Recent Changes to the Internal Revenue Code
Will Impact Individuals and Small Businesses

On July 31, 2015, President Obama signed into law Public Law 114-41, the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (the "Act"). Although the primary purpose of the Act was to extend the Highway Trust Fund expenditure authority, the Act also contained provisions that affect tax reporting requirements for both businesses and individuals. Specifically, the Act changed tax return due dates for partnerships, C corporations and S corporations. The Act also instituted new basis reporting requirements for property received from the estate of a decedent.

Tax Return Due Dates

Effective for tax years beginning on or after January 1st, 2016, partnerships and C corporations will have new due dates for filing tax returns with the Internal Revenue Service. As a result of the effective date of the Act, these changes generally will not impact businesses until tax returns are actually filed in 2017.

Under the Act, a C corporation will be required to file a Form 1120*, U.S. Corporation Income Tax Return,* by the fifteenth (15th) day of the fourth (4th) month after the close of the C corporation's tax year. Consequently, a C Corporation that is a calendar year taxpayer will now have a filing due date of April 15th. Previously, the filing due date for a C Corporation that is a calendar year taxpayer was March 15th, which was the fifteenth (15th) day of the third (3rd) month after the close of the C corporation's tax year. However, there is an exception: a C corporation that is a fiscal year taxpayer with a year end of June 30th will continue to be required to file a Form 1120*, U.S. Corporation Income Tax return,* by fifteenth (15th) day of the third (3rd) month after the close of the C corporation's fiscal year for the next ten (10) years. After December 31, 2025, a C corporation that is a fiscal year taxpayer with a year end of June 30th will be required to file a Form 1120*, U.S. Corporation Income Tax return,* by the fifteenth (15th) day of the fourth (4th) month after the close of the C corporation's fiscal year.

Thirteen states, including the State of Georgia, currently have a corporate filling deadline of March 15th. Therefore, unless changes are made by these states prior to the 2016 filing season, some state deadlines could remain on March 15th.

Additionally, a C Corporation that is a calendar year taxpayer will now be entitled to an automatic extension of five (5) months rather than six (6) months. Thus, the new filing due date for a C Corporation that is a calendar year taxpayer will be September 15th. This change is effective for tax years beginning after December 31st, 2015. In the case of a C corporation that is a fiscal year taxpayer with a year end of June 30th, the automatic extension will remain at six (6) months for the next ten (10) years. For any return for a taxable year of a C corporation that is a fiscal year taxpayer with a year end of June 30th which ends on June 30th and begins before January 1st, 2026, such C Corporation will be entitled to an automatic extension of seven (7) months rather than six (6) months.

Under the Act, a partnership now will be required to file a Form 1065*, U.S. Return of Partnership Income,* by the fifteenth (15th) day of the third (3rd) month after the close of the partnership's tax year. Consequently, a partnership that is a calendar year taxpayer will have a filing due date of March 15th. Previously, the filing due date for a partnership that is a calendar year taxpayer was April 15th, which was the fifteenth (15th) day of the fourth (4th) month after the close of the partnership's tax year. A partnership that is a fiscal year taxpayer will also now be required to file a Form 1065*, U.S. Return of Partnership Income,* by the fifteenth (15th) day of the third (3rd) month after the close of the partnership's fiscal year.

The maximum period for the extension of income returns for partnerships that are calendar year taxpayers will now be six (6) months, and such extension period shall end on September 15th.

Under the Act, the filings deadlines for an S corporation remain unchanged. An S Corporation will be required to file a Form 1120S*, U.S. Income Tax Return for an S Corporation,* by the fifteenth (15th) day of the fourth (4th) month after the close of the S corporation's tax year. Also, the maximum period for the extension of income returns for S Corporation will now be six (6) months.

Additionally, there were several other modifications to the due dates for filings with the Internal Revenue Service for taxable years beginning after December 31st, 2015, including:

- The maximum extension for the returns of trusts filing Form 1041 shall be a five and a half (5 ½) month period ending on September 30th for calendar year taxpayers.

- The maximum extension for the returns of employee benefit plans filing Form 5500 shall be an automatic three and a half (3 ½) month period ending on November 15th for calendar year plans.

- The maximum extension for the returns of organizations exempt from income tax filing Form 990 (series) shall be an automatic six (6) month period ending on November 15th for calendar year filers.

The Act also includes several minor revisions to the extension periods of special trust and excise tax returns.

Estate and Gift Provisions

Generally, taxpayers who receive property from an estate obtain an adjusted basis in the property that is equal to the fair market value of the property as of the date of death. In the past, some beneficiaries either did not know or disagreed with the fair market value of such property as reported on the Form 706, *United States Estate (Generation Skipping Transfer) Tax Return*.

Under the Act, a beneficiary now must use the fair market value of the property as reported on the Form 706 when determining such beneficiary's adjusted basis in the property if the estate was required to file a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return*. In the event that a personal representative was not required to file a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return*, then a beneficiary must use the fair market value of the property as reported by the personal representative on a newly required statement to beneficiaries and the Treasury Secretary. This fair market value is referred to as the "final value" under the Act. The determination of final value is critical for these new rules, which are commonly referred to as "basis consistency rules."

For purposes of determining the final value of such property, the basis consistency rules provide that:

(a) In the event that Internal Revenue Service fails to audit the estate within the statute of limitations, then the final value of property shall equal its fair market value as reported on the Form 706, *United States Estate (Generation Skipping Transfer) Tax Return.*

(b) In the event that Internal Revenue Service audits the Form 706, *United States Estate (Generation Skipping Transfer) Tax Return,* and the taxpayer's time for contesting the audit has run, then the final value of property shall equal its fair market value as determined by the Internal Revenue Service.

(c) In the event that the final value of property is litigated between an estate and the Internal Revenue Service, then the final value of property shall equal the value as established by a court ruling or pursuant to a settlement agreement with Internal Revenue Service.

(d) In the event that a personal representative was not required to file a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return*, then the final value of property shall equal the value as reported on the statement furnished beneficiaries.

The basis consistency rules only apply (i) to property that increases estate tax liability, net of credits against the estate tax, and (ii) when a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return* is *required* to be filed. These basis consistency rules are effective as of July 31, 2015 regardless of when a decedent passed. Consequently, the adjusted basis of many types of property may not be impacted under the basis consistency rules, such as (i) property that qualifies for the marital or charitable deductions, or (ii) property received from an estate that was not required to file a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return* (which would include instances in which an estate tax return is filed solely for portability). Please note that in some instances, marital deduction property can be subject to basis consistency requirements. For example, property that qualifies for a marital deduction on the estate tax return of the first spouse to die and that is includible in the taxable estate of a surviving spouse will increase estate tax in the surviving spouse's estate, if that estate generates an estate tax. Thus, the basis consistency rules would apply in this instance with respect to the marital deduction property of the first spouse to die because of the resulting estate tax liability after the surviving spouse's death.

Additionally, a personal representative will have to comply with new reporting requirements. These new reporting requirements are commonly referred to as "information reporting requirements," and they may apply even if the basis consistency rules do not apply. To satisfy the information reporting requirements, a personal representative must send a statement to a beneficiary whenever he or she is required to file a Form 706, *United States Estate (Generation Skipping Transfer) Tax Return*, including an estate for which portability has been elected. The statement must also be sent to the Secretary of the Treasury. The statement to the beneficiary must show the value of the property included in the decedent's gross estate that the beneficiary is receiving as reported on the estate tax return. The statement to the Secretary of the Treasury must also provide the same information.

The time for furnishing the statement is the earlier of (i) the date which is thirty (30) days after the date on which the estate tax return is due (including extensions) or (ii) the date which is thirty (30) days after the date such estate tax return is filed. If an estate tax return is not timely filed, information reporting is nevertheless required to be filed no later than thirty (30) days after the date when estate tax return would have been required to be filed. If the final value of property is adjusted a result of an audit of the estate tax return, then a supplemental statement must be filed with the Secretary of the Treasury and provided to the beneficiary within thirty (30) days after the adjustment is made.

It is important to note that the information reporting requirements are not the same as the basis consistency rules. For example, the estate of a decedent that meets the filing requirement may have no estate tax due because the estate tax marital deduction reduces the estate tax to zero. In this instance, information reporting is required even though the basis consistency rules do not apply.

If a beneficiary claims basis on his or her income tax return in excess of the basis provided to him or her in the statement from the personal representative, a twenty (20%) penalty is applied to the underpayment arising from the inconsistent estate basis. The six (6) year statute of limitations applies in the case of overstatement of basis. In the event that a personal representative fails to prepare and file the

necessary statement to the beneficiaries and the Secretary of Treasury, the personal representative may be subject to a penalty for failure to file.

Act Now to Avoid Penalties

While the Secretary of Treasury is expected to issue regulations regarding these issues in the near future, these new rules may already affect certain individuals and business. Corporations, partnerships and other business entities should meet with their qualified tax professionals now to determine whether they need to take any actions to comply with new filing requirements and deadlines. Likewise, if you are serving as an executor or administrator of an estate, you may need to undertake additional actions to comply with your fiduciary obligations as the personal representative of a decedent's estate. Failure to comply with these new reporting requirements may result in penalties that adversely impact individuals and businesses. These issues are complex, and the current lack of substantive guidance from the Department of Treasury in the form of treasury regulations only contributes to these issues' complexity. To avoid adverse consequences, we encourage you to seek immediate counsel from qualified tax professionals regarding these new tax reporting requirements.

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