Tax Watch

BROWNEDWARDS
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August 12, 2015
Issue 10

Highway Funding Law Brings Important Law Changes

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 was signed into law on July 31. This three-month extension of the Highway Trust Fund was the 34th stopgap extension of transportation programs since 2009. In addition to providing continued funding for federal transportation projects, the new law includes several important tax-related provisions affecting businesses and individuals.

Taxpayers subject to revised reporting deadlines

The highway funding law changes the due dates for several types of tax and information returns:

The revised due dates are generally effective for tax years beginning after December 31, 2015. In other words, they don't apply to the tax returns for 2015 that are due in 2016.

Partnership income tax returns. The new due date for partnerships with tax years ending on December 31 to file federal income tax returns is March 15. For partnerships with fiscal year ends, tax returns are due the 15th day of the third month after the close of the tax year. Under prior law, returns for calendar-year partnerships were due *April* 15, and returns for fiscal-year partnerships were due the 15th day of the *fourth* month after the close of the fiscal tax year.

Under the new law, the IRS may allow a maximum extension of six months (until September 15) for Form 1065, "U.S. Return of Partnership Income," for calendar-year taxpayers. This is up from five months under prior law. So the extension deadline doesn't change, only the length of the extension.

Corporation income tax returns. The new deadline for C corporations to file income tax returns is the 15th day of the fourth month after the close of the corporation's tax year. In other words, C corporations with tax years ending on December 31 must file federal income tax returns on or before April 15. Under prior law, such returns were due on the 15th day of the *third* month after close. (S corporations must continue to file returns on the 15th day of the third month after close, however.)

Under the new law, C corporations are also generally allowed an automatic six-month extension.

FinCEN Form 114. The deadline for Form 114, "Report of Foreign Bank and Financial Accounts," changes from June 30 to April 15, with a maximum six-month extension. No extension was allowed for this form under prior law.

Form 3520. The deadline for Form 3520, "Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts," changes from June 30 to April 15 for taxpayers with a calendar year end, with a maximum six-month extension ending on October 15.

The highway fund extension law also revises the extension periods for several filing deadlines. A maximum extension of 5½ months (until September 30) is available for calendar-year taxpayers that file Form 1041, "U.S. Income Tax Return for Estates and Trusts." Under prior law, the form had a due date of April 15, with a five-month extension to September 15.

Also under the new law, a maximum extension of 3½ months (until November 15) is available for Form 5500, "Annual Return/Report of Employee Benefit Plan," for calendar-year plans. This is an extra month over the previous extension date.

In addition to the forms referenced above, extensions up to six months may be obtained for other forms, such as:

Form 5227, "Split-Interest Trust Information Return" (from the due date),

Form 8870, "Information Return for Transfers Associated With Certain Personal Benefit Contracts" (from the due date), and

Form 3520-A, "Annual Information Return of Foreign Trust with a U.S. Owner," for taxpayers that use calendar year ends (until September 15).

C corporations with tax years ending on June 30, however, aren't subject to the new due dates until tax years beginning after December 31, 2025. And calendar-year corporations aren't allowed the new automatic six-month extension (until October 15) until tax years beginning after December 31, 2025. However, they can enjoy a five-month automatic extension (until September 15) for tax years beginning after December 31, 2015, and before January 1, 2026.

Large estates must report fair market values

Under the highway fund law, executors of large estates (those subject to estate tax) must provide the IRS and each of the estate's heirs with statements identifying the fair market value of the inherited property as reported on the estate tax return. Any underpayment of tax resulting from an understatement of basis under this provision will be subject to a 20% accuracy-related penalty.

These requirements are intended to ensure consistent reporting for estate and income tax purposes. The changes apply to any estate tax returns filed after July 31, 2015.

Overstated basis qualifies as understatement of gross income

The highway fund law also clarifies the statute of limitations for overstated tax basis. In 2012, the U.S. Supreme Court held that the extended six-year statute of limitations — which applies when a taxpayer "omits from gross income an amount properly includible" in excess of 25% of the gross income — didn't apply to the overstatement of basis in *sold* property.

The new law amends the tax code to clarify that an understatement of gross income due to an overstatement of unrecovered cost or other basis is an omission from gross income. The amendment applies to returns filed after July 31, 2015, as well as previously filed returns that are still open.

Veterans don't count as employees for ACA purposes

The highway fund law has several provisions related to veterans. One specifies that veterans who're enrolled in the Defense Department's TRICARE or the Veterans Administration's medical programs shouldn't count as employees for purposes of determining whether an employer is considered an "applicable large employer" under the Affordable Care Act (ACA).

Applicable large employers are generally those with 50 or more full-time employees or the equivalent. And they're subject to information reporting requirements and at risk for penalties under the ACA's shared responsibility (or "play or pay") provision.

Exempting veterans from the 50-full-time-employee-or-equivalent calculation provides an added incentive for businesses near the threshold to hire them. Why? Hiring veterans rather than nonveterans can minimize their reporting requirements and risk for play-or-pay penalties.

Employers have more time to transfer excess pension assets

The highway fund law gives employers four more years to transfer — without adverse tax consequences — excess defined benefit plan assets to a retiree's health benefits account or group term life insurance that's part of the plan. To make such transfers (which are allowed only once a year), a defined benefit plan must have assets of at least 125% of their funding target. The new law extends the deadline to the end of 2025.

Tax law changes fund transportation spending

"The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015" is a somewhat misleading name. The new law is about more than just transportation funding and veterans' health care services; it will also result in noteworthy changes to the income tax obligations and reporting requirements for business owners and individuals. If you have questions about how these tax provisions are likely to affect you, Brown Edwards tax professionals can help. Contact the office nearest you.

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