

# What's new for 2017: a roundup of tax changes going into effect this year

The new year promises to be a challenging one for tax practitioners and their clients, as President-elect Trump and Congressional Republicans have promised to enact a significant tax reform package in 2017. However, even if there is no new law, practitioners still will have to cope with a number of tax changes that go into effect for the first time this year or apply for the first time for tax returns filed this year. This article is the first installment of a 2-part roundup of these tax changes, other than indexing changes and changes created by Congress's failure (as of now), to enact an extenders package to revive tax provisions that expired at the end of 2016.

**Higher floor beneath medical expenses for seniors.** For tax years beginning after Dec. 31, 2016, the floor beneath the itemized deduction for medical expenses of taxpayers who are age 65 or older increases from 7.5% of AGI to 10% of AGI. (**Code Sec. 213(a), Code Sec. 213(f)** )

**Some taxpayers may need new ITINs.** Any individual filing a U.S. tax return is required to state his or her taxpayer identification number on that return. Generally, a taxpayer identification number is the individual's Social Security number (SSN). However, in the case of individuals who are not eligible to be issued an SSN, but who still have a tax filing obligation, IRS issues individual taxpayer identification numbers (ITINs) for use in connection with the individual's tax filing requirements. (**Reg. § 301.6109-1(d)(3)(i)**)

The 2015 Protecting Americans from Tax Hikes (PATH) Act (P.L. 114-113) provided that an ITIN will expire if an individual fails to file a tax return (or is not included as a dependent on another's tax return) for three consecutive years. (**Code Sec. 6109(i)(3)(B)(ii)**) Under this new rule, taxpayers who have an ITIN that has not been used at least once in the past three years will no longer be able to use that ITIN on a tax return as of Jan. 1, 2017. In addition, individuals who were issued ITINs before 2013 are now required to renew their ITINs on a staggered schedule between 2017 and 2020. (**Code Sec. 6109(i)(3)(C)**) However, only ITIN holders who need to file a tax return in 2017 need to renew their ITINs; others don't need to take any action.

**Accelerated due dates for W-2, 1099, etc. Forms.** For wages paid to employees, and taxes withheld from employee wages before 2016, payors generally had to file a Form W-2 return with the Social Security Administration (SSA) by February 28 of the year following the calendar year for which the return had to be filed, using Form W-3, Transmittal of Wage and Tax Statements. For those W-2s, the due date for returns filed electronically was March 31. Similarly, for payments before 2016, payors generally had to file Forms in the 1099 series with IRS on or before the last day of February of the year following the calendar year for which the return had to be filed. For those 1099s, the due date for most information returns that were filed electronically was March 31.

Under the 2015 PATH Act, beginning with forms filed in 2017, Forms W-2, W-3, and returns to report non-employee compensation (e.g., Form 1099-MISC), must be filed **on or before January 31** of the year following the calendar year to which such returns relate. And, those returns are no longer eligible for the extended filing date for electronically filed returns. **(Code Sec. 6071(c))**

Additionally, extensions of time to file Form W-2 with the SSA are no longer automatic. For filings due on or after Jan. 1, 2017, taxpayers may request one 30-day extension by submitting Form 8809, Application for Extension of Time to File Information Returns.

**Revised due dates for partnership and C corporation returns.** Under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41), effective generally for returns for tax years beginning after Dec. 31, 2015 (i.e., for 2016 tax year returns filed in 2017):

- Partnerships, as well as S corporations, must file their returns by the **15th day of the third month** after the end of the tax year. **(Code Sec. 6072(b))** For prior returns, partnerships had to file by the 15th day of the fourth month after the end of the tax year.
- C corporations generally must file by the **15th day of the fourth month** (had been third month) after the end of the tax year. However, for C corporations with fiscal years ending on June 30, the filing date continues to be the 15th day of the third month after the end of the tax year. Corporations with short tax years ending anytime in June are treated as if the short year ended on June 30, and they must file by the 15th day of the third month after the end of the tax year. For C corporations with fiscal years ending on June 30, the deferred filing due date won't apply until tax years beginning after Dec. 31, 2025.

**Revised automatic extension rules for corporations.** Under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, effective generally for returns for tax years beginning after Dec. 31, 2015, i.e., for 2016 tax year returns filed in 2017, the 3-month automatic extension of time for corporate returns in **Code Sec. 6081(b)** is changed to an automatic 6-month extension. However, for any return for a tax year of a C corporation which ends on December 31 and which begins before Jan. 1, 2026, the automatic extension period is five months (not six months). And, for any return for a tax year of a C corporation which ends on June 30 and which begins before Jan. 1, 2026, the automatic extension period is seven months (not six months). **(Code Sec. 6081(b))**

**Safe harbor for de minimis errors on information returns and payee statements.** In general, except where there is reasonable cause and no willful neglect and subject to certain other exceptions, a failure to include all of the information required to be shown on an information return or a payee statement with respect to an information return, or any inclusion of incorrect information on an information return or payee statement, is subject to a penalty. The amount of the penalty depends on various factors, including whether the payor is a small business.

Effective for returns and statements required to be filed after Dec. 31, 2016, the 2015 PATH Act established a de minimis safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements. If the error is \$100 or less (\$25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return, and no penalty is imposed. (**Code Sec. 6721(c)(3)(A)**; **Code Sec. 6722(c)(3)(A)**)

However, if any person receiving payee statements requests a corrected statement, the penalty for failure to file a correct information return and the penalty for failure to furnish a correct payee statement continue to apply in the case of de minimis errors on that statement. (**Code Sec. 6721(c)(3)(B)**; **Code Sec. 6722(c)(3)(B)**)

#### **Qualified small employer HRAs exempt from ACA market reform requirements.**

Generally effective for years beginning after Dec. 31, 2016, the “21st Century Cures Act” (P.L. 114-255) provides that a “qualified small employer HRA” is not treated as a group health plan for income tax purposes (except for **Code Sec. 49801(f)(4)** (which defines a group health plan), as amended, and notwithstanding any other provision of the Code). (**Code Sec. 9831(d)(1)**) There are similar exceptions for ERISA and Public Health Services (PHS) Act purposes.

**Observation:** Thus, under the Act, a qualified small employer HRA will not face the **Code Sec. 4980D** excise tax levied on group health plans that don't meet the Affordable Care Act (ACA) market reform requirements.

In general, a qualified small employer HRA is one that satisfies the following requirements:

- (1) It is maintained by an eligible employer. (**Code Sec. 9831(d)(2)(A)(ii)**) An eligible employer is one that employs fewer than 50 employees and does not offer a group health plan to any of its employees. (**Code Sec. 9831(d)(3)(B)**)
- (2) It is provided on the same terms to all eligible employees, defined as any employee of an eligible employer, except that the arrangement may exclude from consideration employees who haven't completed 90 days of service, employees who haven't attained age 25, part-time or seasonal workers, employees covered in a collective bargaining unit, and certain nonresident aliens. (**Code Sec. 9831(d)(2)(A)(ii)**, **Code Sec. 9831(d)(3)(A)**)
- (3) It is funded solely by an eligible employer, and no salary reduction contributions may be made under the HRA. (**Code Sec. 9831(d)(2)(B)(i)**)
- (4) It provides, after the employee provides proof of coverage, for the payment of, or reimbursement of, an eligible employee for expenses for medical care (as defined in **Code Sec. 213(d)**) incurred by the eligible employee or the eligible employee's family members (as determined under the HRA's terms) (**Code Sec. 9831(d)(2)(B)(ii)**) and
- (5) The amount of payments and reimbursements do not exceed \$4,950 (\$10,000 in the case of an arrangement that also provides for payments or reimbursements for family members of the employee). (**Code Sec. 9831(d)(2)(B)(iii)**) For any year beginning after 2016, the above dollar amounts are subject to cost of living increases. (**Code Sec. 9831(d)(2)(D)(ii)**) For employees who are covered by a qualified

arrangement for less than an entire year, the above dollar amounts are prorated. **Code Sec. 9831(d)(2)(D)(i)**

For purposes of **Code Sec. 105** (amounts received under accident and health plans) and **Code Sec. 106** (contributions by employer to accident and health plans), payments or reimbursements from a qualified small employer HRA of an individual for medical care (as defined in **Code Sec. 213(d)**) will not be treated as paid or reimbursed under employer-provided coverage for medical expenses under an accident or health plan if, for the month in which such medical care is provided, the individual does not have minimum essential coverage under **Code Sec. 5000A(f)**. (**Code Sec. 106(g)**)

Additionally, for any month that an employee is provided a small employer HRA that constitutes “affordable coverage,” as defined, the employee is not eligible for a premium assistance tax credit under **Code Sec. 36B**. (**Code Sec. 36B(c)(4)(A)**) (A reduced credit may be available if the small employer HRA does not constitute affordable coverage.)