



estate planning BULLETIN

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Year-end scramble on tax extenders

Tax Notes has reported that a major compromise may be coming regarding tax extenders. These are the various temporary tax breaks that require additional Congressional attention every year or two. One of the major extenders, the inflation adjustment to the Alternative Minimum Tax exemption, was made permanent a few years ago, so that is no longer a concern.

Under the rumored compromise, some of the extenders would be made permanent, and others would be allowed to expire. The research and development tax credit and the earned income tax credit would become permanent, while the credit for wind power would be phased out. The goal would be to eliminate repeatedly spending so much legislative energy on the tax extenders, which usually means finding offsets to “fund” the renewals and avoid increasing the federal budget deficit.

Apparently, the compromise would not be offset by other tax increases and would “cost” an estimated \$700 billion. Complicating the effort is the controversy over repealing or delaying the “Cadillac tax” on high-value health care insurance plans. Senate Finance Committee Chairman Orrin Hatch (R-Utah) has stated that he would prefer a stand-alone extenders package, but the changes could be included in an omnibus budget bill that Congress must pass in December.

Adjournment is scheduled for December 18. If the extenders deal isn't done by then, Senator Hatch indicated that a two-year retroactive bill would be necessary.

An online portal for IRS accounts in 2016?

According to Small Business/Self-Employed Division Commissioner Karen Schiller, speaking at the American Institute of Certified Public Accountants' National Tax Conference in Washington on November 3, the IRS hopes to give taxpayers online access to their tax obligations, such as payment history and balance due. “Our future vision is, interacting with the IRS will be similar to how the interaction is with a financial institution or a bank . . . more online access, more self-service capability,” she reported.

The key hurdle will be authentication standards. Deployment is expected first for individual accounts. The rollout has been targeted for 2016, but the timing will be influenced by any changes to the IRS budget.

The statute will control

Another interesting tidbit from the CPAs' Washington conference concerned forthcoming Regulations on estate valuations for interests held by family members. The Obama administration has proposed that some restrictive provisions, such as upon future transfers or liquidations, should be ignored when determining the value of intrafamily transfers. There had been widespread speculation that the IRS might try to implement some of these ideas through the regulatory process.

According to Leslie Finlow of the IRS Office of Associate Chief Counsel, such changes are not consistent with the current statutory language. "We are looking to the statute as it is now. . . . We are not looking at the green book" outlining the President's budget ideas. New Regs. in this area are expected by the end of the year.

Tax items of interest from the President's 2016 budget proposal

President Obama's 2016 budget proposal recycles many of the ideas from prior proposals that Congress never addressed. At least one change included in this year's budget proposal already has been adopted—the consistent reporting of basis for estate and income tax purposes. One never knows which items in a budget proposal might be attached to other legislation.

The estate and gift tax proposals include:

- Return to the 2009 transfer tax regime, effective January 1, 2016;
- Require a minimum term for grantor annuity trusts;
- Put a time limit on the generation-skipping transfer tax exemption;
- Change the annual gift tax exclusion from \$14,000 per donee per year to \$50,000 per donor per year.

Other perennial favorites aimed at higher-income families include:

- Implement the "Buffett rule" with a new "Fair Share Tax";
- Treat the transfer of an appreciated capital asset by gift or bequest as a sale;
- Reduce the value of deductions for higher-income taxpayers;
- Tax carried interest as ordinary income, not capital gain;
- Limit the total accumulation in retirement plans;
- Repeal the exclusion for net unrealized appreciation in a distribution of employer securities.

In September the Joint Committee on Taxation issued an explanation of the provisions and their revenue consequences [JCS-2-15].

Marital status Regs. proposed

In late October the IRS proposed amendments to the Regulations under IRC §7701 defining marital status. Changes are required to accommodate appropriate tax treatment for same-sex marriages, in accordance with the U.S. Supreme Court's decisions in *U.S. v. Windsor* and *Obergefell v. Hodges*.

However, an actual marriage will be required, according to the preamble. The IRS will not treat civil unions, registered domestic partnerships, or other similar relationships as marriages for federal tax purposes.

Taking the Fifth with the IRS

Filing an income tax return is not the act of being a witness against oneself within the meaning of the Fifth Amendment. Those who file blank tax returns and attempt to invoke the Fifth Amendment as a defense have routinely been penalized for filing frivolous returns.

However, recently a taxpayer filed a numerically accurate return but redacted some information on the Schedule B. He omitted the names of certain financial institutions, but he accurately reported (and paid the tax) on the income received from those institutions. Apparently, the taxpayer was concerned about running afoul of the requirements for reporting foreign bank accounts, which can involve severe criminal penalties for mistakes.

The IRS took the position that there is no Fifth Amendment privilege for any tax return questions, offered no rationale for requiring the omitted information, and imposed the penalty for frivolous returns. The Tax Court refused to enforce the penalty, because the tax return was substantially accurate and because the taxpayer had a legitimate, narrow fear of self incrimination [*Youssefzadeh v. Commissioner*, No. 14868-14].

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