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Tax Changes Tucked Away In An Unlikely Place

Law360, New York (August 18, 2015, 5:40 PM ET) -- Sometimes, new regulations can be found in the most unlikely places. On July 31, 2015, President Barack Obama signed a highway funding bill known as the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (HR3236), which allows the Senate to keep the Highway Trust running for another three months.

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What didn't get much attention, however, was the bill's inclusion of several tax provisions, changing some major tax filing dates. While we don't have the room to discuss the changes to the highway funding bill, it's worth exploring these very relevant tax provisions. Certain entities, including partnerships and corporations, and persons with foreign bank accounts, should raise their heads to take note.

Here are some things you need to know:

Modified FBAR Filing Date

Certain U.S. persons with foreign financial accounts are required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The FBAR form originated under the Bank Secrecy Act and has historically been due by June 30, with no extension available. In some instances, noncompliance has resulted from the fact that the FBAR deadline does not coincide with any of the deadlines for income tax returns.

Beginning with tax year 2016, FBARs will be due on April 15 rather than June 30. In addition, for the first time, taxpayers will be allowed to obtain a six-month extension for FBARs, making the extended due date Oct. 15. By harmonizing the due dates and extension rules for federal individual tax returns and FBARs, Congress is alleviating one source of confusion for taxpayers and better positioning tax return preparers to handle FBARs in connection with income tax preparation work.

Furthermore, HR 3236 specifically authorizes the Internal Revenue Service to waive an FBAR penalty for first-time filers who fail to file by April 15, but do so by Oct. 15. The IRS historically has had the authority to reduce or waive FBAR penalties and there is already administrative guidance explaining the IRS's view of appropriate circumstances to waive or reduce penalties. Therefore, it is unclear whether this provision was intended to broaden the authority of the IRS.

Tax Return Due Date Changes for Partnerships, S Corporations and C Corporations

As more and more businesses are conducted through partnership and S corporation forms, the delays with providing informational returns (Schedules K-1) to owners have experienced a trickle-down effect. Many tax returns are delayed while awaiting the Schedules K-1. With this in mind, Congress took a stab at modifying tax return due dates. These modifications will impact businesses of all sizes, their owners and their tax return preparers.

Among other new due dates, HR 3236 changes the due dates for partnership, S corporation and C corporation returns, beginning with tax year 2016.

Tax returns for calendar-year partnerships and S corporations will be due on March 15, rather than April 15. In addition, tax returns for fiscal-year partnerships and S corporations will be due on the 15th day of the third month following the close of the fiscal year. Under HR 3236, partnerships, like S corporations, will be able to extend their filing due date by six months.

Although these new deadlines will create a burden on finance and tax departments, and their outside advisers, to accelerate their tax return preparation, the hope is that owners of these pass-through entities will receive their K-1s earlier and, therefore, will not be faced with as many delays in getting their own tax returns filed.

For calendar-year C corporations, the new due date will be April 15. Currently, calendar-year C corporations must file their returns by March 15. Similarly, the due date for fiscal-year C corporations will be extended. Fiscal-year C corporations will have until the 15th day of the fourth month following the close of the C corporation’s fiscal year, to file their returns (an additional month). However, in the case of C corporations with fiscal years ending on June 30, the new due dates will not apply until tax years beginning after Dec. 31, 2025.

Beginning with tax year 2016, and until 2026, calendar-year C corporations will be able to extend their due date by only five months, making the effective due date Sept. 15. During that same period of time, C corporations with fiscal years ending on June 30 will be able to extend their due date by seven months. All other fiscal-year C corporations will be able to take a six-month extension.

Six-Year Statute of Limitations in Case of Overstatement of Basis — Overruling Home Concrete

An overstatement of basis is now included as an omission from gross income in the determination by the IRS as to whether it can invoke a six-year statute of limitations. Generally, Section 6501(a) of the Internal Revenue Code permits the IRS three years from the date the tax return was filed, to assess any tax. However, Section 6501(e)(1) of the code extends the period to six years when there is a substantial omission of income. A substantial omission of income is defined as 25 percent or more of the gross income properly includible on the tax return.

In Home Concrete & Supply LLC, 132 S. Ct. 1836 (2012), the U.S. Supreme Court held that the extended six-year statute of limitations under Section 6501(e)(1) of the Internal Revenue Code does not apply when a taxpayer overstates its basis in property it has sold.

Responding to this Supreme Court decision, HR 3236 revises Section 6501(e)(1) of the code so that an omission from gross income includes an overstatement of basis. The change applies to tax returns filed after July 31, 2015, and to any previously filed tax returns that are still open for assessment (e.g., returns filed within the past three years, among others). This change in the law will place many more taxpayers at risk for assessments past the typical three-year statute of limitations.

Although this isn't the first time Congress has included important tax provisions in legislation as innocuous as a "highway funding bill," paying close attention to congressional actions is always a good idea.

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