed on the return) had minimum essential health coverage for all of 2015. If not, the filer must compute the amount of his or her individual shared responsibility payment and enter it onto Line 61. Individuals who qualify for an exemption from the requirement to obtain minimum essential health coverage must file Form 8965, Health Coverage Exemptions.

- ***Comment.*** This requirement existed for the 2014 tax year. However, 2015 is the first year in which health coverage providers were required to furnish Form 1095-A: Health Insurance Marketplace Statement, Form 1095-B: Health Coverage, or Form 1095-C: Employer-Provided Health Insurance Offer and Coverage, to taxpayers. Form 1040 filers should receive one of these forms (which one depends on who provided the coverage for that year) by January 31, 2016. The information provided on the forms will enable a tax filer to compute his or her individual shared responsibility payment for 2015, if any applies.

Line 69, Net Premium Tax Credit. Taxpayers must report on Line 69 the amount, if any, of the taxpayer's Code Sec. 36B premium assistance tax credit.

- ***Comment.*** If the tax filer or any member of his or her household enrolled in health insurance through the Health Insurance Marketplace and benefited from advance payments of the premium tax credit, the filer must use Form 8962, Premium Tax Credit (PTC), to reconcile the advance payments with the actual premium tax credit to which the filer is entitled for 2015. The information supplied by the Marketplace on Form 1095-A will enable filers to complete this line. In addition, taxpayers use Form 8962 to claim a premium tax credit if they were entitled to one and did not opt to have advance payments made to the insurance provider during the year.

Line 67, Additional child tax credit. New for tax years beginning after 2014, tax filers cannot claim the additional child tax credit—meaning the refundable portion of the credit—if they are excluding foreign earned income and/or foreign housing expenses under Code Sec. 911. This disallowance was enacted in the *Trade Preferences Extension Act of 2015*.

Line 73, checkbox d, [Credits from Form] 8885. Filers who qualify for the Health Coverage Tax Credit against the cost of certain health insurance premiums may still complete Form 8885, Health Coverage Tax Credit, and claim it, even though the tax credit expired at the end of 2013. Congress reinstated the credit, retroactive to January 1, 2014.

Line 76, Amount refunded to you. New for 2015, taxpayers can direct-deposit a portion or all of their tax refund into the new type of Roth IRA, the myRA.

- ***Comment.*** The myRA account is available to any unmarried individual with an annual income of less than $129,000 a year (or to married couples with income of less than $191,000 a year). The account is intended to be for savers who do not have access to an employer-sponsored retirement savings plan, or who are looking to supplement a current plan. Contributions will earn interest at the same variable rate as contributions to the Government Securities Investment Fund in the Thrift Savings Plan for federal employees.

Schedule A, Itemized Deductions

Line 1, Medical and dental expenses. The 2015 standard mileage rate for medical-related use of an automobile is 23 cents per mile.

Line 21, Unreimbursed employee expenses. The 2015 standard mileage rate for business travel is 57.5 cents per mile.

Schedule B, Interest and Ordinary Dividends

Line 3, Excludable Interest. For 2015, the exclusion for education-related savings bond interest phases out for single individuals with modified AGI from $77,200 to $92,200 (up from $76,000 to $91,000 for 2014). For joint filers the 2015 income phaseout range will be $115,750 to $145,750 (up from $113,950 to $143,950 for 2014).

Schedule C, Profit or Loss from Business

Part II, Expenses, Line 9, Car and Truck Expenses. The standard mileage rate for use of a vehicle for business purposes is 57.5 cents per mile for 2015.

Other Important Changes

Filing deadline. Although April 15 is generally the due date for all individual returns (absent any extension of time to file), for 2015 the due date is April 18, 2016. The deadline was pushed back because Emancipation Day is being celebrated on Friday, April 15, 2015. Residents of Maine or Massachusetts have a due date of April 19, 2016, to accommodate the Patriots' Day holiday celebrated in those states.

COMPLIANCE CALENDAR

October 30

Employers deposit Social Security, Medicare, and withheld income tax for October 24, 25, 26, and 27.

November 4

Employers deposit Social Security, Medicare, and withheld income tax for October 28, 29, and 30.

November 6

Employers deposit Social Security, Medicare, and withheld income tax for October 31, November 1, 2, and 3.

November 10

Employees who received $20 or more in tips during October must report them to their employer. Form 4070 may be used.

November 12

Employers deposit Social Security, Medicare, and withheld income tax for November 4, 5, and 6.

November 16

Employers deposit Social Security, Medicare, and withheld income tax for November 7, 8, 9, and 10.

TRC TEXT REFERENCE TABLE

The cross references at the end of the articles in Wolters Kluwer Federal Tax Weekly (FTW) are text references to Tax Research Consultant (TRC). The following is a table of TRC text references to developments reported in FTW since the last release of New Developments.

ACCTNG 15,204	469	FILEIND 15,204.25	493	PART 60,500	422
ACCTNG 36,162.05	517	HEALTH 3,250	503	PART 60,552	506
BUSEXP 3,050	518	HEALTH 3,300	519	PAYROLL 3,404	447
BUSEXP 9,056	481	INDIV 63,052	503	PAYROLL 6,106	443
BUSEXP 48,152	482	INDIV 66,058	480	PENALTY 3,252.10	419
BUSEXP 51,102.40	480	INTL 18,102.10	491	PENALTY 9,056.20	469
BUSEXP 54,554.15	483	IRS 3,118	460	PENALTY 9,152	436
COMPEN 15,208	504	IRS 9,108	467	REORG 100	517
COMPEN 27,252.10	513	IRS 9,206.15	434	RETIRE 30,502	445
ESTGIFT 51,162.20	493	IRS 24,106	504	RETIRE 57,212.20	431
EXCISE 12,054	493	IRS 24,300	445	RETIRE 75,454.10	446
FARM 3,206.10	481	IRS 30,052	434	RIC 3,064.10	459
FILEBUS 9,108	501	IRS 30,220	467	SALES 6,156	507
FILEBUS 9,158.12	478	IRS 60,102	495	SALES 12,154.20	446
FILEBUS 9,320	470	IRS 66,360	505	SALES 12,452	492
FILEBUS 9,322	494	PART 3,100	490	SALES 45,254.05	491
FILEBUS 15,100	483	PART 3,504	506		
FILEIND 15,204.05	514	PART 60,054	496		

MONTHLY QUIZZER

The following questions (with answers at the bottom of the column) will help you review some of the more important developments in Wolters Kluwer Federal Tax Weekly during the past month.

Q1. The gift tax annual exemption for 2016 will be:

(a) $13,000
(b) $14,000
(c) $14,500
(d) $114,000

Q2. The adjusted applicable dollar amount that must be used to calculate the fee imposed for policy years and plan years that begin on or after October 1, 2015, and end on or before October 1, 2016, is $2.17. *True or False?*

Q3. In which Revenue Procedure does the IRS list the countries with which it has income tax treaties and tax information exchange agreements?

(a) Rev. Proc. 2015-1
(b) Rev. Proc. 2014-64
(c) Rev. Proc. 2015-2
(d) None of the above

Q4. The IRS recently announced on its website that plan sponsors may temporarily use prior versions of revised Forms 8950 and 8951 to apply to the Voluntary Correction Program (VCP). *True or False?*

Answers:

Q1. *(b), See Issue #44, page 514.*

Q2. *True, See Issue #42, page 493.*

Q3. *(b), See Issue #41, page 479.*

Q4. *True, See Issue #40, page 468.*