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IRS and Treasury Release 2018-2019 Priority Guidance Plan

The IRS and Treasury have released the text of their 2018-2019 priority guidance plan (<https://www.irs.gov/privacy-disclosure/priority-guidance-plan>). The plan lists guidance projects identified as priorities, while continuing to prioritize implementation of the 2017 Tax Cuts and Jobs Act (TCJA) and taking into account the burden-reducing policies and reforms described in Executive Orders 13789 and 13777. The plan, which covers July 2018 through June 2019, contains 239 guidance projects, of which 45 items have been released as of the end of October. Included among the items listed that are of interest to regulated investment companies (RICs) are (i) final regulations under Section 851, which deals with the treatment by regulated investment companies of certain inclusions with respect to foreign corporations, including those arising under Sections 965 and 951A (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/09/tax-insights-september-12-2018>)); (ii) guidance under Section 4982 for RICs on the treatment of amounts that Section 965 requires to be included in gross income under Section 951(a)(1) for the excise tax year ended on Dec. 31, 2017 (see our prior coverage here (<https://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-28-2016>)); and (iii) proposed modification of regulations under Section 337(d) regarding certain transfers of property to RICs and real estate investment trusts. (Section references are to the Internal Revenue Code of 1986, as amended (the Code).)

IRS Issues Proposed Regulations on Exempt Organization Excise Taxes

The IRS issued proposed regulations (REG-107163-18 (<https://www.gpo.gov/fdsys/pkg/FR-2018-11-07/html/2018-24285.htm>)) specifying which return to use to pay certain excise taxes and the time for filing the return. The proposed regulations would amend regulations under (a) Section 6011, to specify the return to accompany payment of excise taxes under Sections 4960, 4966, 4967 and 4968; (b) Section 6071, to specify the time for filing that return; and (c) Section 4963, where the first-tier taxes subject to abatement under Section 4962 are defined. The Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, 1094, added Sections 4966 and 4967 to the Code. These sections impose excise taxes related to certain distributions from donor-advised funds maintained by organizations that are defined as sponsoring organizations in Section 4966(d)(1). The TCJA added Sections 4960 and 4968 to the Code. Section 4960(a) imposes an excise tax equal to the product of the rate of tax under Section 11 and the sum of (1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of \$1 million, plus (2) any excess parachute payment paid by such an organization to any covered employee. Section 4960(c)(4)(A) provides that remuneration of a covered employee by an applicable tax-exempt organization includes any remuneration paid with respect to employment of such employee by any related person or governmental entity. Section 4960(c)(4)(C) provides that when remuneration from more than one employer is taken into account in determining the tax imposed by subsection (a), each such employer is liable for a pro rata share of the tax imposed by subsection (a) based on the ratio of the amount of remuneration paid by such employer with respect to such employee to the amount of remuneration paid by all such employers to all such employees. Separately, Section 4968 imposes an excise tax on each applicable educational institution based on the net investment income of such institution (including certain income of related organizations) for the taxable year.

Q&As Provide Guidance on Transfer Agreements for Exceptions to Section 965 Acceleration and Triggering Events

The IRS has updated questions and answers (<https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>) regarding the Section 965 transition tax to provide guidance on “transfer agreements” that are filed in connection with transfers that are intended to avoid accelerating the payment of remaining installments under a Section 965(h) election or triggering deferred tax liability under Section 965(i).

NYSBA Issues Report on Proposed Bonus Depreciation Regulations

The New York State Bar Association Tax Section has submitted a report (https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Reports_2018/1405_Report.html) on proposed regulations (REG-104397-18) that provide guidance on the additional first-year depreciation deduction under Section 168(k) to reflect changes made by the TCJA. Section 168(k), as amended by the TCJA, generally allows a taxpayer to deduct 100 percent of the cost of some qualified property placed in service between Sept. 27, 2017, and Jan. 1, 2023 (and lesser percentages for subsequent years before phasing out for most property placed in service after Dec. 31, 2026).

Pennsylvania DOR Issues Sales Tax Ruling on Situs of Sale

The Pennsylvania Department of Revenue (DOR) issued Pennsylvania Sales and Use Tax Ruling No. SUT-18-004, Oct. 23, 2018 (<https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/LetterRulings/SUT/Documents/SUT-18-004.pdf>), regarding a business providing cleaning services throughout several Pennsylvania counties, and advised that the application of local sales and use tax is based on the location of the retailer’s place of business and not the location where the services are rendered. The taxpayer, located in Allegheny County, provides private house cleaning services to customers located in Allegheny, Beaver, Butler and Washington counties. The taxpayer received a letter from the DOR stating that it must charge and collect the 6 percent state sales tax as well as the local 1 percent sales tax on charges for cleaning services. Local taxes are imposed on the same items of tangible personal property and enumerated taxable services as the state tax, except that the local sales taxes are “point of sale” taxes under the Pennsylvania Code and statutes relating to the Philadelphia tax and the Allegheny County tax. Point of sale means that the sale of property or a service delivered to a location within Pennsylvania is deemed to occur at the place of business of the retailer (Pa. Code Title 61 Section 60.16(a)(11)). Pa. Code Title 61 Section 60.16(c) also provides that

“sales of, and services to, tangible personal property and other taxable services subject to the state sales and use tax are also subject to the local tax if the sale originates in a taxable county.” Because the taxpayer only has one business location, which is in Allegheny County, all of its sales originate in Allegheny County and the taxpayer must charge and collect the local sales tax applicable to sales made in Allegheny County on any taxable services it provides to its customers, regardless of where the customer is located.

Delaware Now Accepting Angel Investor Credit Applications

The Delaware Division of Small Business announced (<https://news.delaware.gov/2018/11/01/delaware-angel-investor-tax-credit-applications-now-available/>) that it is now accepting certification applications for the Angel Investor Tax Credit (AITC (<https://business.delaware.gov/wp-content/uploads/sites/118/2018/10/Angel-Investor-Tax-Credit-Info-Sheet.pdf>)) at www.business.delaware.gov/incentives. The AITC is a refundable tax credit worth up to 25 percent of the investment in a qualified Delaware-based company. Qualified businesses must pay certain minimum wages, employ fewer than 25 people and engage in innovation in one of several areas as their primary business activity. Once a business or investor has submitted a certification application, the Division will begin its review process. In January, certified companies and investors will be able to submit credit allocation requests.

Connecticut Explains Voluntary Disclosure Program

The Connecticut Department of Revenue Services has issued a new publication (Connecticut Informational Publication No. 2018(18), Nov. 6, 2018 ([https://portal.ct.gov/-/media/DRS/Publications/pubsip/1-2018/IP-2018\(18\).pdf?la=en](https://portal.ct.gov/-/media/DRS/Publications/pubsip/1-2018/IP-2018(18).pdf?la=en))) explaining its voluntary disclosure program. Under the program, taxpayers who are not in compliance with Connecticut tax laws are encouraged to come forward voluntarily to register or bring their accounts into compliance. Taxpayers who voluntarily disclose nonpayment or underpayment of their taxes may generally be offered favorable terms to pay their back taxes. The taxpayer will benefit by not having a penalty imposed, by receiving a limited look-back period and by not being subjected to discovery through the state’s normal investigative or audit procedures. To apply to the voluntary disclosure program, the taxpayer may mail a written request to Department of Revenue Services State of Connecticut Voluntary Disclosure, 450 Columbus Blvd., Suite 1, Hartford, CT 06103-1837; or email a written request to voluntary.disclosure@po.state.ct.us. To remain anonymous when sending the request, the taxpayer may engage a representative such as a tax preparer, an accountant or an attorney.

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