

NEWS NOTES

August 2015

Tax provisions in Highway Act signed into law by the President

On July 31, 2015, President Obama signed into law H.R. 3236, the “Surface Transportation and Veterans Health Care Choice Improvement Act of 2015” (the Act) which provides a three-month extension, through Oct. 29, 2015, of the general expenditure authority for the Highway Trust Fund (HTF), including its expenditure authority for the Sport Fish Restoration and Boating Trust Fund and the Leaking Underground Storage Tank (LUST) Trust Fund. This News Note provides a preliminary look at the tax provisions which are included in the Act.

Adjusted Tax-Filing Deadlines For Partnerships, S Corporations, C Corporations and other Filers

A C corporation or an S corporation were previously required to file its tax return by March 15 (or within two and a half months after the close of its tax year). Corporations can obtain an automatic three-month extension of the filing due date and can apply for an additional three-month extension—for a total of six months. A partnership was previously required to file its return by April 15 (or within three and a half months after the close of its tax year), the same date that applies to individuals.

New law. The Act provides that a partnership and an S corporation are required to file by **March 15** following the close of the calendar year (or for a fiscal year taxpayer, on or before the 15th day of the third month following the close of its fiscal year), and a C corporation is required to file by **April 15** (or three and a half months after the close of its tax year). Effective for returns for tax years beginning after Dec. 31, 2015) For C corporations with a tax year ending on June 30, the above changes are effective for tax years beginning after Dec. 31, 2025.

The Act also provides C corporations with an automatic six-month extension of the applicable filing date. In the case of calendar year C corporations, the automatic extension is up to five months (September 15) until tax years beginning after Dec. 31, 2025, at which time the extension would be up to six months (October 15). For C corporations with tax years ending on June 30, the current law filing date (September 15) remains in effect until tax years beginning after Dec. 31, 2025, and will be extended to October 15 thereafter.

The due date for FinCEN Form 114 – Report of Foreign Bank and Financial Accounts – has been changed from June 30 to April 15th. Taxpayers will be allowed a six-month extension to file FinCEN 114. The form must be filed electronically.

Additional Details Required To Be Disclosed On Mortgage Information Returns

An interest recipient (lender) must file a separate information return for each qualified mortgage for which it receives \$600 or more in interest for a calendar year. The return must include:

- (A) The name and address of the individual from whom the interest was received,
- (B) the amount of such interest (other than points) received for the calendar year,

- (C) the amount of points on the mortgage received during the calendar year and whether such points were paid directly by the borrower, and
- (D) such other information as IRS may prescribe.

The regulations prescribe certain additional information that must be provided, such as the taxpayer identification number (TIN) of the borrower and the name, address, and TIN of the interest recipient.

New law. The Act provides that the return must also include:

- . . . the amount of the outstanding mortgage principal as of the beginning of the calendar year;
- . . . the mortgage origination date; and
- . . . the address (or other description, for property without an address) of the property which secures the mortgage.

The mortgage reporting requirements will apply to returns required to be made and statements required to be furnished after Dec. 31, 2016.

Basis Overstatement is Income Omission for 6-Year Limitations Period

In general, a valid assessment of income tax liability may not be made more than 3 years after the later of the date the tax return was filed or the due date of the tax return. However, a 6-year period of limitations applies when a taxpayer “omits from gross income” an amount that's greater than 25% of the amount of gross income stated in the return.

In the case of a trade or business, the term “gross income” means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to the diminution by the cost of such sales or services. In determining the amount omitted from gross income, there isn't taken into account an amount omitted from gross income stated in the return if the taxpayer adequately discloses the fact of the omission on the return or in an attached statement.

The Supreme Court, in *Home Concrete & Supply, LLC*, resolving a split among various Circuit Courts and the Tax Court, determined that an overstatement of basis *isn't* an omission of gross income for purposes of the 6-year limitations period.

New law. The act overrules the Supreme Court decision and states that an understatement of gross income by reason of an overstatement of unrecovered cost or other basis *is* an omission from gross income for purposes of the six-year limitations period.

The Act's changes for overstatement of basis are effective for: (1) returns filed after July 31, 2015; and (2) returns filed on or before July 31, 2015 that are still open for assessment purposes.

Consistent Basis Reporting for Transfer Tax and Income Tax Purposes

The basis of property acquired from a decedent generally is the fair market value (FMV) of the property on the decedent's date of death. Similarly, property included in the decedent's gross estate for estate tax purposes generally must be valued at its FMV on the date of death.

Although the same valuation standard applies to both provisions, pre-Act law does not explicitly require that the recipient's basis in that property be the same as the value reported for estate tax purposes.

New law. The Act imposes a new basis consistency standard—in general, the basis of property received by reason of death under Code Sec. 1014 must equal the value of that property for estate tax purposes. A new information reporting requirement, covered below, is designed to ensure that the basis consistency

standard is met. More specifically, under the Act, effective for property with respect to which an estate tax return is filed after July 31, 2015, the basis of any property to which Code Sec. 1014(a) applies (i.e., the rules for determining basis of property acquired from a decedent), can't exceed:

- (A) In the case of property the final value of which has been determined for purposes of the tax imposed by the estate tax on the estate of the decedent, such value, and
- (B) in the case of property not described in (A), above, and with respect to which a statement has been furnished under new Code Sec. 6035(a) (see below) identifying the value of such property, such value.

The basis consistency rule in Code Sec. 1014(f)(1) only applies to a property whose inclusion in the decedent's estate increased the liability for the tax imposed by chapter 11 (reduced by credits allowable against such tax) on the estate.

IRS may by regulation provide exceptions to the application of Code Sec. 1014(f).

New Information Reporting Requirements for Those Inheriting Property

Under the Act, effective for property with respect to which an estate tax return is filed after July 31, 2015, the following new information reporting requirements apply to inherited property:

- (1) The executor of any estate required to file a return under Code Sec. 6018(a) must furnish to IRS and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes a statement identifying the value of each interest in such property as reported on the estate tax return and such other information with respect to such interest as IRS may prescribe.
- (2) Each person required to file a return under Code Sec. 6018(b) (returns by certain beneficiaries) must furnish to IRS and to each other person who holds a legal or beneficial interest in the property to which such return relates a statement identifying the information described in (1), above.

The statements required under (1) and (2), above, must be furnished as prescribed by IRS, but not later than the earlier of:

- . . . the date which is 30 days after the date on which the return under Code Sec. 6018 was required to be filed (including extensions, if any), or
- . . . the date which is 30 days after the date such return is filed.

Where there is an adjustment to the information required to be included on the new reporting statement after the statement has been filed, a supplemental statement must be filed not later than the date which is 30 days after such adjustment is made.

IRS is empowered to issue regulations necessary to carry out the new Code Sec. 6035 basis reporting rules, including the application of the rules to property with regard to which no estate tax return is required to be filed, and situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or FMV of the property.

Those failing to follow the new information reporting requirements are subject to the penalty for failure to file rules, and those reporting inconsistent estate basis are subject to the penalty for inconsistent reporting.

Please keep in mind that this is only a summary of these new provisions. If you would like to discuss this matter further, please do not hesitate to call.

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