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Dear Clients and Colleagues:

The following is a summary of the most important tax developments that have occurred during the first quarter of 2015 that may affect you, your family, your investments, and your livelihood. Please call us for more information about any of these developments and what steps you should implement to take advantage of some of the favorable changes and what you should do to minimize the impact of those that are unfavorable.

2015 luxury auto depreciation dollar limits and lease income add-backs released. Annual depreciation and expensing deductions for so-called luxury autos are limited to specific dollar amounts. These amounts are inflation-adjusted each year. The IRS has announced that for autos (not trucks or vans) first placed in service during 2015, the dollar limit for the first year an auto is in service is \$3,160.00; for the second tax year, \$5,100.00; for the third tax year, \$3,050.00; and for each succeeding year, \$1,875.00. The dollar limits are the same as those that applied for autos first placed in service in 2014. For light trucks or vans (passenger autos built on a truck chassis, including minivan and sport-utility vehicles (SUVs) built on a truck chassis) first placed in service during 2015, the dollar limit for the first year the vehicle is in service is \$3,460.00; for the second tax year, \$5,600.00; for the third tax year, \$3,350.00; and for each succeeding year, \$1,975.00. For a light truck or van placed in service in 2015, the dollar figure for the second tax year is \$100.00 higher than the figure that applied for such vehicles first placed in service in 2014. For all other years, the 2015 limit is the same as the 2014 limit. A taxpayer that leases a business auto may deduct the part of the lease payment representing its business/investment use. If business/investment use is 100 percent, the full lease cost is deductible. So that auto lessees cannot avoid the effect of the luxury auto limits, however, taxpayers must include a certain amount in income during each year of the lease to partially offset the lease deduction. The amount varies with the initial fair market value of the leased auto and the year of the lease and is adjusted for inflation each year. The IRS has released a new inclusion amount table for autos first leased during 2015. The amounts in the new table are higher than the figures in the table that applied to autos first leased in 2014.

Cents-per-mile valuation of personal use. An employee's personal use of an employer-provided auto must be treated as fringe benefit income and valued using one of several methods. One of the acceptable methods allows employers to value personal use at the mileage allowance rate (57.5 cents per mile for 2015). However, the cents-per-mile method may be used only if the auto's fair market value does not exceed \$12,800.00, as adjusted for inflation. The IRS has announced that the inflation-adjusted figures for vehicles first made available to employees for personal use in 2015 are \$16,000.00 for autos (same as for 2014) and \$17,500.00 (up from \$17,300.00 for 2014) for trucks and vans-i.e., passenger autos built on a truck chassis, including minivans and SUVs built on a truck chassis.

IRS eases process for small businesses to adopt tangible property regulations. The IRS created a number of special procedures that will allow small businesses (under \$10 million of assets or \$10 million or less of gross receipts) to more easily adopt final tangible property regulations. These procedures generally involve limiting the changes in accounting needed to adopt the regulations, to amounts paid or incurred, and dispositions, in tax years beginning on or after January 1, 2014. The special procedures also shed light on the regulations' de minimis safe harbor election, a useful and widely applicable break that allows many businesses to dispense with capitalizing and depreciating (or expensing) purchases of many lower-cost assets (e.g., furniture, equipment, computers) needed to run a business. Please call for details about these complex rules which could be highly beneficial for many businesses.

Proposed regulations OK research credit for some software developed for internal use. A tax credit is available to taxpayers that conduct qualified research, but research into computer software that is developed by (or for the benefit of) the taxpayer primarily for its internal use is generally ineligible for the credit. However, under an exception in recently issued proposed regulations, certain internal use software is eligible for the research credit if the software satisfies a "high threshold of innovation" test. Under this test, internal use software would be qualified research if it is innovative, the software development involves significant economic risk, and the software is not commercially available for use by the taxpayer.

Transition relief allows employers to claim retroactively extended work opportunity tax credit. The work opportunity tax credit (WOTC) allows employers who hire members of certain targeted groups (such as qualifying veterans) to obtain a credit against income tax equal to a percentage of first-year wages (and second-year wages as well, for some eligible hires). The credit depends on which targeted group the eligible hire belongs in. An individual is not treated as a member of a targeted group unless: (1) on or before the day he begins work, the employer obtains certification from the state that the individual is a member of the targeted group; or (2) the employer completes a pre-screening

notice (Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit) on or before the day the individual is offered employment and submits the notice to the state to request certification not later than 28 days after the individual begins work. The WOTC was to have expired for eligible employees who began work after 2013, but a tax law change enacted late last year extended the WOTC retroactively for 2014 for members of targeted groups. The IRS realized that employers needed additional time to comply with the technical requirements of this credit. Accordingly, the IRS said that eligible employers that hired a member of a targeted group on or after January 1, 2014 and before January 1, 2015, will be considered to have satisfied the certification requirements if they submit the completed Form 8850 to request certification to the appropriate state agency not later than April 30, 2015.

Relief provisions from ACA's health coverage provisions. The IRS released the following relief measures related to the Affordable Care Act's (ACA's) rules that require individuals to carry adequate health insurance or pay a penalty and give eligible individuals a credit to help them pay for premiums.

(1) *Special open enrollment for taxpayers paying fee for not having health coverage.* Americans who do not qualify for an exemption and went without health coverage in 2014 have to pay a fee when they file their taxes in 2015. Those who were unaware or did not understand the implications of the fee for not enrolling in coverage were provided with an opportunity to buy health insurance coverage from March 15 to April 30 of this year. Taxpayers who do not buy coverage for 2015 during this special enrollment period may have to pay a fee when they file their 2015 income taxes. Those taking advantage of this special enrollment period will still owe a fee for the months they were uninsured and did not receive an exemption in 2014 and 2015. Those eligible for this special enrollment period live in states with a Federally-facilitated Marketplace and: are not enrolled in coverage through the Federally-facilitated Marketplaces (FFM) for 2015; attest that when they filed their 2014 tax return, they paid the fee for not having health coverage in 2014; and attest that they first became aware of, or understood the implications of, the responsibility to pay the fee after the end of open enrollment (February 15, 2015) in connection with preparing their 2014 taxes.

(2) *Relief where late payment, estimated tax penalties arise from advance premium credit payments.* Taxpayers with moderate or low incomes who got health insurance coverage through the Health Insurance Marketplace may be eligible for a premium tax credit that reduces the cost of buying health insurance. Eligible individuals can choose to have the credit paid in advance to their insurance company to lower what they pay for their monthly premiums, and then reconcile the amount paid in advance with the actual credit computed when they file their tax return. The amount of the credit they are eligible to claim on the return is based on actual household income and family size for

the year as reflected on the tax return. If the advance credit payment was less than the actual premium tax credit, the difference is a higher refund or lower tax due. If the advance credit payment made to a health care provider was more than the actual credit, the taxpayer may need to pay the difference with his or her tax return. Normally, taxpayers may owe certain penalties for late payments or underpayment of estimated tax. However, to help smooth the process for the first year of the ACA, the IRS announced that it will waive these penalties for the 2014 tax year for eligible taxpayers if they resulted from repayment of excess advance payments of the premium tax credit for Marketplace coverage.

(3) *Taxpayers who filed using erroneous premium credit data may, but do not have to, refile.* New Form 1095-A, Health Insurance Marketplace Statement, is furnished to individuals to allow them to reconcile the premium credit that they are actually entitled to with advance payments of the premium tax credit and then report any difference between those two amounts on their tax return. In March, the government announced that a number of taxpayers received a Form 1095-A with incorrect data. The IRS announced that persons who received an incorrect Form 1095-A, and had already filed their 2014 tax return, did not need to file amended returns. The IRS said it would not pursue the collection of any additional taxes from these individuals based on updated information in the corrected forms. Nonetheless, the IRS advised that some individuals may be better off filing amended returns (that is, when the corrected Form 1095-A results in a lowered tax bill).

Ways and Means Reports Estate Tax Repeal Bill. On April 16, the House passed the Death Tax Repeal Act of 2015, introduced by Rep. Kevin Brady (R-Tx), by a vote of 240-179. Sen. John Thune (R-S.D.) introduced an identical bill in the Senate to be marked up by the Senate Finance Committee. If passed by both the House and the Senate, this bill would repeal the federal estate and generation skipping transfer taxes. A similar bill was introduced in 2013, but failed to garner the votes necessary to pass in the Senate. Many observers are skeptical as to the likelihood of this legislation being enacted into law.

IRS Fact Sheets describe ways to combat taxpayer identity theft. In two Fact Sheets, the IRS has listed numerous ways that taxpayers can protect themselves from identity theft and the steps they should take if they find they have become victims of such fraud. Tax-related identity theft occurs when someone uses a stolen Social Security number (SSN) to file a tax return to claim a fraudulent refund. A taxpayer's SSN can be stolen through a data breach, a computer hack or a lost wallet. The IRS listed a number of simple, practical steps that a taxpayer can take to avoid becoming a victim, including: do not carry your Social Security card or any documents that include your SSN or Individual Taxpayer Identification Number (ITIN); do not give a business your SSN or ITIN just because they ask; protect

your financial information; check your credit report every 12 months; review your Social Security Administration earnings statement annually; secure personal information in your home; protect your personal computers by using firewalls and anti-spam/virus software, updating security patches and changing passwords for Internet accounts; and do not give personal information over the phone, through the mail, or on the Internet unless you have initiated the contact or you are sure you know who you are dealing with. The IRS also provided possible indications that there has been a tax-related identity theft, such as receiving a notice from the IRS or learning from a tax professional that: more than one tax return was filed for you; you owe additional tax, have a refund offset, or have had collection actions taken against you for a year you did not file a tax return; IRS records indicate you received more wages than you actually earned; or your state or federal benefits were reduced or cancelled because the agency received information reporting an income change. If identity theft is suspected, in addition to notifying the police, filing a complaint with the Federal Trade Commission, notifying credit card reporting bureaus to place a “fraud alert” on one’s accounts, closing compromised accounts, if a taxpayer’s SSN has been compromised and the taxpayer knows, or suspects he or she may be a victim of tax-related identity theft, a taxpayer should respond immediately to any IRS notice and call the number provided, complete IRS Form 14039, Identity Theft Affidavit, continue to pay taxes and file tax returns, even if by paper, and contact the IRS’ Identity Protection Specialized Unit.

IRS reviews consequences of foreclosures involving nonrecourse or recourse debt. The IRS recently issued an Audit Techniques Guide (ATG) on foreclosure, a complex topic that has swamped practitioners and the IRS alike in recent years due to the extended fallout from the subprime mortgage crisis. One of the many topics of interest is the foreclosure of properties with nonrecourse or recourse mortgages. Generally, the IRS concludes that an important difference between the tax treatment of nonrecourse and recourse debt in a foreclosure is that when the foreclosed property is encumbered by nonrecourse debt, the amount of the nonrecourse debt is included in the amount realized (even if the debt exceeds the property’s fair market value) and is, therefore, part of the reported gain or loss; however, if the debt is recourse and is in excess of the property’s fair market value, the amount realized for purposes of determining gain or loss is the property’s fair market value and the extent to which the recourse debt exceeds the fair market value is cancellation of debt income potentially eligible for Code Section 108 relief if, e.g., the taxpayer is insolvent) to the extent that the debtor is not called upon to pay the difference to the lender.

Lack of substantiation kills \$37,000.00 charitable deduction for household items. In Kunkel v. Commissioner, TC Memo 2015-71, the Tax Court has held, despite its having no doubt that the taxpayer donated property to a charitable organization, that none of his contributions totaling

\$37,315.00 were deductible, because he failed the charitable contribution substantiation tests. In addition, the taxpayer was liable for a Code Section 6662 accuracy-related penalty. This case underscores the importance of complying with the substantiation requirements of the Internal Revenue Code and Treasury Regulations. For noncash contributions in excess of \$500.00, taxpayers are required to maintain written records that must include, among other things: (1) the approximate date the property was acquired and the manner of its acquisition; (2) a description of the property in detail reasonable under the circumstances; (3) the cost or other basis of the property; (4) the fair market value of the property at the time it was contributed; and (5) the method used in determining its fair market value. For contributions of property valued in excess of \$5,000.00, the taxpayer must satisfy the above substantiation requirements and must also: (1) obtain a “qualified appraisal” of the items; and (2) attach to the tax return a fully completed appraisal summary.

Proposed regulations on casinos, etc. reporting winnings from bingo, keno, and slot machines.

The IRS has issued proposed regulations that would update and simplify the existing information reporting requirements for persons who make reportable payments of bingo, keno, or slot machine winnings. Under Code Section 6041, information reporting is generally required by every person engaged in a trade or business who, in the course of such trade or business, makes payments of gross income of \$600.00 or more in any tax year. However, Temporary Regulations raised the reporting thresholds for winnings from a bingo game and slot machine play to \$1,200.00, and for winnings from a keno game to \$1,500.00. The IRS thinks the regulations for reporting winnings from bingo, keno, and slot machine play need to be updated in light of developments in gaming industry technology and in the tax information reporting regime. The proposed regulations would provide that every person engaged in a trade or business who, in the course of its trade or business, pays reportable gambling winnings must make an information return with respect to such payments. They would clarify that the term “persons engaged in a trade or business” includes not only those engaged in a trade or business for profit or gain, but also organizations whose activities are not for profit or gain, such as tax-exempt organizations and governmental entities. Under the proposed regulations, the reporting thresholds for winnings from bingo, keno, and slot machine play (other than electronically tracked slot machine play) would remain the same as under the existing regulations. As under the temporary regulations, the proposed regulations would provide that, in determining whether the reporting threshold is satisfied, the amount of the winnings from bingo or slot machine play is not reduced by the amount wagered, but the amount of winnings from one keno game is reduced by the amount wagered in that one game. The proposed regulations would also clarify that all winnings from all cards played during one bingo game are combined and that all winnings from all “ways” on a multi-way keno ticket are combined.

Winnings from different types of games would not be combined to determine whether the reporting thresholds are satisfied. The proposed regulations would clarify that bingo, keno, electronically tracked slot machine play, and slot machine play that is not electronically tracked are all different types of games. Although the proposed regulations only apply to reporting of gambling winnings from bingo, keno, and slot machine play, the IRS is aware that taxpayers required to report winnings from pari-mutuel gambling may have concerns similar to those addressed in these proposed regulations, relating to when wagers with respect to horse races, dog races, and jai alai may be treated as identical. The IRS intends to amend the regulations pertaining to such activities in a manner consistent with these proposed regulations.

Large loss allowed for taxpayer's participation in related real estate enterprises. In a recent decision, the Tax Court has held that a taxpayer that stepped in during the 2008 financial crisis to rescue several related family businesses in which he held interests did so as a material participant, not as an investor. On the facts, the passive activity loss rules of Code Sec. 469 did not apply, and he could carry back a large loss to 2006 and thereby generate a refund of over \$5 million. *Lamas v. Commissioner*, TC Memo 2015-59.

National Taxpayer Advocate decries expected decline in IRS's levels of taxpayer service. National Taxpayer Advocate, Nina E. Olson, has released her 2014 annual report to Congress which expresses concern about the impending dismal levels of taxpayer service from the IRS and recommends that Congress enact a principles-based Taxpayer Bill of Rights, adopt additional measures to safeguard those rights, and provide sufficient funding to make taxpayer's right to quality service a reality. The report says the combination of the IRS's increasing workload, the erosion of public trust occasioned by the IRS's use of "tea party" and similar terms in screening applicants for tax-exempt status, and the sharp reduction in funding have created a "perfect storm" of trouble for tax administration and therefore for taxpayers. As a result, taxpayers in 2015—during which time the implementation of the Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA) is expected to add considerable new work—are likely to receive the worst levels of taxpayer service since at least 2001. Olson emphasizes that: budget reductions (in inflation-adjusted terms) over the last five years has brought about a devastating erosion of taxpayer service, harming taxpayers individually and collectively; the lack of effective administrative and Congressional oversight, in conjunction with the failure to pass taxpayer rights legislation, has eroded taxpayer protections enacted 16 or more years ago; the combined effect of these trends is reshaping U.S. tax administration in ways that are not positive for future tax compliance or for public trust in the fairness of the tax system; and this downward slide can be addressed if Congress makes an investment in IRS and holds it accountable for

how it applies that investment. For fiscal year 2015, the IRS's diminished service expectations are: the IRS is unlikely to answer even half the telephone calls it receives, and levels of service may average as low as 43 percent; taxpayers are expected to wait on hold for 30 minutes on average and considerably longer at peak times; and the IRS will answer far fewer tax-law questions than in past years and it will not answer any tax-law questions except “basic” ones. After the filing season, the IRS will not answer any tax-law questions at all, leaving the roughly 15 million late filers unable to get answers to their questions by calling or visiting IRS offices, and tax return preparation assistance has been eliminated.

Tax Advocate: problems remain with the IRS offshore voluntary disclosure program. The National Taxpayer Advocate's executive summary of its 2014 Annual Report to Congress also highlighted flaws with the IRS offshore voluntary disclosure program (OVDP). According to National Taxpayer Advocate, Nina E. Olson, the flaws do not bode well for fairness and justice in the IRS's implementation of future settlement programs and undermine voluntary taxpayer compliance. The NTA has recommended a number of changes, including allowing taxpayers to amend their IRS closing agreement in order to benefit from a number of recent OVDP changes.

President's FY 2016 budget contains host of tax provisions targeting the wealthiest taxpayers. On February 2nd, the President released his federal budget proposals for fiscal year 2016. Shortly afterwards, the Treasury Department released its “General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals” (the so-called “Greenbook”). As expected, the President's FY 2016 Budget contains a mixture of old and new provisions. Some of the provisions are particularly targeted to increasing taxes on the wealthiest taxpayers, such as: imposing the “Buffett Rule” which requires that wealthy millionaires pay no less than 30 percent of income—after charitable contributions—in taxes; increasing the top capital gains and dividend tax rates to 28 percent (24.2 percent plus 3.8 percent net investment income tax); for couples, the 28 percent rate would apply where income is more than \$500,000.00 annually; taxing carried interest profits as ordinary income, rather than capital gains; treating owners of pass-through businesses providing professional services (such as S corporations and partnerships) consistently for self-employment payroll tax purposes, regardless of the legal form of the organization; limiting the value of itemized deductions and other tax preferences to 28 percent for couples with incomes over about \$250,000.00 (singles with incomes over about \$200,000.00); prohibiting contributions to and accruals of additional benefits in tax-preferred retirement plans and IRAs once balances are about \$3.4 million, i.e., enough to provide an annual income of \$210,000.00 in retirement; eliminating a depreciation benefit for corporate jets and other general aviation passenger aircraft by increasing the depreciation recovery period for general aviation airplanes that carry passengers from five to seven years; closing the so-called “stepped-up basis loophole” by requiring



payment of capital gains tax on the increase in value of securities at the time they are inherited (however, the Budget would provide that for couples, no tax would be due until the death of the second spouse; additionally, an exception under the proposal would provide that no tax would be due on inherited small, family-owned and operated businesses unless and until the business was sold, and any closely-held business would have the option to pay tax on gains over 15 years; and, capital gains of up to \$200,000.00 per couple, \$100,000.00 per individual, could be bequeathed free of tax, with this exemption automatically portable between spouses, and couples would have an additional \$500,000.00 exemption for personal residences, \$250,000.00 per individual, with this exemption also automatically portable between spouses); restoring the estate, gift, and generation-skipping transfer (GST) tax parameters in effect in 2009 which would make permanent the estate, GST, and gift tax parameters as they applied during 2009 when the top tax rate was 45 percent and the exclusion amount was \$3.5 million for estate and GST taxes, and \$1 million for gift taxes; making overly generous outcomes from grantor retained annuity trusts (GRAT) and other grantor trusts—in which a donor receives a stream of income from assets held by the trust, while transferring expected appreciation to donees without paying a gift tax—more difficult to achieve by, among other things, requiring that donors leave assets in GRATs for a fairly long period of time and requiring that there be a significant value of the part of the GRAT that is transferred to the donee and subject to gift tax. Whether these provisions, or any of them, will actually be enacted into law remains to be seen.

Very truly yours,

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