Welcome to the BKD 2015 Year-End Tax Advisor.

Solid tax planning is key to a healthy financial future. That’s why we’ve gathered valuable information for you on a wealth of topics that may affect your tax planning efforts for the remainder of this year and well into the future. From updated retirement planning rules to changes related to health care reform, these articles will help you navigate new tax issues and determine how they apply to your situation.

Developing an effective tax strategy often involves weighing a range of possibilities to determine the best course of action. While the following articles cover several important issues that could affect you, everyone’s tax situation is unique, and the Advisor is not a substitute for advice from your BKD tax professional. We encourage you to use this resource as a basis for discussions with your tax advisor during your year-end planning process.

We thank you for trusting us with your tax and accounting needs, and we look forward to serving you for years to come.

Sincerely,

Robert J. Pruitt    Jesse Palmer
BKD National Tax Director  BKD Director of Tax Quality Control
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BKD Year-End Tax Advisor Reader Feedback
BKD is always looking to improve how we deliver insights to our clients. Please visit surveymonkey.com/r/bkdadvisor to answer a few questions about how you receive and use the BKD Year-End Tax Advisor.

Fill out the survey before April 15, 2016, to be entered into a drawing for a new Apple iPad!

These articles are for general information purposes only and not to be considered as legal advice. This information was written by qualified, experienced BKD professionals, but applying this information to your particular situation requires careful consideration of your specific facts and circumstances. Consult your BKD advisor or legal counsel before acting on any matter covered in this update.

Information is accurate as of November 20, 2015.
Taxpayers beginning their year-end tax planning are focused on what Congress will do with the temporary tax breaks that expired December 31, 2014. While the fate of tax extenders is unclear, individual taxpayers shouldn’t overlook several recent tax law changes and clarifications that could significantly impact their situation.

Tax Extender Legislation
Tax legislation that retroactively extends some of the tax provisions that expired in 2014 may be enacted before year-end. Keep an eye on extender legislation if you’re contemplating a 2015 transaction that could be altered based on an expired provision. Here are some of the provisions that expired in 2014:

- Itemized deduction for state sales taxes in lieu of a deduction for state income taxes
- Above-the-line tuition and fees deduction for up to $4,000 of eligible higher education expenses
- Above-the-line $250 tax deduction for elementary and secondary school teachers for classroom supplies
- Exclusion of up to $1 million ($2 million for joint filers) of income from discharge of qualified principal residence indebtedness
- Exclusion from income of up to $100,000 of qualified charitable IRA distributions made from an individual retirement account by an individual who is 70½ or older
- Treatment of mortgage insurance premiums as qualified residence interest
- Increase to 100 percent (from 50 percent) the exclusion for gain on eligible small business stock
- Credit for energy-efficient improvements to existing homes

Maryland Individual Tax Regime Results in Double Taxation
On May 18, 2015, the Supreme Court ruled in Comptroller of the Treasury of Maryland v. Wynne et ux., affirming the Maryland Court of Appeals decision that Maryland’s personal income tax regime unconstitutionally discriminated against interstate commerce. Specifically, the court said Maryland residents are eligible to claim a credit against both state and county tax for taxes paid in other jurisdictions.

In addition to providing Maryland resident taxpayers with a basis for filing refund claims for tax paid in other states against the county tax, the Supreme Court decision provides resident taxpayers in other localities that don’t allow a credit for county and other local income taxes paid (such as Kansas, North Carolina, Ohio, Pennsylvania and New York City) with a basis for filing refund claims for such credit.

Highway Funding Fix Includes Tax Provisions
On July 31, 2015, the president signed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, providing a three-month fix to prevent a funding lapse for the federal Highway Trust Fund. Congress modified several individual tax provisions to help offset the costs resulting from the passage of this act, including the following:

- Mortgage Reporting Requirements – Beginning in 2017, lenders must provide the IRS and borrowers with additional information regarding mortgages, including:
  - Outstanding principal at the beginning of the year
  - Date of mortgage origination
  - Address of property securing the mortgage
**IDENTITY THEFT – A VICTIMLESS CRIME?**

Susan Thiessen

“Street crime is down because everybody is now filing false tax returns,” a police chief tells the IRS commissioner. There can be a lot of money in identity theft with very little physical risk—and in many cases, only a computer is needed to steal someone’s identity.

Thieves often begin their fraud by stealing an individual’s Social Security number (SSN) and other personal information. The thief can use this information to file a false tax return claiming a fraudulent refund or gain employment using stolen personal information while under-withholding taxes against those wages.

Victims of identity theft may not realize their situation until they file their tax return and uncover a series of problems. The first step in cleaning up the mess is the burden of proof. Victims must work diligently to prove they are who they say they are, alerting financial institutions, credit reporting agencies, local law enforcement and the IRS of identity theft.

On top of the extra work, victims often deal with a delay in receiving their tax refund. They might have to wait several months as the IRS authenticates the duplicate refund. In some cases, bank loans can be held up, since banks face difficulty validating and verifying tax return information when a victim’s tax records are blocked.

Identity theft can be perpetrated using low-tech methods such as purse snatching or dumpster diving or high-tech techniques like email “phishing” or spyware. Phone scams are another common technique. Phone scammers often imitate the IRS and pretend they know something about you in an attempt to convince you to share more personal information. As the IRS itself states, the agency will never do any of the following:

1. Call to demand immediate payment
2. Demand you pay taxes without giving an opportunity to question or appeal the amount
3. Require you to use a specific payment method for your taxes
4. Ask for credit or debit card numbers over the phone
5. Threaten to involve local law enforcement

The IRS also says it doesn’t use unsolicited email, text messages or social media to discuss your personal tax issues. Identity theft numbers continue to rise. Know how to reduce your threat and know what to do if you fall victim to identity theft. Your BKD advisor can help you plot a course if you have been victimized. Visit bkd.com/TaxIDTheft for additional BKD information about identity theft.

**Basis Reporting by Estates** – Effective July 31, 2015, taxable estates must report the value of the estate’s property to the IRS upon the owner’s death; the reporting is due 30 days after the estate return due date. However, IRS Notice 2015-57 delays this basis reporting to February 29, 2016, for estate returns due between July 31, 2015, and January 31, 2016. This provision ensures the person inheriting the property doesn’t overstate the basis when selling the property in the future, decreasing his or her tax liability.

**Statute of Limitations on Overstatement of Basis** – Effective July 31, 2015, the IRS may assess additional tax for up to six years after the filing of a return if it finds a taxpayer substantially distorted the cost basis of property sold leading to a lower tax liability upon sale.

These are just some of the issues that could affect individual taxpayers. Your BKD advisor can help you determine which issues could affect your specific situation.

Here are some best practices to reduce the potential for identity theft:

- **Protect your records** – Do not carry your Social Security card or other documents with your SSN; only provide your SSN if necessary and if you know the identity of the person requesting the information.
- **Practice smart record retention** – Shred documents you do not need; don’t hang on to documentation with personal information for decades unless absolutely necessary.
- **Secure sensitive information** – Be cautious in sharing personal information, especially via phone or electronic communications. Know your audience; use secure electronic methods to transmit sensitive data and don’t click on suspicious links in emails from unknown parties.
- **Take charge of your credit** – Monitor your credit routinely or use a credit monitoring service.
- **Say something** – If you suspect identity theft, report it!
TAX PLANNING FOR EDUCATION
Brandon Baum

With education costs increasing exponentially, many taxpayers are seeking relief to ease the impact of current and future student tuition and fees. Prepaid tuition plans, savings plans and tax credits may be available to ease the burden of paying for college. While many of these programs have considerable limitations, some planning ideas can offer benefits for individuals and families in virtually any tax bracket.

American Opportunity Tax Credit (AOTC)
For the first four years of postsecondary education, the AOTC may be available for current educational expenses for you or your dependents. The AOTC provides a tax credit of up to $2,500 per year per student. If the credit exceeds the tax liability of the taxpayer, a refund may be available of up to $1,000. Eligible costs are limited to tuition, fees and course materials; room and board expenses do not qualify.

A high-earning parent should consider shifting AOTC eligibility to a dependent student as a planning option. The credit phases out completely at income levels of $90,000 for single filers and $180,000 for joint filers. Taxpayers will forgo a dependency exemption for that student if they shift the credit, so discuss the situation with your advisor to compare the tax impacts of available options. The AOTC is nonrefundable on a dependent’s return, making it most useful to dependents with tax due.

Lifetime Learning Credit
The Lifetime Learning Credit, which is capped at 20 percent of eligible expense not exceeding $10,000, i.e., a maximum credit of $2,000, is available for most post-secondary education. It’s commonly used when the AOTC is exhausted, because the credit is less and cannot be combined with the AOTC. The credit phases out completely for those with income of more than $65,000 for single taxpayers and $130,000 for married taxpayers filing jointly.

Tuition & Fees Deduction
The tuition and fees deduction provides a more direct reduction of income than most itemized deductions. The deduction can help taxpayers with income close to or triggering limitation thresholds such as the IRA deduction limits and taxability of Social Security benefits. A deduction of up to $4,000 is available for tuition and fees required for enrollment paid during the year. The deduction is phased out completely at income levels above $80,000 for single taxpayers and $160,000 for married taxpayers filing jointly. The deduction is not available to married individuals filing separately, to individuals qualifying as dependents on another’s return or to taxpayers claiming either the AOTC or Lifetime Learning Credit for the student incurring the expenses.

The provision expired in 2014 and no extension has been approved for 2015 as of publication.

Section 529 Plans
A 529 plan is an educational savings plan a taxpayer may set up, with after-tax funds, for a beneficiary. A 529 plan can offer planning options to individuals and families of all income levels, since income phaseouts are not an issue. There are two main 529 program types. A 529 prepaid tuition plan allows the taxpayer to prepay some or all tuition costs at certain rates. A 529 savings plan lacks the prepaid rate component but allows taxpayers to pay a number of higher education expenses—including room and board, tuition and books—not covered by prepaid plans. Plans also may be transferrable between beneficiaries.
These plans offer federal tax benefits, such as tax-free investment growth as long as distributions are used for qualified expenses. Many states offer deductions or credits for 529 contributions, but limits and programs vary by state. Consult your advisor about state and gift tax considerations before making a contribution.

529 Information for Selected States

<table>
<thead>
<tr>
<th>State</th>
<th>Tax Benefit: Up to $5,000 deduction for single filers ($10,000 for joint). Tax Benefit Available for Out-of-State Contributions?</th>
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<tr>
<td>Arkansas</td>
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</tr>
<tr>
<td>Colorado</td>
<td>Tax Benefit: Deduction for lesser of allowable contribution or AGI for that year. Tax Benefit Available for Out-of-State Contributions? No</td>
</tr>
<tr>
<td>Illinois</td>
<td>Tax Benefit: Up to $10,000 deduction for single filers ($20,000 for joint). Tax Benefit Available for Out-of-State Contributions? No</td>
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<tr>
<td>Indiana</td>
<td>Tax Benefit: Tax credit equal to lesser of 20% of contributions, $1,000, or tax liability. Tax Benefit Available for Out-of-State Contributions? No</td>
</tr>
<tr>
<td>Iowa</td>
<td>Tax Benefit: Up to $3,163 deduction for single filers ($6,326 for joint) per beneficiary. Tax Benefit Available for Out-of-State Contributions? No</td>
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<tr>
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<td>Tax Benefit: Up to $3,000 deduction for single filers ($6,000 for joint) per beneficiary. Tax Benefit Available for Out-of-State Contributions? No</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Tax Benefit: No tax benefit available. Tax Benefit Available for Out-of-State Contributions? No</td>
</tr>
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<td>Mississippi</td>
<td>Tax Benefit: Up to $10,000 deduction for single filers ($20,000 for joint). Tax Benefit Available for Out-of-State Contributions? No</td>
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<td>Missouri</td>
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<td>Nebraska</td>
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<tr>
<td>Ohio</td>
<td>Tax Benefit: Up to $2,000 per beneficiary, but remaining is carried forward. Tax Benefit Available for Out-of-State Contributions? No</td>
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<tr>
<td>Oklahoma</td>
<td>Tax Benefit: Up to $10,000 for single filers ($20,000 for joint), any amount in excess is carried forward five years. Tax Benefit Available for Out-of-State Contributions? No</td>
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<td>Pennsylvania</td>
<td>Tax Benefit: Up to $14,000 deduction for single filers ($28,000 for joint) per beneficiary. Tax Benefit Available for Out-of-State Contributions? Yes</td>
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</table>

Brandon Baum
DON’T LOSE THE DEDUCTION! CHARITABLE AGI LIMITATIONS & ORDERING RULES
Susan Jones

According to Giving USA's most recent annual report, Americans are contributing more to charity than ever; we gave $358 billion in 2014—the highest total ever, even adjusted for inflation. These charitable dollars largely came from individual donors whose gifts comprised 72 percent of the total.

When planning for these charitable gifts, taxpayers who itemize their deductions may take into consideration the potential tax benefit from their donations. In addition to ensuring gifts are made to qualified charities and record-keeping requirements are followed, taxpayers should be aware of the annual tax deduction limits on charitable deductions and how these limits might affect the potential tax benefit from a charitable gift.

Several factors affect the amount of charitable contributions an individual can deduct in any one tax year, including the types of organizations to which the contributions are made as well as the nature and value of the contributions. For this purpose, charities are classified as either “50 percent organizations” or “non-50 percent organizations.”

Fifty percent charities include churches, schools, hospitals, governmental entities, private operating foundations and other not-for-profit agencies organized for charitable, religious, educational, scientific or literary purposes. A cash gift to one of these is deductible as long as it doesn't exceed 50 percent of the taxpayer's adjusted gross income (AGI) for the year. For non-50 percent charities, such as private nonoperating foundations and veterans organizations, the annual AGI limitation for cash gifts is reduced to 30 percent.

Gifts of appreciated, long-term capital gain property, such as stock, may be subject to lower AGI limits. If the donation value is determined using the property's fair market value (as opposed to the property's lower cost basis), the AGI threshold for gifts to 50 percent and non-50 percent organizations are reduced to 30 percent and 20 percent, respectively.

After applying these AGI limitations, taxpayers also are subject to a maximum deduction of 50 percent of AGI for total gifts. For example, if a taxpayer with an AGI of $100,000 contributes $40,000 in cash and long-term appreciated stock with a fair market value of $25,000 to a 50 percent charity, the taxpayer's total deduction for that year will be limited to $50,000, even though each gift did not exceed the AGI limitation for that particular type of property.

In the example above, the additional $15,000 of charitable donations may be carried forward for up to five years. However, taxpayers should use caution when dealing with charitable contribution carryforwards, as specific ordering rules must be applied to determine the amount of deductible contributions in subsequent years, often with surprising results.

In the example above, the $15,000 gift will carry forward as a gift subject to the 30 percent limitation, as—under the ordering rules—gifts of cash to a 50 percent organization are applied first to the overall 50 percent limitation. If the taxpayer makes no other gifts in Year Two, the full $15,000 of charitable contribution carryforward may be used so long as the taxpayer's AGI is at least $50,000. On the other hand, if in Year Two the taxpayer's AGI is reduced to $60,000 and the taxpayer makes an additional $30,000 cash gift to a 50 percent organization, no part of the $15,000 charitable contribution carryforward will be used, as—under the ordering rules—current-year gifts are applied first against the AGI limitations. Without proper planning, this taxpayer may be unable to use the contribution carryforward within the five-year carryforward window, permanently losing the potential tax benefit.

Taxpayers planning for year-end giving should consult their tax advisor to make sure significant gifts are structured to realize the largest tax benefit while meeting philanthropic goals.

TAX PLANNING TIPS
The IRS provides a helpful search tool on its Exempt Organizations Select Check website that allows users to search for and select an exempt organization and check certain information about its tax status, including whether the exempt organization is a 50 percent or non-50 percent organization.

Taxpayers looking to make a significant charitable gift should consider making the gift in a year in which AGI will be particularly high to realize the largest possible current-year deduction and tax benefit. If the taxpayer would prefer to make the gift to a charity or charities over an extended time period, he or she may consider a donor-advised fund, which lets the taxpayer receive a current-year deduction but retains the flexibility to direct the payout of the fund to charities of their choosing in later years.
RETIRED SAVINGS: A NEW YEAR BRINGS NEW OPPORTUNITIES
Kristin Morgan

As we get ready to ring in the new year, now is a great time to re-evaluate your retirement plans for 2016.

In addition to providing benefits for retirement, many plans offer current tax benefits. Employee benefits for retirement savings vary based on the type of account and can include tax-deferred or tax-free compounding and reduced current-year income taxes.

Regular Contributions & Catch-Up Contributions
It’s important to start saving for retirement early to allow for compounding growth. Taxpayers should consider increasing their annual contributions and taking advantage of employer matching programs.

In addition, taxpayers age 50 and older at the end of the tax year can make elective catch-up contributions to their retirement accounts over and above the current contribution limits.

Roth IRA Conversions
Taxpayers with traditional individual retirement account (IRA) plans might consider converting all or part of their IRA to a Roth IRA. Conversion lets taxpayers turn tax-deferred future growth into tax-free growth. Depending on whether deductions were taken for past IRA contributions, all or part of the amount converted is taxable in the year of the conversion. Taxpayers should review several factors, including age, current tax bracket, expected tax bracket in retirement, ability to pay the conversion tax out of pocket and potential applicability of the additional 3.8 percent Medicare net investment income tax (NIIT) before moving forward with a conversion.

There are currently no income limitations for taxpayers to convert to a Roth IRA. It’s most advantageous if the taxpayer can pay the additional taxes out of pocket and not use the converted IRA funds. This offers the taxpayer additional compounding and growth of the funds tax-free. One additional benefit of Roth IRAs: They don’t require distributions during the taxpayer’s life, so the balance can continue to grow tax-free for the benefit of any heirs.

Required Minimum Distributions
Required minimum distributions (RMD) represent the minimum amount a retirement account owner must withdraw annually beginning at age 70½. If the account holder is still employed, the RMD from an employer-sponsored plan can be delayed until the year in which the account holder retires, unless the account holder owns more than 5 percent of the employer.

RMD rules apply to all employer-sponsored retirement plans and IRAs, excluding Roth IRAs, while the owner is alive. Taxpayers who have not taken IRA distributions before reaching age 70½ may elect to delay the first payment until April 1 of the following year. For all subsequent years, the taxpayer must take the RMD by December 31. The RMD is calculated by dividing the account balance as of the prior December 31 by an IRS-provided life expectancy factor. In addition, IRA owners must calculate their RMD for each IRA they own. While it’s possible to withdraw the combined RMD from one IRA, this task can be difficult if the accounts are with different brokerage firms.

Taxpayers approaching age 70½ should consider the potential tax benefit or detriment of deferring the first distribution. For taxpayers that don’t comply with the RMD rules, penalties can equal 50 percent of the amount that should have been distributed.

Qualified Charitable Distributions
The Tax Increase Prevention Act of 2014 extended the provision allowing qualified charitable distributions (QCD) from IRAs through December 31, 2014. Under this provision, individuals age 70½ and older could exclude up to $100,000 from adjusted gross income (AGI) for donations paid directly to a qualified charity from their IRA. Married individuals filing a joint return could exclude up to $100,000 donated from each spouse’s IRA.

QCDs provide a powerful tax strategy for philanthropic individuals because the QCD counts toward IRA RMDs for the year. By excluding the QCD from AGI in lieu of an itemized charitable deduction, certain deductions and credits that phase out based on AGI may be preserved; this also could reduce NIIT exposure.

Taxpayers interested in taking advantage of this provision for 2015 will need to stay tuned for potential year-end legislation that might extend this provision for the 2015 tax year.

Direct Transfers & Rollovers
Did you switch jobs in 2015? Have you left funds in a former employer’s workplace savings plan? Now might be the time to consider a retirement plan direct transfer or rollover.

A direct transfer or trustee-to-trustee transfer occurs when the taxpayer requests the plan administrator make a payment directly to another retirement plan or IRA administrator. No federal income taxes are withheld from these transactions.

A rollover occurs when taxpayers take a retirement plan distribution and deposit the funds into another retirement plan or IRA within 60 days. The transaction usually is tax-free when funds are rolled over within 60 days and not withdrawn from the new plan. In this scenario, the taxpayer can deposit all or a portion of the amount in an IRA or retirement plan within the 60-day window. When this occurs, federal income taxes will be withheld from the distribution. If the taxpayer wishes to roll over the entire amount, he or she will need to use additional funds to make the rollover for the entire amount of the distribution. Any withdrawn payments or withholdings are subject to income tax and an additional
10 percent penalty for early distributions if not rolled over within 60 days. If taxpayers miss the 60-day deadline to roll over their distribution, there are limited exceptions where the IRS may waive the requirement if there were circumstances beyond the taxpayer’s control.

As of January 1, 2015, taxpayers only may make one rollover in any 12-month period. If a taxpayer exceeds the one-rollover-per-year limitation, the taxpayer will include the distribution amount in gross income and may be subject to the 10 percent early withdrawal penalty on the amount included in income. If taxpayers recontribute the distributed amounts to another IRA, the amounts could be treated as excess contributions and be subject to an excise tax of 6 percent per year for the period they remain in the IRA.

It’s important to note the one-rollover-per-year limitation does not apply to the following events:
- Rollovers from traditional IRAs to Roth IRAs (conversions)
- Trustee-to-trustee transfers to another IRA
- IRA-to-plan rollovers
- Plan-to-IRA rollovers
- Plan-to-plan rollovers

Both direct transfers and rollovers allow taxpayers to transfer the funds into another plan where they can continue to grow tax-deferred.

EASING STATE WITHHOLDING & FILING REQUIREMENTS FOR EMPLOYERS & EMPLOYEES
Rich Boer

Currently, 43 states and the District of Columbia impose a tax on personal income earned in their state. As the U.S. continues to shift toward a more service-based economy with an increasingly mobile workforce, the need for employers and employees to stay current on nonresident withholding and tax filing requirements continues to intensify. With varying state rules on these issues, employers and employees face an increasingly overwhelming task in order to remain compliant.

Differences among the states range from the methodology used to determine withholding and tax return filing requirements to differences in specific threshold amounts. Some states use a time threshold to determine filing requirements, while others use an earnings threshold. In Maine, withholding isn’t required if a nonresident employee is in the state for 12 or fewer days and doesn’t earn more than $3,000 in the taxable year. However, in Arizona, withholding isn’t required if a nonresident employee is physically present in the state performing a service that will benefit the employer for less than 60 days in the taxable year.

Fortunately, legislation under consideration in Congress could help employers and employees with these burdensome requirements.

On May 14, 2015, the Mobile Workforce State Income Tax Simplification Act of 2015 was introduced in the U.S. House of Representatives. This bill would prohibit states from taxing wages and other remuneration earned by nonresident employees performing employment duties in a state for less than 31 days during the calendar year. This prohibition wouldn’t apply to professional athletes, professional entertainers or other public figures who perform services for wages or other remuneration on a per-event basis. On June 17, 2015, the bill was passed out of the House Judiciary Committee. Since its passage, bipartisan support has continued to grow; today, the bill has 130 co-sponsors.

While the strong bipartisan support for this legislation should be encouraging for employers and employees, such encouragement should be tempered by recent history. Federal legislation limiting states’ ability to subject employers to withholding rules and employees to personal income tax filing requirements has been introduced numerous times over the past several years, including in 2006, 2007, 2009, 2011 and 2013. Opponents have argued that such limitations create a system of tax avoidance allowing individuals and their employers to avail themselves of a state’s economy without having to pay for the benefit. They’ve also said such legislation infringes upon state sovereignty.

While the act appears to have strong bipartisan support, employers and employees should closely monitor its status, since its future remains uncertain. For the time being, be aware that the presence of nonresident employees in a state may create nonresident withholding and income tax filing requirements for both employers and employees.
As we approach year-end, you should review your current taxable income and projected tax while you can still make changes to reduce your overall tax liability. Once 2015 comes to a close, there are few opportunities to reduce the 2015 tax.

Whether you’re an employee with W-2 wages, self-employed or retired, there are options available for timing income and deductions in 2015 or 2016. First, project what your tax rate will be for 2015. Unless you expect a significant drop in 2016, you likely should defer income into 2016 and accelerate deductions into 2015. We don’t expect any significant change in tax rates for 2016, so marginal rates should remain the same with the top tax rate of 39.6 percent.

Here are a few options to consider related to income timing:

- Accelerate capital losses into 2015 to offset capital gains or postpone an asset sale if you expect a gain. Remember, only $3,000 of capital losses in excess of capital gains can be used to offset other income each year. If you expect to buy back the security, be careful of the wash sale rules that prohibit claiming a loss if you acquire the same security within 30 days.

- Structure the sale of a gain-generating asset as an installment sale, postponing tax liability until future years when proceeds are collected.

- Consider a like-kind exchange if you’re selling business or investment property. The gain on eligible business or investment property can be deferred by reducing the basis of the replacement property by the gain otherwise recognized.

- Consider delaying year-end bonus payments until 2016, if possible.

- Delay the collection of outstanding receivables until early 2016 (applicable for cash-basis taxpayers only).

- Maximize your contributions to retirement plans. If you’re at least age 50 by year-end, you may make a catch-up contribution (these amounts vary based on account type).

On the deduction side, first consider whether you’re subject to alternative minimum tax (AMT), as many personal deductions aren’t allowed under the AMT structure.

Here are some deduction issues to consider:

- Charitable donations are allowed for those itemizing deductions in an amount up to 50 percent of your adjusted gross income (AGI) for cash contributed (read more on page 5).

- Consider donating appreciated stock to a charity, which allows you to avoid capital gain tax—and, if applicable, net investment income tax (NIIT)—on the appreciation in the security. The property must have been held for more than 12 months and must be capital gain property. There’s generally a 30 percent AGI limit on these contributions.

- Consider accelerating real estate tax payments into 2015, even if they’re not due until 2016. AMT must be considered, as this isn’t deductible for AMT purposes.

- Consider paying your fourth-quarter state estimated income tax payment in December. Again, this may not be beneficial if you’re subject to AMT.

- If you’re self-employed, consider deductions such as supplies, repairs, maintenance or employee bonuses that can be paid in 2015 to claim the tax deduction this year.

- Consider acquiring new business property in 2015 that’s eligible for the Section 179 expensing election. Note that the limit on assets available for this election will be $25,000 this year unless Congress extends the expiring provision (see more on this below).

**Expiring Provisions**

As you proceed with year-end planning for your tax liability, remember that a number of tax provisions expired at the end of 2014, including:

- State and local sales taxes deductions in lieu of actual state income taxes paid

- Tuition and fees deduction

- Increased Sec. 179 expensing limit for business assets

- Bonus depreciation—an allowance of 50 percent of the cost of eligible business assets placed in service

- Deductions for IRA-related charitable contributions

- Various energy efficiency tax provisions

Congress has acted late in recent years to extend these provisions, but it’s unclear if they’ll be made available for 2015. Consider how you can take advantage of these provisions late in the year—if they’re extended—to increase your 2015 tax benefits.

In planning for your 2015 taxable income, consider how your AGI affects more than your current income tax liability. Your AGI amount can determine whether you’re subject to NIIT, which was effective beginning in 2013. If your AGI exceeds $200,000 for single taxpayers, or $250,000 for married taxpayers filing jointly, your investment and passive income could be subject to an additional 3.8 percent tax. The NIIT is based on the lesser of net investment income or the amount by which modified AGI exceeds the threshold amount.

Another item potentially affected by your AGI is the Medicare Part B health insurance and prescription drug coverage premium. If your AGI exceeds $170,000 for married filing jointly, or $85,000 for single filers, your
USING IDITS/IDGTS IN ESTATE PLANNING
Michael Tulley

While estate planning is not limited to those with significant net worth, it’s especially important for taxpayers whose wealth would result in a taxable estate on death. In general, estate planning is used to help taxpayers quantify their potential estate tax liability, understand sources to fund that liability and identify ways to transfer wealth in a tax-efficient manner.

Intentionally defective irrevocable trusts (IDIT), also called intentionally defective grantor trusts (IDGT), can offer significant estate planning opportunities for taxpayers. In general, an IDIT is an irrevocable trust for which assets will not be subject to estate taxes at the death of the grantor but which is disregarded for income tax purposes. This seemingly conflicting status under the estate tax and income tax rules may allow for estate and income tax reduction and may serve as a vehicle for more sophisticated “estate freeze” techniques, described below.

An irrevocable trust becomes an IDIT by including certain provisions during the trust’s drafting, such as allowing the grantor to substitute trust assets for assets of equal value or borrow trust funds without adequate consideration.

How Does an IDIT Work?

An IDIT works much the same as other irrevocable trusts: A trustee is appointed to manage the trust property, with distributions to beneficiaries determined by the trust document. Unlike other irrevocable trusts, however, the IDIT is not a separate taxpayer for income tax purposes; the trust’s income and expenses are reported directly on the grantor’s income tax return as though the grantor still owned the trust assets.

Why would a grantor want to pay extra taxes? Although trusts have the same marginal rates as individuals, the brackets are highly condensed. In 2015, a married couple reaches the highest federal marginal rate of 39.6 percent at about $465,000 of taxable income. By contrast, a trust reaches this same rate at just more than $12,000. Further, by structuring a trust as an IDIT, the taxpayer may be able to use tax attributes unavailable if the trust was taxed separately. For example, under an IDIT structure, a grantor may offset total capital gains with the trust’s capital losses, which may not be fully usable in a given year if taxed separately at the trust level.

Finally, for taxpayers looking to increase tax-free gifting and overall family wealth, a grantor’s ability to pay taxes on the IDIT’s assets can provide a significant planning opportunity. Under current tax law rules and regulations, if a taxpayer chose to pay the income tax liabilities of his adult children, that tax payment would be considered a taxable gift, possibly using a portion of the taxpayer’s gift and estate tax exemption. However, if a taxpayer establishes an IDIT for his adult children, current laws do not regard tax payment on the IDIT’s income as an additional gift to the trust.

Selling Assets to an IDIT

The fact that an IDIT is disregarded for income tax purposes always allows for more advanced tax planning opportunities, such as the sale of assets by a grantor to an IDIT he or she establishes.

The grantor establishes the IDIT and then sells assets to the trust in exchange for an installment note. The federal applicable rate—which is currently at historically low levels—can be used to calculate interest on the installment note. The IDIT then pays interest payments to the grantor according to the terms of the note. Because the grantor and the IDIT are the same taxpayer for income tax purposes, the grantor does not include the interest in his or her taxable income. It is very important to respect the terms of the transaction; many advisors suggest “seeding” the trust with an initial gift sufficient to generate funds necessary to make timely interest payments.

Carefully choosing what assets to sell to the trust can serve as a significant estate planning opportunity. To get the most advantage from an IDIT, the grantor should sell to the trust those assets that are expected to appreciate in value. As a result, the assets will appreciate outside of the grantor’s estate, which will freeze the assets’ value when they are transferred outside of the estate.

Conclusion

When developing an estate plan, implementing an IDIT may be a good way for grantors to transfer property outside of their estate for estate tax purposes. All property transferred to the trust, along with the income taxes paid by the grantor, will help reduce the grantor’s taxable estate and allow income generated by the trust and the appreciation of trust property to benefit the trust’s beneficiaries as intended.
Taxpayers beginning their year-end tax planning are focused on what Congress will do with the temporary tax breaks that expired December 31, 2014. While the fate of tax extenders is unclear, business owners shouldn’t overlook several recent tax law changes and clarifications that could significantly affect their situation.

**Tax Extender Legislation**

By the end of 2015, tax legislation that retroactively extends some of the tax provisions that expired in 2014 may be enacted. Monitor extender legislation if you’re contemplating a 2015 transaction that could be altered based on an expired provision. Here are some of the provisions that expired in 2014:

- Fifty percent bonus depreciation
- Fifteen-year recovery period for qualified leasehold improvement property, restaurant property and retail improvement property
- Increased Section 179 expensing to $500,000 (from $25,000) and increased phaseout of Section 179 investment amount to $2 million (from $200,000)
- Inclusion of certain computer software in the definition of Section 179 property
- Up to $250,000 of the cost of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property as Section 179 property
- Reduced (five-year) recognition period for the S corporation “built-in gains” tax
- Twenty percent traditional research tax credit and 14 percent alternative simplified research tax credit
- Section 179D energy-efficient deductions for commercial buildings
- Work Opportunity Tax Credit

**ACA Penalty Exposure for Small Employers**

Much of the penalty focus stemming from the Patient Protection and Affordable Care Act (ACA) has been geared toward the requirement for large employers to offer ACA-compliant insurance to full-time employees. However, after July 1, 2015, small employers offering employer payment plans to two or more employees are subject to a penalty of $100 per day, per employee.

Through employer payment plan arrangements, the employer directly pays or reimburses employee-substantiated premiums for nonemployer-sponsored hospital and medical insurance and excludes the premiums from the employee’s income. Companies offering these arrangements should consider immediate steps necessary to comply with the ACA.

**Repair & Capitalization Rules**

Most taxpayers with fixed assets or supplies spent considerable time changing their accounting methods for tax years beginning on or after January 1, 2014, to comply with the new tangible property regulations (repair regulations). In many cases, this culminated with the filing of a 2014 Form 3115, which memorializes the changes in accounting method.

Although the changes have been implemented—or soon will be for fiscal-year taxpayers—the rules for 2015 and beyond must be monitored. For example, numerous elections apply on an annual basis, such as the de minimis expensing safe harbor, partial asset dispositions, small taxpayer safe harbor and book conformity. In addition, taxpayers should consider how the betterment, restoration and adaptation rules apply to a unit of property when analyzing a repair for capitalization purposes.

**Highway Funding Fix Modifies Tax Return Due Dates**

On July 31, 2015, the president signed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, providing a three-month fix to prevent a funding lapse for the federal Highway Trust Fund. Congress modified several tax return due dates to help offset the costs. The table on the next page summarizes some of the key changes in effect for tax years beginning after December 31, 2015, for entities with a December 31 year-end.

**Debt Limit Bill Changes IRS Partnership Audits**

On November 2, 2015, the president signed the Bipartisan Budget Agreement of 2015, extending the debt limit deadline and avoiding a potential government shutdown. Among its provisions, the legislation changes the way the IRS audits partnerships. The new audit treatment is mandatory for tax years beginning after 2017, but partnerships may elect treatment under the new rules immediately.

Under the provision, the current Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and electing large partnership rules are repealed; the partnership audit rules are simplified to a single set of rules for auditing partnerships and their partners at the partnership level. The provision permits partnerships with 100 or fewer qualifying partners to opt out of the new rules—the partnership and partners would be audited under the general rules applicable to individual taxpayers.

Under the streamlined audit approach, the IRS examines the partnership’s items for a particular year. Any adjustments and resulting tax are taken into account by the partnership (not the individual partners) in the year the audit is completed. This represents a shift in tax payment—from those who were partners for the year under audit and received the benefit from the item at issue to the partnership and its current partners. As such, partnership agreements may need revisiting to account for these changes.

These are just some of the new issues that could affect businesses. Your BKD advisor can help you determine which issues could affect your specific situation.
Tax deductions and employment credits provide businesses with valuable incentives to expand hiring and production. Unfortunately, Congress must annually renew the legislation enacting these items. While popular with both legislators and taxpayers, the renewal legislation often is bundled with more controversial measures or lacks revenue offsets, which prevents immediate passage of the renewals and causes uncertainty for businesses and tax planners.

Unless otherwise stated, Congress has not yet renewed the following credits and incentives as of publication, meaning they’re not applicable to the 2015 tax year. Please note: Historically, Congress has retroactively renewed the credits and incentives with little to no modification.

### WOTC

Businesses earn the Work Opportunity Tax Credit (WOTC) by hiring qualifying people in certain target groups, such as unemployed or disabled veterans, SNAP or TANF recipients, ex-felons and individuals residing in distressed or rural areas of the country. Many businesses don’t pursue the WOTC due to a lack of understanding surrounding the eligibility rules. In general, businesses may receive a tax credit of up to $2,400 per eligible employee, but some targeted groups are eligible for a credit of up to $9,600 per employee. To earn the credit, businesses must receive state agency approval for each eligible employee. Businesses must implement credit approval as part of the hiring process.

Some businesses find the gathering of necessary information for the WOTC difficult and forego additional inquiry. Your tax advisor can help capture the necessary data using efficient online tools designed to help collect the required employee data components needed to claim the credit.

### Location-Based Incentives

Businesses looking to relocate have a litany of considerations in choosing a target location. Your tax advisor can provide insight regarding applicable credit opportunities available for potential relocation sites. In certain areas, businesses may earn up to $3,000 per employee if the employees reside and work in an empowerment zone. The qualifying work site can either be the business’s core location or temporary work locations in an empowerment zone. In addition, businesses already operating in one of these zones can have their employee roster evaluated for empowerment zone residents. Preapproval for the empowerment zone credit is not required, so any business conducting work in one of these empowerment zones may qualify for credits if employees meet the residency qualification. Additional location-based incentives may apply at the state or local level.

### R&E Credit

Businesses also might consider whether they qualify for the research and experimentation (R&E) credit. Eligibility may be possible if a business is engaging in development of new technology, production processes, process improvements, patents, consumer software or other aspects of the business. This credit generally requires a more in-depth evaluation of the business’s mechanics than can be obtained through books and records. However, the benefits can be substantial.

BKD continues to watch legislative developments for the extension of these and other key tax benefits, including bonus depreciation, Section 179 expensing limits, New Markets Tax Credits and enhancements to the deduction of charitable contributions of inventory. After all, careful planning is the surest precursor to good luck.

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>Form No.</th>
<th>Current Due Date</th>
<th>New Due Date</th>
<th>Current Extended Due Date</th>
<th>New Extended Due Date</th>
</tr>
</thead>
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<td>3/15</td>
<td>9/15</td>
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</tbody>
</table>
ACA CREATES NEW COMPLIANCE REQUIREMENTS

Jeff Bodkin

As year-end planning for tax compliance begins to take shape, many organizations are focused on provisions of the Patient Protection and Affordable Care Act (ACA) first taking effect for calendar year 2015. To refresh, the ACA was signed into law March 23, 2010, with the goal of providing more Americans access to affordable, quality health insurance. To achieve this goal, the following ACA provisions are now in effect:

- Subsidies are available for eligible individuals who purchase health coverage from a qualified health insurance exchange
- Non-exempt individuals will be penalized for failing to maintain minimum essential coverage
- Large employers face penalties for failure to provide ACA-compliant coverage to full-time employees

To monitor compliance with these provisions and assess applicable penalties, Internal Revenue Code (IRC) Section 6056 requires organizations meeting the definition of an applicable large employer (ALE) to report ACA information to the IRS. Calendar year 2015 reporting is due in early 2016, but employers must track monthly data beginning with January 2015. Self-insured organizations not meeting the ALE criteria will have a reporting obligation under IRC Section 6055.

Applicable Large Employers

Reporting requirements begin by establishing whether the organization is an ALE as defined by the ACA. The ALE designation occurs when an organization, or controlled group of organizations, employ an average of 50 or more full-time employees, including full-time equivalent (FTE) employees, during the prior year. Typically, an employer would look to its average full-time employees, including FTEs, for all 12 months of 2014 to determine its potential ALE status. However, a transition rule for 2015 allows an employer to use any consecutive six-month period during 2014 to measure its workforce size, rather than the full 12 months of 2014.

A full-time employee has, on average, at least 30 hours of service per week during the calendar month or 130 hours of service during the calendar month. An employer determines its number of FTEs for a month by combining the number of hours of service of all non-full-time employees for the month, without including more than 120 hours of service per employee, and dividing that total by 120. While employers must consider part-time employees for the ALE determination, they may not be assessed an ACA penalty for failing to provide coverage to a part-time employee.

A reporting exception exists for employers with seasonal workforces. Under this exception, an employer has no filing requirement if the 50 or more full-time employee threshold, including FTEs, is exceeded for 120 days or fewer during the prior calendar year, and the employees in excess of 50 who were employed during such 120-day period were seasonal workers. The term “seasonal worker” refers to workers who perform labor or services on a seasonal basis as defined by the Secretary of Labor, e.g., retail workers employed exclusively during holiday seasons.

Reporting Requirements

Once ALE determination has been made, the organization can identify the specific IRS forms necessary to report coverage information. The reporting requirements and applicable forms are different for fully insured and self-insured organizations:

**Self-Insured**

<table>
<thead>
<tr>
<th>Under 50 Full-Time Equivalent Employees</th>
<th>50 or More Full-Time Equivalent Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: Complete Forms 1094-B and 1095-B for all individuals who participated in your plan during the calendar year</td>
<td>B: Complete Forms 1094-C and 1095-C (Parts I, II and III) for all full-time employees and Parts I and II for any other employees or nonemployees* who participated in your plan during the calendar year</td>
</tr>
</tbody>
</table>

**Fully Insured**

<table>
<thead>
<tr>
<th>Under 50 Full-Time Equivalent Employees</th>
<th>50 or More Full-Time Equivalent Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>C: No employer reporting required. Insurer will submit Form 1095-B to all individuals who participated in your plan during the calendar year</td>
<td>D: Complete forms 1094-C and 1095-C (Parts I and II) for all full-time employees. Insurer will submit Form 1095-B to all individuals who participated in your plan during the calendar year</td>
</tr>
</tbody>
</table>

*Nonemployees could include former employees on COBRA, retirees and board members

**Key Compliance Dates**

- Employers must submit Forms 1095 to recipients by February 1, 2016, since the required January 31 submission date falls on a Sunday.
- All reporting for calendar year 2015 must be submitted to the IRS by February 29, 2016, if filing paper forms, or by March 31, 2016, if filing electronically. A 30-day IRS filing extension will be granted by completing Form 8809.

Note: Electronic filing is mandatory if submitting 250 or more Forms 1095.

Failure to file or late filing could subject an employer to a penalty of $250 per form, up to a maximum annual penalty of $3 million. Establishing a compliance solution to report the necessary information is critical for affected employers to avoid penalties. Additional information on ACA compliance is available at bkd.com.
THE IMPORTANCE OF FILING FORM 1099-MISC
Ryan Peterson

The penalty for failing to file Form 1099 information returns has never been higher. On June 29, 2015, the Trade Preferences Extension Act of 2015 was signed into law, increasing the penalties associated with failing to file correct information returns and provide payee statements. A failure to file information returns required to be filed after December 15, 2015, now carries a per return penalty between $50 and $250, depending on date of filing and average annual gross receipts; the maximum dollar limitations also have increased. Penalties assessed due to an intentional disregard of a filing requirement now carry a $500 per return penalty with no maximum. In light of these increased penalties, taxpayers should ensure they are in compliance with all information return reporting requirements, including the oft-overlooked Form 1099-MISC.

Know the Rules & Exceptions
Forms 1099-MISC are required to be filed for certain types of payments made in the course of a trade or business (including not-for-profit organizations) during the year that exceed a certain amount (typically $600). Common reportable payment types include:

- Rents and royalties
- Prizes and awards
- Medical and health care payments
- Services (including parts and materials) performed by nonemployees
- Federal income tax withheld from nonemployees
- Payment of attorneys’ fees and gross proceeds paid to attorneys
- Other income payments

Payments requiring 1099-MISC reporting may be subject to backup withholding at the rate of 28 percent of the amount paid if the payee fails to provide a taxpayer identification number (TIN) or the IRS notifies the payee of its intent to impose backup withholding.

The IRS offers several exceptions for payments that don’t need to be reported on Form 1099-MISC, including:

- Payments to a corporation; this exception doesn’t apply to medical and health care payments, withheld federal income tax, payments of attorneys’ fees and gross proceeds paid to attorneys or other legal service providers
- Payments to employees
- Payments for merchandise, telegrams, telephone, freight, storage and similar items
- Payments made with credit or payment cards
- Scholarships or fellowship grants

Don’t Miss a Deadline
The deadlines for filing Form 1099-MISC and the 1096 transmittal form vary depending on the recipient of the form, the information reported on the form and method of filing, as noted below:

<table>
<thead>
<tr>
<th>2015 1099-MISC/1096 Due Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form</td>
</tr>
<tr>
<td>------</td>
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<tr>
<td>1099-MISC</td>
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<tr>
<td>1099-MISC</td>
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<tr>
<td>1099-MISC/1096</td>
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<tr>
<td>1099-MISC/1096</td>
</tr>
</tbody>
</table>

Extensions of time to file information returns and time to furnish statements to recipients may be available.

Understand Filing Methods
1099-MISC forms must be filed electronically with the IRS if filing 250 or more forms, not including corrections. Penalties may be assessed up to $100 per information return in excess of 250 information returns if filed on paper. A waiver from electronic filing can be requested if submitted at least 45 days in advance of the filing deadline.

Plan Ahead
The February 1, 2016, due date for 2015 1099-MISC recipient copies is rapidly approaching. An analysis of filing requirements should be completed well in advance of the first deadline. During this analysis, taxpayers should complete the following steps:

- Identify general ledger accounts likely to include amounts required on Form 1099-MISC; run account analysis reports sorted by vendor and evaluate filing requirements.
- Review vendor lists for indicators of individual or partnership tax classification (first and last name, LLP, LLC, etc.) and evaluate filing requirements.
- Review individual vendor files for completed Form W-9, Request for Taxpayer Identification Number and Certification.
- If applicable, review IRS notifications regarding name/TIN discrepancies and ensure proper follow-up has occurred and been documented.
- Modify internal processes over vendor selection, documentation and accounting system setup prior to issuing future vendor payments.

Most organizations are required to file 1099-MISC information returns, and increased noncompliance penalties make a detailed review of your information return reporting more important than ever.
Organizations that own or lease vehicles for employee use must report the value of the employee’s personal vehicle use as income on the employee’s Form W-2. Here is what your organization should know about the reporting process.

Personal Use

Personal use of an employer-provided vehicle can include the following:

- Commuting between a personal residence and work location (except for infrequent de minimis use, i.e., one day per month)
- Local transportation unrelated to the organization’s trade or business (small personal detours while on business aren’t considered personal use)
- Vacation or weekend use
- Use by individuals other than company employees

Employee use of “qualified non-personal use vehicles” is considered a working condition fringe benefit and not personal use. Qualified nonpersonal use vehicles include:

- Police, fire and public safety vehicles, both marked and unmarked
- Vehicles designed to carry cargo with loaded gross vehicle weight exceeding 14,000 pounds
- School buses and buses with capacity for more than 19 passengers
- Delivery trucks with seating for the driver only
- Flatbed trucks, qualified moving vans and qualified specialized repair trucks
- Certain specially modified pickup trucks
- Certain other special use vehicles

The value and personal use of demonstrator cars by persons meeting the definition of a “full-time automobile salesperson” may be excludable if certain restrictions on personal use are in force. In addition, when qualified employees are allowed to use company vehicles for commuting due to unsafe conditions, the value of commuting mileage can be calculated at $1.50 per commute (additional conditions apply).

Record Keeping & Documentation

Detailed records documenting business and personal use should be maintained by employees for vehicles used both for business and personal purposes. Records should include mileage, date, destination and purpose for each trip. Absent detailed records to substantiate business use of the vehicle, the value of all automobile use must be included in the employee’s W-2 compensation. If the employer includes the entire value of the vehicle use in the employee’s compensation, the employee can claim miscellaneous itemized deductions for the part of the value substantiated as business use plus actual costs incurred in operating the vehicle for business purposes.

Safe Harbor Substantiation Rules

Detailed records of employee use of vehicles aren’t required if all the following conditions are met:

- The vehicle is owned or leased by the employer and provided to the employee for use in the employer’s business
- The employer has established a written policy prohibiting personal use other than de minimis use (and commuting if vehicle is only used personally for commuting)
- The employer reasonably believes the vehicle isn’t used for personal use, except for de minimis use (and commuting if vehicle is only used personally for commuting)
- The employer accounts for the commuting use by including the commuting value in the employee’s wages

Additional requirements apply based on specific vehicle use:

- For vehicles not used for personal purposes:
  - When not in use, the vehicle is kept on the employer’s premises
  - No employee using the vehicle lives at the employer’s business premises

- For vehicles not used for personal purposes except commuting:
  - For bona fide noncompensatory reasons, the employer requires the employee to commute to or from work in the vehicle
  - The employee isn’t a control employee (as defined by IRS regulations)

Automobile Valuation Rules

There are three methods for calculating the value received by an employee for personal use of an employer-provided vehicle. The method selected depends on several factors, including the type of vehicle, its specific use, mileage and organizational policies and expectations. The table on the next page offers more details.
Payroll Tax Considerations

- Reporting Frequency – Under the special accounting rule, wage additions can be reported as frequently as on a per-pay-period basis and on any frequency up to and including an annual basis, keeping in mind that frequency determines payroll tax deposit due dates.

- Federal Withholding Tax – Federal withholding tax on fringe benefit wage additions can be calculated as a combined total with regular wages or withheld at a flat 25 percent rate. When adding personal use of an employer-provided highway motor vehicle, employers can choose not to withhold federal income tax if the employee has been notified that the employer has chosen not to withhold federal income tax and the value is properly reported on a timely filed Form W-2.

- Employee Portion of Social Security and Medicare Tax – The employee portion of Social Security and Medicare tax may be paid by the employer or employee. If paid by the employer, tax paid should be included in the employee’s income.

Plan Ahead

The rules above should be considered in the record keeping and reporting of employee use of employer-provided vehicles. In addition, employers should:

- Review list of company-owned/leased vehicles and determine whether vehicles are being used by employees for personal purposes

- Ensure personal and organizational use of company vehicles is substantiated by appropriate records

- Review fringe benefit valuation methods and select appropriate valuation method

- Determine federal withholding tax treatment and responsibility for Social Security and Medicare taxes

- Identify benefit reporting frequency, schedule payroll reporting adjustment(s) and verify proper presentation on payroll tax returns and W-2s

Carefully drafted policies, maintenance of appropriate records and attention to rules for reporting the value of employee personal use of employer-provided vehicles can help avoid penalties for failure to comply.
STOP WORRYING ABOUT SUCCESSION!
Alan Taylor

Countless articles and studies have been written on succession planning. A large number of privately held companies expect a succession event in the near term but have done little to plan for it. How can such an important issue simply fall off the radar? Easy: During the day, ownership and management address day-to-day issues, but at night, these same individuals lose sleep over their lack of a thoughtful and developed succession plan.

My advice: Stop worrying about succession!

There are two options. The first is to simply stop worrying about it. I might suggest finding a good psychologist to help you find a way to stop thinking about the following questions:

• How much money do I need to support my retirement plans and family? Is my company positioned to meet this goal?
• What happens to me, my family, my business and my employees if I’m suddenly unable to run the business? (Note: If you decide to just run the business as long as you can, it’s not a question of if this will happen, but when.)
• Who is my potential management successor, and is he or she getting the proper training?
• What do I want to accomplish during succession, and which option helps me meet that goal?

The second option is to develop a succession plan that meets your goals and addresses contingencies, gaps and opportunities. After you’ve developed a succession plan, voila! You’ll stop worrying about succession.

If you elect Option 2—and I hope you do—I suggest identifying a lead advisor who can manage planning and implementation. This will help you efficiently use your time and develop a thoughtful and comprehensive plan. This advisor should have experience in succession planning and a solid understanding of the interplay between the business, you, your family and ownership. This advisor also should have a developed process and toolkit for navigating these relationships.

If you selected the right lead advisor, your process generally begins with discovery. During this phase, the advisor works with you to gather information, identify stakeholders and needs and clarify objectives. In the second phase—integrated planning—your advisor will work with you to compare your current state to your desired state and identify gaps, opportunities and risks, prioritize needs and develop a road map to meet family, business and ownership objectives. A critical component of succession planning is clarifying stakeholder objectives and reconciling differences when possible. Remember, the right advisor will readily seek assistance from other qualified advisors at various points in this process. The lead advisor won’t be an expert in all fields—if they claim to be, I would exercise extreme caution—but will be able to identify potential needs and access the right professionals.

The final phase of the process is implementing the plan you’ve developed. It’s critical for your lead advisor to be involved in this process. Note that some action plans developed in the first two phases may not be acted upon immediately. For example, if the first two phases identified the need to enhance your business’s value prior to a sale, at least two action plans may result. The first—the development and implementation of a business process improvement plan—should be acted upon immediately. The second—going through the process of selling the business—will come several years later.

One final admission: I’ve said that by developing a succession plan you’ll stop worrying about succession, but I may have exaggerated—succession planning is a never-ending process that requires re-evaluation as circumstances change. Succession planning likely will always be a concern (as it should be), but having a plan in place will hopefully give you the peace of mind to get a good night’s rest.
FORM 990 CARRIES INCREASED IMPORTANCE
Kevin Ensminger

Over the past several years, IRS Form 990 has evolved into a highly comprehensive required filing for not-for-profit organizations. Exempt entities are being challenged to provide more transparency regarding their operations and executive compensation. Now it looks as though these returns will be getting a closer look by the federal government.

The IRS announced in 2015 that it is proceeding with plans for more computer scans of Form 990 filed by exempt organizations. “The examination side [of the IRS] is going to be setting up computer queries to spot inconsistencies and missing information,” said Elaine Leichter, a tax law specialist in the IRS Tax-Exempt and Government Entities Division.

While Form 990 always has been used as an enforcement tool, the IRS is apparently ramping up those efforts. It is more critical than ever for not-for-profits to complete their returns as completely and accurately as possible.

Now that the IRS can match information on Form 990 to other databases, organizations will need to avoid inconsistencies. Not only will compensation be matched to W-2 and 1099 filings, but activities such as lobbying can easily be compared to public information on congressional websites. Required supporting schedules will need to maintain accuracy with content of the core form.

Speaking at the Washington Non-Profit Legal and Tax Conference, Leichter said if filers fill out the various sections and schedules as the instructions call for, they should have no need to attach documents. “Attachments are not helpful,” she said. “There is a place for that in the return.”

But Leichter said the IRS will maintain “a level playing field” between paper and electronic returns. She added that just because electronic forms are easier for computers to process, that doesn’t mean electronic forms are more likely to draw an audit. “We don’t want to create an incentive for people to not file electronically,” Leichter said.

There’s one new twist coming on the 2015 Form 990: a box for organizations to check if they self-declare their tax-exempt status.

THE CLOCK IS TICKING FOR 501(r) COMPLIANCE
Brian Todd

When they were issued, the final Internal Revenue Code (IRC) Section 501(r) regulations seemed rather generous in the amount of time provided for tax-exempt hospitals to revise their policies and procedures to achieve compliance. However, much of that transition time has passed, and many tax-exempt hospitals are approaching the compliance deadline.

Background
On December 29, 2014, the final 501(r) regulations were issued. Tax-exempt hospitals must comply with the final regulations on the first day of the tax year beginning on or after December 29, 2015. Therefore, calendar year-end tax-exempt hospitals must be in compliance on January 1, 2016. Tax-exempt hospitals with a different fiscal year-end must comply by the first day of the fiscal year beginning in 2016.

Here are the four significant areas under 501(r):
- 501(r)(3) – Community health needs assessment (CHNA)
- 501(r)(4) – Financial assistance policy and emergency medical care policy
- 501(r)(5) – Limitations on charges for financial assistance eligible patients
- 501(r)(6) – Billing and collections requirement

The due dates discussed above apply to the last three of the four significant areas. The CHNA, however, is due three tax years after completion of the initial CHNA. For example, a tax-exempt hospital with a September year-end likely completed its initial CHNA during the September 30, 2013, fiscal year, so its second CHNA will be due by the end of the September 30, 2016, fiscal year.

Important Considerations
Timing is everything when attempting to comply with these regulations. Many areas require final approval by an authorized body, defined in the regulations as the governing body or a committee, or another party authorized by the governing body to the extent permitted under state law. Board meeting agendas fill up quickly, so it’s important to schedule 501(r) discussions to ensure proper approval is obtained.

An authorized body also must approve the financial assistance policy, emergency medical care policy and billing and collections policy. As discussed above, the first tax-exempt hospitals that must have the necessary policy revisions completed are calendar year-end hospitals that need approval from an authorized body by January 1, 2016. Every tax-exempt hospital likely will be required to make some changes to comply with the final regulations. If your hospital has not yet formed a compliance team—which could include internal and external resources—to evaluate your current policies and procedures, the time is now.

More Information
BKD’s thought leaders have put together numerous articles and webinars for exempt organizations. Visit bkd.com/articles/tax to see what we have to offer.
With the recent judicial activity related to the Multistate Tax Compact, now is a good time to review the status of compact litigation in various states. The compact, which took effect in 1967, is intended to promote uniformity and efficiency in the administration of its member states’ tax regimes, in part to shield taxpayers from double taxation. The compact gives taxpayers in member states the option to elect an equally weighted, three-factor apportionment formula for income tax purposes. However, some member states have attempted to supersede or de facto repeal the compact via state legislation.

California
The California Supreme Court heard oral arguments on October 6 in *Gillette Co. v. Franchise Tax Board*. The court’s focus was whether the compact was a binding agreement between member states and whether lawmakers intended to cede the state’s right to set tax policy when they joined the compact. The Franchise Tax Board appealed the case after the Court of Appeals found in favor of the taxpayer in 2012. In that ruling, the court decided the compact was a valid and binding contract that the state had not repealed and withdrawn. As such, legislation adopting a double-weighted sales factor in 1993 did not invalidate the three-factor option available to taxpayers in the compact. The California Supreme Court has 90 days to issue an opinion on the matter, assuming it does not take a 60-day extension.

Michigan
The Michigan Court of Appeals heard combined arguments in *Gillette Commercial Operations North America & Subsidiaries v. Department of Treasury* on September 2 regarding the validity of the Michigan legislature’s retroactive repeal of the compact in 2014. The Court of Appeals quickly found in favor of the Department of Treasury, concluding the compact was not a binding contract under state law and dismissing other constitutional arguments. Notably, the court felt a 6.5-year retroactive repeal was a modest time frame and did not violate the Due Process Clause. A repeal of this magnitude not only appears to empower the legislature to overrule a Michigan Supreme Court ruling but also appears to undermine taxpayer ability to rely on tax laws as written. The ruling is expected to be appealed to the Michigan Supreme Court, which initially upheld use of the compact election in its July 2014 decision in *IBM v. Department of Treasury*.

Minnesota
On June 19, the Minnesota Tax Court found in favor of the Commissioner of Revenue in *Kimberly-Clark v. Commissioner*. The section of the compact that allowed three-factor apportionment was explicitly repealed in 1987 by the Minnesota legislature. The taxpayer argued, in part, that a partial repeal of the compact was not constitutional, impairing a contract made by the state. However, the court reasoned government contracts must be construed, where possible, to avoid relinquishment of the sovereign powers of the state; allowing the compact provisions to trump the partial repeal enacted by the legislature would violate this principle. Kimberly-Clark filed an appeal of its claim with the Minnesota Supreme Court on August 14.

Oregon
The Oregon Tax Court denied a taxpayer’s election to use the compact’s three-factor method, granting summary judgment to the Oregon Department of Revenue on September 9 in *Health Net, Inc. v. Department of Revenue*. The Oregon legislature had enacted changes to its apportionment formula in 1993. The statutory language directed taxpayers that the revised Oregon law would apply in lieu of the compact in the event of conflicting language between the two sources. The court found the legislation effectively disabled the compact election. The taxpayer may file an appeal with the Oregon Supreme Court.

Texas
On July 28, the Texas Court of Appeals affirmed in *Graphic Packaging Corporation v. Combs* that the compact formula is not available for use in the revised Texas Franchise Tax. The court ruled the franchise tax does not meet the definition of an income tax as contained in the compact, making the three-factor election not applicable. Graphic Packaging Corporation is preparing to file a petition for review with the Texas Supreme Court.

Litigation on the compact issue is far from complete. However, future state Supreme Court decisions in California and Michigan could indicate whether the adverse nature of recent rulings will continue to be the trend in state proceedings. This issue may even find its way to the U.S. Supreme Court. Affected taxpayers should keep an eye on the issues as these cases progress. More importantly, taxpayers should consider filing protective refund claims if the outcomes could have a significant impact on prior tax liabilities in these states.
A significant transfer pricing issue facing multinational enterprises (MNE) is Base Erosion and Profit Shifting (BEPS). This term refers to the negative effect of MNEs’ tax avoidance strategies on national tax bases. In some cases, BEPS can be achieved through inappropriate transfer pricing practices.

On October 5, 2015, the Organisation for Economic Co-operation and Development (OECD) released its final reports on the BEPS project. The final reports addressed 15 different action items put forth by the OECD in 2013, designed to curb base erosion and profit shifting by MNEs. The Group of 20 (G20), which endorsed the BEPS package at its October 8 meeting in Lima, Peru, commissioned the OECD to develop measures to combat perceived MNE abuses related to taxation of their cross-border activities.

The perception of the G20 finance ministers was that the existing international taxation and transfer pricing rules were inadequate and allowed MNEs to aggressively structure their cross-border arrangements to unfairly avoid or reduce their tax liabilities. As a result, the final reports covering the 15 action items released by the OECD substantially modified the existing international tax and transfer pricing rules. The next step is for the participating and nonparticipating countries to adopt the BEPS package as law. The changes within the BEPS package will profoundly affect all MNEs, requiring them to review their cross-border arrangements and increase their compliance efforts.

Action Item 13 addresses transfer pricing documentation. As of today, there is no standard format for transfer pricing documentation; countries have different stances as to whether documentation is required by law, forcing MNEs to handle multiple sets of varying requirements. Action Item 13 offers a standardized transfer pricing documentation format in the form of a master file and local country file. It also introduces the country-by-country (CbC) reporting template. The master file is a high-level document providing an overview of the MNE group’s business and industry, its legal entity structure, transfer pricing positions, financial information, discussion of its intangible property and functional and risk analysis. The master file is intended to offer tax authorities a comprehensive overview of the MNE group’s transfer pricing arrangements and supply chain in their entirety, rather than just the local country viewpoint that historically has been the focus of transfer pricing documentation prepared by MNEs. The local country file is a detailed file of the MNE’s local country positions related to transfer pricing and is essentially a local country transfer pricing study.

One of the more controversial items in the BEPS package is the reporting template, which requires MNEs to report revenues (split between related and third party), profit, taxes paid, stated capital, tangible assets and number of employees for each jurisdiction where they have legal entities or a permanent establishment. It also requires disclosure of each legal entity’s main business activity. Companies with consolidated revenues of €750 million or more must file the CbC reporting template in their home country 12 months after the accounting period commencing on or after January 1, 2016. The tax authority in the home country will share the CbC reporting template with treaty partners in the countries where the MNE does business. The template will offer tax authorities a high-level understanding as to whether the profit and tax paid is commensurate with activity in their country relative to other countries where the MNE operates. Some countries are expected to enact legislation that also would require MNEs with revenues under the €750 million threshold to file the CbC reporting template.

A number of countries, including Australia, Canada, Germany, the Netherlands, Poland, Spain, the United Kingdom and the U.S., already have passed legislation or stated their intention to pass legislation mandating filing of the CbC reporting template and preparation of the master and local country files. MNEs should review their transfer pricing arrangements and begin preparing to develop master and local country files.
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