

## DAMASCO TAX UPDATE

### AUGUST 2015

**Important New Filing Deadlines.** The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, signed into law in July 2015, contains a number of tax provisions which alter tax return filing dates. The most pertinent changes are summarized below.

*Corporations and partnerships:* In a major restructuring of entity return due dates, effective generally for returns for tax years beginning after December 31, 2015, both partnerships and S-corporations will have to file their returns by the 15th day of the 3rd month after the end of the tax year. Calendar year taxpayers will now have to file by March 15th. C-corporations will now have to file by the 15th day of the 4th month after the end of the tax year, meaning that those with a calendar year will have to file by April 15th. Currently, S- and C-corporations with a calendar year must file their returns by March 15th, and partnerships with a calendar year must file their returns by April 15<sup>th</sup>. Moving the partnership deadline up one month to March 15th may help partners file their returns without the need for an extension (as Schedule K-1s for partnerships filing by the unextended due date will now arrive in March). Under a special rule, for C-corporations with fiscal years ending on June 30, the change won't apply until tax years beginning after December 31, 2025.

*QSFs:* As Qualified Settlement Funds are treated as C-corporations for the purposes of procedure and administration, the new April 15th deadline applies to QSF returns (Form 1120-SF).

*Extensions for corporations:* For corporate returns for tax years beginning after December 31, 2015, the automatic extension of time is now 6 months (instead of 3 months), per a revision to the IRC resolving a conflict between the IRC and the regulations. Again, there are special rules for C-corporations. For calendar year taxpayers with tax years beginning before January 1, 2026, the automatic extension period is 5 months instead of 6 months, while for June 30 fiscal year taxpayers with tax years beginning before January 1, 2026, the automatic extension period is 7 months instead of 6 months.

*FBAR:* Form 114, Report of Foreign Bank and Financial Accounts, used to report a financial interest or signature authority over a foreign financial account, will now be due April 15th, instead of June 30th. This change takes effect for tax years beginning after December 31, 2015. In the past, extensions were not possible, but extensions of up to 6 months will now be permitted. Taxpayers required to file Form 114 for the first time may apply for a waiver of the penalty for failure to timely request, or file, an extension.

*Increases in maximum extensions for filers of Form 1065, Form 1041, Form 5500, and Form 990 series:* Effective for returns for tax years beginning after December 31, 2015, the maximum extension for partnerships filing Form 1065 will be a 6-month period ending on September 15th for calendar year taxpayers. Currently, it's a 5-month period. For trusts filing Form 1041, the maximum extension will be to a 5½-month period ending on September 30th for calendar year taxpayers. Currently, it's a 5-month period. For employee benefit plans filing Form 5500, the maximum extension will be an automatic 3½-month period ending on November 15th for calendar year plans. Currently, it's a 2½-month period. Finally, for exempt organizations filing the Form 990 series, the maximum extension will be an automatic 6-month period ending on November 15th for calendar year filers. Currently, it's a 3-month period.

**Penalties Increased For Information Return Reporting.** The Trade Preferences Extension Act has significantly increased the penalties associated with a failure to properly file information returns or provide payee statements. These changes are effective with respect to returns and statements required to be filed after December 31, 2015. The increased penalties will apply to Forms W-2, the 1099 series, as well as Affordable Care Act employer shared responsibility and minimum essential coverage reporting forms.

The penalty for failure to file a correct information return more than doubles, from \$100 per return to \$250 per return. The maximum penalty per calendar year doubles to \$3,000,000 from the previous \$1,500,000. Similarly, the penalty for failure to furnish a correct payee statement rises from \$100 per return to \$250 per return, with a new maximum penalty of \$3,000,000. Note the potential total penalty exposure is \$6,000,000, if the failure relates to both information returns and payee statements and each of the two independent penalty caps is reached. Penalties for corrected returns and intentional disregard also increase. The chart below shows these changes:

|   | Old Law<br>For returns filed before 1/1/16 |                           |  | Trade Preference Extension Act Sec. 806<br>For returns filed after 12/31/15 |                           |  |
|---|--|---------------------------|--|---|---------------------------|--|
|   | Penalty Per Return                         | Calendar Year Penalty Max | Small Taxpayer Max (Gross Receipts Not More Than \$5M) | Penalty Per Return  | Calendar Year Penalty Max | Small Taxpayer Max (Gross Receipts Not More Than \$5M) |
| <b>IRC section 6721: Failure to file correct info return</b>        |  |                           |  |   |                           |  |
| Tier 1: Correction w/in 30 days                                     | \$30.00                                    | \$250,000.00              | \$75,000.00  | \$50.00   | \$500,000.00              | \$175,000.00   |
| Tier 2: Correction on or before Aug. 1                              | \$60.00                                    | \$500,000.00              | \$200,000.00   | \$100.00  | \$1,500,000.00            | \$500,000.00   |
| Tier 3: Correction after Aug. 1                                     | \$100.00                                   | \$1,500,000.00            | \$500,000.00   | \$250.00  | \$3,000,000.00            | \$1,000,000.00   |
| Intentional disregard   | \$250.00/10%                               | NONE                      | NONE   | \$500.00/10%  | NONE                      | NONE   |
| <b>IRC section 6722: Failure to furnish correct payee statement</b> |  |                           |  |   |                           |  |
|   | Per Return                                 | Max                       | Small Taxpayer Max                                     | Per Return  | Max                       | Small Taxpayer Max                                     |
| Tier 1: Correction w/in 30 days                                     | \$30.00                                    | \$250,000.00              | \$75,000.00  | \$50.00   | \$500,000.00              | \$175,000.00   |
| Tier 2: Correction on or before Aug. 1                              | \$60.00                                    | \$500,000.00              | \$200,000.00   | \$100.00  | \$1,500,000.00            | \$500,000.00   |
| Tier 3: Correction after Aug. 1                                     | \$100.00                                   | \$1,500,000.00            | \$500,000.00   | \$250.00  | \$3,000,000.00            | \$1,000,000.00   |
| Intentional disregard   | \$250.00/10%                               | NONE                      | NONE   | \$500.00/10%  | NONE                      | NONE   |

**Begin Use Of New W-9 And W-8 Forms.** The Foreign Account Tax Compliance Act (FATCA) requires U.S. withholding agents paying FATCA withholdable income to withhold 30% on certain U.S. source payments made to foreign entities, if the agent is unable to document the entities for purposes of FATCA. Current FATCA regulations, and the regulations that coordinate FATCA withholding (Chapter 4 withholding) with the regulations addressing withholding on nonresident aliens (Chapter 3 withholding), require the withholding agent to presume that certain payees (apart from certain pre-existing obligations) are foreign, unless there is documentation establishing the entity to be a U.S. person. The fact that an entity name includes “Incorporated,” “Inc.,” “Corporation,” or “Corp.” (the “eyeball test”) is no longer sufficient to establish U.S. exempt status. Form W-9 is the only documentation that will suffice to prove U.S. status and to avoid applicable Chapter 3 or Chapter 4 withholding and penalties.

Note that the IRS issued a revised version of Form W-9 in December 2014. Though reliance on the old form is permitted in some circumstances for grandfathered or preexisting obligations, all new solicitations should be made with the new form. The new W-9 conforms to current FATCA regulations and includes the option for the taxpayer to certify that the taxpayer is exempt from FATCA reporting.

Forms W-8 are used to certify foreign status. The IRS also issued revised W-8 series forms in February and April 2014. In addition to revised Forms W-8ECI, W-8EXP, and W-8IMY, the single W-8BEN has been split into W-8BEN for individuals and W-8BEN-E for entities. The forms have been revised to conform to the new FATCA rules, and all new solicitations should be made using these new forms.

**California Recovery Cost Fees For Non-Filers.** The California Franchise Tax Board has recently instituted changes to its cost recovery fee amounts beginning July 1, 2015, for the 2015/2016 fiscal year. The cost recovery fee is assessed to recover program costs when individuals and businesses fail to file tax returns upon demand or fail to pay their delinquent taxes. The assessment is comprised of two separate fees, the filing enforcement fee and the collection fee. For fiscal year 2015/2016, for individuals, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies treated as partnerships, the filing enforcement fee is \$79 and the collection fee is \$226. For corporations and limited liability companies treated as corporations, the filing enforcement fee is \$92 and the collection fee is \$334. For QSFs with California filing obligations, the cost recovery fee can be assessed for non-filing even where no tax is due. Most often, the cost recovery fee is assessed several years after the tax year(s) at issue, a point in time when the QSF may already be distributed and closed. Consequently, administrators should determine early in their engagement whether a QSF has a California filing obligation.

If you have any questions about the issues discussed in the Damasco Tax Update, or any other tax issues, please do not hesitate to contact us.



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