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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware

www.meritas.org

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IRS Releases Guidance on Real Property Deductions

The IRS has released Rev. Proc. 2019-8 (https://www.irs.gov/pub/irs-drop/rp-19-08.pdf), which provides guidance on changes to the definition of "qualified real property" under Section 179 and depreciation requirements under Section 168 that were enacted by the 2017 Tax Cut and Jobs Act (TCJA). (Section references are to the Internal Revenue Code of 1986, as amended (the Code).) Under Section 179, a taxpayer is permitted to treat the cost (or a portion thereof) of certain property, like machinery and equipment, as an expense in the year in which the property is placed into service. The TCJA modified the definition of "qualified real property" that is eligible to be elected to be treated as Section 179 property to include qualified improvement property and certain improvements to nonresidential property, like heating and ventilation. Under Section 168(g), the Section 167(a) depreciation deduction for certain property must be determined under the alternative deprecation system. The TCJA expanded the property under Section 168(g) that must use the alternative depreciation system to include nonresidential real property, residential rental property and certain property held by an electing real property trade or business or electing farming business.

The guidance provides that the Section 179 election procedures under Treasury Regulation 1.179-5(c) (https://www.govinfo.gov/content/pkg/CFR-2013-title26-vol3/pdf/CFR-2013-title26-vol3-sec1-179-5.pdf) and Notice 2013-59 (https://www.irs.gov/pub/irs-drop/n-13-59.pdf) are still applicable for property placed in service during any taxable year beginning after 2017. The Revenue Procedure also provides guidance for election real property trade or businesses and electing farming businesses on how to transition from the general depreciation system to the alternative depreciation system for property placed in service in taxable years beginning before 2018.

NJ Announces Special Allocation and Sourcing Method for GILTI and FDII

The New Jersey Division of Taxation has announced (https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb85.pdf) special rules for Section 951A global intangible low-taxed income (GILTI) and Section 250(b) foreign derived intangible income (FDII) that were enacted under the TCJA. Both GILTI and FDII are net categories of income, which have corresponding deductions for eligible U.S. corporations for federal income tax purposes. The starting point for New Jersey Corporation Business Tax (CBT) is reported federal income tax, before certain special deductions; so, GILTI and FDII are included in a taxpayer's CBT. Taxpayers are permitted to take the New Jersey deductions for GILTI and FDII as long as such income is included and the corresponding federal deductions were allowed and taken. The announcement provides that GILTI and FDII are sourced under the "all other business receipts" category, and that a separate special accounting method, described therein, will be used to calculate the portion of GILTI and FDII that is subject to the CBT.

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Jacquelyn Gordon at 215.564.8176 or jgordon@stradley.com.