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AN ALERT FROM SMITH LEONARD PLLC:

2016 INDIVIDUAL YEAR-END PLANNING UPDATE



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2016 INDIVIDUAL YEAR-END PLANNING UPDATE

It's that time of year again. Time to focus on year-end planning strategies. Year-end planning is particularly important this year given the large number of recent tax law changes that offer new tax savings opportunities, in addition to the many "time-tested" tax savings techniques that continue to apply.

Planning Alert: It seems every year we are faced with a long list of popular tax breaks that have either recently expired, or are scheduled to expire in the near future. Fortunately, the PATH Act has made many (but not all) of these tax breaks *permanent*. For example, the following tax breaks that were previously scheduled to expire are now permanent: Election to deduct state and local "sales" taxes instead of deducting state and local "income" taxes; Contributions by individuals who have reached age 70½ of up to \$100,000 from their IRAs directly to charity without triggering any income tax; Deduction of up to \$250 for qualifying school supplies by school teachers; Expanded charitable contribution deduction for qualified conservation easements, and others. Unfortunately, however, the PATH Act extends some tax breaks *only through 2016*.

We are sending this letter to help you navigate *new* tax planning opportunities available to individuals because of recent law changes. In this letter, we also remind you of the *traditional* year-end tax planning strategies that help lower your taxable income and postpone the payment of your taxes to later years.

Tax Tip: Many of the tax breaks that could reduce your 2016 income tax liability are dependent on the amount of your adjusted gross income, modified adjusted gross income, or taxable income. We highlight these income thresholds prominently in this newsletter.

Caution: Tax planning strategies suggested in this letter may subject you to the alternative minimum tax (AMT). For example, many deductions are not allowed for AMT purposes, such as: personal exemptions, the standard deduction, state and local income taxes, and real estate taxes. Also, the AMT can be triggered by taking large capital gains, having high levels of dividend income, or exercising incentive stock options. Therefore, we suggest that you call our firm before implementing any tax planning technique discussed in this letter. You cannot properly evaluate a particular planning strategy without calculating your overall tax liability (including the AMT and any state income tax) with and without that strategy. **Note:** This letter contains ideas for Federal income tax planning only. *State income tax issues are not addressed.*

MONITOR STATUS OF TAX BREAKS EXPIRING AFTER 2016

For over a decade, we have been faced with a long list of popular tax breaks with set expiration dates. In the past, Congress temporarily extended the majority of these tax breaks every few years. On December 18, 2015, the President signed the *Protecting Americans From Tax Hikes Act Of 2015 (PATH Act)* which removed the expiration dates for several (but not all) of these tax breaks – making them permanent. However, the following tax breaks were not made permanent, and are currently *scheduled to expire at the end of 2016*: Deduction (Up to \$4,000) for Qualified Higher Education Expenses; Deduction for Mortgage Insurance Premiums as Qualified Residence Interest; Temporary 10% Credit (With a Life-time Cap of \$500) for Qualified Energy-Efficient Home Improvements (e.g., qualified energy-efficient windows, storm doors, roofing); Income Exclusion for Discharge of Qualified Principal Residence Indebtedness; and The 30% Credit for Qualified Energy-Efficient Fuel Cell Property, Small Wind Energy Property, and Geothermal Heat Pump Property. **Caution:** Although Congress has traditionally extended a majority of expiring tax breaks in the past, there is no guarantee that it will do so in the future. **Planning Alert:** Regardless of how Congress ultimately addresses these expiring tax breaks, there may be real tax savings available if you take advantage of these provisions *before the end of 2016*.



Tax Tip: The 30% Residential Energy Efficient Property (REEP) credit for expenditures for installing certain solar equipment in your residence does not expire after 2016. More specifically, the 30% REEP credit for “Qualified Solar Electric Property” and “Qualified Solar Water Heating Property” is not scheduled to be reduced until *after 2019*. This 30% credit applies if you install the qualifying energy-efficient property in or on property located in the U.S. that you use as a residence. The residence does *not* have to be your “principal residence.” So, installations for a second residence or vacation home may qualify. The 30% credit also applies to the on-site installation costs. **Caution:** To take the 30% credit for 2016, the property must *actually be installed* no later than *December 31, 2016*.

OTHER RECENT TAX LEGISLATION THAT COULD IMPACT PLANNING FOR 2016

In addition to the *PATH Act* (mentioned above), over the past 15 months Congress passed several other pieces of legislation containing a variety of new tax provisions. The following are selected provisions from this *Legislation* that are generally *first effective in 2016*:

Starting in 2016, Taxpayers Must Have Form 1098-T in Order to Claim Education Credits Or Tuition Deductions

Generally, educational institutions are required to provide Form 1098-T to students and file a copy of Form 1098-T with the IRS. This form contains information regarding the student’s qualifying tuition and related fees that are used to determine various education-related tax credits and deductions. *Effective for tax years beginning after June 29, 2015*, the Trade Act provides that the following education tax breaks will not be allowed unless the taxpayer possesses a valid Form 1098-T from the educational institution: 1) The *American Opportunity Tax Credit* (up to \$2,500 per qualifying student – generally used for the first four years of post-high school education); 2) The *Lifetime Learning Credit* (up to \$2,000 per qualifying taxpayer – generally used for graduate school), and 3) The college *Tuition and Fees Deduction* (up to \$4,000). This new documentation requirement effectively means that, if you are claiming any of these education tax benefits, *you will need Form 1098-T before you can claim an education credit or deduction* on your 2016 return. **Planning Alert:** As mentioned previously in this letter, the *American Opportunity Tax Credit* (as well as the *Lifetime Learning Credit*) is now permanent; however, the *Tuition and Fees Deduction* of up to \$4,000 is *scheduled to expire after 2016*.

Enhanced School Teachers’ Deduction

Historically, teachers have been allowed an “above the line” deduction (with an annual cap of \$250) for various school supplies. However, starting *in 2016*, in addition to allowing teachers a deduction for school supplies, the *PATH Act* allows teachers to also deduct (subject to the overall annual cap of \$250) amounts paid *for certain professional development courses*. Such courses must be related 1) To the curriculum in which the teacher provides instruction, or 2) To the students for which the teacher provides instruction. Before this change, a teacher’s unreimbursed expenses for professional development were classified as *miscellaneous itemized deductions* subject to the 2% threshold which, many times, caused the teacher to get little or no tax benefit from the expenditure. **Planning Alert:** Starting *in 2016*, teachers should be aware of this change and retain documentation of unreimbursed costs they incur for professional development courses.

New Due Date and Allowable Extensions for FinCEN Form 114 (FBAR)

Generally, if you own (or have signatory authority over) foreign financial accounts exceeding an aggregate value of \$10,000 at any time during the year, you are required to file FinCEN Form 114 (“*Report of Foreign Bank and Financial Accounts*” or “FBAR”). Previously, the due date for filing this FinCEN Form 114 was June 30 of the year immediately following the reporting year, and no extensions were available. *For tax years beginning after 2015*, the *Transportation Act* provides that the *initial due*



date for *FinCen Form 114* will be *April 15th* of the following year (i.e., generally the same initial due date for your Form 1040). The Act also provides for a maximum *extended due date* until the following *October 15th*. **Planning Alert:** According to proposed regulations issued by the Treasury Department in March 2016, the *due date for the 2016 FinCEN Form 114* is *April 15, 2017*. The proposed regulations also provide that “extensions to October 15 of the reporting year are available upon request.” However, the regulations do not say how the extension is to be requested or whether the extension request will be automatically approved.

POSTPONING TAXABLE INCOME MAY SAVE YOU OVERALL TAXES

Deferring income into 2017 is a good idea if you believe that your marginal tax rate for 2017 will be equal to or less than your 2016 marginal tax rate. In addition, deferring income into 2017 could increase various credits and deductions for 2016 that would otherwise be phased out as your adjusted gross income increases.

Deferring Income Could Help You Stay in Lower Tax Brackets

Deferring taxable income from 2016 to 2017 may reduce your exposure to higher tax brackets if, for example: 1) The deferral of income causes your 2016 taxable income to fall below the thresholds for the highest 39.6% tax bracket (i.e., \$466,950 for joint returns; \$415,050 if single), or 2) As discussed in more detail later, you have income subject to the 3.8% Net Investment Income Tax (3.8% NIIT) and the income deferral causes your 2016 modified adjusted gross income (MAGI) to fall below the thresholds for the 3.8% NIIT (i.e., \$250,000 for joint returns; \$200,000 if single). If, after considering these factors, you believe that deferring taxable income into 2017 will save you taxes, consider the following strategies:

- **Self-Employment Income:** If you are self-employed and use the cash method of accounting, consider delaying year-end billings to defer income until 2017. **Planning Alert:** If you have already received the check in 2016, deferring the deposit does not defer the income. Also, you may not want to defer billing if you believe this will increase your risk of not getting paid.
- **Installment Sales:** If you plan to sell appreciated property in 2016, you might be able to defer the gain until later years by taking back a promissory note instead of cash. If you qualify for installment treatment, the gain will generally be prorated over the term of the note and is taxed to you as you collect the principal payments. This is called reporting your gain on the “installment method.” **Planning Alert:** Although the sale of real estate and closely-held stock generally qualify for this deferral treatment, some sales do not. For example, even if you are a cash method taxpayer, you cannot use this gain deferral technique if you sell publicly-traded stock or securities. Also, you may not want to take back a promissory note in lieu of cash if you believe this reduces your chances of getting paid. **Tax Tip:** Since the “installment method” essentially allows you to spread a single gain over several years, this could cause your income in the year of sale (and possibly subsequent years) to fall below the income thresholds that kick in the top 39.6% rate, or the top 20% capital gains rate. In addition, this could also prevent your income from exceeding the thresholds for the 3.8% NIIT (discussed in more detail later).

Tactics for Deferring Income by Delaying Distributions from IRAs, Etc.

Generally, once you reach age 70½ or if you inherit someone else’s IRA or qualified retirement plan account, there are strict rules that require you to begin taking “*Required Minimum Distributions*” (RMDs) from the account. However, there are various ways to delay or defer the RMDs—allowing you to postpone taxable income. The following are various suggestions for minimizing the tax impact of RMDs:

- **IRA Owners Who Attain Age 70½ During 2016:** If you reached age 70½ at any time during 2016, you must begin distributions from a traditional IRA account *no later than April 1st of 2017*. A 50%



penalty applies to the excess of the required minimum distribution (RMD) over the amount actually distributed. In addition, if you wait until 2017 to take your first payment, you will still be required to take your second RMD no later than December 31, 2017, which will cause you to take two payments in 2017. This “bunching” of the first two required annual payments into one tax year (2017) could cause your income to be taxed in a higher tax bracket and, therefore, result in more overall tax than if you received the first required payment in 2016. **Tax Tip:** Assuming you otherwise wish to contribute to a charity, you could avoid being taxed in 2016 on all or part of an RMD by transferring all or part of the RMD (up to \$100,000) directly to a charity (as discussed below). If you reached age 70½ in 2016, and you own an IRA or other qualified retirement account, we will gladly help you navigate these rules to your best advantage.

- **Tax-Free IRA Payments to Charities if You Are Age 70½ or Older:** For the past several years, we have had a popular rule that allows taxpayers, who have reached age 70½, to have their IRA trustee transfer up to \$100,000 from their IRAs directly to a qualified charity, and exclude the IRA transfer from income. The IRA transfer to the charity also counts toward the IRA owner’s “required minimum distributions” (RMDs) for the year. If you wish to contribute to a charity and you are at least 70½, this tax break effectively allows you to exclude all or a portion of your otherwise taxable RMDs from taxable income. This, in turn, could allow your 2016 modified adjusted gross income (MAGI) to stay below the thresholds for various credits and deductions for 2016 that would otherwise be phased out as your adjusted gross income increases. In addition, this could potentially reduce the portion of your social security payments that would otherwise be taxable. Moreover, in future tax years, this exclusion could reduce the amount of your Medicare Part B and Part D premiums which generally increase as your MAGI increases. **Tax Tip:** To qualify, the check from your IRA must be made out “directly” to your designated charity. In addition, if the contribution is \$250 or more, you must get a timely, qualifying receipt from the charity for the charitable contribution. **Good News:** Although this provision was previously available only for a limited number of years, the PATH Act makes it permanent. **Planning Alert:** To take advantage of this exclusion for 2016, the “direct transfer” from your IRA to the charity must be completed by December 31, 2016. It may take the IRA custodian several days to complete all the necessary paper work to complete the transfer. Consequently, you should start the process of transferring the funds from your IRA to the charity well before December 31, 2016.
- **Post Mortem Planning for Retirement Plan and IRA Distributions:** If you are the beneficiary of an IRA or qualified plan account of someone that has died in 2016, there are certain planning techniques you should consider as soon as possible. **Tax Tip:** If the decedent named multiple beneficiaries or included an estate or charity as a beneficiary, we should review the situation as soon as possible to see if there is anything we can do to avoid certain tax traps. The rules for rearranging IRA beneficiaries for maximum tax deferral are complicated and are subject to rigid deadlines. Acting before certain deadlines pass is critical. If the owner died in 2016, the best tax results can generally be achieved by making any necessary changes *no later than December 31, 2016*. If you need assistance, please call our office as soon as possible so we can advise you.
- **Rollovers by Surviving Spouses:** If an individual *over age 70½* died during 2016 and the beneficiary of the decedent’s IRA or qualified plan is the surviving spouse, and the *surviving spouse* is *over 59½*, the surviving spouse should consider rolling the decedent’s qualified plan or IRA amount into his or her name *on or before December 31, 2016*. If the decedent’s retirement account is rolled into an IRA in the surviving spouse’s name *before 2017*, then: 1) Provided the surviving spouse has not reached age 70½, no distributions are required in 2017, or 2) If the surviving spouse is at least 70½, the RMD in 2017 will be determined using the Uniform Lifetime Distribution Table that results in a smaller annual required payout. Therefore, *converting the*



account into the surviving spouse's name on or before December 31, 2016, could substantially reduce the amount of the RMD for 2017 where the decedent was at least 70½. **Planning Alert:** If the surviving spouse is not yet 59½, leaving the IRA or qualified plan account in the name of the decedent may be the best option if the surviving spouse needs to withdraw amounts from the retirement account before age 59½. If the account is transferred into the spouse's name, and the spouse receives a distribution before reaching age 59½, the distribution could be subject to a 10% early distribution penalty.

TAKING ADVANTAGE OF DEDUCTIONS

Don't Overlook "Above-The-Line" Deductions

So-called "*above-the-line*" deductions reduce both your "adjusted gross income" (AGI) and your "modified adjusted gross income" (MAGI), while "*itemized*" deductions (i.e., *below-the-line* deductions) do *not* reduce either AGI or MAGI. Deductions that reduce your AGI (or MAGI) are particularly favorable because they not only reduce your taxable income, they also may free up other deductions (and tax credits) that phase out as your AGI (or MAGI) increases (e.g., itemized deductions, personal exemptions, certain IRA contributions, certain education expense deductions and credits, adoption credit, etc.). In addition, "above-the-line" deductions could serve to reduce your MAGI below the income thresholds for the 3.8% Net Investment Income Tax (discussed in more detail below).

- **"Above-The-Line" Deductions:** "Above-the-line" deductions include allowable deductions for IRA or Health Savings Account (HSA) contributions, health insurance premiums for self-employed individuals, qualified student loan interest, alimony payments, moving expenses, and business expenses for a self-employed individual. Tax Tip: Unreimbursed "employee" business expenses are classified as "miscellaneous itemized deductions" and trigger two potential limitations: 1) Aggregate "miscellaneous itemized deductions" are allowed only to the extent they exceed 2% of your AGI, and 2) Any excess is included in "itemized deductions" which are reduced once your AGI exceeds certain thresholds (e.g., for 2016 – \$311,300 for joint returns; \$259,400 if single). However, if you arrange for your employer to reimburse you for your "qualified" employee business expenses under an "accountable reimbursement plan," the reimbursement is excluded from your income (which is generally the equivalent of an "above-the-line" deduction).
- **Accelerating "Above-The-Line" Deductions.** As a cash method taxpayer, you can generally accelerate a 2017 deduction into 2016 by "paying" for the deductible item in 2016. "Payment" typically occurs in 2016 if a check is delivered to the post office, if your electronic payment is debited to your account, or if an item is charged on a *third-party credit card* (e.g., Visa, MasterCard, Discover, American Express) in 2016. Caution: If you post-date the check to 2017 or if your check is rejected, no payment has been made in 2016. **Planning Alert:** The IRS says that prepayments of expenses applicable to periods beyond 12 months after the payment are not deductible in 2016.

Accelerating "Itemized" Deductions into 2016

As mentioned above, although "*itemized*" deductions (i.e., *below-the-line* deductions) do *not* reduce your AGI or MAGI, they still may provide valuable tax savings. *Itemized deductions* generally include charitable contributions, state and local income taxes (or, alternatively state and local sales taxes), property taxes, medical expenses, unreimbursed employee travel expenses, home mortgage interest, and gambling losses (to the extent of gambling income). However, if your itemized deductions fail to exceed your standard deduction in most years, you are not receiving maximum benefit for your itemized deductions. You could possibly reduce your taxes over the long term by bunching the payment of your



itemized deductions in alternate tax years. This may produce tax savings by allowing you to itemize deductions in the years when your expenses are bunched, and use the standard deduction in other years. **Tax Tip:** The easiest deductions to shift from 2017 to 2016 are *charitable contributions, state and local taxes*, and your January, 2017 home *mortgage interest payment*. For 2016, the standard deduction is \$12,600 on a joint return and \$6,300 for single individuals. If you are blind or age 65, you get an additional standard deduction of \$1,250 if you're married (\$1,550 if single). **Watch Out for AMT:** Certain itemized deductions are not allowed in computing your alternative minimum tax (AMT), such as state and local taxes (including state income taxes) and unreimbursed employee business expenses. Before you accelerate 2017 itemized deductions into 2016, to be safe, we should calculate your taxes "with and without" accelerating the deduction so we can determine the AMT impact of this strategy.

Medical Expenses for Seniors

Generally, you are allowed an *itemized deduction* for un-reimbursed medical expenses (including un-reimbursed health insurance premiums) only to the extent your aggregate medical expenses exceed 10% of adjusted gross income (AGI). However, if either you or your spouse is *at least age 65* before the close of the year, your threshold is 7.5% of AGI instead of 10% (whether you file a joint return or separate returns). **Planning Alert:** After 2016, the threshold for those at least age 65 *increases from 7.5% to 10% of AGI*. If you or your spouse are age 65 or older and anticipate more than negligible medical expense in the near future, consider accelerating as many elective medical expenses (i.e., braces, new eye glasses, etc.) into 2016 as possible – if this will allow you to exceed the 7.5% threshold. Waiting until 2017 will require your medical expenses to exceed the 10% threshold.

Charitable Contributions

If you are planning to contribute to a charity before the end of this year, and you want a charitable deduction for 2016, please note that a charitable contribution deduction is allowed for 2016 if the check is *mailed on or before December 31, 2016*, or the contribution is made by a credit card charge in 2016. **Planning Alert:** If you merely give a note or a pledge to a charity, no deduction is allowed until you pay the note or pledge. **Caution:** The IRS regulations provide that you may not take a deduction for a charitable contribution unless you strictly comply with the rigid documentation requirements imposed by the Internal Revenue Code. Over the last several years (including 2016), there have been a series of Court cases disallowing charitable contribution deductions because the taxpayer failed to satisfy one or more of the strict documentation requirements. The IRS and the Courts have been particularly harsh with respect to taxpayers that fail the mandatory documentation requirements for contributions of "\$250 or more." Under this requirement, if you contribute \$250 or more (whether by cash, check, charge card, or in property) to a charity, you are allowed a deduction only if you receive a "qualifying written receipt" from the charity by the time you file your return (a cancelled check is not enough) and the return is timely filed. The qualifying written receipt must contain the following information: 1) The amount of cash and a description (but not value) of any property other than cash you contributed to the charity, 2) A statement as to whether the charity provided you with any goods or services in return for your contribution, and 3) A description and good faith estimate of the value of any goods or services, if any, the charity provided to you (or, if applicable, a statement that the goods and services consisted solely of intangible religious benefits). In addition, for all noncash contributions, the receipt must contain the date of the charitable contribution, the location of the contribution, and a description of the property contributed. Even for contributions of less than \$250 each, you need certain documentation. For cash contributions, you need a written receipt from the charity. For contributions made by check, debit card, or credit card, you need either a written receipt from the charity, a cancelled check, a bank statement, or a credit card statement.

Maximizing Your Home Mortgage Interest Deduction



If you are looking to maximize your 2016 itemized deductions, you can increase your home mortgage interest deduction by paying your January, 2017 mortgage payment *on or before December 31, 2016*. Typically, the January mortgage payment includes interest that was accrued in December and, therefore, is deductible if paid in December. **Planning Alert:** Make sure that you send in your January, 2017 mortgage payment early enough in December for your lender to actually receive it before year-end. That way, your lender should reflect that last payment on your 2016 Form 1098, and we can avoid a matching problem on your 2016 return.

TAX PLANNING FOR INVESTMENT INCOME (INCLUDING CAPITAL GAINS AND THE 3.8% NIIT)

Planning with the 3.8% Net Investment Income Tax (3.8% NIIT)

The *3.8% Net Investment Income Tax (3.8% NIIT)* is imposed on *net investment income* of higher-income individuals. This tax applies to individuals with modified adjusted gross income (MAGI) exceeding the following “*thresholds*” (which are *not indexed* for inflation): \$250,000 for *married individuals filing jointly*; \$200,000 if *single*; and \$125,000 if *married filing separately*.

- **Net Investment Income:** The 3.8% NIIT not only applies to traditional types of investment income (i.e., interest, dividends, annuities, royalties, and capital gains), but it also applies to “business” income that is taxed to a “passive” owner unless the “passive” income is subject to S/E taxes. This could include income from an S corporation in which you do not “materially participate”, income as a limited partner, and rental income. You will generally be deemed a “passive” owner if you do not “materially participate” in the business as determined under the traditional “passive activity loss” rules. For example, under the *passive activity loss* rules, you may be a “passive” owner unless you spend more than 500 hours working in the business during the year or meet one of the other “material participation” tests. Furthermore, *rental income* is generally deemed to be “passive” income under the *passive activity loss* rules, regardless of how many hours you work in the rental activity. **Tax Tip:** In certain situations, real estate rentals may not be treated as “passive” income and could be exempt from the 3.8% NIIT. For example, if you are a “qualified real estate professional,” or you lease property to a business and you “materially participate” in the business operations of the lessee, the rental income may be exempt from the 3.8% NIIT. If you believe you may qualify for one of these rental exemptions, or you otherwise believe you may have “passive” income from non-rental business activities, please contact our firm. We will gladly evaluate your situation to determine whether there are *steps you could take before the end of 2016* to avoid “passive” income classification, and thus, reduce your exposure to the 3.8% NIIT.

Planning with Zero Percent Tax Rate for Capital Gains and Dividends

Long-term capital gains and qualified dividends that would be taxed (if ordinary income) in the 15% or lower ordinary income tax bracket, are taxed at a zero percent rate. For 2016, taxable income up to \$75,300 for joint returns (\$37,650 if single) is taxed at the 15% rate, or below. **Tax Tip:** Taxpayers who have historically been in higher tax brackets but now find themselves between jobs, recently retired, or expecting to report higher-than-normal business deductions in 2016, may temporarily have income low enough to take advantage of the zero percent rate for 2016. If you are experiencing any of these situations, please call our firm and we will help you take advantage of this zero percent tax rate for long-term capital gains and qualified dividends. **Planning Alert:** The zero percent rate for long-term capital gains and qualified dividends is particularly important to *lower-income retirees* who rely largely on investment portfolios that generate dividends and long-term capital gains. Furthermore, gifts of appreciated securities to lower-income family members who then sell the securities could reduce the tax on all or part of the gain from as high as 23.8% to as low as zero percent. **Caution:** If the donee is subject to the so-called *kiddie tax*, this planning technique will generally not work.



Timing Your Capital Gains and Losses

If the value of some of your investments is less than your cost, it may be a good time to harvest some capital losses. For example, if you have already recognized capital gains in 2016, you should consider selling securities *prior to January 1, 2017* that would trigger a capital loss. These losses will be deductible on your 2016 return to the extent of your recognized capital gains, plus \$3,000. **Tax Tip:** These losses may have the added benefit of reducing your income to a level that will qualify you for other tax breaks, such as the: \$2,500 American Opportunity Tuition Tax Credit, \$1,000 Child Credit, \$13,460 Adoption Credit, etc. **Planning Alert:** If, within 30 days before or after the sale of loss securities, you acquire the same securities, the loss will not be allowed currently because of the “wash sale” rules (although the disallowed loss will increase the basis of the acquired stock). **Tax Tip:** If you are afraid of missing an upswing in the market during this 60-day period, consider buying shares of a different company in the same sector. Also, there is *no* wash sale rule for *gains*. Thus, if you decide to sell stock at a gain in order to take advantage of a zero capital gains rate, or to absorb capital losses, you may acquire the same securities within 30 days without impacting the recognition of the gain.

Penalties

The FinCEN regulations include an anti-avoidance rule that will require FBAR reporting if an entity is created for the purpose of evading FBAR reporting. Failure to file an FBAR report may subject the non-filer to civil and criminal penalties. Penalties for a willful failure to file can be as much as the greater of \$100,000 or 50 percent of the amount in the account at the time of the violation.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information.

Note: The information contained in this letter represents a general overview of tax developments and should not be relied upon without an independent, professional analysis of how any of the provisions discussed may apply to a specific situation.

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