CORDASCO
& COMPANY P.C.

Certified Public Accountants

2015

NEW DEVELOPMENT

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2015 NEW DEVELOPMENTS LETTER

INTRODUCTION

Over the past several years, we have experienced tax changes and developments at a much faster pace than just a few years ago. Consequently, keeping abreast of these changes has become an annual Fall tradition for an increasing number of taxpayers. To help you adjust to (and plan for) a rapidly-changing tax environment, we are providing a summary of key legislative, administrative, and judicial tax developments that have occurred over the last 12-15 months. We highlight only those developments that we believe will have the greatest impact on our clients.

As a Preview – Some of the ***Major Tax Developments*** we highlight in this letter are: **1)** ***Recent Tax Legislation*** that: Provides for new tax-favored ABLE Accounts for disabled individuals; Imposes an additional requirement for claiming a credit or deduction for qualifying tuition payments; Establishes a new basis limitation on certain inherited property; Changes filing deadlines for a variety of individual and business returns; and **2)** ***New Cases, IRS Rulings, and Regulations*** that: Illustrate the risks involved in a self-directed IRA; Review situations where divorced spouses may lose their deduction for alimony; Provide guidance for information returns that many employers will be required to file under the Affordable Care Act; Explain how certain employers may avoid a potential $100 a day penalty for reimbursing an employee's individual health insurance premiums; Provide relief for certain small businesses that makes it easier to implement the capitalization regulations; Suggest how a business may accelerate the date it can begin taking depreciation deductions for a newly-acquired building and/or building improvements.

CAUTION!

We highlight only *selected* tax developments. If you have heard about other tax developments not discussed in this letter, and you need more information, please call our office for details. Also, ***we suggest that you call our firm before implementing any tax planning technique discussed.*** You cannot properly evaluate a particular planning strategy without calculating your overall tax liability (including the alternative minimum tax and any state income tax) with and without that strategy.

> **Please Note!** This letter contains ideas for Federal income tax planning only. ***State income tax issues are not addressed.***

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DEVELOPMENTS IMPACTING PRIMARILY INDIVIDUALS

RECENT TAX LEGISLATION

Background. Over the last twelve months, President Obama has signed into law the following four bills, each containing a number of important tax provisions: The *"Achieving A Better Life Experience Act of 2014;"* The *"Trade Preference Extension Act of 2015;"* The *"Trade Priorities and Accountability Act of 2015;"* and The *"Surface Transportation and Veterans Health Care Choice Improvement Act of 2015"* (collectively referred to as ***"Recent Tax Legislation"***). This *Recent Tax Legislation* contains a variety of tax changes that impact individual taxpayers. This segment provides an overview of these provisions, which may have an impact on you or your family.

> **Caution!** Some of these changes ***will first apply to 2015 tax years,*** while others ***are not effective until 2016. The "effective date"*** of each new tax provision discussed below is prominently highlighted:

New Tax-Favored ABLE Accounts For Disabled Individuals. ***For tax years beginning after 2014,*** *Recent Tax Legislation* authorizes a new tax-advantaged savings account ("ABLE Account") for certain qualified disabled individuals. The tax rules for ABLE Accounts are generally patterned after the tax rules for the popular Section 529 plans which are currently used to accumulate funds for qualified college expenses. The stated purpose of this new savings account is to "*provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits otherwise available to those individuals, whether through private sources, employment, public programs, or otherwise*" (e.g., private insurance, Medicaid, SSI). If the qualified disabled individual is not personally able to establish the ABLE Account, the account may be established by the disabled person's parent or legal guardian, or by an agent under a power of attorney. The following are key features of the ABLE Account:

- **ABLE Accounts Generally Aren't Counted For Federal Means-Tested Programs.** One of the most attractive ***non-tax features*** of the ABLE Account is that amounts in a disabled individual's ABLE Account (including earnings), contributions to the individual's account, and distributions to pay qualified disability expenses are generally disregarded in determining the individual's eligibility for, or the amount of, any assistance or benefit authorized by Federal means-tested programs.

  > **Caution!** ***For purposes of*** the supplemental security income (SSI) program under title XVI of the Social Security Act, ***distributions*** from an ABLE Account for ***certain housing expenses*** are not disregarded, and amounts (including earnings) in an ABLE Account ***in excess of $100,000*** are considered a resource of the designated beneficiary.

- **Qualified Disabled Individual.** Generally, ABLE Accounts may only be established by (or on

behalf of) an individual, who ***during that tax year*** is: **1)** Entitled to benefits based on ***blindness*** or ***disability under the Social Security disability insurance program*** or the ***Supplemental Security Income*** for the Aged, Blind, and Disabled (SSI) program, ***and*** that blindness or disability occurred ***before the date on which the individual reached age 26.*** Otherwise, an individual will qualify only if he or she files a ***"disability certification"*** with the IRS that certifies that the individual has specifically-defined physical or mental impairments or is blind and the blindness or disability occurred before the individual attained age 26.

- **General Tax Features Of The ABLE Account.** Like a Section 529 college-savings account, contributions to ABLE Accounts are not deductible, but assets in the account grow tax-free. Withdrawals are tax-free if the money is used for qualified disability-related expenses. The earnings portion of a ***nonqualified*** distribution is subject to income tax and a 10% penalty. Each disabled person is limited to one ABLE Account, and total annual contributions by all individuals to an ABLE Account cannot exceed the inflation-adjusted annual gift tax exclusion amount (i.e., $14,000 for 2015).

- **Check With Your State Of Residency.** Generally, a qualified disabled individual is allowed to establish an ABLE Account only under a state ABLE program sponsored by the state in which the disabled individual resides. Thus, a disabled individual interested in an ABLE Account should first check with the resident state to determine whether a state-sponsored ABLE program has been adopted and, if so, whether the program is available for applications. If the resident state does not have an ABLE program, the resident state is allowed to contract with another state that does sponsor an ABLE program. If so, the disabled individual may be allowed to establish an ABLE Account in the other contracting state.

  Tax Tip. Check with your resident state to determine whether either of these ABLE arrangements are available.

Penalty-Free Retirement Plan Distributions Allowed For An Expanded Group Of Public-Safety Employees. Under current law, ***state or local*** police, firefighters or emergency medical services personnel who have separated from service may take distributions from their government "define benefit plan" without a 10% penalty – once they reach age 50 (instead of age 55 that generally applies to other taxpayers). *Recent Tax Legislation* expands this "age 50" exception to the 10% penalty to ***Federal*** law enforcement officers, ***Federal*** customs and border protection officers, ***Federal*** firefighters, and air traffic controllers. In addition, the new law allows the exception to apply to all government retirement plans, not just government *"defined benefit"* (pension) plans.

Planning Alert! This expanded relief from the 10% penalty is effective ***for distributions made after December 31, 2015.*** Therefore, if you are a member of this expanded group of qualifying Federal workers and wish to take advantage of this new exception to the 10% penalty, it will not be available to you ***unless you take the distribution after December 31, 2015.***

Claiming The Foreign Earned Income Exclusion Will Nix The Refundable Portion Of The Child Credit. Generally, an individual is allowed a child credit of up to $1,000 for each qualifying child who has not attained age 17 by the close of the calendar year. The child tax credit claimed for a tax year is reduced $50 for each $1,000 of modified AGI over $110,000 (if married filing jointly), over $75,000 (for unmarried individuals), and over $55,000 (for married individuals filing separate returns). Moreover, this child credit is generally "refundable" to the extent of 15% of an individual's earned income in excess of $3,000 for 2009 through 2017. This generally means that, to the extent the credit exceeds the taxes on your individual income tax return without the credit, the IRS will actually send you a check for the excess. For example, the full $1,000 child credit would be refundable (to the extent the credit exceeded 2015 income taxes) for a married couple with one child under age 17 who file jointly, if their AGI for 2015 were at least $9,667 but not more than $110,000. If the couple's AGI were between $3,000 and $9,667, only a portion of the child tax credit would be refundable.

Effective for tax years beginning after 2014, *Recent Tax Legislation* now provides that individuals who "elect" to exclude "any amount" of foreign earned income under §911 will not be allowed to treat any portion of the child credit as a "refundable" credit. Under §911, a U.S. citizen or resident who lives abroad and satisfies certain requirements may "elect" to exclude from taxable income up to $100,800 (for 2015) of "foreign earned income." Thus, under the new law, if a taxpayer "elects" to take any foreign earned income exclusion, the individual will only benefit from the otherwise qualifying child credit to the extent the taxpayer has sufficient tax liability to absorb the credit. This means that, starting with the 2015 tax year, if you qualify for both the foreign earned income exclusion and the child credit, we should consider a "with" and "without" calculation to see if electing the foreign earned income exclusion will save you overall taxes.

After 2015, Taxpayers Must Have Form 1098-T In Order To Claim Education Credits Or Tuition Deductions. Generally, educational institutions are required to provide Form 1098-T to students who attend their institution and file a copy of Form 1098-T with the IRS. This form contains information regarding the student's qualifying tuition and related fees that are used to determine various education tax credits and education deductions. ***Effective for tax years beginning after June 29, 2015,*** *Recent Tax Legislation* provides that the following education tax breaks will not be allowed unless the taxpayer possesses a valid Form 1098-T from the educational institution: the ***American Opportunity Tax Credit*** (of up to $2,500 – generally used for the first four years of post-high school education), the ***Lifetime Learning Credit*** (of up to $2,000 – generally used for graduate school), and the college ***Tuition and Fees Deduction*** (of up to $4,000).

> **Tax Tip.** This new requirement will not apply to the filing of your 2015 tax return, but will be applicable to your 2016 tax return. So, this new requirement effectively means that you will have to wait to file your tax return for the 2016 tax year until you receive Form 1098-T, if you are claiming any of these education tax benefits.
>
> **Planning Alert!** The ***Tuition and Fees Deduction*** (of up to $4,000) ***expired at the end of 2014!*** Although Congress is currently considering "extenders" legislation that would

extend this provision at least through 2015, as we complete this letter, Congress has not yet extended this tax break. Please contact our firm if you need a status report on this legislation.

New Initial Due Date And Allowable Extensions For FinCEN Form 114 (FBAR). If you own (or have signatory authority over) foreign financial accounts exceeding an aggregate value of $10,000 at any time during the year, you are generally required to file FinCEN Form 114, "*Report of Foreign Bank and Financial Accounts*" (FBAR), by June 30 of the year immediately following the reporting year. Traditionally, no extensions have been available for this June 30th due date. ***For tax years beginning after 2015,*** *Recent Tax Legislation* provides that the ***initial due date*** for ***FinCen Form 114*** will be ***April 15th*** of the following year (i.e., the same initial due date for your Form 1040), and provides for a maximum ***extended due date*** until the following ***October 15th*** (i.e., the same extended due date for your Form 1040). In addition, the IRS will be authorized to waive the penalty for failure to timely request an extension for filing the form for any taxpayer required to file FinCEN Form 114 for the first time.

> **Planning Alert!** These new reporting deadlines do not apply until 2016. Therefore, the due date for filing FinCEN Form 114 ***for the 2015 calendar year will still be June 30, 2016,*** with ***no extensions of time to file!***

New Income Tax Basis And Reporting Rules For Certain Inherited Property. Generally, an individual who inherits property from a decedent, receives an "income tax basis" in the property equal to the property's *fair market value* on the date of the decedent's death. In addition, if the *"fair market value"* of all the property included in a decedent's taxable estate exceeds $5,430,000 (for deaths in 2015), the estate must file an *"estate tax return,"* and may be required to pay an estate tax based on the fair market value of the property included in the estate. ***Effective for property with respect to which an estate tax return is filed after July 31, 2015,*** *Recent Tax Legislation* generally provides that the *"income tax basis"* in the hands of the recipient of the inherited property ***may not exceed*** the value of the property as reported in the estate tax return, if the property increases the estate tax liability. Also, executors of larger estates (i.e., large enough to require the filing of Federal estate tax return) ***that are filed after July 31, 2015,*** will be required to file certain information reports with the IRS and furnish them to the beneficiary containing information identifying the value of the property received by the beneficiary as reported on the estate tax return.

> **Planning Alert!** Although this information report is generally required to be filed within 30 days following the filing of the estate tax return, the IRS has announced that it has ***delayed the initial filing of this report until February 29, 2016.*** The IRS has also stated that it plans to release a "draft" copy of the new reporting Form in mid-January, 2016. ***Please call our firm*** if you need additional details.

Veterans With VA Medical Coverage For Service-Connected Disabilities Will Be Allowed To Contribute To Health Savings Accounts (HSAs). Individuals may generally make deductible ("pre tax") contributions to a health savings account (HSA) if they are covered under a

qualified ***"high deductible health plan"*** (HDHP) (except for certain "permitted" insurance). However, individuals are generally not eligible to contribute to an HSA if they are also covered under any other type health care coverage that is not an HDHP. In certain situations, this restriction has caused some veterans who were covered by an HDHP to be ineligible for an HSA if they were also receiving VA medical coverage for service-connected disabilities. ***Effective for months beginning after 2015,*** *Recent Tax Legislation* provides that an otherwise qualifying individual covered by an HDHP ***will not be disqualified*** from contributing to an HSA solely because the individual ***receives hospital care or medical services*** under any law ***administered by the VA*** for a ***service-connected disability.***

> **Tax Tip.** Starting ***in 2016,*** veterans receiving VA health care services ***for a service-related injury*** will have the opportunity to have a tax-favored HSA provided the veteran is otherwise covered by a qualified HDHP.

Lenders Will Be Required To Provide Additional Information On Form 1098 That Reports Interest Paid. Under current law, if you make payments on a mortgage, the mortgage service provider is generally required to report to you and the IRS certain information on Form 1098 regarding the interest you paid to the lender. Most individuals use this information to determine how much interest they may deduct with regard to their current year home mortgage payments. The IRS has previously expressed concern that the information currently reported on the Form 1098 was not sufficient for the IRS to determine whether the interest reported qualified for the home mortgage interest deduction. In response to that concern, *Recent Tax Legislation* provides that, for forms ***required to be furnished to borrowers after 2016,*** the following additional information must be included in ***Form 1098*****: 1)** The ***amount of the outstanding mortgage principal*** as of the beginning of the calendar year, **2)** The ***mortgage origination date*****,** and **3)** The ***address of the property*** (or description of property without an address) which secures the mortgage.

RECENT CASES, RULINGS, AND REGULATIONS

Supreme Court Upholds Premium Tax Credits For Insurance Purchased On Both The State And Federal Insurance Exchanges. ***Beginning in 2014,*** eligible lower-and-middle income individuals who purchase insurance on the new government-sponsored health insurance exchanges may be entitled to a refundable "premium tax credit" (PTC) to help subsidize the cost of the health insurance. Some of these health insurance exchanges are sponsored and run by the State in which an individual resides, while other exchanges are Federally-facilitated exchanges (i.e., run by the Federal government). Due to certain technical language in the *Affordable Care Act*, some had argued that the PTC was allowed for health insurance purchased on the State-sponsored exchanges, but was not allowed for insurance purchased on the Federally-facilitated exchanges. This summer, the U.S. Supreme Court ruled that the PTC was allowed for qualifying individuals whether they purchased their health insurance on a "State-sponsored" exchange or a "Federally-facilitated" exchange. Therefore, individuals who otherwise qualify will be entitled to the PTC if they purchase their health insurance on the new government exchanges – whether State or Federal.

IRS Provides Relief For Individuals Who Purchased Health Insurance On The New Health Insurance Exchanges During 2014. As discussed in the preceding segment, starting in 2014, eligible individuals who purchased health insurance on the new government-sponsored (State or Federal) health insurance exchanges (Exchanges) may have been entitled to a refundable premium tax credit (PTC). This generally means that, to the extent the credit exceeds the taxes on your individual income tax return without the PTC, the IRS will actually send you a check for the excess. Individuals qualifying for the credit had the option to have the PTC paid in advance to their insurance company to lower what they would otherwise pay for their monthly premiums. Those who chose this *"advance payment"* option were also required to reconcile (on Form 8962) the amount paid in advance (as reported in new Form 1095-A) with the actual PTC computed when they filed their 2014 income tax return. If the amount of *the "advance payment"* PTC made to a health care provider was more than the actual PTC as computed on the 2014 income tax return, the individual was generally required to pay the excess back as an *"additional income tax"* with his or her 2014 income tax return. Individuals who ended up owing this *additional income tax* could face certain penalties for late payment of taxes or underpayment of estimated taxes.

- **IRS Provides Relief For Qualifying Taxpayers.** Recognizing that 2014 was the first tax year individuals were required to comply with these rules, the IRS announced that it will provide relief from certain potential penalties and the *additional income tax* itself – in certain situations. For example, the IRS says that it will: **1)** Waive any penalties for individuals who timely filed their 2014 return and who received a delayed or incorrect Form 1095-A from the Exchange, **2)** Waive underpayment of tax penalties caused by a qualifying taxpayer's requirement to pay back all or a portion of the PTC *advance payment*, and **3)** Not require a taxpayer to amend a previously-filed return if it is later learned that the information on the Form 1095-A (provided by the Exchange) was incorrect, even if the corrected Form 1095-A would have required the taxpayer to pay additional taxes. Please contact our firm if you believe you may benefit from any of these relief provisions, and you need additional details.

Supreme Court's Decision On Same-Sex Marriage May Impact The "State" Income Taxation Rules For Same-Sex Couples Residing In Certain States. Two years ago, the U.S. Supreme Court essentially held that the Federal government had to recognize same-sex marriages performed in jurisdictions that allow them. In response to this Supreme Court decision, in the Summer of 2013, the IRS adopted a general rule recognizing for Federal tax purposes any marriage entered into in a state whose laws permitted same-sex marriages, even if the couple resided in a state that did not recognize them as a legally married couple. Therefore, since 2013, legally married same-sex couples have been largely treated the same as legally married opposite sex couples for Federal income tax purposes. However, after the 2013 Supreme Court ruling, approximately 14 states did not permit same-sex married couples to file as married individuals for "state" income tax purposes.

On June 26, 2015, the Supreme Court in *Obergefell v. Hodges*, generally held that a state must license a marriage between two people of the same-sex, as well as recognize a marriage between

two people of the same-sex when their marriage was lawfully licensed and performed out-of-state.

- **Planning Alert!** This latest Supreme Court decision should not affect a couple's income tax filing status for Federal income tax purposes, since individuals who were married in a state recognizing same-sex marriage have been treated as "married" for Federal income tax purposes since the 2013 Supreme Court decision. However, the Obergefell decision now seems to require that all legally married same-sex couples file "state" income tax returns as married individuals. Several states that did not previously recognize same-sex marriages have announced that subsequent returns filed by legally married same-sex couples should be filed as married individuals. These states should also allow legally married same-sex couples the option of filing amended returns for prior years for which the statute of limitations is open to file as married individuals.

- **Tax Tip!** Same-sex couples residing in states that previously did not allow same-sex couples to file as married individuals, should consider filing amended state income tax returns for prior years for which the statute of limitations is open, if they would benefit by filing as "married" for state income tax purposes.

Appeals Court Disqualifies Self-Directed IRA Where IRA Owner Was Paid Compensation By IRA-Owned Business. Individuals who like more control over their retirement fund investments sometimes choose to maintain their IRAs as "self-directed" IRAs. A self-directed IRA generally allows owners to *"self direct"* the investment options to best fit their specific investment objectives. However, owners of any IRA (especially a self-directed IRA) must be careful not to involve the IRA in an investment that is classified as a *"prohibited transaction."* Generally, ***if an IRA engages in a prohibited transaction,*** the IRA loses its tax-deferred status and the ***entire value of the IRA is taxed*** to the holder as a distribution. In addition, the distribution may trigger a 10% early distribution penalty (e.g., where the owner is under 59½). A *"prohibited transaction"* includes the direct or indirect transfer of the IRA income or assets to the IRA owner for his or her own benefit.

- **Eighth Circuit Court Of Appeals Concludes That Compensation Paid By IRA-Owned Business To IRA Owner Was A Prohibited Transaction.** This recent Eighth Circuit Court of Appeals case held that an individual's receipt of ***$9,754 of wages*** from a business owned by his self-directed IRA constituted a *"prohibited transaction."* This "prohibited transaction" caused the IRA to lose its tax-exempt status, and resulted in the Taxpayer having to pay aggregate ***penalties and taxes of $163,123 on the IRA account balance of $321,366.***

  Planning Alert! This case illustrates that it is critically important for owners of self-directed IRAs to seek advice from reputable tax advisors before engaging in any transaction with the IRA to avoid violating the "prohibited transaction" rules. This is particularly important if the IRA owner has any personal financial connection with the investments owned by the IRA.

IRS And The Courts Continue Their Rigid Enforcement Of The Documentation Requirements For Charitable Contributions. Over the past several years, there has been a substantial increase in the number of Court cases dealing with the IRS's denial of charitable contribution deductions – and 2015 is no exception. The IRS continues to litigate various issues relating to the charitable contribution deduction, including: **1)** ***Conservation/facade easements*** (e.g., IRS contesting valuation, documentation, and compliance requirements), **2)** Requisite ***donative intent*** (e.g., did the taxpayer receive a benefit from the charity which could nullify the charitable contribution deduction), and/or **3)** Failure to satisfy the strict documentation requirements (e.g., IRS can disallow your charitable contribution deduction ***if it is $250 or more*** and you fail to receive a ***qualifying written receipt*** from the charity).

> **Caution!** Whether you are contributing property or cash, the easiest and most effective way for the IRS to disallow your charitable contribution deduction is to find that you failed to comply with one of the rigid documentation rules for the contribution. ***For example,*** last April, the Tax Court denied a charitable deduction of over $37,000 for aggregate donations of household items allegedly made in separate batches of less than $250. The taxpayer unsuccessfully argued that the donations did not require a ***qualifying written receipt*** because they were made in batches below the $250 threshold. The Court found it implausible that, without direct supporting evidence, that the taxpayer had limited each batch of his contributions to a value below $250.

- **Planning Alert!** The ***qualifying written receipt*** required for contributions of ***$250 or more*** must contain the following information**:** **1)** The amount of cash and a description (but not value) of any property other than cash you contributed to the charity, **2)** A statement as to whether the charity provided you with any goods or services in return for your contribution, and **3)** A description and good faith estimate of the value of any goods or services, if any, the charity provided to you (or, if applicable, a statement that the goods and services consisted solely of intangible religious benefits). In addition, for all noncash contributions, the receipt must contain the date of the charitable contribution and a description of the property contributed.

  > **Caution!** You must receive this qualifying written receipt for contributions of $250 or more by the date you file your return or, by the due date of your return (including extensions) if earlier.

  In addition, **contributions of less than $250** must be documented by a bank record (e.g., a cancelled check or credit card statement) or a receipt from the charity showing the name of the charity, the date of the contribution and the amount of the contribution.

Court Of Appeals Decision Creates Potential Tax Trap For Homeowners Who Sell Their "Principal Residence" Using Owner Financing. In a recent Eighth Circuit Appeals Court case, the Court essentially concluded that an individual who sells his or her principal residence in a transaction that qualifies for the home-sale exclusion, ***may retroactively lose*** that exclusion, if: **1)** The owner sells the home using an ***owner-financing arrangement*** retaining a mortgage on the

home, **2)** The buyer defaults, **3)** ***The original owner re-acquires*** the home, ***AND*** **4)** The original owner ***does not re-sell the home within one year*** of re-acquiring the home. If the exclusion is lost because of the owner's repossession of the residence, the homeowner could qualify for the home-sale exclusion on a subsequent sale where the home is used as the individual's principal residence for at least two years out of the five years preceding the year of sale.

> **Planning Alert!** In light of this case, individuals should try to avoid selling their principal residence using seller-financing where: **1)** The seller has a significant gain excluded from income under home-sale gain exclusion rule (up to $500,000 of the gain may be excludable on a joint return, up to $250,000 if single), and **2)** The seller believes there is more than a minimal possibility that the buyer might default in the future.

IRS Taking More Taxpayers To Court Contesting Their "Qualified Real Estate Professional" Status. Generally, any losses from renting real estate, where the average period rented is more than seven days, are deemed for tax purposes to be "passive activity losses" (PALs). PALs are generally suspended, and are not allowed unless and until you have qualifying "passive" income to offset the losses. In addition, net rental income is generally deemed to be "passive income" which is potentially subject to the 3.8% Net Investment Income Tax (3.8% NIIT) for high income individuals. However, if you are a *"qualified real estate professional"* (*QREP*) and ***meet certain "material participation" tests,*** you will generally be able to fully deduct your net losses from your rental real estate activities, and any net income generated by your rental real estate activities will generally be exempt from the 3.8% NIIT.

Generally to be a *QREP*: **1)** You must perform more than 750 hours of services during the year in real estate businesses in which you materially participate, **AND 2)** More than 50% of your personal services performed in businesses during the year must be performed in real property businesses in which you materially participate.

> **Tax Tip.** As a *QREP*, you are allowed to make a "tax" election to treat all of your rental real estate activities as a "single" rental real estate activity. If you have multiple rental properties, this election is often necessary to meet the required "material participation" tests.

- **Planning Alert!** Because of the potential of a double tax benefit afforded to QREPs (i.e., net rental losses are deductible and net rental income is exempt from the 3.8% NIIT), taxpayers classifying themselves as QREPs have recently attracted much more scrutiny by the IRS and the Courts. Over the last few years, we have seen a significant uptick in the number of individuals the IRS has taken to Court contesting their "QREP" classification. For example, the IRS recently ruled that the activities of a real estate broker or agent generally would qualify for QREP classification, but the activities of a real estate mortgage broker would not. In addition, in Court cases dealing with the QREP issue, the IRS has generally prevailed where the taxpayer could not provide adequate documentation that he or she spent more than 750 hours and over 50% of their working hours, working in qualifying real estate activities. Although the Courts generally did not strictly require taxpayers to maintain daily logs of time

spent on real estate activities, the Courts generally do not allow "after-the-fact ballpark estimates." For instance, in a recent Tax Court case, the Court found that a full-time teacher's after-the-fact logs showing that during the year he spent 2,450 hours on his rental properties and only 618 hours on his teacher duties, were not credible.

- **Tax Tip.** To minimize exposure to IRS attacks, individuals who must qualify as a QREP in order to deduct their net rental real estate losses or exempt their net rental real estate income from the 3.8% NIIT, should contemporaneously document their hours spent on real estate activities (e.g., by recording their hours in a daily or weekly calendar).

Appeals Court Overturns Earlier Tax Court Decision And Holds That Unmarried Co-Owners Of Residences Are Not Required To Split The Maximum Home Mortgage Interest Deduction Caps. A taxpayer (filing a single return or a joint return) may generally deduct interest on a mortgage incurred to purchase or improve his or her qualifying residence to the extent the mortgage balance does not exceed $1 million. In addition, an individual may deduct interest for a qualifying home equity loan amount of up to $100,000. In 2012, the Tax Court held that two unmarried individuals who co-owned their principal residence and a second home, were required to split the $1 million cap on the purchase of the residences, and also split the $100,000 home equity loan amount on the residences. In that case, the individuals were jointly liable for mortgages on the two homes totaling $2.7 million. The Tax Court concluded that the $1 million and $100,000 mortgage caps must be prorated between the two co-owners of the residences. Thus, each co-owner was allowed to deduct interest on his proportionate share of the $1.1 million loan limit.

> **Planning Alert!** In 2015, the Ninth Circuit Appeals Court overturned this Tax Court decision and ruled that each of the co-owners was entitled to a $1.1 million loan limitation amount. In essence, the Ninth Circuit ruled that the $1 million and $100,000 loan limitations applied on a "per taxpayer" basis rather than a per residence basis.

IRS Continues To Contest Alimony Deductions. In order for a divorced spouse to be able to deduct "alimony," the payments must satisfy all of the technical requirements for tax-deductible alimony as outlined in the Internal Revenue Code. For example, among other things, the Code requires that: The payments must be paid in ***cash or cash equivalent*****;** The payments must terminate no later than the ***death of the payee spouse*****;** and The payments must be paid pursuant to a Court order or ***written separation agreement*****.** The IRS has consistently taken the position that deductible "alimony" payments must ***"strictly comply"*** with each of these statutory requirements, and the Courts have largely agreed.

For example, in recent cases dealing with whether an individual made deductible "alimony" payments to the former spouse, the Courts held that: **1)** A Court-approved "lump-sum alimony" payment that replaced an earlier Court-approved monthly "nonmodifiable bridge-the-gap alimony" was not deductible as alimony because there was no requirement that the "lump-sum alimony" terminate at the death of the former spouse; **2)** Payments under an unsigned "draft" marital agreement did not qualify as deductible alimony because the unsigned "draft" did not

constitute a "written separation agreement;" **3)** A transfer of "real estate" to satisfy a divorced individual's otherwise qualifying alimony obligation did not qualify for an alimony deduction because it was not paid in cash or cash equivalent; **4)** An individual's qualifying alimony obligation that he defaulted on and that was later converted to a judgment claim against him, was no longer deductible alimony when he paid the judgment because his obligation to pay the judgment did not terminate on the death of his former spouse; and **5)** A taxpayer's satisfaction of his qualifying alimony obligation with the transfer of his IRA to his former spouse did not qualify as deductible alimony.

> **Planning Alert!** If you are involved in divorce proceedings, anticipate making payments to your spouse, and are counting on a deduction for these payments, these cases illustrate that the agreement needs to be properly worded so that the payments meet each and every technical requirement for tax-deductible alimony. In addition, if the payments under the agreement meet the requirements for deductible alimony, it is also important that, going forward, you don't deviate from the specific payment requirements of the agreement.

DEVELOPMENTS IMPACTING PRIMARILY BUSINESSES

RECENT LEGISLATION

Background. As previously mentioned, over the last twelve months, Congress has passed several bills containing a variety of tax provisions (***"New Tax Legislation"***) that impact businesses of all sizes. This segment provides an overview of these provisions which may have an impact on you or your business activities.

> **Caution!** Some of these changes ***are first effective for 2015 tax years,*** while others ***are not effective until 2016. The"effective date"*** of each new tax provision discussed below is prominently highlighted:

Revised Due Dates For Various Tax Returns For Tax Years Beginning After 2015. For ***tax years beginning after 2015,*** *Recent Tax Legislation* revises the initial due dates and/or the extended due dates for a series of tax returns including: ***Form 1065*** (partnership return); ***Form 1120*** ("C" corporation tax return); and ***Form 1041*** (trust and estate income tax returns). The following are just a few examples of the new due dates and extended due dates provided by the new legislation.

For tax years beginning after 2015, the ***"Initial"*** due date for a ***Partnership Return*** (Form 1065) will be the 15th day of the ***"third"*** month following year-end (i.e., March 15 of the following year for a calendar-year partnership). Partnership returns are currently due the 15th day of the ***"fourth"*** month (i.e., April 15 of the following year). However, the ***"Extended"*** due date for partnership returns will not change (i.e., it is the 15th day of the ninth month of the following year under both current law and the new law).

For calendar-year *"C" Corporation Returns* (Form 1120), under the new law the ***"Initial"*** due

date for the corporate return will be April 15 of the following year instead of the current due date which is March 15 of the following year. However, the **"Extended"** due date for calendar-year "C" corporation returns will be September 15 of the following year which is the same as the current extended due date for calendar-year "C" corporation returns.

For an "*income tax return*" for an ***Estate or Trust*** (Form 1041), under the new law the ***"Initial"*** due date ***will not change*** (i.e., the 15th day of the fourth month of the following year). However, under the new law, the ***"Extended"*** due date of Form 1041 will be the ***"last"*** day of the ninth month following year-end, instead of the current ***"15th"*** day of the ninth month following year-end.

Observation. The *New Tax Legislation* does not change the initial due date or the extended due date for the "S" corporation tax return (Form 1120S).

- **Planning Alert!** Since these new due date provisions are effective for ***tax years beginning after 2015***, the initial and extended due dates for the ***current 2015 tax year*** for all of the returns described above will remain the same as in the past. The new deadlines ***will first apply*** to returns ***for the 2016 tax year*** – which are filed ***in 2017.***

- **Caution!** In addition to the Forms listed above, the New Legislation **changes the due dates and extended due dates for several other forms** for tax years **beginning after 2015.**

Failure To File Certain Information Returns Timely Has Become More Costly. The *Recent Tax Legislation* significantly increased the monetary penalties for failing to file certain information returns (e.g., the Form 1099 series, Form 1095-B, Form 1095-C), effective for returns ***required to be filed after 2015.*** For example, the penalty for failing to file a Form 1099 with the payee is increased from $100 to $250 for each Form 1099 and, in addition, the failure to file a Form 1099 with the IRS is also increased from $100 to $250. Therefore, under the new law, failure to file a 2015 Form 1099 required to be filed in 2016 with both the payee and the IRS would generally trigger a total penalty of $500 ($250 for failing to file with the payee, plus $250 for failing to file with the IRS).

- **Planning Alert!** These increased penalties are ***effective*** for information returns ***required to be filed after 2015.*** So, the increased penalties will apply to Forms 1099 reflecting payments made during 2015, that are generally required to be furnished to the payee by February 1, 2016, and to the IRS by February 29, 2016 if filed by paper (by March 31, 2016 if filed electronically).

- **Tax Tip.** If your business is required to file Forms 1099 for the 2015 tax year, it is more important than ever that you begin gathering the information that is necessary to complete the forms as soon as possible. The February 1, 2016 deadline for furnishing a Form 1099 to the payee is rapidly approaching.

<u>RECENT CASES, RULINGS, AND REGULATIONS</u>

<u>IRS Releases Insurance Coverage Reporting Forms That "Applicable Large Employers" Must Furnish To Full-Time Employees And File With The IRS.</u> The Affordable Care Account (ACA) generally requires ***"Applicable Large Employers"*** (***ALEs***) to furnish new insurance coverage reporting forms (new ***Form 1095-C***) to full-time employees, and to file copies of **Forms 1095-C** and **1094-C** with the IRS. As discussed in more detail below, an *ALE* is generally an employer with an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding year. These new filing requirements were "optional" for calendar-year 2014, but ***are required for calendar year 2015.*** **A Form 1095-C** is completed for each full-time employee and reports to the IRS and to the employee the months in 2015 for which the full-time employee, dependents, etc., were offered medical coverage by the ALE. The form also includes the employee's share of the lowest cost monthly premium for self-only coverage and indicates if the employer qualifies for any ACA safe harbors. The information reported on Form 1095-C is used in determining if the employee qualifies for the "premium tax credit" for insurance purchased on the government-sponsored health insurance exchanges, and whether the *ALE* may owe the new *"employer shared responsibility excise tax"* for failing to offer qualified health care coverage to its full-time employees.

Form 1094-C is required to be filed with the IRS by an ALE and serves a dual purpose. The form serves as a transmittal for the Forms 1095-C filed by the ALE. In addition, Form 1094-C is used to help the IRS determine if the employer may be subject to the shared responsibility excise tax. Part II of the form is used to indicate if the ALE is subject to any of the 2015 transition rules exempting the employer from the shared responsibility excise tax. In addition, an ALE must indicate in Part III of Form 1094-C whether the ALE offered minimum essential medical coverage to its full-time employees for each month of the year. Part III also provides a listing of the total full-time employees and the total employees for each month of the year. If the ALE is a member of a controlled group of employers, the other members of the group are listed in Part IV of Form 1094-C.

The frequently-asked questions and answers listed below address the basics of this new reporting requirement (Please call our firm if you need additional details):

- **<u>Which Employers Are Subject To The Reporting Requirements?</u>**

  Answer – Only ***"Applicable Large Employers"*** (ALEs) are required to file the new Form 1095-C. An *ALE* is an employer that employed on average ***50 or more employees*** (determined by adding together the number of "full-time employees" and the "full-time equivalent employees") during ***each month*** of the ***"Testing Period"*** (i.e., the entire preceding calendar year). Thus, the ***"Testing Period"*** for ***"2015"*** would normally be the ***<u>entire</u> "2014" calendar year.*** However, for ***2015,*** employers may determine whether they had 50 or more full-time employees (including full-time equivalent employees) in the previous year by reference to a period of ***at least 6 consecutive months during 2014.***

Planning Alert! For the ***2015 tax year only***, the IRS has generally waived the *"employer shared responsibility excise tax"* for an ALE that fails to offer qualified health care coverage to its full-time employees, unless the ALE employed ***100 or more*** employees (instead of 50 or more), determined by adding "full-time employees" and the "full-time equivalent employees" during each month of the "Testing Period." Unfortunately, ***for 2015*** (and after), ALEs meeting the ***50-employee*** threshold (not the 100-employee threshold) are required to file the new Forms 1094-C and 1095-C. For example, if your business is determined to have employed 75 employees (including full-time equivalent employees) during 2014 (i.e., the Testing Period for 2015), it may be exempt from the *"employer shared responsibility excise tax"* for 2015, but it would still be required to file Forms 1094-C and 1095-C for 2015.

- **Planning Alert!** *Recent Tax Legislation* provides that, ***effective for months beginning after 2013***, an employee ***will not be counted*** when determining whether an employer is an ***"applicable large employer"*** for any month that the employee has medical coverage under ***TRICARE or VA health care.*** Therefore, when evaluating whether your business is an "applicable large employer" for 2015, be sure to exclude from your 2014 monthly employee count all employees that were covered by *TRICARE* or *VA health care during that month.* ***Please note*** that this rule applies after 2015 as well.

- **Must An ALE Furnish Form 1095-C To Every Employee?**

Answer – ALEs must furnish Form 1095-C to ***each employee*** who was a ***"full-time employee"*** for ***any month*** of ***2015.*** Generally, a ***full-time employee*** is an employee who, for a calendar month, worked an average of at least 30 hours per week, or worked 130 hours during the calendar month.

Caution! An ALE must complete information ***for all twelve months*** of the calendar year for any of its employees who were full-time employees for at least one calendar month.

- **When Are Forms 1094-C And 1095-C Due?**

Answer - ALEs are required to furnish a ***2015 Form 1095-C*** to ***each full-time employee*** by ***February 1, 2016,*** and submit ***Forms 1094-C and 1095-C to the IRS*** by ***February 29, 2016*** (if filing by paper), or by ***March 31, 2016*** (if filing electronically). If an ALE fails to furnish Form 1095-C to its full-time employees and also fails to file with the IRS, it faces a penalty of up to $500 for each Form 1095-C it failed to file.

Planning Alert! The IRS says that it will not assess penalties for ***incorrect or incomplete information reported in 2016*** (for the ***2015 calendar year***) so long as the ALE makes ***a good faith effort to comply.*** However, this relief ***does not apply*** if the form is ***not filed timely.***

- **<u>If A Business Is Not An ALE – Does That Mean It Will Have No New Health Care Information Reporting Obligations Under ACA For 2015?</u>**

  Answer – Not necessarily. Starting with the 2015 tax year, smaller employers that are not ALEs may have to file a new information ***Form 1095-B*** if they provide certain ***"self-insured"*** health care arrangements to their employees. The immediately following segment discusses this potential filing requirement.

<u>A Small Employer That Provides Certain "Self-Insured" Health Care Arrangements May Have To File New Form 1095-B.</u> Generally, ***beginning with the 2015 calendar year*****,** providers of health care coverage that qualifies as "Minimum Essential Coverage" under the Affordable Care Act (ACA) must file new information ***Form 1095*****-B** with the covered individual and the IRS disclosing certain information about the coverage. The primary purpose of ***Form 1095-B*** is to provide information to the IRS about individuals who have health care coverage that constitutes ***"Minimum Essential Coverage"*** (MEC) – and who are, therefore, not subject to the "*Shared Responsibility Tax"* (SR Tax) imposed on individuals who fail to obtain qualified health care coverage. This Form 1095-B should be filed by health insurance carriers or sponsors for insured plans, and by government agencies that provide health care coverage under a government-sponsored program. However, in certain situations, Form 1095-B may also be required to be filed by a private employer (even if not an ALE) if the employer provides employer-sponsored *"self-insured group health plan coverage."* Although the IRS has yet to provide a precise definition of a ***"self-insured group health plan coverage,"*** it is clear from the instructions to Form 1095-B that this term includes an employer-sponsored ***"health reimbursement arrangement"*** (HRA). The IRS defines an ***HRA*** as an arrangement funded solely by an employer that reimburses an employee for qualified medical care expenses up to a maximum dollar amount. The IRS has recently announced that sponsoring employers (regardless of the number of workers it employs) must file a Form 1095-B for each employee covered by an HRA, unless the employer satisfies a specific exception. For example, the IRS says that an employer would not have to file a Form 1095-B for an HRA that is provided only to employees who are covered by an insured health plan sponsored by the same employer.

> **<u>Caution!</u>** As discussed in more detail in the next segment, an HRA covering two or more employees is generally deemed to violate the requirements of ACA unless the employer also sponsors an ACA compliant health plan along with the HRA and could expose the sponsoring employer to a penalty of $100 per day for each covered employee.

- **<u>Tax Tip.</u>** If an HRA is sponsored by an ***"Applicable Large Employer"*** (ALE) and requires reporting, the ALE would report information for the HRA by filling out ***Part III*** of Form ***1095-C*** (and would generally not file Form 1095-B).

- **<u>Planning Alert!</u>** *Employers* that sponsor ***"self-insured group health plan coverage,"*** and that don't meet an exception, are required to furnish a ***2015 Form 1095-B*** to ***each employee "covered by" the plan*** by ***February 1, 2016,*** and submit **Form 1095-B** along with transmittal ***Form 1094-B to the IRS*** by ***February 29, 2016*** (if filing by paper), or by ***March 31, 2016*** (if

filing electronically). If the employer fails to furnish this form to its ***"covered"*** employees and also fails to file with the IRS, it faces a ***penalty of up to $500*** for each Form 1095-B it failed to file.

> **Caution!** These rules are extremely technical and can be quite confusing – so please call our firm if you have additional questions concerning these new reporting rules.

Potential Penalties For Employers Sponsoring "Health Reimbursement Arrangements" Or "Employer Payment Plans." Any employer, regardless of size, that sponsors a ***"Health Reimbursement Arrangement"*** (*HRA*) or an ***"Employer Payment Plan"*** (*EPP*) could face a $100 a day penalty for each covered employee. As noted in the previous segment, the IRS defines an ***"HRA"*** as an arrangement (funded solely by an employer) that reimburses an employee for qualified medical care expenses incurred by the employee up to a maximum dollar amount for a coverage period. The IRS defines an ***"Employer Payment Plan"* (*EPP*)** as an arrangement where the employer reimburses an employee's substantiated premiums for the employee's individual medical insurance coverage (i.e., non-employer sponsored medical insurance coverage) or the employer pays the premiums directly to the insurance company. The IRS has provided several *"safe harbors"* for certain HRAs and for EPPs that could protect employers from this harsh $100 a day penalty in certain situations. For example, the IRS says an HRA that only covers employees who are also covered by an ACA compliant employer-sponsored health plan, will generally be exempt from the $100 a day penalty. The IRS also says that an ***Employer Payment Plan*** will be exempt from the $100 a day penalty, where an "S" corporation reimburses or pays the premiums for individual health insurance coverage for a shareholder/employee who owns more-than-2% of the S corporation – ***at least through December 31, 2015.*** In order for the S corporation more-than-2% shareholder to qualify for this exemption, the premiums reimbursed or paid by the S corporation must be properly included in the S corporation shareholder's W-2. In addition, if this is handled properly, the shareholder is allowed an above-the-line deduction for the insurance premiums included in his or her W-2.

- **Planning Alert!** Although the two safe harbors discussed above have the broadest application, ***please note*** that the IRS has also provided for ***other narrow safe harbors*** that could exempt an HRA or EPP from the $100 a day penalty. Some of these safe harbors are permanent, while others are temporary. These safe harbor provisions can be complicated and tricky. If you think your business might possibly run afoul of these rules, please contact our firm and we will help you determine whether you meet one of the safe harbors.

IRS Provides "Implementation" Relief For "Qualifying Small Businesses" Applying The Capitalization Regulations. Most businesses, regardless of size, commonly deal with the tax issue of whether an expenditure for acquiring, producing, or maintaining depreciable business property (e.g., machinery, equipment, vehicles, buildings, etc.) is currently deductible or must be capitalized and depreciated. On September 13, 2013, the IRS released the long-awaited "final" capitalization regulations (filling more than 200 pages) addressing expenditures relating to the acquisition, production, or maintenance of tangible business property (e.g., machinery, equipment, vehicles, buildings, etc.).

The IRS says that all taxpayers (large and small alike) are required to apply these new regulations ***beginning with the 2014 tax year***. Although the final regulations are not effective until the first tax year ***beginning after 2013,*** in many situations implementing these regulations would require filing an automatic accounting method change request (i.e., Form 3115) with the taxpayer's 2014 tax return and, in some cases, require adjustments to the taxpayer's 2014 taxable income based on transactions that occurred before 2014.

In response to concerns voiced by the small business community and various professional groups, last February, the IRS provided "optional" relief for qualifying small businesses to implement these regulations. More specifically, the IRS has provided special rules allowing a trade or business with under $10 million of assets ***or*** $10 million or less of gross receipts for the past three years, to more easily adopt these final tangible property regulations. If a taxpayer qualifies and chooses to utilize these simplified rules, the taxpayer applies the new capitalization regulations to ***amounts paid or incurred in tax years beginning after 2013*** *rather than applying the capitalization regulations retroactively.*

- **Planning Alert!** Qualifying small businesses are not required to adopt these simplified rules for implementing the capitalization regulations. However, those that qualify and choose to utilize the simplified rules by properly following the capitalization regulations for amounts paid or incurred in tax years beginning after 2013, are not required to file an accounting method change request with the IRS. In addition, they are generally not required to make adjustments to their taxable income for transactions that occurred before 2014 when adopting the capitalization regulations. ***Please call our firm*** if you need additional details.

Tax Court Concludes That $1 Million Bonus Paid To 100%-Owner Physician Of Ophthalmology Surgery And Eye-Care Center Was Not Reasonable. If you own a "C" corporation that is a "personal service corporation," all income retained in that corporation is taxed at a flat rate of 35%. Generally, a corporation is a *personal service corporation* (PSC) if it meets the following "function" and "ownership" tests: **1) Function Test -** substantially all (95% or more) of its activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting; and **2) Ownership Test -** substantially all (95% or more) of the stock (by value) is held by employees performing such services.

> **Tax Tip.** Generally, it is preferable from a tax standpoint to leave as little taxable income in a PSC as possible. This may be accomplished by paying ***"reasonable"*** compensation to the stockholders/employees ***before the end of the PSC's tax year.***

In a recent Tax Court case that appeared to involve a PSC, the Court concluded that one-half of a $2 million bonus paid by a "C" corporation to its wholly-owned shareholder (a physician) was nondeductible as unreasonable compensation, primarily because the taxpayer offered the Court no meaningful support as to why the bonus was reasonable.

Planning Alert! This case illustrates how important it is for closely-held corporations (even 100%-owned personal service corporations) to properly document the economic reasons for the amount of compensation paid to controlling shareholders. Although what constitutes "reasonable compensation" is determined on a case-by-case analysis, the factors the IRS and the Courts typically consider include: **1)** Whether the compensation and/or bonus are based on a consistently applied formula; **2)** Whether the taxpayer can establish that an independent investor in the corporation would have paid that level of compensation to that employee, and **3)** Documentation of the range, sophistication, and importance of the services the employee is providing to the corporation, and the extent to which those services contribute to value of the corporation's business activities.

- **Caution!** Even if the compensation and/or bonus paid by a PSC to its owner/employee is considered "reasonable," it must be "paid" by the end of the PSC's tax year for the PSC to deduct the payment for that year. In a recent Tax Court case, the Court disallowed the PSC a deduction for a bonus check of $815,000 paid to its 100% shareholder (an architect) on December 30th, because the PSC did not have sufficient funds in the bank to cover the check when it was written.

  Note. It would appear that the PSC could have solved this problem by first borrowing the necessary funds, and then depositing sufficient funds in the corporate checking account to cover the bonus check – before writing the check.

Pro-Taxpayer Case Says That A Building (And Its Improvements) Were "Placed-In-Service" For Depreciation Purposes Earlier Than The IRS Allowed. Generally, if you are purchasing "depreciable property" (equipment, computers, vehicles, buildings, etc.), the property must be *"placed-in-service"* before you can start depreciating it, or before you are allowed an immediate deduction under §179 for qualifying §179 property (e.g., generally new or used business equipment, vehicles, other tangible-personal property, and possibly "qualified real property"). It is generally assumed that depreciable "personal" property (e.g., equipment, vehicles) is placed-in-service when the property is ***ready and available*** for use for its intended purpose. In the case of a building which is intended to house machinery, equipment, or inventory and which is being constructed or renovated, the building is generally considered placed-in-service on the date the construction or renovation is ***substantially complete*** and the building is in a condition or ***state of readiness and availability.***

In a recent District Court case, the Court held that a "retail" building was "placed-in-service" when the taxpayer was issued a *certificate of occupancy* allowing the building to ***receive equipment, shelving, racks and merchandise – not when*** it was later ***"open for business"*** as the IRS argued.

- **Planning Alert!** For the past several years, Congress has allowed an increased portion of the cost of qualifying commercial buildings and/or building improvements to be deducted in the year the property is placed-in-service. For example, a 50% §168(k) additional first-year depreciation for "qualified leasehold improvements" has been allowed, as well as a $250,000 immediate deduction under §179 for "qualified real property" (i.e., qualified leasehold

improvements, qualified restaurant property, and qualified retail property). Therefore, if your business is incurring any of these "building" costs that could qualify for these rapid write-offs, this case indicates that you could take the deductions in the tax year that the building has been issued a *certificate of occupancy* allowing the building to ***receive equipment, shelving, racks and merchandise,*** as opposed to the tax year the building is "open for business."

- **Caution!** Both the 50% §168(k) additional first-year depreciation and the $250,000 immediate deduction under §179 for "qualified real property" ***expired after 2014.*** Although Congress is currently considering "extenders" legislation that would extend both of these provisions at least through 2015, as we complete this letter, Congress has not yet extended these tax breaks. Please contact our firm if you need a status report on this legislation.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information.

> **Note!** The information contained in this material represents a general overview of tax developments and should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.

Disclaimer: Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of promoting, marketing, or recommending to another party any transaction or matter addressed herein. The preceding information is intended as a general discussion of the subject addressed and is not intended as a formal tax opinion. The recipient should not rely on any information contained herein without performing his or her own research verifying the conclusions reached. The conclusions reached should not be relied upon without an independent, professional analysis of the facts and law applicable to the situation.