2016 FEDERAL TAX CONFERENCE

Individual Income Tax Update

James C. Krupp

TAXPAYER IDENTITY THEFT

What is It? – "Tax-related identity theft occurs when an individual intentionally uses the personal indentifying information of another person to file a false tax return with the intention of obtaining an unauthorized refund." *IRM 10.5.3.1.2.1(4).* The offense of identity theft is set forth at 18 U.S. Code § 1028 (a)(7).

Texans Sentenced for Inmate Income Tax Scheme
On Dec. 15, 2015, in Beaumont, Texas, Stasha Franchell Anderson and Jessica Bellis were sentenced to 36 and 30 months in prison, respectively. Co-defendant Derek Cornelius Briscoe held himself out as a tax preparer sometimes doing business as "Thaferrets Tax Service." Briscoe offered female inmates at the Jefferson County jail a fee in exchange for personally identifying information (PII) of other inmates that could be used to file false tax returns. Anderson and Bellis were inmates who supplied Briscoe with PII of other inmates, which Briscoe used to electronically file fraudulent tax returns for the years 2009, 2010, and 2011. During times when Anderson was not incarcerated, she also aided Briscoe in the preparation of the false tax returns. The trio prepared over 500 false tax returns. Anderson was ordered to pay restitution of $156,519 to the IRS, while Bellis was ordered to pay restitution in the amount of $30,000. Both women are jointly liable for $1,127,193 in total restitution along with Briscoe. On Nov. 19, 2015, Briscoe was sentenced to 57 months in prison for his part in the scheme.

Washington DC Man Sentenced For Role in Identity Theft and Tax Fraud Scheme
On Jan. 15, 2016, in Washington, District of Columbia, Ezekiel Raspberry was sentenced to 18 months in prison, three years of supervised release and ordered to pay $315,076 in restitution to the IRS. Raspberry is among approximately 16 defendants who have participated in a massive and sophisticated stolen identity refund fraud scheme that involved an extensive network of more than 130 people, many of whom were receiving public assistance. The overall case involves the filing of at least 12,000 fraudulent federal income tax returns that sought refunds of at least $42 million. The refunds were sought for tax years 2005 through 2012, often in the names of people, whose identities had been stolen, including the elderly, people in assisted living facilities, drug addicts and prisoners. In other cases, the refunds were sent to people who were willing participants in the scheme.

Mississippi Residents Sentenced For Roles in Tax Fraud Scheme
On Jan. 14, 2016, in Jackson, Mississippi, Brenda Norman, of McComb, was sentenced to 30 months in prison, three years of supervised release and ordered to repay $493,111 to the IRS jointly with Yvonne Gary. Norman obtained the names and social security numbers of elderly and disabled individuals she met through her religious organization. After obtaining this information, Norman provided it to co-conspirator, Yvonne Gary, who then used the information to prepare and submit fraudulent federal income tax returns to the IRS. The false income tax returns contained false wage and income information with fraudulent deductions and credits and claimed a total of $493,111 in refunds. Gary was sentenced on Sept. 10, 2015, to 32 months in prison and three years of supervised release.

Individuals Sentenced for Stealing Personal Information of More Than 1,400 People
On Dec. 21, 2015, in Detroit, Michigan, Markitta Washington, of Hampton, Georgia, previously of Farmington Hills, and Martez Lear, of Farmington Hills, were sentenced to 47 months and 56 months in prison, respectively. In addition, Washington and Lear were each ordered to pay restitution to the IRS in the amount of $489,883. Washington, who worked for Henry Ford West

Bloomfield Hospital and DMC Harper Hospital, removed patient records that included Personal Identifying Information (PII) and used the PII to file fraudulent tax returns in other's names. A search executed at the shared residence of Washington and Lear patient identification documents and handwritten notes that included PII for approximately 1,400 individuals. The tax refunds were directed to accounts under the control of Washington and Lear.

Alabama Woman Sentenced for Role in $20 Million Stolen Identity Tax Fraud Ring On Nov. 23, 2015, in Montgomery, Talashia Hinton, aka "LayLay," of Phenix City, was sentenced to 94 months in prison, three years of supervised release and ordered to pay restitution in the amount of $7,173,704. Hinton participated in a large-scale SIRF scheme in which participants filed more than 8,000 false tax returns for 2012 and 2013 fraudulently claiming more than $20 million in income tax refunds from the IRS. Hinton worked with Keshia Lanier, who supplied her with IRS Electronic Filing Identification Numbers (EFINs) in the names of sham tax preparation businesses and stolen personal identifying information (PII). Hinton also obtained stolen PII from Tamika Floyd. Hinton used some of those names to file false returns, emailed some of the names to Lanier and delivered other names to another co-conspirator, Tracy Mitchell and her family, who used the names to file false returns. Floyd, Mitchell and Lanier were previously sentenced to 87, 159 and 180 months in prison, respectively.

IRS employee charged in identity theft scheme. An employee who worked in the IRS's Taxpayer Advocate Service at a job assisting identity theft victims was charged with running a $1 million identity theft tax fraud scheme. Federal officials announced arrests and charges last month against four people accused of participating in the scheme, including Nakeisha Hall, 39, an IRS employee who worked in the Taxpayer Advocate Service office. According to the indictment, Hall obtained individuals' names, birth dates and Social Security numbers through unauthorized access to IRS computers. She then used the information to prepare fraudulent income tax returns and submitted them electronically to the IRS. Hall asked the IRS to pay the refunds to debit cards and directed that the cards be mailed to addresses that she controlled, according to prosecutors. Hall solicited and received the drop addresses from Goodman, Coleman and the other co-conspirators, who also collected the refund cards from the mail.

"Get Transcript" breach. The IRS announced in May, 2015 that 114,000 taxpayers had their accounts accessed by unauthorized parties through the "Get Transcript" online portal. In November the IRS announced that an additional 220,000 taxpayers were subject to this breach.

What is the magnitude of tax related identity theft?

- For calendar year 2015, through November the IRS rejected or suspended 4.8 million suspicious returns. Of these, 1.4 million returns were confirmed identity theft returns claiming $8 billion in refunds. *(IRS Fact Sheet 2016-1)*

- In 2013 the IRS prevented or recovered $24.2 billion (4.1 million returns) of identity theft refunds, but paid $5.8 billion (1 million returns) of refunds later determined to be related to identity theft. *Identity Theft and Tax Fraud, GAO 15-119.* To put the magnitude of this theft in context, according to FBI statistics the value of all cars stolen in 2013 was $4.1 billion.

- In 2014, through May 31, 2014, the IRS detected and stopped processing on 3.6 million returns suspected for identity theft. *http://www.taxpayeradvocate.irs.gov/get-help/identity-theft?taxissue=63*

- The Identity Protection Specialized Unit handled 746,942 cases in 2014. *TIGTA 2016-40-003.*

- As of September 30, 2015 the IRS had an inventory of 601,799 pending identity theft cases. *Taxpayer Advocate Services 2015 Annual Report to Congress*.

- In February, 2015 Intuit stopped e-filing for state income tax returns due to identity theft concerns.

Criminal Enforcement:

	FY 2015	**FY 2014**	**FY 2013**
Investigations Initiated	776	1063	1492
Prosecution Recommendations	774	970	1257
Indictments/Informations	732	896	1050
Sentenced	790	748	438
Incarceration Rate	84.6%	87.7%	80.6%
Average Months to Serve	38	43	38

How does the IRS process and resolve an identity theft case?

- The IRS has assigned over 3,000 employees to work on identity theft issues, with training in identity theft indicators to an additional 35,000 employees. *IRS Fact Sheet 2014-1*.

- The IRS formed the Identity Protection Specialized Unit (IPSU) in 2008. The IPSU was meant to be a dedicated unit for victims of identity theft. The IRS intended for the IPSU to provide a single case worker for each taxpayer, but this has not been accomplished. In 2015 the IRS announced a plan to consolidate identity theft assistance and compliance into a new organization, Identity Theft Victim Assistance (ITVA). ITVA is located within Accounts Management, centralizes victim assistance, and will result in the relocation of approximately 1,700 employees. *TIGTA 2016-40-003*.

- The IRS has a dedicated phone number for victims of identity theft (800) 908-4490.

- A "typical" case takes 120 days to resolve. *IRS Fact Sheet 2016-1*.

- A TIGTA review of identity theft accounts resolved between August 1, 2011 through July 31, 2012 found that the average case took 312 days to resolve. A similar review for cases between October 1, 2012 and September 30, 2013 found that the average case took 278 days to resolve. *TIGTA 2015-40-024.* A review by Taxpayer Advocate Services of cases closed in June 2014 found that the average case took 179 days to resolve. *National Taxpayer Advocate 2014 Annual Report to Congress*.

- A taxpayer initiated case begins by the filing of a Form 14039. An IRS initiated case begins with a notice to the taxpayer generated by the Taxpayer Protection Program – Letter 4883C for prior-year suspicious returns and Letter 5071C for current year returns.

	IRS Identified	Taxpayer-Initiated
	Incidents/Taxpayers	Incidents/Taxpayers
2010	338,753/201,376	101,828/69,142
2011	1,014,884/553,730	110,750/87,322
2012	1,508,375/985,843	277,491/233,365
2013	2,542,488/2,106,932	376,996/309,841

https://www.irs.gov/Individuals/How-IRS-ID-Theft-Victim-Assistance-works

You tell us you may be a tax-related identity theft victim

Here's what happens if you learn you are a victim of tax-related identity theft. For example, your e-filed return rejects because of a duplicate tax filing with your Social Security number, and you report the incident to us:

- *You should file by paper if you are unable to e-file*
- *You should complete and file Form 14039, Identity Theft Affidavit, with your paper tax return*
- *Your tax return and Form 14039 are received for processing by the IRS.*
- *Your case goes to our Identity Theft Victim Assistance (IDTVA) organization where it will be handled by employees with specialized training*
- *You will receive an acknowledgment letter*
- *The Identity Theft Victim Assistance organization will work your case by:*
    - *Assessing the scope of the issues, trying to determine if your case affects one or more tax years.*
    - *Addressing all the issues related to the fraudulent return. This includes determining if there are additional victims, who may be unknown to you, listed on the fraudulent return.*
    - *Researching the case to double check all the names, addresses and SSNs are accurate or fraudulent.*
    - *Conducting a case analysis to determine if all outstanding issues were addressed*
    - *Ensuring your tax return is properly processed and if you are due a refund, releasing your refund.*
    - *Removing the fraudulent return from your tax records.*
    - *Marking your tax account with an identity theft indicator, which completes our work on your case and helps protect you in the future.*
- *You will receive notification that your case has been resolved. This is generally within 120 days but complex cases may take 180 days or longer*
- *Prior to the start of the next filing season, you will receive a letter (CP01A) with an Identity Protection Personal Identification Number (IP PIN) to help protect your tax return going forward.*

We tell you we have a suspicious return with your name on it

Often, the IRS Taxpayer Protection Program identifies a suspicious tax return bearing your name and SSN and will send you a notice or letter. There are many reasons why a return may appear to suspicious to us, and we take this precautionary step to help protect you. Here's what happens in this situation:

- *You may receive a letter from the IRS asking you to verify your identity within 30 days.*
- *You follow the letter's instructions to verify your identity at IDVerify.irs.gov:*

- *If you are unable to verify using the website, you should call the Taxpayer Protection Program toll-free number provided by the letter.*
- *If you are unable to verify your identity with the customer service representative, you may be asked to visit an IRS Taxpayer Assistance Center in person. You should plan on providing picture identification plus the letter and a copy of the tax return if you did file it.*
- *If you are unsure about the letter's authenticity and whether it came from the IRS, go to IDVerify.IRS.gov and follow the prompts to verify your identity.*
- *If you receive this or similar notices about suspicious returns, you do not need to complete the Form 14039 unless instructed to do so.*

- *Once you verify your identity with us, you can tell us if you did or did not file the return.*
- *If you did not file the return, it will be removed from your IRS records. You may be told you will need to file a paper return for the current filing season.*
- *If you did file the return, it will be released for processing and, barring other issues, your refund will be sent.*

How quickly we can work identity theft cases depends upon the volume of work and the complexity of the cases. Once we completely resolve your tax account issues, we will mark your account with an identity theft indicator to help protect you in the future.

The Identity Protection PIN (IP PIN)

The IP PIN is a 6-digit number assigned annually to eligible taxpayers to help prevent the misuse of their Social Security numbers on fraudulent federal income tax returns. If a return is filed with an SSN and an incorrect or missing IP PIN, the IRS will reject it.

- Victims of identity theft whose cases have been resolved by the IRS will receive a CP01A Notice containing the IP PIN.

- Residents of Georgia, Florida, or the District of Columbia and taxpayers who receive an IRS letter inviting them to 'opt-in' to get an IP PIN can obtain an IP PIN on the IRS website.

- Taxpayers must use the IP PIN on all federal income tax returns 1040, 1040A, 1040EZ and 1040 PR/SS.

- The IRS issued more than 1,500,000 IP PIN's in 2015.

- An IP PIN was not issued to 532,637 taxpayers whose identity theft cases were resolved in 2014. Also, the IRS did not provide an IP PIN to 24,628 taxpayers whose personal information had been lost by or stolen from the IRS. *TIGTA 2014-40-086*.

Instructions for Requesting Copy of Fraudulent Returns

A victim of identity theft may request a redacted copy of a fraudulent return that was filed and accepted by the IRS using the victim's name and SSN – only if the victim is the primary or secondary taxpayer on the return. The IRS will not release the fraudulent return unless the case has been resolved. The request must be made in writing and mailed to the IRS at P.O. Box 9039 Andover, MA 01810-0939.

IRS Efforts to Detect Identity Theft

- The IRS will test a 16 character W-2 verification code. The code will be a 16-digit value containing the letters "a" through "f" and numbers "0" through "9" and will appear on approximately 2% of W-2's.

- In October, 2015 the IRS announced that it reached agreement for software providers to enhance identity requirements and strengthen validation procedures. Taxpayers who use private sector tax software accounts will be subject to: new password standards requiring a minimum of eight characters with upper case, lower case, alpha, numerical and special characters, a new timed lockout feature, limited unsuccessful log-in attempts, and the addition of three security questions.

- PATH Act - 1)Requires filing of W-2's by January 31, whether paper or e-filed, and allows a non-automatic 1 month extension; 2) the IRS will not issue refunds based on the earned income tax credit and the refundable portion of the child tax credit prior to February 15; 3) authorizes the IRS to promulgate regulations that require truncated social security numbers on W-2's.

- The IRS is constantly developing filters to detect identity theft. In 2012 11 filters detected 235,000 returns. In 2013 80 filters detected 720,000 returns. In 2014 114 filters detected 832,000. *TIGTA 2015-40-026*.

- "Clustering" tool – The IRS groups tax returns to target multiple refunds with similar characteristics that include address, zip code, and/or bank routing number. This identified 517,000 returns in 2013. *TIGTA 2015-40-026*

"Taxpayer" address	returns	refunds issued
Address 1 in Lansing, Michigan	2,137	$3,316,051
Address 2 in Chicago, Illinois	765	903,084
Address 3 in Belle Glade, Florida	741	1,004,897
Address 4 in Orlando, Florida	703	1,088,691
Address 5 in Tampa, Florida	518	1,791,770

Type of "taxpayer"	returns	refunds issued.
Deceased	104,950	$ 415,047,568
Elderly	76,338	374,419,730
Citizens of US Possessions	67,789	387,183,428
Students (age 16-22)	288,252	695,343,022
Children (under 14)	2,274	3,960,327
Income level - not required to file	952,612	3,345,064,109

TIGTA 2012-42-080

- Locking deceased SSN's. From January 2011 through September 2014 IRS locked 26.3 million accounts of deceased individuals with the following number of fraudulent returns stopped:

  2012 16,341 efiled and 588 paper
  2013 442,743 efiled and 2,255 paper
  2014 338,807 efiled and 15,915 paper

  TIGTA 2015-40-026

- Matching social security benefits and withholding with Forms SSA-1099 has resulted in a decrease in undetected fraudulent returns claiming false social security benefits and withholding:

  2010 undetected 93,142 returns
  2011 undetected 12,993 returns
  2012 undetected 3,064 returns

  TIGTA 2015-40-026

- The IRS has implemented a direct deposit limit so that no more than 3 deposits can go to a single bank account. *Testimony of J. Russell George (TIGTA) before the Senate Budget Committee – August 26, 2015.*

ABLE ACCOUNTS

Proposed Regulations. REG-102837-15 (IRB 2015-27)

Qualification as an ABLE program
The program must: (1) be established and maintained by a state or a state's agency or instrumentality; (2) permit the establishment of an ABLE account only for a designated beneficiary who is a resident of that state, or a state contracting with that state for purposes of the ABLE program; (3) permit the establishment of an ABLE account only for a designated beneficiary who is an eligible individual; (4) limit a designated beneficiary to only one ABLE account, wherever located; (5) permit contributions to an ABLE account established to meet the qualified disability expenses of the account's designated beneficiary; (6) limit the nature and amount of contributions that can be made to an ABLE account; (7) require a separate accounting for the ABLE account of each designated beneficiary with an ABLE account in the program; (8) limit the designated beneficiary to no more than two opportunities in any calendar year to provide investment direction, whether directly or indirectly, for the ABLE account; and (9) prohibit the pledging of an interest in an ABLE account as security for a loan.

Determination of Disability
If the potential beneficiary is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the individual's 26th birthday then the individual would be eligible to open an ABLE account. The proposed regulations assert that each state ABLE program is allowed to verify this however it sees fit.

If the potential beneficiary is attempting to receive eligibility through establishing a "disability certification" then the potential beneficiary must present to the state ABLE program documentation stipulating that the individual meets the criteria in the federal statute, along with the individual's diagnosis related to the individual's relevant impairment or impairments, signed by a licensed physician. At the point in which this documentation is given to the state ABLE program, that individual is eligible to open an ABLE account.

For eligibility purposes, the phrase "marked and severe functional limitation" will be the same standard as the disability standard related to the Social Security Act for children claiming benefits under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program based on disability, but without regard to the age of the individual.

The proposed regulations state that a qualified ABLE program generally must require annual re-certifications confirming that the designated beneficiary continues to satisfy the definition of an eligible individual. However, the proposed regulations also allow the states the flexibility to choose different methods of ensuring a designated beneficiary's status as an eligible individual and may impose different periodic recertification requirements depending on a qualified beneficiary's particular circumstance (in particular the severity and nature of their disability)

The proposed regulations allow a qualified ABLE program or any of its contractors to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services. For example, a CDFI could provide screening and verification of disabilities, certification of the qualified purpose of distributions, debit card services to facilitate distributions, and social data collection and reporting. A CDFI also may be able to obtain grants to defray the cost of administering the program.

Designated beneficiary account eligibility and payments
The proposed regulations clarify that, if the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual.

If a designated beneficiary ceases to be an eligible individual, the proposed regulations provide that no contributions to the ABLE account may be accepted beginning on the first day of the tax year following the tax year in which the designated beneficiary ceased to be an eligible individual. If the designated beneficiary later becomes an eligible individual again, then additional contributions may be accepted subject to the applicable annual and cumulative limits.

ABLE account contributions generally must be made in cash. The proposed regulations provide that a qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment.

Qualified Disability Expenses
The proposed regulations provide that qualified disability expenses are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin.

The Treasury Department and the IRS conclude that the term "qualified disability expenses" should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual.

Distributions
Distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income. The earnings portion of distributions from the ABLE account in excess of the qualified disability expenses is includible in the gross income of the designated beneficiary.

The proposed regulations provide that, for purposes of applying Code Sec. 72 (e.g., inclusion of income from annuities, etc.) to amounts distributed from an ABLE account that all distributions during a tax year are treated as one distribution.

The proposed regulations provide that, in addition to the income tax on the portion of a distribution included in gross income, a tax of 10 percent of the amount includible in gross income is imposed. This additional tax does not apply, however, to distributions on or after the designated beneficiary's death or to returns of excess contributions, excess aggregate contributions, or contributions to additional purported ABLE accounts made by the due date (including extensions) of the designated beneficiary's tax return for the year in which the relevant contributions were made.

A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses

Limitation on Number of Accounts
Except with respect to rollovers and program-to-program transfers, no designated beneficiary may have more than one ABLE account in existence at the same time. The proposed regulations provide that a qualified ABLE program must require the designated beneficiary to verify under penalties of perjury, when creating an ABLE account, that the account being established is the designated beneficiary's only ABLE account.

Under the proposed regulations, an ABLE account for a designated beneficiary may be established only under the qualified ABLE program of the state in which that designated beneficiary is a resident or with which the state of the designated beneiciary's residence has contracted for the provision of ABLE accounts. However, a qualified ABLE program may permit a designated beneficiary to continue to maintain his or her ABLE account that was created in that state, even after the designated beneficiary is no longer a resident of that state.

Application of Gift, GST, and Estate Tax Provisions
The proposed regulations provide that any contribution by a designated beneficiary to a qualified ABLE program benefitting the designated beneficiary is not treated as a completed gift.

The proposed regulations provide that contributions to an ABLE account by a person other than the designated beneficiary are treated as completed gifts to the designated beneficiary of the account, and that such gifts are neither gifts of a future interest nor a qualified transfer under Code Sec. 2503(e). Accordingly, no distribution from an ABLE account to the designated beneficiary of that account is treated as a taxable gift.

Neither gift nor GST taxes apply to the change of designated beneficiary of an ABLE account, as long as the new designated beneficiary is an eligible individual who is a sibling of the former designated beneficiary.

Reporting Requirements
A qualified ABLE program must report the establishment of each ABLE account, including the name and residence of the designated beneficiary, and other relevant information regarding the account that is included on the new Form 5498-QA, "ABLE Account Contribution Information." Information regarding distributions will be reported on the new Form 1099-QA, "Distributions from ABLE Accounts." In addition, Code Sec. 529A(b)(3) requires that a qualified ABLE program provide separate accounting for each designated beneficiary. A contributor to an ABLE account must provide his or her TIN.

Effective Date
Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on the proposed regulations. The regulations are proposed to be effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register. These rules, when adopted as final regulations, will apply to tax years beginning after December 31, 2014. The reporting requirements of Proposed Reg. §§1.529A-5 through 1.529A-7 will apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

However, states that enact legislation creating an ABLE program in accordance with Code Sec. 529A , and individuals establishing ABLE accounts in accordance with such legislation, will not fail to receive the benefits of section Code Sec. 529A merely because the legislation or the account documents do not fully comport with the final regulations when they are issued. The Treasury Department and the IRS intend to provide transition relief to enable those state programs and accounts to be brought into compliance with the requirements in the final regulations, including providing sufficient time after issuance of the final regulations for changes to be implemented.

NOTE: The PATH Act eliminates the requirement that ABLE accounts be established only in the ABLE account owner's state of residence.

Notice 2015-81 (IR-2015-130, Nov. 20, 2015) notes three changes to the proposed regulations for ABLE accounts that'll be included in the final regulations when issued.

Categorization of distributions not required. ABLE programs need not include safeguards to determine which distributions are for qualified disability expenses, nor are they required to specifically identify those used for housing expenses. Commenters noted that such a requirement would be unduly burdensome and that, in any case, the eventual use of a distribution may not be known at the time it is made. Designated beneficiaries will still need to categorize distributions when determining their federal income tax obligations.

Contributors' TINs not required. ABLE programs will not be required to request the taxpayer identification numbers (TINs) of contributors to the ABLE account at the time when the contributions are made, if the program has a system in place to reject contributions that exceed the annual limits. However, if an excess contribution is deposited into a designated beneficiary's ABLE account, the program will need to request the contributor's TIN.

Disability diagnosis certification permitted. Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the qualification standards, including their receipt of a signed physician's diagnosis if necessary, and that they will retain that diagnosis and provide it to the program or the IRS upon request. This means that eligible individuals with disabilities will not need to provide the written diagnosis when opening the ABLE account, and ABLE programs will not need to receive, retain, or evaluate detailed medical records. States and potential qualified ABLE program administrators expressed concerns about their responsibilities and potential liabilities for receiving and safeguarding medical information contained in a signed diagnosis, particularly when they do not anticipate having any expertise or ability to evaluate that medical information. The commenters emphasized that qualified ABLE programs would incur unmanageable costs and burdens in trying to comply with applicable laws imposing system and other requirements on those in possession of medical records, as well as in implementing systems to receive and store paper documentation. The commenters also expressed the concern that, if these costs and burdens cannot be minimized, some states may not proceed with the implementation of qualified ABLE programs for their residents.

LEGISLATION

PROTECTING AMERICANS FROM TAX HIKES ACT

PERMANENT EXTENDERS

Enhanced Child Tax Credit Made Permanent (IRC §24, Act §101)
Until 2009, the threshold dollar amount was $10,000 indexed for inflation from 2001 (which would be roughly $14,000 in 2015). Since 2009, however, this threshold amount had been set at an unindexed $3,000 and had been scheduled to expire at the end of 2017, returning to the $10,000 (indexed for inflation) amount. The provision permanently sets the threshold amount at an unindexed $3,000.

Enhanced American Opportunity Tax Credit Made Permanent (IRC §25A, Act §102)
The American Opportunity Tax Credit (AOTC) took the permanent provisions of the Hope Scholarship Credit and increased the credit to $2,500 for four years of post-secondary education, and increased the beginning of the phase-out amounts to $80,000 (single) and $160,000 (married filing jointly) for 2009 to 2017.

Enhanced Earned Income Tax Credit Made Permanent (IRC §32, Act §103)
Low- and moderate income workers may be eligible for the earned income tax credit (EITC). For 2009 through 2017, the EITC amount had been temporarily increased for those with three (or more) children and the EITC marriage penalty has been reduced by increasing the income phase-out range by $5,000 (indexed for inflation) for those who are married and filing jointly.

Extension and Modification of Deduction for Certain Expenses of Elementary and Secondary School Teachers (IRC §104, Act §104)
The provision permanently extends the above-the-line deduction (capped at $250) for the eligible expenses of elementary and secondary school teachers. As always, amounts expended in excess of that amount will generally remain deductible only if the taxpayer itemizes deductions and then as an employee business expense subject to the over 2% of adjusted gross income floor on miscellaneous itemized deductions. Beginning in 2016, the provision also modifies the deduction to index the $250 cap to inflation and include professional development expenses as deductible under this provision.

Extension of Deduction of State and Local General Sales Taxes (IRC §164, Act §106)
The provision permanently extends the option to claim an itemized deduction for State and local general sales taxes in lieu of an itemized deduction for State and local income taxes. The taxpayer may either deduct the actual amount of sales tax paid in the tax year, or alternatively, deduct an amount prescribed by the Internal Revenue Service (IRS).

Extension and Modification of Special Rule for Contributions of Capital Gain Real Property Made for Conservation Purposes (IRC §170(b), Act §107)
The provision permanently extends the charitable deduction for contributions of real property for conservation purposes. The provision also permanently extends the enhanced deduction for certain individual and corporate farmers and ranchers.

Extension of Tax-Free Distributions from Individual Retirement Plans For Charitable Purposes (IRC §408(d)(8), Act §112)
The PATH Act permanently extends the ability of individuals at least 70½ years of age to exclude from gross income qualified charitable distributions from Individual Retirement Accounts (IRAs). The exclusion may not exceed $100,000 per taxpayer in any tax year. The direct rollover will be counted as part of the taxpayer's minimum required distribution for the year if the taxpayer has not already take at least the minimum required distribution (MRD) from the plan prior to direct contribution from the IRA to the charity.

Extension of 15-Year Straight-Line Cost Recovery for Qualified Leasehold Improvements, Qualified Restaurant Buildings and Improvements, and Qualified Retail Improvements (IRC §168, Act §123)
The PATH Act permanently extends the 15-year recovery period for qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property.

Extension and Modification of Increased Expensing Limitations and Treatment of Certain Real Property as Section 179 Property (IRC §179, Act §124)
The PATH Act permanently extends the small business expensing limitation and phase-out amounts in effect from 2010 to 2014 ($500,000 and $2 million, respectively). These amounts would have reverted to $25,000 and $200,000, respectively, beginning in 2015. The PATH Act also makes permanent the permission granted to a taxpayer to revoke without the consent of the Commissioner any election, and any specification contained therein, made under section 179.

The PATH Act modifies the expensing limitation by indexing both the $500,000 and $2 million limits for inflation beginning in 2016 and by treating air conditioning and heating units placed in service in tax years beginning after 2015 as eligible for expensing. The provision further modifies the expensing limitation with respect to qualified real property by eliminating the $250,000 cap beginning in 2016.

EXTENDERS THROUGH 2019

Extension and Modification of Bonus Depreciation (IRC §168(k), Act §143)
The PATH Act restores bonus depreciation to the law, retroactive to January 1, 2015. For 2015 the rules will be the same as they were for 2014. But the new law makes changes in future years, including reducing the amount of bonus depreciation that can be claimed in the final two years before it's now scheduled expiration.

The provision extends bonus depreciation for property acquired and placed in service during 2015 through 2019 (with an additional year for certain property with a longer production period).
The bonus depreciation percentage is 50 percent for property placed in service during 2015, 2016 and 2017 and phases down, with 40 percent in 2018, and 30 percent in 2019.

Beginning in 2016 modifications are made to the definition of what qualifies as qualified improvement property. As the *PATH Technical Explanation* notes:

> After 2015, the provision allows additional first-year depreciation for qualified improvement property without regard to whether the improvements are property subject to a lease, and also removes the requirement that the improvement must be placed in service more than three years after the date the building was first placed in service.

EXTENDERS THROUGH 2016

Extension and Modification of Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness (IRC §108, Act §151)

The provision extends through 2016 the exclusion from gross income of a discharge of qualified principal residence indebtedness. The provision also modifies the exclusion to apply to qualified principal residence indebtedness that is discharged after December 31, 2016, if the discharge is pursuant to a written agreement entered into before December 31, 2016

Extension of Mortgage Insurance Premiums Treated as Qualified Residence Interest (IRC §163, Act §152)

The Act extends the deduction for private mortgage insurance premiums for two years (with respect to contracts entered into after December 31, 2006). Thus, the provision applies to amounts paid or accrued in 2015 and 2016 (and not properly allocable to any period after 2016). This deduction phases out ratably for a taxpayer with AGI of $100,000 to $110,000.

Extension of Above-the-Line Deduction for Qualified Tuition and Related Expenses (IRC §222, Act §153)

The Act extends through 2016 the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at $4,000 for an individual whose AGI does not exceed $65,000 ($130,000 for joint filers) or $2,000 for an individual whose AGI does not exceed $80,000 ($160,000 for joint filers).

Extension and modification of credit for nonbusiness energy property (IRC §, Act §)

The provision extends through 2016 the credit for purchases of nonbusiness energy property. The provision allows a credit of 10 percent of the amount paid or incurred by the taxpayer for qualified energy improvements, up to $500. Beginning in 2016 the efficiency standards are modified so that that windows, skylights, and doors must meet Energy Star 6.0 standards to qualify for the credit.

Extension of Credit for Energy-Efficient New Homes (IRC §45L, Act §188)

The Act extends through 2016 the tax credit for manufacturers of energy-efficient residential homes. An eligible contractor may claim a tax credit of $1,000 or $2,000 for the construction or manufacture of a new energy efficient home that meets qualifying criteria.

PROGRAM INTEGRITY

Safe harbor for de minimis errors on information returns and payee statements (IRC §§6721 and 6722, Act §202)

The provision establishes a safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements by providing that if the error is $100 or less ($25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return and no penalty is imposed. A recipient of such a return (e.g., an employee who receives a Form W-2) can elect to have a corrected return issued to them and filed with the IRS.

The provision is effective for returns and statements required to be filed after December 31, 2016. The provision is meant to reduce the issuance of revised Forms 1099 for minor amounts. Thus the provision should reduce the number of returns that end up being redone just before delivery to a client due to last minute receipt of a revised Form 1099. But note that the rule will not take effect in time for the filing of 2015 tax returns.

Procedures to reduce improper claims (IRC §24, 25A, 32 and 6695, Act §207

The provision expands the paid-preparer due diligence requirements with respect to the earned income tax credit, and the associated $500 penalty for failures to comply, to cover returns claiming the child tax credit and American Opportunity Tax Credit. The provision applies to tax years beginning after December 31, 2015.

Restrictions on taxpayers who improperly claimed credits in prior year (IRC §24, 25A, 32 and 6213, Act §208)

The provision expands the rules under current law, which bar individuals from claiming the earned income tax credit for ten years if they are convicted of fraud and for two years if they are found to have recklessly or intentionally disregarded the rules, to apply to the child tax credit and American Opportunity Tax Credit. The provision adds math error authority, which permits the IRS to disallow improper credits without a formal audit if the taxpayer claims the credit in a period during which he is barred from doing so due to fraud or reckless or intentional disregard. The provision applies to tax years beginning after December 31, 2015.

Employer identification number required for American opportunity tax credit (IRC §25A and 6050S, Act §211)

The Act requires a taxpayer claiming the American opportunity tax credit to report the employer identification number (EIN) of the educational institution to which the taxpayer makes qualified payments under the credit. The law modifies the reporting requirements under section 6050S of the Code to require an educational institution to provide its employer identification number on the Form 1098-T. The provision applies to tax years beginning after December 31, 2015, and expenses paid after such date for education furnished in academic periods beginning after such date.

Improvements to Section 529 Accounts (IRC §529, Act §302)

The law expands the definition of qualified higher education expenses for which tax-preferred distributions from 529 accounts are eligible to include computer equipment and technology. The Act treats a refund of tuition paid with amounts distributed from a 529 account as a qualified expense if such amounts are re-contributed to a 529 account within 60 days. These provisions are effective for distributions made or refunds after 2014, or in the case of refunds after 2014 and before the date of enactment, for refunds re-contributed not later than 60 days after date of enactment.

Surface Transportation and Veterans Health Care Choice Improvement Act

Buried within this law is a change to IRC Section 6501(e)(1). This change overrules the Supreme Court case of *The Colony, Inc. v. Commissioner*, and *United States v. Home Concrete Supply, LLC*. In both cases the Court ruled that an overstatement of basis is not an "omission from gross income." A new section 6501(e)(1)(B)(ii) states that "an understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income." The new law also removes "adequate disclosure" as a defense to the six-year statute of limitations with respect to any amount omitted from gross income by reason of an overstatement of basis

IRS PRONOUNCEMENTS

Notice 2016–04 (IRB 2016-3) Extends filing dates for Forms 1095-B and Form 1095-C to March 31, 2016 – only for the 2015 tax year. To the extent that individual taxpayers do not receive their ACA information returns prior to the time of filing their own returns, they may rely upon information received from their employer or insurer when confirming eligibility for the premium tax credit and maintenance of coverage for the year.

Rev. Proc. 2015-56 (IRB 2015-49) This revenue procedure provides certain taxpayers engaged in the trade or business of operating a retail establishment or a restaurant with a safe harbor method of accounting for determining whether expenditures paid or incurred to remodel or refresh a qualified building (as defined in section 4.02) are deductible under §26 USC 162(a) of the Internal Revenue Code (Code), must be capitalized as improvements under §26 USC 263(a), or must be capitalized as the costs of property produced by the taxpayer for use in its trade or business under §26 USC 263A.

REG-134219-08 (IRB 2015-49) 6015; innocent spouse relief; joint and several liability.

REG-148998-13 (IRB 2015-45) Marital status; same sex couples; definitions.

REG-138344-13 (IRB 2015-41) Exception to contemporaneous written acknowledgement requirement for contributions of $250 or more. This proposal would allow charitable organizations to report donations of $250 or more to the IRS in lieu of providing donors with contemporaneous written acknowledgements. Organizations choosing to do this would have to obtain the donors' TIN's.

REG-138344-13 (IRB 2016-4) Regulations withdrawn; charitable contributions; contemporaneous written acknowledgment; contributions of $250 or more.

Notice 2015-38 (IRB 2015-21) This notice updates the list of designated private delivery services ("designated PDSs") set forth in Notice 2004-83, 2004-2 C.B. 1030, for purposes of the timely mailing treated as timely filing/paying rule of section 26 USC 7502 of the Internal Revenue Code, provides rules for determining the postmark date for these services, and provides a new address for submitting documents to the Internal Revenue Service ("IRS")with respect to an application for designation as a designated PDS. These changes are effective May 6, 2015.

Announcement 2015-22 (IRB 2015-35) The IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's)recordkeeping system must include the value of the identity protection services in the employees' gross income and wages. The IRS will also not assert that these amounts must be reported on an information return(such as Form W-2 or Form 1099-MISC) filed with respect to such individuals. This announcement does not apply to cash received in lieu of identity protection services, or to identity protection services received for reasons other than as a result of a data breach.

Announcement 2016-2 (IRB 2016-3) Announcement 2016–02 informs the public that the IRS will not assert that an individual must include in gross income the value of identity protection services provided to employees or other individuals before a data breach occurs. Additionally, the IRS will not assert that an employer providing identity protection services to its employees must include the value of the identity protection services in the employees gross income and wages.

CASES

***Gemperle v. Commissioner*. TC Memo 2016-1**
No appraisal attached – no deduction for conservation easement
The taxpayers claimed a charitable deduction of $108,000 for a qualified contribution easement. They obtained an appraisal to determine the value. However, they failed to attach the appraisal to the Form 8283 for their 2007 return. In 2010 they submitted a "corrected" Form 8283 to the IRS with the appraisal. The tax court found that the "plain language" of the relevant statute, IRC 170(h)(4)(B), requires an appraisal be submitted with the tax return. Since the taxpayers did not comply with this they were denied the deduction.

***Howard v. Commissioner*. TC Memo 2015-38**
Truck driver has no tax home
The taxpayer was a truck driver. His employer did not require him to return to its base, but sent him his assignments at the end point of each route. The IRS disallowed $19,109 of travel expense while away from home. He used his mother's address as his home address for his truck driver's license. However, he did not stay at her house (except for a few days when he had jury duty) and he did not pay rent or any expenses. The Tax Court agreed with the IRS that the driver had no tax home – he did not incur "substantial continuing living expenses" at his mother's house. "When the taxpayer had neither a principal place of business nor a permanent residence, he has no tax home from which he can be away. His home is wherever he happens to be."

***Blagaich v. Commissioner*. TC Memo 2016-2**
Boy gives girl lavish gifts. Girl leaves boy. Boy gives girl a 1099 MISC. Mr. Burns and Ms Blagaich were romantically involved. In 2010 Burns gave her gifts of cash and other property totaling $743,819. At one point he wired $200,000 to her bank account and gave her a Corvette worth $70,000 (he did not want her to ride her motorcycle). He also wrote her various checks totaling $73,819. On November 29, 2010, they entered into a written agreement to formalize their "respect, appreciation and affection for each other." The agreement also provided that both "shall refrain from engaging in intimate or other romantic relations with any other individual." The agreement required Burns to pay Blagaich $400,000, which he did. Unfortunately, it did not last long. Blagaich moved out in March, 2011 and Burns filed suit in DuPage County to terminate their agreement, seeking return of all gifts. In April, 2011 Burns filed a Form 1099-MISC with the IRS reporting that he paid Blagaich $743,819 in 2010. The state court ordered Blagaich to return $400,000 to Burns, but found that the car and other money were "clearly gifts." Burns' executor filed a revised 1099-MISC showing $400,000 paid to Blagaich. The IRS adjusted Blagaich's income in the amount of the first 1099. Blagaich argued that the IRS had to take notice of the state court's decision that everything but the $400,000 was a gift, and thus adjustment should be limited to $400,000. She also argued that her return of $400,000 pursuant to a court order should eliminate the remaining amount of the adjustment. The Tax Court ruled that the IRS did not have to take notice of the state court's characterization of some of the transfers as gifts, because the IRS was not a party to that action. Therefore, the determination of the first $343,819 remains an issue of fact. For the $400,000 payment, the court rejected Blagaich's argument to exclude it under the doctrine of recission because she did not repay, or make provision for repayment, within one year of receiving it.

***Okonkwo v. Commissioner*. TC memo 2015-181**
No deduction for rental house occupied by daughter paying below fair market rent
Dr. Okonkwo purchased a lot in 1997, built a house on it, and tried to sell it. From 2002 through 2006 he rented the house for $6,000 per month to an unrelated party. From 2007 through 2010 his daughter lived in the house and paid $2,000 per month. During the time the daughter resided there, Okonkwo tried to

sell the house. Okonkwo's CPA prepared his returns "using estimates of certain deductions that Okonkwo conveyed during their conversations." Through 2008 the rental activity was reported on a Schedule E. Before preparing the 2009 return the CPA asked about the decrease in rent, and was told that the daughter moved in and was paying less rent. On Schedule C of the 2009 and 2010 returns Okonkwo reported receipts equal to the rent and expenses equal to the house expenses, and indicated that he was in the construction business. He also filed an amended 2008 return, putting the Schedule E activity on a Schedule C. The taxpayers claimed that they were in the real estate development business, and they rented the house to their daughter because their homeowners policy required that the house be occupied. The IRS claimed that the deductions relating to the house "are limited because their [taxpayers'] daughter resided there. The Tax Court found that the use of the house was personal, and because the daughter did not pay fair market rental, the deductions were limited to the extent of the rental income.

***Redisch v Commissioner*. TC Memo 2015-95**
Losses disallowed – property never converted to rental
Taxpayer purchased a home in 2004 and used it as a seasonal home. In 2008 they decided to attempt to rent it. They moved their personal belongings out of the home at that time. Mr. Redisch contacted a realtor from a company that was involved in a residential development that was not completed, with the hope that buyers would rent Redisch's hose while waiting for their new houses to be constructed. The realty company let propective buyers know that Redisch's house was available to rent, and the property was kept in a portfolio in the realty company's office. There was no evidence of any other efforts to market the property. Redisch received inquiries from two people – neither of whom rented the home. Redisch sold the house at a loss in 2010. In 2009 and 2010 Redisch reported losses on a Schedule E. The Tax Court held that Redisch's property was not converted to property held for the production of income. Redisch's efforts did not amount to a "bona fide attempt to rent" the property -"It is unsurprising that this minimal effort yielded only minimal interest."

***Kaufman v. Commissioner*, 14-1863 (1st Cir. April 27, 2015)**
Reliance on appraisal does not automatically give rise to reasonable cause relief
Taxpayers took a charitable deduction of $220,000 for contribution of a façade easement. The amount of the deduction was based on an appraisal. The IRS determined that the façade easement had no value. Taxpayers asserted that they should have reasonable cause relief from penalties because the value was based on a qualified appraisal, and that obtaining the appraisal satisfied their duty to make a good faith investigation into the value. They argued that since they were not experts in this type of valuation there was no way for them to make an investigation except by obtaining an appraisal. The court was not persuaded and found that the taxpayers "should have recognized obvious warning signs" regarding the appraisal. Before granting the easement the taxpayers asked the charity how the easement would affect their property. A representative from the charity emailed back saying that the easement would not reduce the value – "One of our directors, Steve McClain, owns fifteen or so historic properties and has taken advantage of this deduction. He never would have granted any easement if he thought there would be a risk or loss of value in his properties." Also, in order to have the taxpayers' mortgage subordinated to the easement, the taxpayers signed a statement saying that the easement would not impose any restrictions on the property that did not already exist. The court determined that these warning signs were so obvious that the taxpayers should have known that it was not reasonable to rely on the appraisal. The taxpayers also claimed reliance on the advice of their accountant. However, in testimony to the Tax Court the accountant admitted that he had "no idea whatsoever" as to whether the appraisal was accurate.

***Tilden v. Commissioner*. TC Memo 2015-188**
Stamps.com "postmark" disregarded.
The taxpayer's attorney's office mailed a petition for redetermination to the Tax Court using postage from stamps.com. The envelope had a mailing label generated by the taxpayer's attorney's office which included a "postmark" of April 21, 2015 (90 days after the notice of deficiency). The envelope also had a

certified mail sticker with a tracking number. The envelope did not have a USPS postmark. The sender's receipt for certified mail was not postmarked, but had a handwritten note from the attorney's secretary that it was placed in the mail on April 21. The USPS tracking data indicated that the envelope entered the postal system on April 23. The court held that the petition was not timely mailed. By not having the certified mail receipt stamped at the time of mailing, the petitioner bore the risk that the postmark would be placed on the envelope on a later date. The court ruled that the USPS tracking data superseded the stamps.com "postmark."

***Padilla v. Commissioner*. TC Summary Opinion 2015-38**
Hours in rental activity were that of an investor.
Padilla lost his job during the year, and devoted his extra time to his rental properties. He had employment records showing he worked 676 hours. He had a contemporaneous log that showed he spent 764 hours working in his rental activities. The court accepted his log as credible. Unfortunately, the court did not stop there. Padilla had a management company manage some properties and hired another company to find tenants for other properties. His activities mostly consisted of researching other properties, foreclosures and refinancing. These activities are those of an investor so they did not count towards material participation under the passive activity rules.

***Voss v. Commissioner*. 796 F.3d 1051 (9th Cir. 2015)**
Limitation on mortgage debt for deduction of interest applies on per-taxpayer basis for unmarried partners
The 9th Circuit, overturning a Tax Court decision, ruled that when unmarried partners co-own a qualified residence, the limitation on qualified residence indebtedness applies on a per-taxpayer basis rather than on a per-residence basis. The taxpayers were registered domestic partners under California law. They co-owned two houses. Between the two houses they had mortgage/home equity debt of approximately $2.7 million. The result of the 9th Circuit's decision is that the taxpayers were each allowed to deduct interest paid on up to $1.1 million in indebtedness for the homes they co-owned. With the same facts, spouses filing separately would be limited to a total of $1.1 million in indebtedness.

***DeBough v. Commissioner*, No. 14-3036 (8th Cir. August 28, 2015)**
Reacquisition of principal residence trigger recognition of gain.
On July 11, 2006 DeBough agreed to sell his principal residence on contract for $1.4 million, with the final installment due on July 11, 2014. He reported $657,796 of gain - $500,000 of which was excluded, and the remaining $157,796 reported on the installment method. He received $505,000 in payments and reported $56,920 from 2006 through 2008. The buyers defaulted and DeBough reacquired the home in 2009. He reported $97,153 in long term capital gain in 2009 due to the reacquisition. He did not resell the property. The IRS determined that the correct amount of gain was $448,080 – the amount of payments received minus the gain already recognized. The First Circuit upheld the Tax Court.

***Morris v. Commissioner*. TC Memo 2015-82**
IRA beneficiary taxable on whole lump sum even though he split it with his siblings
Elroy Earl Morris was the primary beneficiary of his father's IRA, and took a lump sum distribution of $95,484. Elroy was the executor of his father's estate and wrote checks to his two siblings totaling $37,000 for their share of the IRA, believing that this is what his father wanted. A paralegal at the law firm that represented the estate advised Elroy that there would be no tax due on the IRA distribution. Elroy asserted that "it would be inequitable to hold him soley liable for this tax because he voluntarily shared the proceeds with his siblings, form whom he is unlikely to recover anything." The tax court was not persuaded and found that there was no applicable exception that would allow Elroy to not report the entire lump sum distrubition.

***Rochlani v Commissioner*. TC Memo 2015-174**
Business run completely without corporate formalities taxable as C Corpororation
Manjit Rochlani operated Ultimate Presales, a ticket resale company. Rochlani reported the activity of Ultimate on a Schedule C. All receipts and disbursements went through Rochlani's personal checking account, and he used a personal credit card for other expenses. In 2006 Rochlani's son, then a minor, incorporated Ultimate Presales as a Michigan corporation. Rochlani thereafter filed annual reports with the state of Michigan, but followed no corporate formalities. The IRS disallowed his Schedule C for 2008 and 2009 which reported over $80,000 in losses, and contended that Ultimate Presales should have filed a corporate return. The IRS prevailed. The court noted that the degree of activity for a business to be treated as a corporation for tax purposes is "extremely low" and to be treated as a separate taxable entity a corporation does not need to keep books or records or separate accounts. Mr. Rochlani ratified his son's act of incorporation by continuing to file annual reports.

***Milbourn v. Commissioner*. TC Memo 2015-13**
Payments made prior to signing marital settlement agreement not alimony
In 2005 wife's attorney prepared a draft of a marital settlement agreement in which husband would pay $6,000 per month in alimony. Husband disagreed with the amount and never signed it. A divorce decree was entered on June 27, 2006 – still no settlement agreement was signed. During 2006 husband made payments to wife totaling $37,000 and deducted this as alimony. On June 5, 2007 an amended divorce decree was entered in which husband agreed to pay $4,500 per month. Husband conceded that the payments in 2006 were not made pursuant to a divorce decree or written instrument incident to a decree. He claimed that the payments were made pursuant to a written separation agreement, namely the unsigned settlement agreement from 2005. Husband's argument was that he agreed to pay alimony and the final version of the agreement was the same as the draft except for the amount of alimony. The court ruled that the draft of the settlement agreement was unilateral offer by wife, and that it was not a "written agreement" because of the failure to agree on a crucial term - the amount of alimony.

***Morehouse v. Commissioner*. 8th Cir. No. No. 13-3110(Oct. 10, 2014)**
The Eighth Circuit, reversing the Tax Court, held that payments made to a non-farmer under the Conservation Reserve Program (CRP) are not subject to self-employment tax. CRP is a USDA program in which land owners are paid to keep land out of production and to follow a conservation plan. The Sixth Circuit has ruled that these payments are subject to self-employment tax. The IRS announced it will continue to litigate this issue outside the Eighth Circuit.

Chief Counsel email 201545025.
Delivery of notice of non-judicial sale by UPS did not satisfy delivery requirements
In this instance a notice of a non-judicial sale was sent to the IRS by UPS. Generally, an IRS lien is not impacted by judicial proceedings to which the IRS is not a party. Section 7425 contains a limited exception provided that the IRS is properly notified of the proceeding. The method of notification mandated by the statute is registered or certified mail, or personal service, not less than 25 days prior to the sale. The Chief Counsel opined that the private delivery services provisions of Section 7502 only apply to a postmark date for determining "timely filed." The rule in Section 7425 for notice of non-judicial sales requires more than a postmark and does not provide for private delivery service (other than personal service). However, the IRS did not deny that the notice was delivered, so was there personal service? The email advice said "no." Personal Service is not defined in the IRC or regulations and "in our view, personal service means delivery by the submitter of the notice, not a third party."

***Leland v. Commissioner*. TC Memo 2015-240**

Tax Court accepts reconstructed time logs to prove material participation

Mr. Leland is an attorney in Jackson, Mississippi. He purchased a 1,276 acre farm in Turkey, Texas, and entered into a crop share arrangement with Clinton Pigg. Under the terms of the crop share arrangement, Leland was responsible for maintaining the infrastructure of the farm. This maintenance is apparently a lot of work, and was done primarily by Leland. He visited the farm several times each year (a 13 hour drive) to perform this work. The farm had approximately 25 miles of roads that had to be cleared and disced (uprooting vegetation). Trees and brush had to be cleared from the roads. Wheat was planted each fall to prevent erosion. Wild hogs had to be controlled (they ate 250,000 pounds of Pigg's peanuts). Leland spent six hours per day at the farm hunting hogs. He also spent time building bait traps for the hogs in order to lure them to an area where he could "eradicate" them. Leland used his own equipment for these tasks, and spent time maintaining the equipment. Leland did not have contemporaneous time records. However, he reconstructed the time by reference to a calendar at his law practice, credit card receipts and various invoices for purchases. His testimony was detailed enough to be found credible. According to his records, he spent 359.9 hours in 2009 and 209.5 hours in 2010 on the farm. However, Leland's hours alone were not enough to prove material participation (500 hours). He had to prove that his time exceeded the time that anyone else spent on the farm. In the years in question Pigg only farmed a fraction of the land. His testimony was detailed – time spent on planting, spraying, harvesting, etc. Pigg's time was less than Leland's, so Leland prevailed on the basis of having at least 100 hours which was more than anyone else engaged in the activity.