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**GRAY REED & MCGRAW, P.C.**

# Individual and Small Business Tax Update 2015 Year in Review

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# Overview

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1. The Protecting Americans from Tax Hikes Act of 2015 (“2015 PATH Act”), 12/18/15
2. The Fixing America’s Surface Transportation Act (“FAST Act”), 12/4/15
3. Bipartisan Budget Act of 2015, 11/2/15
4. Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, 7/31/15

# Overview

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5. Trade Preferences Extension Act of 2015, 6/29/15
6. Bipartisan Congressional Trade Priorities and Accountability Act of 2015, 6/29/15
7. Update on Foreign Bank Account Reporting
8. Selected Court Cases/IRS Authority

# 2015 PATH Act

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**Overview:** Another “tax extenders” bill, except this time many are made permanent.

## **Notable Tax Changes/Extensions:**

1. Several “extenders” made permanent
2. The remaining “extenders” are extended through 2016
3. Other notable changes to Section 529 Rules

# 2015 PATH Act

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- 1. Several “extenders” made permanent**
  - ❑ Qualified Charitable Dist. from IRA to charity
  - ❑ State and Local Sales Tax Deduction
  - ❑ American Opportunity Tax Credit
  - ❑ Enhanced Child Tax Credit
  - ❑ Section 179 Expensing



# 2015 PATH Act

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- 2. The remaining “extenders” are extended again, generally through 2016**
  - ❑ Exclusion of Discharged Mortgage Debt on Short Sale
  - ❑ Deductibility of Mortgage Insurance Premiums
  - ❑ Above-The-Line Education Deduction for Qualified Tuition and Fees
  - ❑ 50% Bonus Depreciation (through 2019)

# 2015 PATH Act

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- 3. Other notable changes to Section 529 Rules**
  - a) Expansion of Section 529 Qualified Expenses to include Computer and Related Expenses
  - b) Elimination of Section 529 Plan Aggregation Rule
  - c) Elimination of 529 ABLE Account In-State Residency Requirement

# FAST Act

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**Overview:** \$305 Billion, five year funding bill for federal surface transportation spending. Scored as revenue neutral without increasing gas tax, which remains at 18.4 cents/gallon (last increased in 1994).

## **Two Primary Tax Provisions:**

1. Passport Revocation for Seriously Delinquent Debt
2. Mandatory Outsourcing of Collections





# FAST Act

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## 1. **Passport Revocation for Seriously Delinquent Debt**

New Code Section 7345, “seriously delinquent tax debt” is grounds for denial, revocation, or limitation of a passport.

- \$50,000 (adjusted for inflation) unpaid, legally enforceable federal tax liability, notice of lien or levy has been filed.
  - Are penalties and interest included?



# FAST Act

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## **2. Mandatory Outsourcing of Collections**

Amends Section 6306 requiring the IRS to enter into qualified tax collection contracts “for the collection of all outstanding inactive tax receivables.” Defined as:

- IRS has removed from active inventory
- Has not been assigned to an employee when more than 1/3 of the limitations period has expired
- More than 365 days of inactivity have passed in collections



# FAST Act

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## 2. Mandatory Outsourcing of Collections

Concerns: Congress has tried this twice before once in the early 1900s and once in the mid 90s.

*Went terribly!*

IRS and National Taxpayer Advocate concluded that the IRS is significantly more effective in collecting tax liabilities.



# Bipartisan Budget Act of 2015

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**Overview:** Two-year federal budget and debt ceiling increase.

## **Primary Tax Change:**

1. MAJOR Change to Partnership Audit Rules:  
Elimination of TEFRA!



# Bipartisan Budget Act of 2015

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## 1. MAJOR Changes to Partnership Audit Rules

TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) provided the old rules for auditing partnership. Adjustments flowed down to partners.

Partnerships could be audited under three sets of rules:

1. Unified Audit Rules
2. Small Partnership Rules
3. Electing Large Partnership Rules

# Bipartisan Budget Act of 2015

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## 1. MAJOR Changes to Partnership Audit Rules

This ACT repeals TEFRA. New audit rules:

- a) Any adjustments are determined at the PARTNERSHIP level
- b) Each partner's return must be consistent with the partnership's return
- c) Each partnership must designate a partner as the representative. Partnership and representative receive notice of proceeding and adjustment.



# Bipartisan Budget Act of 2015

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## 1. MAJOR Changes to Partnership Audit Rules

### OPT OUT

- Partnerships with 100 or fewer partners
- To opt out, each partner must be
  - i. Individual
  - ii. C Corporation
  - iii. Foreign entity that would be treated as a C Corporation if it were domestic
  - iv. S Corporation (EACH SHAREHOLDER COUNTS)
  - v. Estate of deceased partner



# Bipartisan Budget Act of 2015

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## **1. MAJOR Changes to Partnership Audit Rules**

Effective Date: Applies to partnership taxable years after 12/31/2017. Opt-outs can occur for taxable years beginning after 11/2/15 and before 1/1/2018.





# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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**Overview:** 3 Month Extension of the Highway and Transportation Funding Act of 2014, moves \$8 Billion into the Highway Trust Fund. Revenue neutral through administrative and compliance changes.

## Significant Tax Law Changes

1. Business Tax Return Due Dates
2. Mortgage Reporting Requirements
3. Estate Basis Reporting
4. Substantial Understatement SOL Clarification

# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## 1. Business Tax Return Due Dates

- Partnership – New due date if March 15, six month extension to September 15
- S Corps – Unchanged at March 15
- C Corps – (FISCAL YEAR) New due date is April 15, for tax years ending on or before 12/31/2015 only FIVE month extension.



# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## 1. Business Tax Return Due Dates

- Trusts – Unchanged at April 15
- FinCEN Report 114– Moved up to April 15 WITH an extension. However, how do you extend? We don't know yet.



# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## 2. Mortgage Reporting Requirements

- Requires tax information returns reporting mortgage information to include the following additional information:
  - i. Outstanding Principal
  - ii. Date of origination.
  - iii. Address of property which secures the mortgage.
  
- Effective date: Reports after 12/31/16

# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## **3. Estate Basis Reporting**

### ONLY APPLIES FOR TAXABLE ESTATES

- Executors must disclose to the IRS and to persons acquiring any interest in the estate information about the value of property received.
- Must be furnished within 30 days of the estate tax return date.
- No reporting required until 2/29/16



# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## 4. Substantial Understatement SOL Clarification

Typical SOL is 3 years, extended to 6 years for substantial understatement of income (or \$5,000 or more of foreign income).

- **Prior Precedent** – *Home Concrete & Supply, LLC*, Supreme Court States that overstatement of basis in property sold is not understatement for 6 Year SOL Rule.
- **New Rule:** Section 6501 “an understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income”
- **Effective Date:** Tax Returns filed after 7/31/15, and returns filed before that with active SOL



# Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

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## **4. Substantial Understatement SOL Clarification**

**Compare with Gassoway v. Commissioner, T.C. Memo 2015-13**

Taxpayer who incorrectly claimed refundable credits avoids the accuracy-related penalty for substantial understatement of income because an understatement is not the same thing as a deficiency.



# Trade Preferences Extension Act of 2015

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**Overview:** Trade preferences measure, trade adjustment assistant for U.S. workers hurt by the TPP and other trade agreement, and misc. changes to the Code.

## **Significant Tax Law Changes**

1. Section 35, Health Coverage Tax Credit
2. Section 24 Child Tax Credit
3. Section 6050S – 1098T Requirement
4. Section 6721/6721 Failure to File Information Return/Furnish Payee Statements Penalties





# Trade Preferences Extension Act of 2015

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## 1. **Section 35: Health Coverage Tax Credit**

- The Act extends through 2019 the refundable section 35 health coverage tax credit.
- Tax credit is equal to 72.5% of the cost of qualified health coverage paid by a taxpayer who is receiving a trade adjustment allowance, or is eligible for the alternative TAA program, or is over the age of 55 and receiving pension benefits from the Pension Benefit Guaranty Corporation Coverage.



# Trade Preferences Extension Act of 2015

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## **2. Section 24: Child Tax Credit**

- Refundable portion of the child tax credit is denied to individual taxpayers who elect to take the foreign earned income exclusion.
- Effective for taxable years beginning after 12/31/14.



# Trade Preferences Extension Act of 2015

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## **3. Section 6050S: 1098T Requirement**

- Taxpayer must have a 1098-T to claim the American opportunity tax credit, tuition deduction, lifetime learning credit, or HOPE scholarship credit.
- Effective for taxable years beginning after 6/29/15, the effective date of the act.



# Trade Preferences Extension Act of 2015

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- 4. Section 6721/6721: Penalties for Failure to File Information Return or Furnish Payee Statements**
  - Major increases in penalties
  - Old Law: Normal Penalty (Small Biz Penalty)
    - Tier One: \$30/Return, Up to \$250,000 (\$75,000)
    - Tier Two: \$60/Return, Up to \$500,000 (\$150,000)
    - Tier Three: \$100/Return, Up to \$1,500,000 (\$250,000)
    - Intentional: \$250/Return, No Limit

# Trade Preferences Extension Act of 2015

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- 4. Section 6721/6721: Penalties for Failure to File Information Return or Furnish Payee Statements**
- **New Law: Normal Penalty (Small Biz Penalty)**
    - Tier One: \$50/Return, Up to \$500,000 (\$175,000)
    - Tier Two: \$100/Return, Up to \$1,500,000 (\$500,000)
    - Tier Three: \$250/Return, Up to \$3,000,000 (\$1,000,000)
    - Intentional: \$500/Return, No Limit
  
  - Indexed for Inflation

# Trade Preferences Extension Act of 2015

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- 4. Section 6721/6721: Penalties for Failure to File Information Return or Furnish Payee Statements**
  
- Law also eliminates automatic extensions for time to file
  - Only allowed one 30-day NON-automatic extension



# Bipartisan Congressional Trade Priorities and Accountability Act of 2015

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**Overview:** Provides “fast track” authority for the President to negotiate the TPP.

## **Significant Tax Law Change**

1. Amends the IRC to allow some federal public safety workers to make early withdrawals from their retirement plans.



# Update on Foreign Bank Account Reporting

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- **FinCEN now offers an alternative FBAR e-filing method.**
  - Web Browser instead of PDF
  - Only Available to Individual Filers NOT Agents





# Selected Court Cases

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- 1. Section 163 Interest - Bruce H. Voss et al., 2015-2 USTC 50,427 (CA-9, 2015) 8/7/15**
- 2. Section 164 Taxes – Matthew L. Cutler, TCM 2015-73, 4/9/15**
- 3. Section 165 Losses – Pilgrim's Pride Corporation, 2015-1 USTC 50,211 (CA-5, 2015), 2/25/15**
- 4. Section 1221 Capital Asset - Craig Patrick, 2015-2 USTC 50,454 (CA-7, 2015) 8/26/15**



# Selected Court Cases/IRS Authority

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5. **Section 4975 Tax on Prohibited Transactions–  
Terry L. Ellis, 2015-1 USTC 50,328 (CA-8, 2015)  
6/5/15**
  
6. **Section 162 Educational Expenses–  
Christopher Holden, TCM 2015-83, 4/29/15**
  
7. **Administrative Changes**
  - Revenue Ruling 2015-13, 2016 Filing Deadlines
  - Notice 2015-38, Private Delivery Services List
  - Announcement 2015-23, Checks must <\$100M

# Selected Court Cases

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## **Section 163 Interest - Bruce H. Voss et al., 2015-2 USTC 50,427 (CA-9, 2015) 8/7/15**

- Section 163(h)(3) limitations on the amounts that may be treated as home acquisition and home equity indebtedness for unmarried taxpayers jointly owning a home is applied PER PERSON not PER RESIDENCE

## **Section 164 Taxes – Matthew L. Cutler, TCM 2015-73, 4/9/15**

- Couple could not deduct state nonresident income taxes paid on husband's partnership income on Schedule E, instead must report as Schedule A itemized deduction.



# Selected Court Cases

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## **Section 165 Losses – Pilgrim's Pride Corporation, 2015-1 USTC 50,211 (CA-5, 2015), 2/25/15**

- Loss from abandoned stock is ordinary loss not capital loss

## **Section 1221 Capital Asset - Craig Patrick, 2015-2 USTC 50,454 (CA-7, 2015) 8/26/15**

- Information award granted to taxpayer under the False Claims Act was ordinary income not capital gain.



# Selected Court Cases/IRS Authority

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## **Section 4975 Tax on Prohibited Transactions- Terry L. Ellis, 2015-1 USTC 50,328 (CA-8, 2015) 6/5/15**

- Compensation paid to a taxpayer from his IRA-owned LLC was a prohibited transaction. Entire IRA becomes taxable.

## **Section 162 Educational Expenses– Christopher Holden, TCM 2015-83, 4/29/15**

- Doctor couldn't deduct pilot license costs even though he claimed he would use it in a charitable movement to perform services overseas. Court found that the education wasn't related enough to his medical career.



# Selected Court Cases/IRS Authority

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## Administrative Changes

- Revenue Ruling 2015-13, 2016 Filing Deadlines
- Notice 2015-38, Private Delivery Services List
- Announcement 2015-23, Checks must <\$100M
  
- ✓ Filing Deadline is Monday, April 18<sup>th</sup> except for MA and ME which must pay by the 18<sup>th</sup> but can file on the 19<sup>th</sup>
- ✓ Updated list of approved PDS to qualify for Section 7502 timely mailing=timely filing
- ✓ Can't send checks of \$100M or more, will need to send multiple checks

