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Recent Developments in College and University Tax Law

Bertrand M. Harding, Jr.

Law Offices of Bertrand M. Harding Jr. - Alexandria, VA

Edward J. Jennings

University of Michigan, Ann Arbor, MI

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Bertrand M. Harding, Jr.
Law Offices of Bertrand M. Harding Jr. -
Alexandria, VA

Edward J. Jennings
University of Michigan, Ann Arbor, MI

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I. LEGISLATIVE DEVELOPMENTS

A. Tax Extended Provisions - Protecting Americans from Tax Hikes Act of 2015 (the Path Act)

On December 18, 2015, President Obama signed into law a bill, the Protecting Americans from Tax Hikes Act of 2015 (the Path Act). The Act makes certain temporary provisions permanent and extends other temporary provisions, generally, for either two or five years.

1. Certain payments to controlling exempt organizations - The Act makes permanent the favorable tax treatment of certain payments by controlled entities to exempt organizations.

Internal Revenue Code (IRC) Section 512(b)(13) generally treats certain payments (interest, rent, royalties and annuities) paid to tax-exempt organizations from controlled entities as unrelated business taxable income (UBIT).

IRC Section 512(b)(13) applies only to the portion of payments that exceed an arm's-length price (as determined under Section 482), and, in addition to the tax, a 20% penalty applies to this excess. The Act reinstates this rule and makes it permanent for payments received or accrued after December 31, 2014.

2. IRA tax-free distributions for charitable purposes - Under IRC Section 408(d)(8), a taxpayer who is aged 70 1/2 or older may exclude up to \$100,000 from gross income for qualified charitable distributions made from an IRA.

Distributions to some charitable organizations, however, such as certain private foundations, Section 509(a)(3) supporting organizations and donor advised funds, are not excludible from gross income under Section 408(d)(8).

Additionally, Section 408(d)(5) allows taxpayers to apply charitable distributions towards their minimum distribution requirements.

3. Qualified conservation easements under IRC Section 170(b) - The Act makes permanent the increased charitable deduction limit of 50% and the 15-year carryforward period under IRC Section 170(b)(1)(E) for contributions by individuals or corporations of a real property interest for conservation purposes.
4. Charitable deduction for contributions of food inventory - The Act makes permanent the provision of IRC Section 170(e)(3)(C) which permits businesses to claim an enhanced charitable deduction for

contributions of excess food inventory made after December 31, 2014.

5. Extension of Above-the-Line Deduction for Qualified Tuition and Related Expenses - The provision extends through 2016 the above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at certain dollar amounts depending on an individual's adjusted gross income and filing status.
6. Moratorium on Medical Device Excise Tax. The provision provides for a two-year moratorium on the 2.3% excise tax imposed on the sale of medical devices. The tax will not apply to sales during calendar years 2016 and 2017.
7. Modification of Form W-2 and 1099-MISC Filing Dates - The provision requires Forms W-2, W-3, and returns or statements to report non-employee compensation (e.g., Form 1099-MISC) to be filed on or before January 31 of the year following the calendar year to which such returns relate. The provision is effective for returns and statements filed in 2017.
8. Requirements for the Issuance of ITINs. - The provision provides that the IRS may issue an ITIN if the applicant provides the IRS-required documentation either (i) in-person to an IRS employee or to an IRS-authorized acceptance agent, or (ii) by mail. The provision provides that (i) individuals who were issued ITINs before 2013 must renew their ITINs on a staggered schedule between 2017 and 2020, and (ii) an ITIN will expire if the individual fails to file a tax return for three consecutive years. The provision is effective for requests for ITINs made after the date of enactment.
9. Form 1098-T Reporting Only of Qualified Tuition and Related Expenses Actually Paid - The provision reforms the reporting requirements for Form 1098-T so that educational institutions are required to report only qualified tuition and related expenses actually paid [box 1], rather than choosing between amounts paid and amounts billed [box 2], as under current law. The provision applies to expenses paid after December 31, 2015, for education furnished in academic periods beginning after that date.

Further details on these and other provisions in the bill can be found at <http://waysandmeans.house.gov/more-details-on-the-protecting-americans-from-tax-hikes-act-of-2015/>.

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