STRADLEY RONON

Tax Insights

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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

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IRS Provides Guidance on Fax Filing Forms 1139 and 1045 Refund Claims

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act): (1) requires a taxpayer with a net operating loss arising in a 2018, 2019 or 2020 tax year to carry that loss back to each of the five preceding years unless the taxpayer elects to waive or reduce the carryback; and (2) allows corporations to claim 100% of minimum tax credits in 2019 as fully refundable and provides an election to accelerate claims to 2018, with eligibility for accelerated refunds. The IRS announced on its website, that it will temporarily allow fax filing of "eligible refund claims" so taxpayers can get their refunds more quickly. It also provided frequently asked questions (FAQs) on the details of such filings. It has now added additional FAQs to the website, including one on adapting Form 1139, the corporate refund form, for carrybacks of prior year minimum tax credits.

IRS Provides Guidance on Bonus Depreciation Technical Correction

The IRS issued Revenue Procedure 2020-25, allowing a taxpayer to change its depreciation for qualified improvement property (QIP) placed in service by the taxpayer after Dec. 31, 2017, in its 2018, 2019 or 2020 taxable year. The 2017 Tax Cuts and Jobs Act (TCJA) amended Section 168 to allow 100% additional first-year depreciation deductions (100% Bonus Depreciation) for certain qualified property. The TCJA eliminated pre-existing definitions for (1) qualified leasehold improvement property, (2) qualified restaurant property, and (3) qualified retail improvement property. It replaced those definitions with one category named QIP. A general 15-year recovery period was intended to have been provided for QIP. However, that specific recovery period failed to be reflected in the statutory text of the TCJA. Thus, under the TCJA, QIP fell into the 39-year recovery period for nonresidential rental property, which made it ineligible for 100% Bonus Depreciation. The CARES Act contains a technical correction to the TCJA and specifically designates QIP as 15-year property for depreciation purposes, which is eligible for 100% Bonus Depreciation.

IRS Reconsidering Statute of Limitations Relating to FTC Carryback Resulting from NOL Carryback

The IRS issued Revenue Ruling 2020-8 in which it announced that it is suspending two existing Revenue Rulings (Revenue Rulings 71-533 and 68-150) covering the subject of what statute of limitations applies when a net operating loss (NOL) carryback results in a foreign tax credit (FTC) carryback while it reconsiders those Revenue Rulings. The IRS is reconsidering whether the 10-year limitations period provided by Section 6511(d)(3)(A) applies to the refund claim at issue in Revenue Ruling 71-533. (Section references are to the Internal Revenue Code of 1986, as amended.) In Revenue Ruling 71-533 the IRS considered whether the special 10-year period of limitations provided by Section 6511(d)(3)(A) can apply to claims for refund or credit of an overpayment resulting from an FTC carryback that arose as a result of an NOL carryback from a subsequent year and concludes that the refund claim was subject to the limitations period provided by Section 6511(d)(3)(A). In Revenue Ruling 68-150 the IRS addressed the scope of Section 6511(d)(3)(A) and concluded, in relevant part, that it applied to "claims for credit or refund based on the correction of mathematical errors in the computation of taxes subject to the provisions of that section… *or any other adjustments to the size of the foreign tax credit,* including those due to the payment of additional foreign taxes." Revenue Ruling 2020-8 states that the suspension of Revenue Rulings 71-533 and 68-150 will not be applied adversely to a taxpayer that filed or files a claim for credit or refund within the limitations period of Section 6511(d)(3) in accordance with Revenue Rulings 71-533 and 68-150. This is important for many taxpayers, given the recent changes to the NOL carryback rules enacted in the CARES Act (see above for a summary).

IRS Rules REIT's Lease Rights Are Real Estate Assets

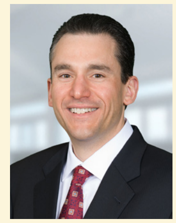
The IRS issued Private Letter Ruling 202012012 in which it found that a REIT's interest in lease rights are real estate assets under Section 856(c). The fee owners of land, building rooftops and other assets (the sites) lease the sites to third parties. Although the letter is heavily redacted, the sites appear to be used, for example, for cell towers and billboards.

IRS Provides Relief for Nonresident Aliens and Foreign Corporations Doing Business in U.S. Due to COVID-19

The IRS released FAQs providing relief from U.S. income tax on U.S. trade or business income earned by nonresident aliens and foreign corporations who would normally not conduct business in the U.S., but who did so because their ability to leave the U.S. was disrupted by COVID-19.

Joint Committee on Taxation Issues Description of CARES Act Tax Provisions

The Joint Committee on Taxation has issued a description of the tax provisions in the CARES Act.


Christopher C. Scarpa


Jacquelyn Gordon

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.