



# ACA Business



## Limited relief for HRAs

- Notice 2015-17 penalty relief thru **6-30-15**
- Penalties - \$100 / day / participant
- Health reimb. plans = group health plans
  - Therefore, subject to ACA requirements
  - Plans that cover more than one employee





## Additional relief



- Relief for > 2% S corp. stkhldr.
  - Include insurance cost in W-2
  - Shareholder deducts above-the-line
- Increase P/R without conditions
- HRA integrated with qual. health plan
- Possible legislative relief?
  - HR 2911 & Sen. 1697 are bottled-up



## Small employers

- Health insurance credit - since 2010
- MUST obtain insur. through a SHOP
- Nonelective contribution  $\geq 50\%$
- C/B 1 year, C/F 20 years
- Only qualify for 2 consecutive years starting in 2014





# Applicable large employer

- Beginning in 2015
  - Must offer basic health insurance to its full-time employees
    - Insurance must be affordable to employee
    - Insurance must provide a minimum value
  - Otherwise, IRS may assess an excise tax
    - **Nondeductible**



## Large employers

- 100+ employees in 2015 (50+ in 2016)
  - Must provide insurance coverage
  - Penalties for noncompliance
- Up to 99 employees (up to 49 in 2016)
  - No employer requirements





## 2 types of assessments

- The “(a) penalty”
  - Large employers that do not offer health insurance
- The “(b) penalty”
  - Large employers that do offer health insurance, but have one or more employee(s) who qualify for premium tax credits

# How is the penalty to be paid?

- NOT included on tax return
- IRS will contact employers
  - IRS procedures not yet in place
  - Employee(s) received a PTC
  - Provide an opportunity to respond
- Flowchart page 3-51







# The “Cadillac Tax”



- Beginning after 2017
- Cons App Act delay to 2019
- 40% tax on high-cost plans
  - Coverage cost > threshold amount
    - \$10,200 (self-only); \$27,500 (family)
    - Also includes HRAs, FSAs and MSAs



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# Business



# Federal due dates are changing

- For taxable years after 12-31-15:
  - 1065 will be due 2½ mos (was 3½)
  - 1120 will be due 3½ mos (was 2½)
    - Exception for June 30 year-ends
  - 1120S – unchanged at 2½ mos
  - FBAR will be due 4-15 (was 6-30)
    - **New** - Can request 6 mo. extension



## Other changes

- Six-year statute
  - Omit more than 25% of income
  - Overstatement of basis = omission
- Mtg. int. stmts. require more info
- Info return penalties increase
  - Applies to rtns. filed after 12-31-15
  - Increase to \$250 (was \$100)



# Bonus depreciation

- Retroactively extended by PATH Act

Year	Bonus Percentage
2015 - 2017	50%
2018	40%
2019	30%



# Bonus depreciation

- Qualified Improvement Property
- Placed in service after building
- Interior of nonresidential real property
  - No enlargement, No elevator/escalator
  - No internal structural framework
- **Trees & vines qualify after 2015**

## §179 depreciation

- PATH Act makes permanent
- \$500,000 maximum
  - Phase-out starts at \$2 million
  - Both indexed for inflation
- New or used property
  - Placed in service in tax year

## Other §179 issues

- Up to \$250,000 §179 for qualified real property – 2015
  - \$250,000 max eliminated after 2015
- Computer software permanent
- Can revoke §179 election - permanent



## Other §179 / depreciation

- Heating & A/C units after 2015
- Certain qualified improvements
  - Permanent 15 year S/L
- Luxury car caps 2015 - \$8,000
- Phase-downs
  - 2018 - \$6,400 / 2019 - \$4,800



# California depreciation

- Generally, no conformity
- C Corps - No MACRS
- §179 = \$25,000 maximum
  - \$200,000 max. qualified assets
  - None for software
- No bonus depreciation
- ***Important to track differences***





## Bldg. placed in service

- *Stine, LLC v. US*
- IRS argued -
  - Open for business - 2009
- T/P argued -
  - Certificate of occupancy - 2008
- Court said when bldg. is in a state of readiness to perform function





# Standard mileage rates

	<u>2015</u>	<u>2016</u>
Business	57 ½	54
Charity §170(i)	14	14
Medical and moving	23	19

California conforms

## Luxury auto limits

- Bonus depreciation for 2015
  - \$8,000 for qualified vehicles
  - New, not used
  - Business use > 50%
- 1<sup>st</sup> yr (2015) = \$11,160 max.
- Reduced if less than 100% bus. use



## Business income (cont'd)

- Settlement partly taxable

- *Consentino v. Comm.*

- Look to Origin of Claim

- Settled for 59% of claim

- Settlement allocated *pro rata* to claim

- Taxable if received tax benefit

- Excludable if recovery of loss



# Trade or business expenses

- Perks in Silicon Valley
  - Convenience of the employer?





# Adequate records

- The hurricane ate my records - *McClellan v. Comm.*
  - Reasonable reconstruction is allowed
    - Including §274(d) deductions







## Legal costs to sue HOA

- Income and expense on Sch. C
  - Claimed 100% of legal fees paid
  - Filed Form 8829 – 50% bus use of home
- IRS disallowed legal exp in full
- Court held 50% deductible
  - Origin of claim - interfered with business
  - IRS did not challenge home office

# Transportation fringe benefits

- Enhanced benefits made permanent by PATH Act
- Chart - Fed vs. CA exclusion of employer-provided transportation benefits



## Net operating losses

- Generally:
  - Two-year carryback
  - Up to 20-year carryforward
- May elect to forgo carryback
  - Irrevocable once made
- CA carryback no longer limited



# Deduction for “expected” NOL

- Impact of expected future NOL on unpaid tax for current year
- File Form 1138/FTB 3593
  - After start of expected NOL year
  - Before pmt of tax liability of year preceding NOL year



## Small business stock

- 50% gain exclusion qualifying stock
  - Must be held more than 5 years
  - Also excluded for AMT purposes
- Acquired between 2/18/09 and 9/27/10
  - Increased from 50% to 75%
- Acquired after 9/27/10 **100%**
- CA no longer has this exclusion

## Built-In Gains

- PATH Act makes 5-year holding period permanent
- California never conformed to shortened holding period

# TEFRA Repeal

- Effective partnership TYBA 2017
- <100 partners can opt out
- Adjustments at p/s level
- Tax assessed and collected at p/s level
- Net adjustment X highest rate
- P/S can issue notice to partners

## P/S Audit Rules

- Opt out for small partnerships
  - 100 or fewer partners/K-1s
  - Each ptr is individual, C corp, foreign entity – C corp, S corp or estate
  - Election must be made on timely filed tax return



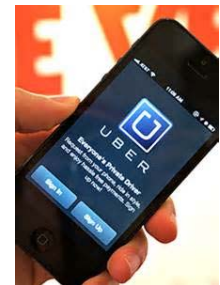
## R & D Credit

- Made permanent by PATH Act
- Small business (<\$50M) can claim against AMT
- Smaller business (<\$5M) can elect to claim against employer FICA
- Up to \$250,000 year / 5 years



# Employee or Independent

- FedEx drivers are employees
  - Control drivers over package delivery
- Uber litigation
  - Is Uber a transportation service?
  - Is Uber a technology referral service?
- Advisor can be liable for willful misclassification





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# Repair Regulations





# Repair regulations

- Tax years on or after 1-1-14
- Expense vs. capitalize
- Accounting method changes
  - TPRs have retroactive effect
  - Need IRS permission – Form 3115
  - May also need to make §481(a) adj.
    - Prevent duplication or omission





# Simplified method

## “do nothing” approach



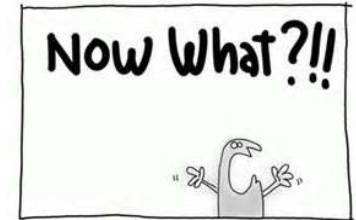
- IRS relief 2-13-15: Rev. Proc. 2015-20
- Only for qualifying small taxpayers
  - Assets OR gross receipts < \$10 mil.
  - No retroactive application of TPRs
- No statement or election required, but recommended

## Simplified method (cont'd)

- Make changes w/o filing Form 3115
  - Cutoff method
  - Use with amounts on/after 1-1-14
  - Adjustments applied prospectively
- May not be best choice for some
- If no F 3115, then Rev. Proc. 2015-20



# TPRs going forward



- New TPR's effective 1-1-14
  - Whether Form 3115 filed, or not
- Deduct supplies (limitations apply)
- Identify the unit of property
  - Deduct repairs if keeps UOP operating
  - Capitalize & depreciate improvements
- Okay to File 3115 2015 and later



# Improvements

- Capitalize costs if result in:
  - Betterment
  - Restoration
  - New or different use  
(adaptation)







# Materials & supplies

- \$200 UOP expense threshold
  - Non-inventory property consumed - and
    - Used to maintain or repair a UOP;
    - Expected to be used in 12 mos. or less;
    - *De minimus*



## *De minimis* safe harbor election

- Expense certain UOP business assets
- Must make annual irrevocable election
  - Up to \$5,000 - Applicable financial stmt.
  - Up to \$500 - Without one
  - Up to \$200 - Absent an election
- Written accounting policies must be in place on first day of tax year

## *De minimis* safe harbor election

### ***NEW! – Notice 2015-82***

- Safe harbor increased to \$2,500
- Effective TYBOA 1/1/16
- Audit Protection TYBB 1/1/16
- Must have had policy in place 1st day of tax year

## ***NEW!*** Rev. Proc. 2015-56

- Remodel-Refresh Project Safe Harbor
- Qualified Taxpayers
  - Must Have Applicable Financial Stmt
  - Retail Merchandise or Food & Beverage
- Write off 75% / Capitalize 25%
- Form 3115 required – DCN 221

# Safe harbor for buildings

- Annual safe harbor election
  - Up to \$1 mil. unadj. basis (excl. land)
  - Up to \$10 mil. gross receipts
  - Deduct, not capitalize, lesser of:
    - Total amounts paid (\$10k max) - or
    - 2% of building's unadjusted basis
  - Off the cliff if exceed threshold



## Partial asset disposition

- Elect to recognize gain/loss on disposition of a partial asset
- All can use for 2014 and later
  - If Form 3115 was filed with tax return, can be used for earlier dispositions
- May use any “reasonable method”





# California and the TPRs

- Depends if *CIT* or *PIT* (incl. S corps)
- Separate CA election is allowed
  - A different §481(a) adjustment is NOT a different accounting method change
- Property tax – different principles
  - Maintain 2 sets of books!