



# Chapter One

## New Legislation

### New Legislation

MISEA 2016

#### Overview for 2016.

The general gridlock in Washington, D.C., over the last eight years applied to tax legislation as well as other legislation. In 2012 Congress did pass the American Taxpayer Relief Act of 2012 (the "ATRA 2012") to avoid the so-called "fiscal cliff" that otherwise would have occurred at the end of 2012.

## New Legislation

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### Overview for 2016.

That Act ended some of the annual Congressional infighting about extension of otherwise expiring tax provisions because it made permanent individual rates and the alternative minimum tax (AMT) “patch” permitting a higher AMT exemption amount.

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## New Legislation

MISEA 2016

### Overview for 2016.

- On September 15, 2015, the IRS issued Rev. Proc. 2015-48 to provide guidance after TIPA concerning the retroactive rules for 50% bonus depreciation and the expensing for qualified real property under § 179(f). The guidance is similar to that in Rev. Proc. 2011-26 for bonus depreciation and Notice 2013-59 for qualified real property under § 179(f).
  - The guidance explains how a taxpayer may claim the retroactive bonus depreciation when the taxpayer’s tax year began in 2013 and ended in 2014, and the taxpayer filed its 2013 return before the enactment of TIPA

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- The IRS also issued Notice 2015-2, which provides guidance on the retroactive increase in transit benefits under § 132(f)(2) from \$130 to \$250 per month

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- In 2015 Congress passed 13 bills that included tax provisions. Some of those bills were narrow provisions to address popular bi-partisan issues.

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## New Legislation

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The remaining 2015 bills containing tax provisions include the following.

- a. The Trade Preferences Extension Act of 2015 increased penalties for failure to file information returns and payee statements, and made the child tax credit not refundable for taxpayers who exclude foreign earned income from gross income.
- b. The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 modified mortgage reporting requirements, requires consistent basis reporting for estates and beneficiaries, and changed return due dates for some taxpayers.

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## New Legislation

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- c. The Bipartisan Budget Act of 2015 provides for a new partnership audit regime to begin in 2018.
- d. The Fixing America's Surface Transportation Act ("FAST Act") provided a longer-term solution to funding the Highway Trust Fund and extended highway-related taxes, provided for revocation or denial of passports for certain delinquent taxpayers, and reinstated private debt collection for certain tax debts.
- e. The Consolidated Appropriations Act of 2016 includes as Division Q the Protecting Americans From Tax Hikes Act of 2015 (the PATH Act), a bill providing for permanent and temporary extensions of the typical extender provisions.

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## New Legislation

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f. The Trade Facilitation and Trade Enforcement Act of 2015, signed into law on February 24, 2016, contains two tax provisions:

- It increases the minimum late filing penalty for taxpayers who fail to file a tax return within 60 days from \$135 to \$205; and
- It extends permanently the ban on State and local taxation of Internet access.

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## New Legislation

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Adding to deficit woes is the estimate that the “tax gap” (the difference between what all taxpayers owe and what the IRS collects) has widened.

a. In April 2016 the IRS estimated that the net tax gap, measured in 2006 at \$385 billion, has risen to \$406 billion.

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b. **The gross tax gap of \$458 billion** (before IRS collection activities bring in \$52 billion) consists of:

- 1) \$32 billion for non-filing;
- 2) \$387 billion for underreporting; and
- 3) \$39 billion for underpayments.

c. The types of taxes accounting for the tax gap are:

- 1) Individual income taxes, \$319 billion;
- 2) Employment taxes, \$91 billion;
- 3) Corporate income taxes, \$44 billion; and
- 4) Excise taxes, \$4 billion.

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## New Legislation

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**The Trade Preferences Extension Act of 2015**  
*contains the following tax provisions.*

Sections 25A and 222 of the Code are amended to provide that no taxpayer may claim the credits for qualified tuition and related expenses under § 25A, or the above-the-line deduction for qualified tuition and fees under § 222, **unless the taxpayer receives a statement required under § 6050S (Form 1098-T)** containing both the identifying information of the taxpayer (including the taxpayer's taxpayer identification number) as well as information related to the calculation of the relevant credits and deduction

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## New Legislation

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### The Trade Preferences Extension Act of 2015

*contains the following tax provisions.*

Sections 6721 and 6722 impose penalties for failure to file information returns or to furnish payee statements. The amount of the penalty depends on how late, if ever, the required return or statement is filed.

- A “first tier” penalty applies if the taxpayer files within 30 days of the due date.
- A “second tier” penalty applies if the return or statement is filed more than 30 days late but filed by August 1 of the relevant year.
- A “third tier” penalty applies if the return or statement is not filed by August 1.

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## New Legislation

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The Act increases the penalties for information returns or payee statements due after December 31, 2005.

- The first-tier penalty is increased to \$50 per return, with a maximum penalty of \$500,000 per calendar year.
- The second-tier penalty is increased to \$100 per return, with a maximum penalty of \$1,500,000 per calendar year.
- The third-tier penalty is increased to \$250 per return, with a maximum penalty of \$3,000,000 per calendar year.

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## New Legislation

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- The Act also increases the lower maximum levels applicable to small businesses.
- For failures or misstatement due to intentional disregard, the penalty per return or statement increases from \$250 to \$500, with no calendar-year limit.

The penalty amounts are indexed to inflation. See Rev. Proc. 2015-53, §§ 3.48 and 3.49, for 2016 amounts.

(T1=\$50      T2=100      T3=260/\$3,193,000)

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## New Legislation

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Note that the increased penalties cover a wide range of information reporting, including not only Forms W-2 and Forms 1099, but also new forms that are required under the ACA.

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## New Legislation

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The Act provides that a taxpayer who elects to exclude from gross income for a taxable year any amount of foreign earned income or foreign housing costs under § 911 may not claim the refundable portion of the child tax credit for the taxable year.

This provision is effective for taxable years beginning after December 31, 2014.

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## New Legislation

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### The Surface Transportation and Veterans Health Care Choice Improvement Act (the “Surface Transportation Act”).

The Act exempts employees from the employer mandate in the Affordable Care Act (the “ACA,” often referred to as “Obamacare”) who have healthcare coverage through the Department of Veterans Affairs or TRICARE.

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## New Legislation

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### FORM 1098 UPDATE

For returns and statements required to be furnished after December 31, 2016, the Act requires mortgage lenders to provide the following additional information on information returns and statements to payors with respect to debt secured by real property:

- The amount of outstanding principal on the mortgage as of the beginning of the calendar year;
- The loan origination date; and
- The address of the property securing the debt (or other description in the case of property without an address).

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## New Legislation

MISEA 2016

### Surface Transportation Act

The Act amends § 1014 and adds § 6035 to require consistent basis reporting between estates and persons acquiring property from decedents, and information reporting by executors.

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## New Legislation

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For purposes of the provision, the value of property has been finally determined for estate tax purposes if: (a) the value of the property is shown on an estate tax return, and the value is not contested by the Secretary before the expiration of the time for assessing estate tax.

New § 6035 provides that an executor of a decedent's estate that is required to file an estate tax return.

A person that is required to file an estate tax return under § 6018(b) (returns by beneficiaries) is required to report to each other person holding a legal or beneficial interest in property to which the return relates.

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## New Legislation

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The Act provides that it applies to property when an estate tax return is filed after July 31, 2016, the date of enactment. On August 21, 2015, the IRS issued Notice 2015-57 to delay basis reporting by executors until February 29, 2016. This deadline was extended to March 31, 2016, in Notice 2016-19. On March 23, 2016, the IRS again delayed reporting until June 30, 2016, in Notice 2016-27. Subsequently the IRS issued new Form 8971 for executors to use to report.

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# New Legislation

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**8971** Information Regarding Beneficiaries Acquiring Property From a Decedent

OMB No. 1545-0046

Check box if this is a supplemental filing

**Part I Decedent and Executor Information**

1 Decedent's name 2 Decedent's date of death 3 Decedent's SSN

4 Executor's name (see instructions) 5 Executor's phone no. 6 Executor's TIN

7 Executor's address (number and street including apartment or suite no., city, town, or post office, state or province, country, and ZIP or foreign postal code)

8 If there are multiple executors, check here  and attach a statement showing the names, addresses, telephone numbers, and TINs of the additional executor.

9 If the estate elected alternate valuation, indicate the alternate valuation date: \_\_\_\_\_

**Part II Beneficiary Information**

How many beneficiaries received (or are expected to receive) property from the estate? \_\_\_\_\_ For each beneficiary, provide the information requested below. If more space is needed, attach a statement showing the requested information for the additional beneficiaries.

| Name of Beneficiary | TIN | Address, City, State, ZIP | Date Provided |
|---------------------|-----|---------------------------|---------------|
|                     |     |                           |               |
|                     |     |                           |               |
|                     |     |                           |               |
|                     |     |                           |               |
|                     |     |                           |               |

**Notice to Executors:**  
Submit Form 8971 with a copy of each completed Schedule A to the IRS. To protect privacy, Form 8971 should not be provided to any beneficiary. Only Schedule A of Form 8971 should be provided to the beneficiary. Retain copies of all forms for the estate's records.

Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, all estimates reported here are true, correct, and complete.

**Sign Here** Signature of executor \_\_\_\_\_ Date \_\_\_\_\_

May the IRS discuss this return with the preparer shown below? See instructions. Yes  No

**Paid Preparer Use Only** Preparer's name \_\_\_\_\_ Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_ Check  if self-employed.

Print name \_\_\_\_\_ Print TIN \_\_\_\_\_ Change to \_\_\_\_\_

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 377001 Form 8971 (1-2016)

# New Legislation

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Date 8971 (1-2016)

**SCHEDULE A—Information Regarding Beneficiaries Acquiring Property From a Decedent**

Information about Form 8971 (including Schedule A) and its separate instructions is at [www.irs.gov/form8971](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

**Part 1. General Information**

1 Decedent's name 2 Decedent's SSN 3 Beneficiary's name 4 Beneficiary's TIN

5 Executor's name 6 Executor's phone no.

7 Executor's address

**Part 2. Information on Property Acquired**

| A<br>Item No. | B<br>Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate and Generation-Skipping Transfer Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here. | C<br>Did this asset increase estate's adjusted taxable gifts? | D<br>Valuation Date | E<br>Estate Tax Value (in U.S. dollars) |
|---------------|--|---|---------------------|---|
| 1             | Form 706, Schedule _____, Item _____<br>Description —  |   |                     |   |
|               |  |   |                     |   |
|               |  |   |                     |   |
|               |  |   |                     |   |
|               |  |   |                     |   |
|               |  |   |                     |   |

**Notice to Beneficiaries:**  
You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. Retain this schedule for tax reporting purposes. If the property increased the estate tax liability, Internal Revenue Code section 1014 applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

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## New Legislation

MISEA 2016

Prop. Reg. § 1.1014-10(a) provides that the consistency requirement applies only to property the inclusion of which in an estate increases estate tax liability.

Prop. Reg. § 1.1014-10(a)-(b) excludes all property reported on a return if no estate tax is imposed upon the estate due to allowable credits.

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## New Legislation

MISEA 2016

Prop. Reg. § 1.1014-10(c)(3) provides rules to determine final value of property that is discovered after the filing of a return.

If such property is reported on an estate tax return before the expiration of the limitations period on assessment, the final value is determined under the normal rules.

If such property is not reported before the limitations period on assessment expires, the final value is **zero**.

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## New Legislation

MISEA 2016

Prop. Reg. § 1.1014-10(d) provides that executors of an estate must file an information return.

This requirement applies only to an executor of an estate required to file an estate tax return under § 6018.

**It does not apply to an executor who is not required to file but chooses to file a return to make an election such as portability or to make a protective filing.**

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## New Legislation

MISEA 2016

Executors should use Form 8971 to report, and the beneficiary statement is Schedule A to Form 8971.

The Surface Transportation Act overrules Supreme Court cases by amending § 6501(e). That section provides a six-year limitations period on assessment rather than the normal three-year period if a taxpayer “omits from gross income” an amount properly includible therein, and such amount is in excess of 25% of the amount of gross income stated in the return. Previously the Supreme Court held that an overstatement of basis of property resulting in an understatement of gross income does not cause an omission from gross income within the meaning of this provision.

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## New Legislation

MISEA 2016

The new rule is effective for all returns filed after July 31, 2015, as well as for any other return for which the limitations period on assessment in § 6501 had not yet expired as of that date.

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## New Legislation

MISEA 2016

The Act provides for new filing original due dates and extension dates for some taxpayers starting with taxable years beginning after December 31, 2015.

For partnerships and S corporations, the original due date of returns will be the fifth day of the third month following the close of the taxable year, or March 15 for calendar-year taxpayers. A maximum extension of six months will be allowed.

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## New Legislation

MISEA 2016

- C corporations will have an original due date of the 15th date of the fourth month after the close of the taxable year, or April 15, for calendar-year C corporations.
- If, however, a C corporation has a fiscal year ending June 30, the original due date will remain at September 15 and will not change to October 15 until taxable years beginning after December 31, 2025.
- C corporations with a taxable year ending on December 31 will receive a maximum extension to file of only five months until taxable years beginning after December 31, 2025.

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## New Legislation

MISEA 2016

Calendar-year trusts will retain an original due date of April 15 and be allowed an extension to file of 5.5 months, until September 30.

The extension to file the Form 5500 series for employee benefit plans using a calendar year was to be 3.5 months, to November 15. Congress repealed this provision to reinstate prior law under which the extended due date is October 15 for calendar-year plans (2.5 months after the end of July).

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## New Legislation

MISEA 2016

The FinCEN Form 114 (the FBAR) will be due April 15 and the IRS has regulatory authority to grant a six-month extension to October 15. The Act permits the IRS to waive any penalties for failure to file a timely request for an extension. The reporting period to which the penalty relates is the first period for which the taxpayer was subject to the FBAR requirements.

The maximum extension for returns of tax-exempt organizations using a calendar year is an automatic six-month period ending on November 15.

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## New Legislation

MISEA 2016

### The Bipartisan Budget Act of 2015.

Generally, the Act provided for funding of the Federal government for fiscal 2016. The Act allows \$120 billion of spending above sequestration, subject to Congressional allocations.

The Act contains a significant tax provision that came out of the blue and surprised practitioners. Congress decided to repeal the TEFRA audit procedures for partnerships and replace it with a new regime that will go into effect after 2017.

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## New Legislation

MISEA 2016

### Partnership Audits and Adjustments After 2017.

For Federal income tax purposes, a partnership is not a taxable entity. Instead, a partnership is a conduit and the items of partnership income, deduction, gain, loss, and credit are taken into account on the partners' income tax returns. Partnership returns and partner statements are generally due by the 15th day of the third month after the end of the partnership taxable year.

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## New Legislation

MISEA 2016

There are three sets of rules for tax audits and adjustments for partners and partnerships. First, for partnerships with more than 100 partners. Second, for partnerships with more than ten partners or with passthroughs as partners.

Under these two sets of rules, partnership items generally are determined at the partnership level.

Third, for partnerships with ten or fewer partners that have not elected the TEFRA audit rules, audit and adjustment rules applicable generally to taxpayers subject to the Federal income tax apply.

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## New Legislation

MISEA 2016

For a partnership with few partners that does not elect to be governed by TEFRA rules, the tax treatment of an adjustment to a partnership's items of income, gain, loss, deduction, or credit is determined for each partner. Adjustments are made in separate actions for each partner.

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## New Legislation

MISEA 2016

### Repeal of TEFRA and Electing Large Partnership Rules.

Generally for returns filed for partnership taxable years beginning after 2017. A centralized system for audit, adjustment, assessment, and collection of tax applies to all partnerships, except those eligible partnerships that have filed a valid election out.

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## New Legislation

MISEA 2016

Under the centralized system, the audit of a partnership takes place at the partnership level. Any adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year, and any partner's distributive share thereof, generally are determined at the partnership level. Any tax attributable to these items generally is assessed and collected at the partnership level.

Under the centralized system, a partnership may seek modification of the imputed underpayment amount. A partnership may elect an alternative to partnership payment of the imputed underpayment in which each reviewed-year partner is furnished a statement of the partner's share of the adjustments.

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## New Legislation

MISEA 2016

### Election Out.

The centralized system is applicable to any partnership unless it meets eligibility requirements. One of the eligibility requirements the partnership is required to furnish 100 or fewer (Schedules K-1).

A further eligibility requirement for a partnership to make the election is that each of its partners is an individual, a deceased partner's estate, a C corporation, or an S corporation

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## New Legislation

MISEA 2016

### Time and Manner of Election Out.

The election is to be made with a timely-filed return of the partnership taxable year to which the election relates; the election is valid only for that year.

For a partnership with a partner that is an S corporation to elect out, the partnership is required to include with its election (in the manner prescribed by the Secretary) a disclosure of the name and taxpayer identification number of each person with respect to whom the S corporation must furnish a (Schedule K-1).

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## New Legislation

MISEA 2016

Example 2: If a partnership has 50 partners, 49 of which are individuals and one of which is an S corporation with 30 shareholders all of whom are individuals, the partnership is treated as being required to furnish 80 statements.

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## New Legislation

MISEA 2016

### Other Persons as Partners.

Assume that a partner of a partnership is a disregarded entity such as a State-law limited liability company (“LLC”) with only one member, a domestic corporation. Such guidance may provide that the partnership can make the election if the partnership includes a disclosure of the name and taxpayer identification number of each of the disregarded entity.

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## New Legislation

MISEA 2016

### Requirement of Consistency with Partnership Return.

The centralized system imposes a consistency requirement. A partner on its return must treat each item of income, gain, loss, deduction or credit attributable to a partnership in a manner that is consistent with the treatment of such income, gain, loss, deduction, or credit on the partnership return.

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## New Legislation

MISEA 2016

### Partners Bound by Actions of Partnership; Designation of Partnership Representative.

### Partnership Adjustments by the Secretary.

The centralized system provides that any adjustment are determined at the partnership level. Any tax attributable to these items is assessed and generally is collected at the partnership level.

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## New Legislation

MISEA 2016

### Reviewed Year and Adjustment Year.

For purposes of the centralized system, the reviewed year means the partnership taxable year to which the item being adjusted relates.

The adjustment year means:

For example, in the case of adjustments with respect to partnership taxable year 2018 resulting in an imputed underpayment assessed in 2020 that the partnership then litigates in Tax Court, the decision of which is not appealed and becomes final in 2021, the adjustment year is 2021.

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## New Legislation

MISEA 2016

### Payment of Imputed Underpayment by the Partnership.

In the event of any adjustment by the Secretary, the partnership is required to pay the imputed underpayment in the adjustment year.

### Adjustment That Does Not Result in Imputed Underpayment.

Any adjustment that does not result in an imputed underpayment is taken into account by the partnership in the adjustment year. The amount of an adjustment in a credit is taken into account as a separately stated item.

Examples. See examples on the pages that follow

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## New Legislation

MISEA 2016

Modification Procedures: Modification of Applicable Highest Tax Rates.

Procedures for modification provide for taking into account a rate of tax lower than the highest rate.

The partnership may demonstrate that a portion of an imputed underpayment is allocable to a partner that is a C corporation, and for that C corporation partner, the highest marginal rate of Federal income tax (35 percent in 2016).

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## New Legislation

MISEA 2016

The partnership may demonstrate that a portion of an imputed underpayment relates to an item of long-term capital gain or qualified dividend income that is allocable to a partner who is an individual, and that the highest rate of tax with respect to that item of long-term capital gain or qualified dividend income for the reviewed year. (20 percent for 2016)

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## New Legislation

MISEA 2016

Modification Procedures: Additional Procedures.

Additional procedures to modify the amount of an imputed underpayment may be provided by the Secretary on the basis of factors the Secretary determines are necessary or appropriate.

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## New Legislation

MISEA 2016

### Restriction on Authority to Amend Partner Information Statements.

The provision provides that partner information returns (currently Schedules K-1) required to be furnished by the partnership may not be amended after the due date of the partnership return to which the partner information returns relate. The due date takes into account the permitted extension period.

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## New Legislation

MISEA 2016

If the partnership has a calendar taxable year, the due date for its partnership 2020 return is September 15, 2021. After which date the Schedules K-1 for 2020 may no longer be amended. The

partnership may file an administrative adjustment request pursuant to new § 6227, and the partnership may pay any resulting imputed underpayment.

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## New Legislation

MISEA 2016

### Effective Date.

The BBA applies to returns filed for partnership taxable years beginning after December 31, 2017. The provision relating to administrative adjustment requests applies to requests with respect to returns filed for partnership taxable years beginning after December 31, 2017. The provision relating to the election of a partnership to furnish statements to partners (§ 6226) applies to elections with respect to returns filed for partnership taxable years beginning after December 31, 2017.

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## New Legislation

MISEA 2016

A partnership may elect for the provisions of the centralized system (other than the election out to apply to any return of the partnership beginning after the date of enactment and before January 1, 2018).

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## New Legislation

MISEA 2016

### Fixing America's Surface Transportation Act (the FAST Act).

No Passports for Seriously Delinquent Taxpayers.

The Secretary of State may refuse to issue or renew a passport if the applicant owes child support in excess of \$2,500 or owes certain types of Federal debts,

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## New Legislation

MISEA 2016

The Secretary of State is required to deny a passport to a seriously delinquent taxpayer.

Exceptions to these rules are permitted for emergency or humanitarian circumstances.

The provision authorizes limited sharing of information between the Secretary of State and Secretary of the Treasury.

The provision applies only to "seriously delinquent tax debt," in excess of \$50,000 for which a notice of lien or a notice of levy has been filed.

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## New Legislation

MISEA 2016

The possible loss of a passport is added to the list of matters required to be included in notices to taxpayer of potential collection activity.

The Commissioner must provide contemporaneous notice when Commissioner sends a certification of serious delinquency to the Secretary.

He is required to provide notice to the taxpayer at the same time

The above provisions are effective on December 4, 2015, the date of enactment.

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## New Legislation

MISEA 2016

Contractors to Collect Inactive Tax Receivables. The Act requires the Secretary to enter into qualified tax collection contracts for the collection of inactive tax receivables. Inactive tax receivables are defined as any tax receivable (a) removed from the active inventory for lack of resources or inability to locate the taxpayer; (b) for which more than one-third of the applicable limitations period has lapsed and no IRS employee has been assigned to collect the receivable; and (c) for which a receivable has been assigned for collection but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection. Tax receivables are defined as any outstanding assessment which the IRS includes in potentially collectible inventory.

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## New Legislation

MISEA 2016

The Act designates certain tax receivables as not eligible for collection.

The Act adds an additional exception to § 6103 to allow contractors to identify themselves as such and disclose the nature, subject, and reason for the contact.

The Act requires the Secretary to prepare two reports for the House Committee. The first report is required annually:

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## New Legislation

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- (1) The total number and amount of tax receivables provided to each contractor for collection; and
- (2) The total amounts collected by, and installment agreements resulting from collection efforts.

The second report is required biannually and is required to include:

- (1) An independent evaluation of contractor performance; and
- (2) A measurement plan that includes a comparison of the best practices.

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## New Legislation

MISEA 2016

The provision requires under § 6306 of the Code be instead used to fund a newly created special compliance personnel program.

No other source of funding for the program is permitted, and funds deposited in the special account are restricted to use for the program.

Special compliance personnel are individuals employed by the IRS.

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## New Legislation

MISEA 2016

The Consolidated Appropriations Act of 2016.

This Act contains several tax provision, including the PATH Act of 2015.

The excise tax on “Cadillac plans” under the Affordable Care Act (ACA) is delayed to 2020.

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## New Legislation

MISEA 2016

The new Act makes two changes:

- 1) The tax is delayed to taxable years beginning after December 31, 2019.
- 2) The denial of a deduction for the tax is eliminated for income tax purposes.

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## New Legislation

MISEA 2016

The Act extends and then phases out credits for producing electricity from wind under §§ 45 and 48.

Currently an increased 30% business energy credit for solar energy property is allowed through 2016, and thereafter the credit rate reverts to 10%. Increased credit rates also apply to other clean energy sources.

The Act extends and modifies the increased credit rate, but only with respect to property that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat. The credit rate is 30% for 2017-2019, 26% for 2020, and 22% for 2021. Thereafter the rate reverts to 10%.

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## New Legislation

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The Act extends the § 25D credit for residential energy efficient property for five years through December 31, 2021, but only for qualified solar electric property and solar water heating property. The credit rate is reduced from 30% to 26% in 2020 and to 22% in 2021.

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## New Legislation

MISEA 2016

The Protecting Americans from Tax Hikes Act of 2015 (the PATH Act).

The PATH Act was enacted on December 18, 2015.

- a. Permanently extends 22 provisions;
- b. Extends four provisions through 2019;
- c. Extends 30 provisions through 2016;

Provides rules on the conduct of IRS employees.

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## New Legislation

MISEA 2016

### Permanent Extensions.

The lower earnings threshold of \$3,000 for the refundable child tax credit (CTC) under § 24 is made permanent.

The § 25A American Opportunity Tax Credit (AOTC), which modified the Hope education credit for 2009-2017, is made permanent. The maximum credit will continue to be \$2,500 for four years, and up to 40% is refundable.

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## New Legislation

MISEA 2016

### Modifications of the earned income tax credit (EITC) presently effective through 2017 are made permanent under § 32.

The § 62(a)(2)(D) \$250 above-the-line deduction for school teachers who pay for qualified expenses is made permanent and will be adjusted for inflation after 2015. In 2016, the amount will remain \$250.

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## New Legislation

MISEA 2016

Parity for the gross income exclusion for employer provided mass transit benefits and employer provided parking benefits is made permanent under §132(f).

In 2016 the amount for both benefits will be \$255 per month.

The election to deduct state and local sales taxes in lieu of state and local income taxes under § 164 is made permanent.

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## New Legislation

MISEA 2016

The § 408(d) exclusion from gross income for qualified charitable dispositions from an IRA is made permanent.

The PATH Act makes permanent the present-law research credit under § 41, and modifies the credit.

The Act makes permanent the differential wage payment credit for eligible small business employers.

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## New Legislation

MISEA 2016

The Act makes permanent the 15-year recovery period under § 168 for:

Qualified leasehold improvement property;

Qualified retail improvement property; and

Qualified restaurant property.

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## New Legislation

MISEA 2016

The Act makes permanent the 100% exclusion from gross income, up to limits, for gain on the sale of § 1202 stock held for five years. It also eliminates the AMT preference for such gain.

The Act makes permanent the \$500,000 deduction limit under § 179 with a \$2,000,000 phaseout floor.

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## New Legislation

MISEA 2016

The amounts are adjusted for inflation after 2015. In 2016, the deduction limit will remain at \$500,000 but the phaseout floor will increase to \$2,010,000.

Off-the-shelf computer software permanently qualifies as § 179 property.

Taxpayers may revoke any § 179 election without IRS consent.

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## New Legislation

MISEA 2016

The provision in § 179(f) treating qualified real property as § 179 property is made permanent, with a \$250,000 limit in 2015.

That limit is eliminated after 2015.

Flush language in § 179(f) excluding air conditioning and heating units from the definition of qualified real property is deleted by the Act. Therefore such property could be considered § 179 property if it otherwise meets the definition of qualified real property.

74

## New Legislation

MISEA 2016

In Rev. Proc. 2016-48, the IRS provides guidance on applying § 179(f) under the PATH Act with respect to carryovers of disallowed deductions for qualified real property.

The Act makes permanent a five-year recognition period under § 1374 for S corporations subject to the built-in-gains tax.

75

## New Legislation

MISEA 2016

### Extensions Through December 31, 2019.

The Act extends the new market tax credit under § 45D for five years.

The Act extends the work opportunity tax credit (WOTC) under § 51-52 through 2019.

76

## New Legislation

MISEA 2016

The Act extended bonus depreciation through 2019, but phased down the percentage amount. Bonus depreciation will be allowed as follows:

For 2015-2017, bonus depreciation will remain at 50%.

In 2018 the percentage will be 40%.

In 2019 the percentage will be 30%.

77

## New Legislation

MISEA 2016

For automobiles, the allowable first-year bonus depreciation will be \$9,000 for 2015-2017, \$6,400 for 2018, and \$4,800 for 2019.

After 2015, bonus depreciation will be allowed for all “qualified improvement property.” In 2015 and prior years, only qualified leasehold improvement property was eligible for bonus depreciation.

78

## New Legislation

MISEA 2016

In Rev. Proc. 2016-48, the IRS provides guidance on the retroactive extension of bonus depreciation.

Generally, such taxpayers may either file an amended return for their taxable year that began in 2014, or file an application for a change in method of accounting under § 6.01 of Rev. Proc. 2016-29.

If a taxpayer made an election not to deduct bonus depreciation on its 2014 return, the IRS grants it consent to revoke that election.

79

## New Legislation

MISEA 2016

### Extensions Through 2016.

The exclusion from gross income under § 108 for cancellation of qualified principal residence indebtedness of up to \$2 million;

The treatment of mortgage insurance premiums allocated to 2015 or 2016 as qualified residence interest;

The § 222 above-the-line deduction for qualified tuition and related expenses;

The § 25C credit for nonbusiness energy property; after 2015 the energy efficiency standards for windows, skylights and doors are modified.

80



## New Legislation

MISEA 2016

The Affordable Care Act medical device excise tax under § 4191 is suspended for sales in 2016 and 2017.

### Other PATH Act Provisions.

For years beginning after 2015, §§ 6071 and 6402 are amended to require Forms W-2 and 1099- MISC reporting non-employee compensation to be filed with the IRS by January 31 (generally the same due date for employee and payee statements). No extended filing date for electronically returns will be provided.

81

## New Legislation

MISEA 2016

Why? The earlier filing will enable the IRS to better fight identity theft and refund fraud.

The Act also provides that after 2016, no refund shall be made before the 15th day of the second month if the taxpayer claimed the EITC, the AOTC, or the CTC on the return.

82

## New Legislation

MISEA 2016

The Act prevents retroactive claims for the earned income tax credit (EITC), the child tax credit (CTC), and the American Opportunity Tax Credit (AOTC).

No credit will be allowed for a year for which the taxpayer or the taxpayer's child has a taxpayer identification number that has been issued after the due date (with extensions) for filing the return for such year.

83

## New Legislation

MISEA 2016

Tax return preparers after 2015 will have to meet due diligence requirements for all three credits rather than just the EITC. Form 8867, the prior checklist for the EITC, has been expanded to cover all three credits. The penalty for failing to comply with due diligence requirements under § 6695(g) is \$510 for 2016 (the adjusted inflation amount for such penalty).

The Act expands the disallowance rules that apply to the EITC to the CTC and the AOTC.

If there is a reckless or intentional disregard of rules in claiming the credit, the taxpayer must wait two years to claim that credit again.

84

## New Legislation

MISEA 2016

Under § 6662, the definition of an underpayment subject to the 20% penalty is expanded to expressly include the amount of an improperly claimed refundable credit in excess of tax.

This rule is in response to *Rand v. Comm’r*, 141 T.C. No. 12 (2013).

- Thus if a taxpayer before credits owed \$500 in tax, and improperly claimed a \$2,500 refundable credit generating a \$2,000 refund, the “underpayment” under *Rand* was only \$500.
- Under the Act, the underpayment subject to penalty is \$2,500.

85

## New Legislation

MISEA 2016

The Act also modifies a penalty exception for the EITC.

Under the change, the taxpayer must have “reasonable cause” to avoid the penalty.

The Act increases the tax return preparer penalty under § 6694(b) for conduct that is (a) a willful attempt in any manner to understate the liability tax; or (b) a reckless or intentional disregard of rules or regulations. The Act increase this penalty to an amount equal to the greater of \$5,000, or 75% of the income derived (or to be derived).

86

## New Legislation

MISEA 2016

Note that the penalty under § 6694(a) for unreasonable positions was not changed, and remains at the greater of \$1,000 or 50% of the income derived.

After 2015, taxpayers claiming the AOTC must provide the employer identification number of the education institution, which must provide that number on Form 1098-T.

87

## New Legislation

MISEA 2016

After 2015, an education institution must report under § 6050S the aggregate amount of qualified tuition and related expenses actually received. Thus the education institution must state the amounts received in box 1 on the Form 1098-T, as reporting only the amounts billed in box 2 of the Form is insufficient.

88

## New Legislation

MISEA 2016

In Announcement 2016-17, however, the IRS addressed concerns raised by educational institutions that they could not make necessary computer software changes in time to comply with the new requirements for 2016. The IRS stated that it will not impose penalties regarding 2016 Forms 1098-T solely because a school reports the aggregate amount billed for 2016. Thus eligible schools can still report either amounts received or amounts billed for 2016 without risking penalties.

89

## New Legislation

MISEA 2016

Section 529, Qualified tuition programs, is amended to:

Include in qualified educational expenses the purchase of a computer, peripheral equipment, computer software, and Internet access and related services if used primarily by the beneficiary of the plan;

Repeal the “aggregate rule” to determine the amount of distributions that may be taxable.

90

## New Legislation

MISEA 2016

The aggregation rule now provides that if a beneficiary receives multiple distributions from a program, the portion of a distribution that represents earnings will now be computed on a distribution-by-distribution basis, not on an aggregate basis.

These rules are effective after December 31, 2014.

91

## New Legislation

MISEA 2016

A distributee with multiple accounts that were aggregated for 2015 may request a corrected Form 1099-Q that computes earnings for 2015 without aggregation, and the corrected Form must be provided.

92

## New Legislation

MISEA 2016

The Act amends the ABLE Act to eliminate the requirement that ABLE accounts for disabled beneficiaries may be established only in the State of residence of the ABLE account owner.

In Notice 2015-81, the IRS eased State administrative burdens with respect to accounts under the ABLE Act.

The Act provides relief for wrongly incarcerated individuals in new § 139F.

93

## New Legislation

MISEA 2016

Gross income shall not include any civil damages, restitution, or other monetary award relating to a “wrongfully incarcerated individual,” an individual who:

Was convicted of a covered offense;

Served all or part of a sentence for that offense; and

Was pardoned, granted clemency, or granted amnesty for the offense because he or she was innocent (or where the conviction was vacated or the person was found not guilty on retrial).

94

## New Legislation

MISEA 2016

See *In Re Elkins*, 117 A.F.T.R.2d (RIA) 2124 (N.D. Ohio 2016), where the Court held that the new statute only applies to the wrongfully incarcerated individual, and settlements received by a spouse or child of an incarcerated person are not covered.

95

## New Legislation

MISEA 2016

The Act clarifies rules for early terminations of a NICRUT or a NIMCRUT.

A net income only CRUT (NICRUT) pays an income beneficiary the lesser of trust income or a fixed percentage of the value of trust assets each year.

A net income CRUT with a make-up feature (NIMCRUT) makes “make-up” distributions when it distributes less than the fixed percentage.

96



## New Legislation

MISEA 2016

The Act amends § 7803 to add to the IRS Commissioner's duties the requirement to ensure that all IRS employees are familiar with, and act in accordance with, taxpayer rights as provided in the Code.

The Act contains a "Hillary Provision." Section 402 of the Act bars the use of personal email accounts by IRS employees for official government business, effective December 18, 2015.

97

## New Legislation

MISEA 2016

The Act revises § 6051 to require employers to include an "identifying number" for each employee, rather than an employee's SSN, on Forms W-2. This permits regulations requiring or permitting a truncated SSN on Forms W-2 under authority currently provided in § 6109(d).

The Act amends Title 31 of the U.S Code to permit enrolled agents meeting IRS qualifications to use the designation "enrolled agent," "EA," or "E.A."

98

## New Legislation

MISEA 2016

The Act provides rules concerning tax-exempt organizations, some in response to the so-called “scandal” concerning the IRS’s selection of applications for tax-exempt status based on political criteria.

Sections 6033 and 6652 along with new § 506 require § 501(c)(4) organizations to give the IRS a 60-day notice of formation. A penalty of \$20 a day, up to \$5,000, applies for failure to comply.

99

## New Legislation

MISEA 2016

### **Other Recent Legislation.**

The Trade Facilitation and Trade Enforcement Act of 2015.

The Act increases the minimum penalty for failure to file a timely return under § 6651(a)(3) from \$135 to \$205. EXCISE TAXES.

100

## New Legislation

MISEA 2016

The Act also permanently extends the Internet Tax Freedom Act, which bans all State and local taxation of Internet access. The Act gives grandfathered localities until June 2020 to phase out existing Internet access taxes. There are currently seven states that will be required to phase out their taxation of Internet access: Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. The permanent ban is estimated to cost those states about \$561 million of revenue annually.

101

## New Legislation

MISEA 2016

### Exclusion of Income Earned By Olympians.

It is expected that President Obama will sign in October 2016 the United States Appreciation for Olympians and Paralympians Act (H.R. 5946), which was approved by a 415-1 vote in the House and unanimous consent in the Senate.

The USOC awards \$25,000 to gold medal winners, \$15,000 to silver medal winners, and \$10,000 to bronze medal winners. For Paralympians, the awards for the three medals are \$5,000, \$3,500 and \$2,500.

102

## New Legislation

MISEA 2016

### The ABLE Act.

The IRS has issued proposed regulations under § 529A that provide guidance regarding programs under the Achieving a Better Life Experience (ABLE) Act of 2014.

Providing a new type of tax- advantaged savings plan for disabled individuals. Called the “ABLE” Act, the new § 529A plans are modeled after § 529 Qualified Tuition Plans.

103

## New Legislation

MISEA 2016

Beginning in 2015, § 529A allows the creation of a qualified ABLE program by a State, under which a separate ABLE account may be established for a disabled individual who is the designated beneficiary and owner of the account. Generally, contributions to that account are subject to both an annual and a cumulative limit, and, when made by a person other than the designated beneficiary, are treated as non-taxable gifts. Distributions made from an ABLE account for qualified disability expenses are not included in the designated beneficiary’s gross income.

104

## New Legislation

MISEA 2016

### Certification of Disability Required.

At the time an ABLE account is created, the designated beneficiary must provide evidence that he or she is an eligible individual. Under § 529A(e)(1), an individual is an eligible individual for a tax year if, during that year, either the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification meeting specified requirements is filed with the IRS.

105

## New Legislation

MISEA 2016

### Contributions to an ABLE Account.

All contributions to an ABLE account must be made in cash.

### Application of Gift Tax to Contributions to an ABLE Account.

Gift tax consequences may arise from contributions to an ABLE account even though the aggregate amount of such contributions to an ABLE account from all contributors may not exceed the annual exclusion.

106

## New Legislation

MISEA 2016

### Distributions.

If distributions from an ABLE account do not exceed the designated beneficiary's qualified disability expenses, no amount is includible in the designated beneficiary's gross income.

IRS has been asked whether a qualified tuition account under § 529 may be rolled into an ABLE account for the same designated beneficiary free of tax. Because such a distribution to the ABLE account would not constitute a qualified higher education expense under § 529, the IRS does not believe it has the authority to allow such a transfer on a tax-free basis.

107

## New Legislation

MISEA 2016

### Qualified Disability Expenses.

Should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefits to others in addition to the benefit to the eligible individual. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism.

108

## New Legislation

MISEA 2016

### Distribution on Death.

The regulations provide that, upon the death of the designated beneficiary, all amounts remaining in the ABLE account are includible in the designated beneficiary's gross estate for purposes of the estate tax.

Pursuant to § 529A(f), a qualified ABLE program must provide that, upon the designated beneficiary's death, any State may file a claim for the amount of the total medical assistance paid for the designated beneficiary under the State's Medicaid plan after the establishment of the ABLE account.

109

## New Legislation

MISEA 2016

### Reporting Requirements.

distributions will be reported on the new Form 1099-QA.

110

## New Legislation

MISEA 2016

# ACA RUNDOWN

111

## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2010.

- Tanning Services Excise Tax.
- Small Employer Health Insurance
- Expanded Dependent Coverage in Employer Health Plans.

112



## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2011.

- W-2 Must Include Cost of Employer-Provided Health Insurance
- Restricted Definition of Medicine for Health Plan Reimbursements
- Increased Penalty Tax on Nonqualifying HSA and Archer MSA Distributions

113

## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2012.

- Information Reporting Required for Payments to Corporations
- REPEALED THE BULK OF THESE PROVISIONS

114

## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2013.

- Increased HI Tax for High-Earning Workers and Self-Employed Taxpayers.
- Surtax on Unearned Income of Higher-Income Individuals
- Higher Threshold for Deducting Medical Expenses
- Dollar Cap on Contributions to Health FSAs

115

## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2014.

- Larger Employers Not Offering Affordable Health Insurance Coverage Must Pay Penalty.
- Individuals Not Carrying Health Insurance Face a Penalty
- Refundable Tax Credit for Low- or Moderate-Income Families Buying Certain Health
- New Information Reporting of Employer Provided Health Coverage.

116

## New Legislation

MISEA 2016

### ACA RUNDOWN

#### The 2010 Health Care Act.

#### Tax Changes Effective for 2018.

- Excise Tax Applies to High-Cost Employer Provided Health Insurance Coverage

117

## New Legislation

MISEA 2016

### **New Form 1023-EZ.**

On July 1, 2014, the IRS announced a new, shortened application form to help small charities apply for § 501(c)(3) tax-exempt status more easily. Form 1023-EZ is three pages long, compared to the standard 26-page form 1023.

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