2015 NEW DEVELOPMENTS LETTER

INTRODUCTION

Over the past several years, we have experienced tax changes and developments at a much faster pace than just a few years ago. Consequently, keeping abreast of these changes has become an annual Fall tradition for an increasing number of taxpayers. To help you adjust to (and plan for) a rapidly-changing tax environment, we are sending this letter providing a summary of key legislative, administrative, and judicial tax developments that have occurred over the last 12-15 months. We highlight only those developments that we believe will have the greatest impact on our clients.

As a Preview – Some of the ***Major Tax Developments*** we highlight in this letter are: **1)** ***Recent Tax Legislation*** that: Provides for new tax-favored ABLE Accounts for disabled individuals; Changes to filing deadlines for a variety of individual and business returns; and **2)** ***New Cases, IRS Rulings, and Regulations*** that: Impact the ability of same-sex couples to file as married for state tax purposes; Provide guidance for information returns that many employers will be required to file under the Affordable Care Act; Explain how certain employers may avoid a potential $100 a day penalty for reimbursing an employee's individual health insurance premiums; Provide relief for certain small businesses that makes it easier to implement the capitalization regulations.

CAUTION!

We highlight only *selected* tax developments. If you have heard about other tax developments not discussed in this letter, and you need more information, please call our office for details. Also, ***we suggest that you call our firm before implementing any tax planning technique discussed in this letter.*** You cannot properly evaluate a particular planning strategy without calculating your overall tax liability (including the alternative minimum tax and any state income tax) with and without that strategy. **Please Note!** This letter contains ideas for Federal income tax planning only. ***State income tax issues are not addressed.***

We have grouped the tax developments discussed below into two categories:

1) **DEVELOPMENTS IMPACTING PRIMARILY "INDIVIDUALS," and**

2) **DEVELOPMENTS IMPACTING PRIMARILY "BUSINESSES"**

DEVELOPMENTS IMPACTING PRIMARILY INDIVIDUALS

Background. Over the last twelve months, President Obama has signed into law the following four bills, each containing a number of important tax provisions: The *"Achieving A Better Life Experience Act of 2014;"* The *"Trade Preference Extension Act of 2015;"* The *"Trade Priorities and Accountability Act of 2015;"* and The *"Surface Transportation and Veterans Health Care Choice Improvement Act of 2015"* (collectively referred to as ***"Recent Tax Legislation"***). This *Recent Tax Legislation* contains a variety of tax changes that impact individual taxpayers, and this segment provides an overview of these provisions, which may impact you or your family. **Caution!** Some of these changes ***will first apply to 2015 tax years,*** while others ***are not effective until 2016. The "effective date"*** of each new tax provision discussed below is prominently highlighted:

New Tax-Favored ABLE Accounts For Disabled Individuals. ***For tax years beginning after 2014,*** *Recent Tax Legislation* authorizes a new tax-advantaged savings account ("ABLE Account") for certain qualified disabled individuals. The tax rules for ABLE Accounts are generally patterned after the tax rules for the popular Section 529 plans which are currently used to accumulate funds for qualified college expenses. The stated purpose of this new savings account is to "*provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits otherwise available to those individuals, whether through private sources, employment, public programs, or otherwise*" (e.g., private insurance, Medicaid, SSI). Like a Section 529 college-savings account, contributions to ABLE Accounts are not deductible, but assets in the account grow tax-free. Withdrawals are tax-free if the money is used for qualified disability-related expenses. The earnings portion of a ***nonqualified*** distribution is subject to income tax and a 10% penalty. Each disabled person is limited to one ABLE Account, and total annual contributions by all individuals to an ABLE Account cannot exceed the inflation-adjusted annual gift tax exclusion amount (i.e., $14,000 for 2015). **Planning Alert!** Generally, a qualified disabled individual is allowed to establish an ABLE Account only under a state ABLE program sponsored by the state in which the disabled individual resides. If the resident state does not have an ABLE program, the resident state is allowed to contract with another state that does sponsor an ABLE program. Check with your resident state to determine whether ABLE arrangements are available.

Claiming The Foreign Earned Income Exclusion Will Nix The Refundable Portion Of The Child Credit. Generally, an individual is allowed a child credit of up to $1,000 for each qualifying child who has not attained age 17 by the close of the calendar year. The child tax credit claimed for a tax year is reduced $50 for each $1,000 of modified AGI over $110,000 (if married filing jointly), over $75,000 (for unmarried individuals), and over $55,000 (for married individuals filing separate returns). Moreover, this child credit is generally "refundable" to the extent of 15% of an individual's earned income in excess of $3,000 for 2009 through 2017. This generally means that, to the extent the credit exceeds the taxes on your individual income tax return without the credit, the IRS will actually send you a check for the excess.

Effective for tax years beginning after 2014, *Recent Tax Legislation* now provides that individuals who "elect" to exclude "any amount" of foreign earned income under §911 will not be allowed to treat any portion of the child credit as a "refundable" credit. Under §911, a U.S. citizen or resident who lives abroad and satisfies certain requirements may "elect" to exclude from taxable income up to $100,800 (for 2015) of "foreign earned income." Thus, under the new law, if a taxpayer "elects" to take any foreign earned income exclusion, the individual will only benefit from the otherwise qualifying child credit to the extent the taxpayer has sufficient tax liability to absorb the credit. This means that, starting with the 2015 tax year, if you qualify for both the foreign earned income exclusion and the child credit, we should consider a "with" and "without" calculation to see if electing the foreign earned income exclusion will save you overall taxes.

New Initial Due Date And Allowable Extensions For FinCEN Form 114 (FBAR). If you own (or have signatory authority over) foreign financial accounts exceeding an aggregate value of $10,000 at any time during the year, you are generally required to file FinCEN Form 114, "*Report of Foreign Bank and Financial Accounts*" (FBAR), ***by June 30*** of the year immediately following the reporting year. Traditionally, no extensions have been available for this June 30th due date. ***For tax years beginning after 2015,*** *Recent Tax Legislation* provides that the ***initial due date*** for ***FinCen Form 114*** will be ***April 15th*** of the following year (i.e., the same initial due date for your Form 1040), and provides for a maximum ***extended due date*** until the following ***October 15th*** (i.e., the same extended due date for your Form 1040). **Planning Alert!** These new reporting deadlines do not apply until 2016. Therefore, the due date for filing FinCEN Form 114 ***for the 2015 calendar year will still be June 30, 2016***, with ***no extensions of time to file!***

Supreme Court's Decision On Same-Sex Marriage May Impact The "State" Income Taxation Rules For Same-Sex Couples Residing In Certain States. Two years ago, the U.S. Supreme Court essentially held that the Federal government had to recognize same-sex marriages performed in jurisdictions that allow them. In response to this Supreme Court decision, in the summer of 2013, the IRS adopted a general rule recognizing for Federal tax purposes any marriage entered into in a state whose laws permitted same-sex marriages, even if the couple resided in a state that did not recognize them as a legally married couple. Therefore, since 2013, legally married same-sex couples have been largely treated the same as legally married opposite sex couples for Federal income tax purposes. However, after the 2013 Supreme Court ruling, approximately 14 states did not permit same-sex married couples to file as married individuals for "state" income tax purposes.

On June 26, 2015, the Supreme Court in ***Obergefell v. Hodges,*** generally held that a state must license a marriage between two people of the same sex, as well as recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. **Planning Alert!** This latest Supreme Court decision should not affect a couple's income tax filing status for Federal income tax purposes, since individuals who were married in a state recognizing same-sex marriage have been treated as "married" for Federal income tax purposes since the 2013 Supreme Court decision. However, the Obergefell decision now seems to require that all legally married same-sex couples file "state" income tax returns as married individuals. **Tax Tip!** Same-sex couples residing in states that previously did not allow same-sex couples to file as married individuals, should consider filing amended state income tax returns for prior years for which the statute of limitations is open, if they would benefit by filing as "married" for state income tax purposes. Before filing amended returns, check with the state's Department of Revenue for their procedures.

DEVELOPMENTS IMPACTING PRIMARILY BUSINESSES

Revised Due Dates For Various Tax Returns For Tax Years Beginning After 2015. For ***tax years beginning after 2015***, *Recent Tax Legislation* revises the initial due dates and/or the extended due dates for a series of tax returns including: ***Form 1065*** (partnership return); ***Form 1120*** ("C" corporation tax return); and ***Form 1041*** (trust and estate income tax returns). The following are just a few examples of the new due dates and extended due dates provided by the new legislation.

For tax years beginning after 2015, the ***"Initial"*** due date for a ***Partnership Return*** (Form 1065) will be the 15th day of the ***"third"*** month following year-end (i.e., March 15 of the following year for a calendar-year partnership). Partnership returns are currently due the 15th day of the ***"fourth"*** month (i.e., April 15 of the following year). However, the ***"Extended"*** due date for partnership returns will not change (i.e., it is the 15th day of the ninth month of the following year under both current law and the new law).

For calendar-year *"C" Corporation Returns* (Form 1120), under the new law the ***"Initial"*** due date for the corporate return will be April 15 of the following year instead of the current due date which is March 15 of the following year. However, the **"Extended"** due date for calendar-year "C" corporation returns will be September 15 of the following year which is the same as the current extended due date for calendar-year "C" corporation returns.

For an "*income tax return"* for an ***Estate or Trust*** (Form 1041), under the new law the ***"Initial"*** due date ***will not change*** (i.e., the 15th day of the fourth month of the following year). However, under the new law, the ***"Extended"*** due date of Form 1041 will be the ***"last"*** day of the ninth month following year-end, instead of the current ***"15th"*** day of the ninth month following year-end.

Please note that the *New Tax Legislation* ***does not change*** the initial due date or the extended due date for the ***"S" corporation tax return*** (Form 1120S). **Planning Alert!** Since these new due date provisions are effective for ***tax years beginning after 2015,*** the initial and extended due dates for the ***current 2015 tax year*** for all of the returns described above will remain the same as in the past. The new deadlines ***will first apply*** to returns ***for the 2016 tax year*** – which are filed ***in 2017.*** **Caution!** In addition to the Forms listed above, the

New Tax Legislation changes the due dates and extended due dates for several other forms for tax years beginning after 2015. Please call our firm if you need more information.

Failure To File Certain Information Returns Timely Has Become More Costly. The *Recent Tax Legislation* significantly increased the monetary penalties for failing to file certain information returns (e.g., the Form 1099 series, Form 1095-B, Form 1095-C), ***effective for returns required to be filed after 2015.*** For example, the penalty for failing to file a Form 1099 with the payee is increased from $100 to $250 for each Form 1099 and, in addition, the failure to file a Form 1099 with the IRS is also increased from $100 to $250. Therefore, under the new law, failure to file a 2015 Form 1099 required to be filed in 2016 with both the payee and the IRS would generally trigger a total penalty of $500 ($250 for failing to file with the payee, plus $250 for failing to file with the IRS).

Planning Alert! These increased penalties are ***effective*** for information returns ***required to be filed after 2015.*** So the increased penalties will apply to Forms 1099 reflecting payments made during 2015, that are generally required to be furnished ***to the payee*** by ***February 1, 2016,*** and ***to the IRS*** by ***February 29, 2016*** if filed by paper (by March 31, 2016 if filed electronically). **Tax Tip.** If your business is required to file Forms 1099 for the 2015 tax year, it is more important than ever that you begin gathering the information that is necessary to complete the forms as soon as possible. The February 1, 2016 deadline for furnishing a Form 1099 to the payee is rapidly approaching.

IRS Releases Insurance Coverage Reporting Forms That "Applicable Large Employers" Must Furnish To Full-Time Employees And File With The IRS. The Affordable Care Account (ACA) generally requires ***"Applicable Large Employers"*** **(*ALEs*)** to furnish new insurance coverage reporting forms (new ***Form 1095-C***) to full-time employees, and to file copies of **Forms 1095-C** and **1094-C** with the IRS. As discussed in more detail below, an *ALE* is generally an employer with an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding year. These new filing requirements were "optional" for calendar-year 2014, but ***are required for calendar year 2015.*** A ***Form 1095-C*** is completed for each full-time employee and reports to the IRS and to the employee the months in 2015 for which the full-time employee, dependents, etc., were offered medical coverage by the ALE. The form also includes the employee's share of the lowest cost monthly premium for self-only coverage and indicates if the employer qualifies for any ACA safe harbors. ***Form 1094-C*** serves as a transmittal for the Forms 1095-C filed by the ALE, and is also used to help the IRS determine if the employer may be subject to the shared responsibility excise tax. The following are additional details to consider when evaluating this new reporting requirement:

- **Employers Subject To The Reporting Requirement.** Only ***"Applicable Large Employers"*** (ALEs) are required to file the new ***Form 1095-C.*** An *ALE* is an employer that employed on average ***50 or more employees*** (determined by adding together the number of "full-time employees" and the "full-time equivalent employees") during ***each month*** of the ***"Testing Period"*** (i.e., the entire preceding calendar year). Thus, the ***"Testing Period"*** for ***"2015"*** would normally be the ***entire*** ***"2014" calendar year.*** However, for ***2015,*** employers may determine whether they had 50 or more full-time employees (including full-time equivalent employees) in the previous year by reference to a period of ***at least 6 consecutive months during 2014.*** **Planning Alert!** For the ***2015 tax year only*****,** the IRS has generally waived the *"employer shared responsibility excise tax"* for an ALE that fails to offer qualified health care coverage to its full-time employees, unless the ALE employed ***100 or more*** employees (instead of 50 or more). Unfortunately, ***for 2015*** (and after), ALEs meeting the ***50-employee*** threshold (not the 100-employee threshold) are required to file the new Forms 1094-C and 1095-C. For example, if your business is determined to have employed 75 employees (including full-time equivalent employees) during 2014 (i.e., the Testing Period for 2015), it may be exempt from the *"employer shared responsibility excise tax"* for 2015, but it would still be required to file Forms 1094-C and 1095-C for 2015. **Tax Tip.** *Recent Tax Legislation* provides that, ***effective for months beginning after 2013,*** an employee ***will not be counted*** when determining whether an employer is an ***"applicable large employer"*** for any month that the employee has medical coverage under ***TRICARE or VA health care.*** Therefore, when evaluating whether your business is an "applicable large employer" for 2015, be sure to exclude from your 2014 monthly employee count all employees that were covered by *TRICARE* or *VA health care during that month.* ***Please note*** that this rule applies after 2015 as well.

- **ALEs Must Furnish Form 1095-C To "Full-Time" Employees.** ALEs must furnish Form 1095-C to ***each employee*** who was a ***"full-time employee"*** for ***any month*** of ***2015.*** Generally, a ***full-time employee*** is an employee who, for a calendar month, worked an average of at least 30 hours per week, or worked 130 hours during the calendar month. **Caution!** An ALE must complete information ***for all twelve months*** of the calendar year for any of its employees who were full-time employees for at least one calendar month.

- **Due Dates For Filing Forms 1094-C And 1095-C.** ALEs are required to furnish a ***2015 Form 1095-C*** to ***each full-time employee*** by ***February 1, 2016,*** and submit ***Forms 1094-C and 1095-C to the IRS*** by ***February 29, 2016*** (if filing by paper), or by ***March 31, 2016*** (if filing electronically). If an ALE fails to furnish Form 1095-C to its full-time employees and also fails to file with the IRS, it faces a penalty of up to $500 for each Form 1095-C it failed to file. **Planning Alert!** The IRS says that it will not assess penalties for ***incorrect or incomplete information reported in 2016*** (for the ***2015 calendar year***) so long as the ALE makes ***a good faith effort to comply.*** However, this relief ***does not apply*** if the form is ***not filed timely.***

A Small Employer That Provides Certain "Self-Insured" Health Care Arrangements May Have To File New Form 1095-B. Generally, ***beginning with the 2015 calendar year,*** providers of health care coverage that qualifies as "Minimum Essential Coverage" under the Affordable Care Act (ACA) must file new information ***Form 1095-B*** with the covered individual and the IRS disclosing certain information about the coverage. This form should be filed by health insurance carriers or sponsors for insured plans, and by government agencies that provide health care coverage under a government-sponsored program. However, in certain situations, Form 1095-B may also be required to be filed by a private employer (even if not an ALE) if the employer provides employer-sponsored *"self-insured group health plan coverage."* Although the IRS has yet to provide a precise definition of ***"self-insured group health plan coverage,"*** it is clear from the instructions to Form 1095-B that this term includes an employer-sponsored ***"health reimbursement arrangement"*** (HRA). The IRS defines an ***HRA*** as an arrangement funded solely by an employer that reimburses an employee for qualified medical care expenses up to a maximum dollar amount. The IRS has recently announced that sponsoring employers (regardless of the number of workers it employs) must file a Form 1095-B for each employee covered by an HRA, unless the employer satisfies a specific exception. For example, the IRS says that an employer would not have to file a Form 1095-B for an HRA that is provided only to employees who are covered by an insured group health plan sponsored by the same employer. **Planning Alert!** *Employers* that sponsor ***"self-insured group health plan coverage,"*** and that don't meet an exception, are required to furnish a ***2015 Form 1095-B*** to ***each employee "covered by" the plan*** by ***February 1, 2016,*** and submit **Form 1095-B** along with transmittal ***Form 1094-B to the IRS*** by ***February 29, 2016*** (if filing by paper), or by ***March 31, 2016*** (if filing electronically). If the employer fails to furnish this form to its ***"covered"*** employees and also fails to file with the IRS, it faces a ***penalty of up to $500*** for each Form 1095-B it failed to file.

Caution! These rules are extremely technical and can be quite confusing – so please call our firm if you have additional questions concerning these new reporting rules. ***Also,*** as discussed in more detail in the next segment, an HRA covering two or more employees is generally deemed to violate the requirements of ACA unless the employer also sponsors an ACA compliant health plan along with the HRA and could expose the sponsoring employer to a penalty of $100 per day for each covered employee.

Potential Penalties For Employers Sponsoring "Health Reimbursement Arrangements" Or "Employer Payment Plans." Any employer, regardless of size, that sponsors a ***"Health Reimbursement Arrangement"*** (*HRA*) or an ***"Employer Payment Plan"*** (*EPP*) could face a $100 a day penalty for each covered employee. As noted in the previous segment, the IRS defines an ***"HRA"*** as an arrangement (funded solely by an employer) that reimburses an employee for qualified medical care expenses incurred by the employee up to a maximum dollar amount for a coverage period. The IRS defines an ***"Employer Payment Plan"* (*EPP*)** as an arrangement where the employer reimburses an employee's substantiated premiums for the employee's individual medical insurance coverage (i.e., non-employer sponsored medical insurance coverage) or the employer pays the premiums directly to the insurance company. The IRS has provided several *"safe harbors"* for certain HRAs and for EPPs that could protect employers from this harsh $100 a day penalty in certain situations. For example, the IRS says an HRA that only covers employees who are also covered by an ACA-compliant employer-sponsored health plan, will generally be exempt from the $100 a day penalty. The IRS also says that an ***Employer Payment Plan*** will be exempt from the $100 a day penalty, where an "S" corporation reimburses or pays the premiums for individual health insurance coverage for a shareholder/employee who owns more-than-2% of the S corporation – ***at least through December 31, 2015.*** In order for the S corporation more-than-2% shareholder to qualify for this exemption, the premiums reimbursed or paid by the S corporation must be properly included in the S corporation shareholder's W-2. In addition, if this is handled properly, the shareholder is allowed an above-the-line deduction for the insurance premiums included in his or her W-2. **Planning Alert!** Although the two safe harbors discussed above have the broadest application, ***please note*** that the IRS has also provided for ***other narrow safe harbors*** that could exempt an HRA or EPP from the $100 a day penalty. Some of these safe harbors are permanent, while others are temporary. These safe harbor provisions can be complicated and tricky. If you think your business might possibly run afoul of these rules, please contact our firm and we will help you determine whether you meet one of the safe harbors.

IRS Provides "Implementation" Relief For "Qualifying Small Businesses" Applying The Capitalization Regulations. Most businesses, regardless of size, commonly deal with the tax issue of whether an expenditure for acquiring, producing, or maintaining depreciable business property (e.g., machinery, equipment, vehicles, buildings, etc.) is currently deductible or must be capitalized and depreciated. On September 13, 2013, the IRS released the long-awaited "final" capitalization regulations (filling more than 200 pages) addressing expenditures relating to the acquisition, production, or maintenance of tangible business property (e.g., machinery, equipment, vehicles, buildings, etc.). The IRS says that all taxpayers (large and small alike) are required to apply these new regulations ***beginning with the 2014 tax year.*** Although the final regulations are not effective until the first tax year ***beginning after 2013,*** in many situations implementing these regulations would require filing an automatic accounting method change request (i.e., Form 3115) with the taxpayer's 2014 tax return and, in some cases, require adjustments to the taxpayer's 2014 taxable income based on transactions that occurred before 2014.

Last February, the IRS provided "optional" relief for qualifying small businesses to implement these regulations. More specifically, the IRS has provided special rules allowing a trade or business with under $10 million of assets ***or*** $10 million or less of gross receipts for the past three years, to more easily adopt these final tangible property regulations. If a taxpayer qualifies and chooses to utilize these simplified rules, the taxpayer applies the new capitalization regulations to ***amounts paid or incurred in tax years beginning after 2013*** *rather than applying the capitalization regulations retroactively.* **Planning Alert!** Qualifying small businesses are not required to adopt these simplified rules for implementing the capitalization regulations. However, those that qualify and choose to utilize the simplified rules by properly following the capitalization regulations for amounts paid or incurred in tax years beginning after 2013, are not required to file an accounting method change request with the IRS. In addition, they are generally not required to make adjustments to their taxable income for transactions that occurred before 2014 when adopting the capitalization regulations. ***Please call our firm*** if you need additional details.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Note!** The information contained in this material represents a general overview of tax developments and should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.