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IRS Issues Final Regulations on Partnership's Allocation of Creditable Foreign Taxes

The IRS has released final regulations (<https://www.federalregister.gov/documents/2019/07/24/2019-15362/allocation-of-creditable-foreign-taxes>) regarding the safe harbor rule for determining the allocation of creditable foreign tax expenditures (CFTEs) to partners in accordance with the partners' interest in the partnership. Treasury Regulation Section 1.704-1(b)(4)(viii) states that CFTEs do not have substantial economic effect and such expenditures must be allocated in accordance with the partners' interests in the partnership. A CFTE is a foreign tax paid or accrued by a partnership that is eligible for a credit under Section 901(a) or an applicable U.S. income tax treaty. (All section references are to the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.) The safe harbor provides that CFTE allocations are deemed to be in accordance with the partners' interest in the partnership if the following steps are taken: (1) determine the partnership's CFTE categories by grouping activities into one or more such categories, (2) assign items of income to each CFTE category and (3) allocate the partnership's CFTEs to each category. Generally, the final regulations adopt the temporary regulations on the safe harbor rule that were released in 2016 with additional discussion on how to treat Section 743(b) adjustments, disregarded payments, nondeductible guaranteed payments, and inter-branch payments for purposes of the safe harbor. The final regulations generally apply to tax years beginning on or after Oct. 19, 2006, with certain exceptions.

IRS Issues Final Regulations for Section 501(c)(4) Organizations

The IRS has released final regulations (<https://www.federalregister.gov/documents/2019/07/23/2019-15614/regulations-on-the-requirement-to-notify-the-irs-of-intent-to-operate-as-a-section-501c4>) regarding the requirement that organizations described in Section 501(c)(4) must notify the IRS within 60 days of their establishment that they intend to operate under section 501(c)(4). This requirement was enacted as part of the Protecting Americans from Tax Hikes (PATH) Act of 2015. Section 501(c)(4) describes certain civic leagues or organizations operated exclusively for the promotion of social welfare and certain local associations of employees. The final regulations adopt the proposed regulations issued in 2019 without substantive changes. Generally, the final regulations provide guidance regarding available extensions to the 60-day deadline due to reasonable cause and explains the relationship between Forms 1024-A (Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code) and 8976 (Notice of Intent to Operate Under Section 501(c)(4) to the IRS). The final regulations apply on and after July 8, 2016.

IRS Releases Draft Form 1099-NEC

The IRS has released a draft of Form 1099-NEC, Nonemployee Compensation (<https://www.irs.gov/pub/irs-dft/f1099nec--dft.pdf>), which should be used by taxpayers to report nonemployee compensation paid in 2020. This information is currently reported on Form 1099-MISC.

NH Governor Signs Anti-Wayfair Legislation

New Hampshire's governor recently signed legislation (<https://legiscan.com/NH/bill/SB242/2019>) that prohibits foreign taxing jurisdictions from (1) requesting private

customer information from, (2) conducting examinations of, or (3) imposing sales and use tax collection obligations on sellers in New Hampshire, unless the foreign taxing jurisdiction provides notice to the New Hampshire Department of Justice. The law is in direct response to the Supreme Court's ruling in *South Dakota v. Wayfair* (https://www.supremecourt.gov/opinions/17pdf/17-494_j4e1.pdf), which permits states to impose its sales and use tax withholding, remitting and reporting responsibilities on out-of-state sellers that meet certain economic nexus thresholds. The ruling overturned precedent that required that out-of-state sellers have a physical presence in a state before being subject to such sales and use tax requirements. (See our previous coverage here (<https://www.stradley.com/insights/publications/2018/06/tax-insights-june-27-2018>)).



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