ROUNDUP OF RECENT TAX DEVELOPMENTS

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House GOP Tax Reform Plan - Business

- Permanent reduction of the corporate tax rate from 35% to 20% beginning in 2018. Reduces the pass-through entity tax rate to no more than 25%.
- Limit business interest deductions to 30% of adjusted taxable income, as specifically adjusted to approximate earnings before interest, tax, depreciation and amortization ("EBITDA") for the tax year. "Investment interest" would be excluded, and businesses with adjusted gross receipts of $25 million or less would be exempt. Section 163(j) would be repealed. The provision would be effective beginning in 2018.
- Permit immediate expensing for certain tangible personal property placed into service after September 27, 2017 and before January 1, 2023. The limitation on section 179 expensing would be increased from $500,000 to $5 million, and the phase out increased from $2 million to $20 million, adjusted for inflation. The expansion of section 179 expensing would be effective for tax years beginning after 2017 and before 2023.
- Deductions for net operating losses ("NOLs") would be limited to 90% of taxable income for a taxable year. NOLs would be carried forward indefinitely to future taxable years, rather than expiring after 20 years, as under current law. NOL carrybacks would generally be disallowed, with exceptions for certain disaster losses.
- End like-kind exchanges for personal property (but retain it for real property).
- Entertainment expenses would no longer be deductible, although business meals would remain deductible.

House GOP Tax Reform Plan: Pass-Throughs

- Special 25% pass-through rate for "business income", with certain rules that are designed to prevent taxpayers who perform principally services to take advantage of it. Net income from a passive business activity would be fully eligible for the 25% rate. Owners receiving income from an active business income would determine their business income by reference to their "capital percentage" of net income.

- Allows owners to elect to apply a capital percentage of 30% to net business income from an active business to determine the business income eligible for the 25% rate. Thus, the bill presumes that 70% of pass-through income is attributable to labor. The 30% election would effectively create a blended rate of 35.22% ([70% x 39.6%] + 30% x 25%]). However, the owners could apply a formula based on facts and circumstances to determine a capital percentage of greater than 30%. The formula would measure the capital percentage based on the federal short term rate plus 7% multiplied by the capital investment of the business. An election to use this formula would be binding for five years.

- Establishes a zero percent default capital percentage for lawyers, accountants, consultants, engineers, financial service professionals, and entertainers. Therefore, these taxpayers would not generally be eligible for the 25% rate. However, the bill does permit these taxpayers to use the alternative capital percentage based on the business's capital investments.

House GOP Tax Reform Plan - Foreign

- One-time tax on the untaxed earnings of foreign subsidiaries of U.S. multinationals. The tax rate would be 12% on cash and 5% on illiquid investments. At the election of the U.S. shareholder, the tax liability would be payable over a period of up to 8 years.
- Shift the current U.S. "worldwide" international tax system under which U.S. companies are taxable on worldwide income to a "territorial" system under which foreign active profits are generally exempt from tax. The mechanism would be to exempt the foreign-source portion of dividends paid by a foreign corporation to a U.S. corporate shareholder that owns 10% or more of the foreign corporation. No foreign tax credit or deduction would be permitted for any exempt dividend, and no deductions for expenses allocable to the exempt dividend would be taken into account for purposes of determining the U.S. corporate shareholder's foreign-source income. The provision would be effective for distributions made after 2017.
- Imposes a 10% tax (i.e., half of the 20% corporate tax) on 50% of a U.S. parent's "foreign high returns" from its foreign subsidiaries.
- Payments (other than interest) made by a U.S. corporation to a related foreign corporation that are deductible, includible in costs of goods sold, or includible on the basis of a depreciable or amortizable asset would be subject to a 20% excise tax unless the related foreign corporation elects to treat the payment as "effectively connected income" subject to U.S. corporate tax. The provision is silent as to whether tax treaties would apply to exempt the payment from tax.

House GOP Tax Reform Plan - Individuals

- Four Brackets (12%, 25%, 35%, and 39.6%). The 12% rate would be phased out for individuals earning more than $400,000 and married couples earning more than $450,000. The method for adjusting the brackets for inflation would be adjusted based on "chained CPI," which would cause the brackets to increase at a slower rate than currently.

- Increases the standard deduction from $6,350 to $12,000 for individuals and from $12,700 to $24,000 for married couples. This increase in the standard deduction would simplify tax filings for millions of low-and middle-income families. However, because the charitable deduction is available only for taxpayers who itemize, the increased standard deduction would tend to reduce charitable contributions. The bill would also repeal the personal exemption ($4,050 for each personal exemption in 2017).

- Increases the child credit from $1,000 to $1,600, and increases the phase out from $75,000 to $115,000 for individuals and from $115,000 to $230,000 for married couples. The bill also creates a new $300 credit for household members who are not children, such as elderly parents and college students. However, the $300 credit expires after 2022.

- Under current law, cash contributions to a public charity are deductible only to the extent of 50% of the taxpayer's adjusted gross income. The percentage would be increased to 60%.

- Repeals the Pease limitations on deductions, which effectively amount to a 1.18% tax (3% x 39.6%) for certain high-income taxpayers.

House GOP Tax Reform Plan - Individuals

- Repeals the individual deduction for state and local income taxes and limits the deduction for state and local property taxes to $10,000 for taxes that are not incurred in connection with a trade or business. State and local taxes incurred in connection with a trade or business would continue to be deductible.

- For mortgages entered into after November 2, 2017, mortgage interest would be deductible only on principal amounts up to $500,000 (down from the current $1 million limit). Interest would be deductible only on the taxpayer's principal residence. Home equity indebtedness would not be deductible.

- Repeals the individual AMT.

- Repeals the deduction for medical expenses that exceed 10% of adjusted gross income, the deduction for student loan interest, and the tax credit for adoption. In addition, under the bill, no deduction would be permitted for moving expenses, and employment achievement awards would be taxable.

- Doubles the estate tax exemption from $5.6 million/person to $11.2 million/person, and would repeal the estate tax and the generation-skipping transfer tax in 2024. The bill would retain the gift tax but would lower it to 35%, and would retain the $10 million lifetime gift tax exclusion and the annual exclusion of $14,000. The "step-up" in basis for heirs, which permits avoidance of all income tax on appreciated property bequeathed at death, would also be retained.

House GOP Tax Reform Plan
Executive Compensation

- Amends section 162(m), which imposes a $1 million compensation deduction limitation,:
  - Eliminates the "performance-based" exemption that is relied upon by a majority of publicly-held corporations that pay their executive officers annual compensation exceeding $1 million.
  - Additional executives would be subject to the deduction limitation. The definition of "covered employees" (i.e., executives subject to the deduction limitation) is expanded to include the chief financial officer, and applies to any individual who served at any time during the taxable year as a chief executive officer or chief financial officer (rather than based on service on the last day of the taxable year). Also, an individual who becomes a covered employee for any taxable year beginning after December 31, 2016 would continue to be a covered employee in subsequent years.
  - Expands the number of corporations to which the deduction limitation applies to include any corporation required to file SEC reports under section 12 or 15(d) of the Securities Exchange Act of 1934, including corporations that file solely due to the issuance of public debt.

House GOP Tax Reform Plan – 409A/457A

- The bill would repeal sections 409A and 457A on a prospective basis:
  - The bill proposes a new section 409B which, for services performed after 2017, would tax all compensation deferred under a nonqualified deferred compensation plan as soon as there is no substantial risk of forfeiture with regard to the compensation.
  - Compensation would be considered to be subject to a substantial risk of forfeiture only if an individual's right to the compensation is conditioned upon the future performance of substantial services (covenants not to compete and payment conditions that relate to a purpose other than the future performance of services would not count as substantial risks of forfeiture).
  - Existing deferrals for services performed before 2018 would become subject to this new rule in 2026.

House GOP Tax Reform Plan
Retirement Plans

- The bill would loosen the restrictions on hardship distributions from qualified defined contribution plans by allowing eligible participants to withdraw not only elective deferrals, but also account earnings and employer contributions and by eliminating the rule that prohibits a participant from contributing to the plan for six months after receiving a hardship distribution.

- The minimum age for in-service distributions from defined benefit pension plans and state and local government defined contribution plans, would be reduced from age 62 to age 59 ½.

- Employees who terminate employment with outstanding loans from qualified retirement plans would have more time to roll over their outstanding loan balances to IRAs before the balances are treated as distributions.

- The bill would repeal the rule that allows for the re-characterization of traditional IRA contributions as Roth IRA contributions and vice versa.

- Under current law, for employers that sponsor both a defined contribution plan and a defined benefit plan, the nondiscrimination rules allow limited cross-testing between the two plans. The bill would allow expanded cross-testing between an employer's defined benefit and defined contributions. This should help employers – particularly employers with closed or frozen defined benefit plans – comply with the nondiscrimination rules.

House GOP Tax Reform Plan
Health and Welfare and Fringe Benefit Programs

- The bill contains only a few provisions impacting employer sponsored health and welfare plans and fringe benefit programs:
  - The bill would eliminate tax-favored dependent care assistance programs.
  - Employer provided moving expense reimbursement, tuition reductions by educational institutions, educational assistance, and adoption assistance programs would now be taxable to employees.
  - Contributions to Archer medical savings accounts would no longer be deductible or excludable.

House GOP Tax Reform Plan
Tax-Exempt Organizations

- The bill would impose a 20% excise tax on a tax-exempt organization that pays compensation. The 20% excise tax would be applied to any compensation paid to the organization's "covered employees" (defined as the five highest paid employees) annually in excess of $1 million. An individual who becomes a covered employee for any taxable year beginning after December 31, 2016 would continue to be a covered employee in subsequent years.

- Payments to employees that are contingent on their separation from the organization would be subject to the excise tax if the payments equal or exceed an amount that is three times the employee's base compensation. If applicable, the 20% excise tax would apply to amounts in excess of one times the employee's base compensation.

- The current 1% or 2% excise tax on private foundation net investment income would be fixed at 1.4%.

- Private tax-exempt colleges and universities with at least 500 students and assets with an aggregate fair market value of at least $100,000 per student (excluding those assets used directly for purposes of educating students) would be subject to the same 1.4% excise tax on net investment income as private foundations.

- The bill would repeal the "Johnson Amendment," which prohibits section 501(c)(3) organizations from engaging in political activities. Under the bill, political speech would be permitted for a religious organization during a "homily, sermon, teaching, dialectic, or other presentation made during religious services or gatherings", so long as the organization's preparation and presentation of the political content occurred in the ordinary course of the organization's carrying out of its exempt purpose and the associated costs to the organization of including the political content are de minimis.

Federal Tax Developments

- Tax Court ruling concluded that an ambulatory surgery center investor, who has no direct management responsibilities, can exempt his surgical center distributions from self-employment tax. *Stephen P. Hardy and Angela M. Hardy v. Commissioner of Internal Revenue*, T.C. Memo. 2017-16.

- The IRS may soon release additional informal guidance on the Section 1402(a)(13) exception for limited partners, and a project is on the Treasury-IRS priority guidance plan. The focus of the IRS is beginning to turn more on control than limited liability. In part, this is based on *Renkemeyer, Campbell, and Weaver LLP v. Comm*., 136 T.C. 137 (2011), where the Tax Court determined that the Section 1402(a)(13) exception was not available to partners in a law firm that provided legal services on behalf of the partnership. The IRS subsequently released two chief counsel advice (CCA) memoranda (ILM 201436049 and ILM 201640014) applying the *Renkemeyer* decision to the specific facts involving other taxpayers. Emphasis on partnership management increased after the Tax Court in *Castigliola v. Commissioner*, T.C. Memo. 2017-62 (2017), determined that the member-managers of a law firm did not qualify for the Section 1402(a)(13) exception.

Federal Tax Developments

- The Bipartisan Budget Act of 2015 ("BBA") created a new audit regime to replace the procedures under the 1982 Tax Equity and Fiscal Responsibility Act. The IRS published partnership audit regulations (REG-136118-15) on January 18, 2017, which were then withdrawn by the IRS in response to a January 20, 2017, White House memorandum ordering a freeze of all regulations. The proposed regulations were released again on June 13, 2017. The new version of the proposed regulations contains only a handful of changes from the version released in January.

- The IRS has issued Rev. Proc. 2017-25 establishing the Small Business/Self Employed fast-track settlement (FTS) program to provide an expedited format for resolving disputes with SB/SE taxpayers.

- The final section 385 debt-equity regulations (T.D. 9790), released in October 2016, would reclassify some debt as equity and thereby negate some interest deductions. Treasury and the IRS announced July 28, 2017, that they will delay by one year the documentation rules under the debt-equity regulations. On October 2, 2017, Treasury Secretary Steven Mnuchin issued a report containing recommending These regulations are listed in the report among the regulations to "consider revoking in part."

- Treasury Secretary Steven Mnuchin report also recommends revoking in part the (i) proposed and temporary regulations governing how liabilities are allocated for purposes of disguised sale treatment; and the (ii) proposed and temporary regulations for determining whether "bottom-dollar" guarantees create the economic risk of loss necessary to be taken into account as a recourse liability.

Federal Tax Developments

- The IRS has confirmed on its website that it is allowing calendar-year C corporations a six-month filing extension, instead of the five-month extension specified in the Code.
- The IRS has issued final and temporary regulations (T.D. 9821) that update the due dates and extensions of time to file some tax returns and information returns. The regulations are effective July 20, 2017. The amendments to section 6072(b) change the due date for filing an income tax return by a C corporation from the 15th day of the third month following the close of the tax year (March 15 for calendar year taxpayers) to the 15th day of the fourth month following the close of the tax year (April 15 for calendar year taxpayers). The amendments also change the due date for filing an income tax return by a partnership from the 15th day of the fourth month following the close of the tax year (April 15 for calendar year taxpayers) to the 15th day of the third month following the close of the tax year (March 15 for calendar year taxpayers). With some exceptions for C corporations having tax years that begin before January 1, 2026, the automatic extension of time provided by section 6081(b) to file the tax return of a C corporation is extended from three months to six months. The temporary regulations conform to amended section 6081(b) by providing a seven-month automatic extension of time to file the income tax return of any C corporation with a tax year that ends on June 30 and before January 1, 2026.

Federal Tax Developments

- Under section 6071(c), the new due date for returns in the Form W-2 series, Form W-3, and Forms 1099-MISC that report nonemployee compensation is January 31 of the calendar year following the calendar year for which the information is being reported, regardless of whether the returns are filed on paper or electronically. The due date for information returns on Forms 1099-MISC that do not report nonemployee compensation remains unchanged.
- The IRS has issued proposed regulations (REG-116256-17) that remove a regulatory burden in making a Section 754 election to adjust the basis of partnership property. Under the current rules, a partnership that files an unsigned section 754 election statement with its partnership return has not made a valid section 754 election. Currently, the only remedy for failing to make a proper Section 754 election is to request Section 9100 relief to make a late Section 754 election. According to the preamble, the IRS has received numerous requests for that relief, especially when returns have been filed electronically. The proposed regulations remove the signature requirement in the current rules. The amended regulation will provide that a taxpayer making a Section 754 election must file a statement with its return that provides the name and address of the partnership making the election and that contains a declaration that the partnership elects under Section 754 to apply the provisions of Section 734(b) and Section 743(b).

Michigan Tax Developments

- The Michigan Department of Treasury has updated a release on how to certify and pay the essential services assessment. No later than August 15, eligible claimants must electronically submit a certified ESA statement either through Michigan Treasury Online (MTO) or through e-File and electronically submit payment of full ESA liability through MTO, e-File, or Electronic Funds Transfer (EFT) credit. An eligible claimant who fails to electronically submit a certified statement and electronically pay ESA liability by August 15 is subject to a late payment penalty at a rate of 1% per week, up to a maximum of 5%, of the total liability that remains due and unpaid. An eligible claimant may amend a previously certified ESA statement through MTO or e-File on or before September 15 of the current tax year. An eligible claimant may not amend a previously certified ESA statement after September 15. Eligible claimants who fail to submit a certified statement and pay ESA in full, including any late payment penalties, via MTO, e-File, or EFT credit by October 15 will have the Eligible Manufacturing Personal Property (EMPP) exemption rescinded. Not later than the first Monday in December, the Department is required to rescind the EMPP exemption on parcels for which ESA liability and late payment penalty have not been paid in full by the October 15 deadline.

Michigan Tax Developments

- Homeowners who rent out their homes to the public for temporary lodging must remit use tax on those accommodations. Michigan's 6% use tax applies to any stay of 30 days or less. This includes the rental of a vacation home, cabin, lodge, condominium, townhouse, room in a private residence, or any other structure. The tax applies to hotel chains, bed and breakfast establishments, and private homeowners; and applies whether the accommodations are rented directly by the host, or through a third-party provider like Airbnb or HomeAway. Michigan Treasury Update, Mich. Dept. Treas., 06/01/2017.

- The Michigan Department of Treasury is reminding taxpayers that it issued guidance to unitary business groups because the decision of *LaBelle Management Inc. v. Department of Treasury*, Dkt. No. 324062, 03/31/2016, 315 Mich App 23 (2016). The Department's RAB 2010-1 had asserted that when a single person does not own more than 50%, the ownership of one person can be attributed to another to meet the control test. Thus, corporations with no common ownership can be part of a unitary business group on the basis that the owners are related persons and the Department attributes the ownership of one family member to another. The Department also attributes ownership interests between partnerships, trusts and estates. In *Labelle Management*, the Court of Appeals rejected the Department of Treasury attribution theory by rejecting both the Department's reliance on attribution provisions of the Internal Revenue Code and its own interpretation of the law.

Michigan Tax Developments

- A city's uncapping of the taxable value of the subject property, which contains an apartment building, was improper since the conveyance at issue was between commonly controlled entities, and is not considered a transfer of ownership for uncapping purposes under Mich. Comp. Laws Ann. § 211.27a(7)(m) . The city argued that the subject property was transferred to the taxpayer by land contract and quit claim deed in 2015. The city argued that the three individuals that were 20% owners each of the prior owner of the property and 25% owners each of the taxpayer do not meet the 80% control requirement of Michigan Revenue Administrative Bulletin No. 1989-48, 05/31/1989 and also failed to meet an additional requirement that each owner's interest be the same in each entity. The Tax Tribunal held that Mich. Comp. Laws Ann. § 211.27a(7)(m) does not contain the 80% ownership requirement, the 5-member control group requirement, or the requirement that each owner have an identical interest in each entity. *TRJ&E Properties LLC v. City of Lansing*, Mich. Tax Tribunal, Dkt. No. 16-000408, 06/06/2017.

- A 2013 transfer of the subject property out of a limited liability company (LLC) wholly owned by the owner to herself individually was not a transfer between legal entities that were commonly controlled and the 2014 transfer from the owner to the taxpayers, while reserving a life estate occurred prior to December 31, 2014, and so both conveyances resulted in an uncapping of the property's taxable value. The Tax Tribunal found that there is no "mirror-image" rule that looks to ultimate beneficial ownership as contended by the taxpayers, and that the ALJ did not err in concluding that Mich. Comp. Laws Ann. § 211.27a(7)(d) , which allows a familial exception for transfers upon the termination of a life estate, was not in effect at the time the property owner's life estate terminated in January 15, 2014.

Michigan Tax Developments

- The Michigan Department of Treasury has issued guidance on additional information flow-through entities should provide partners, shareholders, and members subject to Michigan's corporate income tax (CIT) or individual income tax to properly fill out their state returns. Michigan Treasury Update, Mich. Dept. Treas., 08/01/2017.
- Generally, the following information should be conveyed to the owner:
  - FEIN of the flow-through entity.
  - Tax year of the flow-through entity.
  - Flow-through withholding paid on behalf of that owner (if applicable).
  - For owners subject to individual income tax, the owner's distributive share of taxable income attributable to the flow-through entity. For owners subject to CIT, the owner's distributive share of business income and the owner's share of statutory additions and subtractions, attributable to the flow-through entity. Flow-through entity's sales sourced to Michigan.
  - Flow-through entity's total sales. For owners that are corporations or other flow-through entities, the flow-through entity's gross receipts. Owners will report on CIT returns their proportionate share of allocated or apportioned gross receipts from flow-through entities.

City of Detroit Tax Developments

- City Income Tax Administration (CITA) is a new Section within the Tax Processing Bureau of the Michigan Department of Treasury that was created to process City Income Tax returns under the City Income Tax Act (PA 284 of 1964).
- In January 2016, Phase I of the contract began with Treasury processing the 2015 City of Detroit Individual Income Tax Returns.
- In January 2017, Treasury began processing the following:
  - Tax year 2016 Corporate, Partnership and Fiduciary annual returns;
  - Tax year 2017 and subsequent Corporate, Partnership and Fiduciary estimated payments and annual returns; and
  - Tax year 2017 and subsequent Employer Withholding
- The City of Detroit remains responsible for all prior tax year returns.
- Detroit's Corporate and Withholding taxpayers filing with the Department of Treasury have the ability to submit their city returns electronically and have access to Treasury's online services. Partnership and Fiduciary returns remain paper filed.
- Filing requirements, options, deadlines, and frequently asked questions are available at www.Michigan.gov/citytax. You may also obtain status of returns that have already been filed by selecting the tax type, and then selecting 'Check My Tax Information'. To speak with a Customer Service Representative, call 517-636-5829 or email at Treas_CityTax@michigan.gov.

City of Detroit Tax Developments

- The Tax Tribunal found that the evidence supported the position of the taxpayer, a private equity fund, that it did not have nexus with the City of Detroit and was, therefore, not required to pay the City of Detroit income tax. The city ordinance incorporates the City Income Tax Act, including Mich. Comp. Laws Ann. § 141.605, which provides that "doing business" means the conduct of any activity with the object of gain or benefit, with certain specified exceptions. The Tax Tribunal found the taxpayer was "doing business" under Mich. Comp. Laws Ann. § 141.605 because: (1) the taxpayer was created to hold stock and debt in a company in which it invested, and this activity, even though passive, is "any activity" under Mich. Comp. Laws Ann. § 141.605; and (2) the taxpayer was formed with the objective of gain or benefit. However, the Tax Tribunal found that the taxpayer was not doing business in the City of Detroit. The Tax Tribunal rejected the City's argument that nexus was established because the taxpayer's commercial domicile was in the City of Detroit. The Tax Tribunal the agreed with the taxpayer that as a passive holding company, the taxpayer does not engage in an active trade or business that requires either a physical location or express direction or management. *Apex Laboratories International Inc. v. City of Detroit*, Mich. Tax Tribunal, Dkt. No. 16-000724, 05/02/2017.

Employee Benefits

- The IRS ruled in LTR 201706004 that following a court order approving the change of the beneficiary designation on a decedent's IRA from a trust to the surviving spouse, the IRA will not be an inherited IRA, there won't be a "designated beneficiary," and the entire interest in the IRA must be distributed using the five-year rule under section 401(a)(9)(B)(ii). The IRS' conclusion was based on a determination that a court order cannot create a "designated beneficiary" for purposes of Section 401(a)(9) .
- On February 23, 2017, the IRS issued a memorandum to its employee plan examiners setting forth substantiation requirements for 401(k) plan safe-harbor hardship distributions. Rather than retaining source documents, a plan administrator may retain a summary of information contained in source documents.
- The IRS Tax-Exempt and Government Entities division has revised (TEGE-04-0717-0020) a prior memorandum (TEGE-04-0417-0016) that provided guidelines for employee plans examinations employees on determining the amount available for a loan under section 72(p)(2) when the participant has received multiple loans from a qualified plan during the past year. For example, a participant borrowed $30,000 in February which was fully repaid in April, and $20,000 in May which was fully repaid in July, before applying for a third loan in December. The plan may determine that no further loan would be available, since $30,000 + $20,000 = $50,000. Alternatively, the plan may identify "the highest outstanding balance" as $30,000, and permit the third loan in the amount of $20,000.

Employee Benefits

- In legal memorandum ILM 201736022, the IRS discussed two situations in which the cure period in Treas. Reg. §1.72(p)-1, Q&A-10, applies and prevents missed installment payments to a retirement plan loan from causing a deemed distribution.
- The IRS said that failure to make any installment payment violates the level amortization requirement but that Treas. Reg. §1.72(p)-1, Q&A-10, permits a plan administrator to allow a cure period up to the last day of the calendar quarter following the calendar quarter that the missed installment payment was due.
- In the first situation, the participant made an installment payment equal to three installment payments on July 31, 2019, which cured the deemed missed May and June payments and satisfies the July installment payment.
- In the second situation, the participant missed installment payments on October 31, 2019, November 30, 2019, and December 31, 2019. The entire outstanding loan balance, including the missed payments, can be paid off and replaced by another loan if the participant refinances the loan by March 31, 2020, which is the end of the cure period.
- According to the IRS, the level amortization requirement in Section 72(p)(2)(C) is not violated in either fact pattern and no deemed distribution under Section 72(p)(1) occurs.

Employee Benefits

The IRS has issued a Memorandum to its Employee Plans Exams Employees (Control Number: TE/GE-04-1017-0033, dated October 19, 2017) providing that, for purposes of IRC § 401(a)(9), EP examiners should not challenge a qualified plan for violation of the RMD standards for the failure to commence or make a distribution to a participant or beneficiary to whom a payment is due, if the plan has taken the following steps:

- Searched plan and related plan, sponsor, and publicly-available records or directories for alternative contact information;
- Used any of the search methods below:
  - ❑ a commercial locator service;
  - ❑ a credit reporting agency; or
  - ❑ a proprietary internet search tool for locating individuals; and
- Attempted contact via United States Postal Service (USPS) certified mail to the last known mailing address and through appropriate means for any address or contact information (including email addresses and telephone numbers).

Health Care

- The 21st Century Cures Act includes amendments to the Affordable Care Act and Internal Revenue Code to permit stand-alone health reimbursement arrangements (HRAs) for small employers. Small employers who do not wish to offer their own health plan to employees can now provide employees a pre-tax subsidy of individual health insurance premiums by establishing a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) beginning on or after January 1, 2017.
- IRS Chief Council Advice Memorandum 201622031 addresses the tax treatment of three different situations in which wellness benefits result in taxable income to employees.
- The IRS has stated that it will not accept Forms 1040 for the 2017 tax year if the taxpayer does not report on the ACA's health coverage reporting requirements.

Estate Planning

- In *Estate of Holliday v. Commissioner*, T.C. Memo. 2016-51, the Tax Court held that the full value of property transferred to a family limited partnership was properly includable in the decedent's estate because the decedent had a retained right in the property and there were no significant nontax reasons for making the transfer.
- The estate argued the following significant nontax reasons for the creation of Oak Capital: to protect the assets from "trial attorney extortion"; to protect the assets from the "undue influence of caregivers"; and to preserve the assets for the benefit of the decedent's heirs.
- The IRS contended that the claims of attorney extortion and risk of undue influence were invalid because decedent lived in a nursing home and had never been sued.
- The IRS also argued that there was an implied agreement that decedent could access the assets if she wanted. The court agreed.

Estate Planning

- In *Estate of Nancy H. Powell et al. v. Commissioner*; No. 24703-12; No. 24731-12; 148 T.C. No. 18, the Tax Court held that the value of cash and securities a decedent's son transferred to a limited partnership on her behalf shortly before her death in exchange for a 99 percent limited partner interest that was then transferred to a charitable lead annuity trust (CLAT) was included in her gross estate under section 2036(a)(2) or 2035(a).
- The court found that she had a retained life estate because she could designate the persons who would possess or enjoy the property or the income from the property. According to the court, Powell's ability to dissolve the limited partnership along with her sons was a right to designate persons who could possess or enjoy the property.
- The court also concluded that when Section 2036(a)(2) or 2035(a) requires the inclusion of the value of assets transferred to an FLP in a decedent's gross estate, under Section 2043(a) the amount included must be reduced by the value of the partnership interest the decedent received.

Estate Planning

- Rev. Proc. 2017-34 provides a simpler method to obtain an extension of time to make a portability election.
- Under the new revenue procedure, the executor of the estate must file an estate tax return by January 2, 2018, or the second anniversary of the decedent's death, whichever is later. The return must state at the top "Filed Pursuant to Rev. Proc. 2017-34." By doing this the 706 return will be treated as timely filed and the election for the portability to be allowed.
- This simplified method is available as long as certain requirements are met: (i) the decedent must have a surviving spouse, (ii) the decedent must have died in 2011 or later, (iii) the decedent must have been a U.S. citizen at the date of death, and (iv) the estate must not have a requirement to file the Form 706 other than to make the portability election.
- If a Form 706 has already been timely filed without making the portability election, this new Revenue Procedure isn't available. However, estates that are not eligible for portability election relief may still be able to submit a private letter ruling (PLR) request.

Estate Planning

- In the *Estate of Minnie Lynn Sower et al. v. Commissioner,* No. 32361-15; 149 T.C. No. 11, The Tax Court held that the IRS could examine a predeceased husband's estate tax return to determine the deceased spousal unused exclusion (DSUE) amount available to his wife's estate, finding that the statute of limitations didn't apply regarding the husband's estate and a letter accepting the husband's estate tax return wasn't a closing agreement.

- The IRS has officially withdrawn the proposed Section 2704 regulations on the estate, gift, and generation-skipping transfer tax treatment of lapses of liquidation rights in family-controlled entities and on the valuation of interests in family-controlled corporations and partnerships for estate, gift, and GSTT purposes. The proposed regulations are withdrawn as of October 20, 2017.

- In *United States v. Raelinn M. Spiekhout et a*l.; No. 1:15-cv-01097, a U.S. district court adopted a magistrate judge's report and recommendation and overruled an objection filed by the surviving spouse and personal representative of a decedent's estate, holding that federal tax liens have priority over other claims to the estate's assets.

The End