Montecito Bank & Trust

estate planning BULLETIN

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Another IRS reprieve

On July 31, 2015, the President signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. One minor component of the legislation implemented an idea that had been included in the President's earlier budget messages: requiring consistent basis reporting for income and estate tax purposes. To this end, executors of estates large enough to be required to file a federal estate tax return will have additional paperwork requirements. They have to inform both the IRS and beneficiaries of the tax basis of all bequests.

The law requires such filing within 30 days of the due date for the estate tax filing or 30 days after the actual filing. There was no transition rule, so the IRS created one with Notice 2015-57, 2015-36 IRB 294, which provided that no such filings would be due before February 29, 2016. Now the IRS has further extended the deadline to March 31, 2016. Why? Because proposed Regs. had not yet been issued, and the Service suggested that executors wait for the Regs. before filing. The proposed Regs. were issued March 2.

ACTEC weighs in

The difficulty of writing proposed Regs. for basis reporting was amply demonstrated by comments submitted in January by the American College of Trust and Estate Counsel (ACTEC). The comments ran to 17 pages and touched on a wide variety of issues that probably were not anticipated by the Congress when the legislation was drafted. The ACTEC comments may be found at http://www.actec.org/assets/1/6/ACTEC_Comments_re_Notice_2015-57__01_19_2016.pdf.

Millionaires' audits

Last year the IRS audited nearly 10% of tax returns with more than $1 million of income. That's up sharply from the 7.5% audit rate for this income group in 2011, or the 5.3% rate in 2006. Still, it is well below the high-water mark of over 12% in 2011 and 2012.

What's more, field audits actually were down 8% for the high earners. They were offset by a whopping 35% increase in correspondence audits, which concern errors in document matching.

The 2016 IRS budget

The IRS will have 3% more money to work with in 2016, a total budget of $11.23 billion. Some $290 million has been earmarked for improved electronic services, fraud prevention and detection, and cybersecurity. However, observers don't expect that the IRS telephone support for taxpayers will improve much. Last year fewer than 40% of calls were answered.

Three new responsibilities fall to the IRS this year:

• collecting and disseminating ACA data from insurance companies and large employers;

• preparing implementation of the health coverage tax credit; and

• starting the exchange of Foreign Account Tax Compliance Act information.

Each of these alone would be a major undertaking. Add in the lateness of the passage of the tax extenders bill, and it's going to be very busy at the IRS this year.

Surprising bedfellows

Many Republicans have long favored the elimination of the federal estate tax. It does not contribute significant revenue to the federal government, and the cost of administration is substantial. Yet the impact on particular families can be devastating.

The estate tax opponents found new allies last year in Rep. Sanford Bishop, Jr. (D-Georgia). Bishop joined an effort to eliminate the "black tax," which is shorthand for the effect that the federal estate tax has on the first generation of wealth created by African-Americans. Bishop was joined in opposition to the estate tax by Robert Johnson, who founded the Black Entertainment Network, and by the National Black Chamber of Commerce. They believe that the estate tax is an obstacle to building and preserving wealth in the black community.

Statistically, a small proportion of the black population is likely to be affected by the federal estate tax. The precise number can't be known, because the IRS does not collect racial data on tax returns. But according to Bishop, the incidence of the tax is less important than the fact that having an estate tax at all makes it much harder for black-owned businesses to be maintained within a family. The mega-wealthy, such as Bill Gates and Warren Buffett, use foundations to maintain control over their wealth without paying estate taxes. That opportunity is less likely to be available to owners of small businesses.

An IRS about-face

To support a tax deduction for a charitable gift of more than $250, the charity must provide the donor with a "contemporaneous written acknowledgement" of the gift when it is made. Last September the IRS offered an optional alternative for charities with Proposed Regulation 1.170A-13(f)(18). In place of the acknowledgement, a charity could collect the donor's information, including name, address and taxpayer identification number. The charity then would report this information with the amount of donation directly to the IRS. Presumably, the IRS then could use this reporting to cross-check and verify taxpayer claims for charitable contributions.

The charities wanted none of it. The IRS received 37,968 comments on the proposal, mostly negative. Concerns were expressed about the propriety of charities' collecting and securing taxpayer identifications, as well as the paperwork burden. Although the proposal was strictly voluntary, an unstated concern may have been that the requirement might be made mandatory in the future.

The IRS withdrew the proposed regulation on January 8, 2016.