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IRS Announces Intent to Issue SALT Deduction Regulations for Pass-Through Entities

The IRS, in Notice 2020-75, announced that it, along with the U.S. Department of the Treasury, intends to issue proposed regulations to clarify that State and local income taxes (SALT) imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation in computing its non-separately stated taxable income or loss for the taxable year of payment. The 2017 Tax Cuts and Jobs Act (TCJA) added Section 164(b)(6), which states that an individual's deduction for SALT (which includes a tax imposed by a State, a possession of the United States, (U.S. territory), or a political subdivision of any of the foregoing, or by the District of Columbia) paid during a calendar year is limited to $10,000. The $10,000 limit applies to (1) real property taxes; (2) personal property taxes; (3) income, war profits and excess profits taxes; and (4) general sales taxes. This limitation applies to tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026. The $10,000 SALT limit does not include foreign taxes or state and local taxes that are paid or accrued in carrying on a trade or business or an investment activity. (All Section references are to the Internal Revenue Code of 1986, as amended.)

Generally, the Code disallows certain deductions to partnerships and S corporations in determining their taxable income, and instead, such items must be separately stated and taken into account pro rata by the partners or shareholders of such entity. However, the anticipated proposed regulations will clarify that Specified Income Tax Payments (defined below) are deductible by partnerships and S corporations in computing their non-separately stated income or loss. A "Specified Income Tax Payment" means any amount paid by a partnership or an S corporation to a State, a political subdivision of a State, or the District of Columbia, but not U.S. territories or their political subdivisions, (Domestic Jurisdiction), to satisfy its liability for income taxes imposed by the Domestic Jurisdiction on the partnership or the S corporation. A Specified Income Tax Payment includes any amount paid by a partnership or an S corporation to a Domestic Jurisdiction pursuant to a direct imposition of income tax by the Domestic Jurisdiction on the partnership or S corporation, without regard to whether the imposition of and liability for the income tax is the result of an election by the entity or whether the partners or shareholders receive a partial or full deduction, exclusion, credit, or other tax benefit that is based on their share of the amount paid by the partnership or S corporation to satisfy its income tax liability under the Domestic Jurisdiction's tax law and which reduces the partners' or shareholders' own individual income tax liabilities under the Domestic Jurisdiction's tax law.

If a partnership or an S corporation makes a Specified Income Tax Payment during a taxable year, the partnership or S corporation is allowed a deduction for the Specified Income Tax Payment in computing its taxable income for such taxable year. The Specified Income Tax Payment does not constitute an item of deduction that a partner or an S corporation shareholder takes into account separately in determining the partner's or S corporation shareholder's own Federal income tax liability for that same taxable year. Any Specified Income Tax Payment made by a partnership or an S corporation is not taken into account in applying the SALT deduction limitation to any individual who is a partner or an S corporation shareholder. Notice 2020-75 can be relied upon prior to the issuance of the anticipated proposed regulations and, generally, can be relied upon for taxable years of a partnership or S corporation ending after Dec. 31, 2017, in which a Specified Income Tax Payment is made before Nov. 9, 2020.

IRS Issues Information Letter on SALT Deduction Cap's Application to Co-Op

The IRS, in Information Letter #2020-0010, held that the SALT limitation under Section 164(b)(6) applies to the deduction taken into account by a tenant-stockholder under Section 216 for the tenant-stockholder's proportionate share of the real estate taxes paid or incurred by a cooperative housing corporation.

IRS Issues Final Regulations on First-Year Bonus Depreciation Deduction

The IRS has released final regulations regarding the first-year bonus depreciation deduction under Section 168(k). (See our prior coverage here.) Under the TCJA, the first-year depreciation deduction under Section 168(k)(1) was increased to a 100% deduction, and the property eligible for this first-year depreciation deduction was expanded. These final regulations adopt the proposed regulations, issued in September 2019, with some modifications. Specifically, these final regulations address: (1) rules relevant to the definition of qualified property, (2) rules for consolidated groups, (3) rules regarding components acquired or self-constructed after Sept. 27, 2017, for larger self-constructed property for which manufacture, construction, or production began before Sept. 28, 2017, (4) rules regarding the application of the mid-quarter convention, as determined under section 168(d), and (5) changes to the definitions in the 2019 Final Regulations (which were issued concurrently with the 2019 proposed regulations) for the terms qualified improvement property, predecessor, and class of property.

Additionally, these final regulations withdraw the "Partnership Lookthrough Rule." The Partnership Lookthrough Rule provided that a person is treated as having a depreciable interest in a portion of a property prior to the person's acquisition of the property if the person was a partner in a partnership at any time the partnership owned the property. The Treasury Department and the IRS agreed with comments received about the rule and decided to withdraw it because its application would place a significant administrative burden on both taxpayers and the IRS. Therefore, under these final regulations, a partner will not be treated as having a depreciable interest in partnership property solely by virtue of being a partner in the partnership.

These final regulations are effective 60 days after the date published in the Federal Register.

IRS Provides Bonus Depreciation Guidance

The IRS, in Revenue Procedure 2020-50, released guidance with regard to claiming the bonus depreciation deduction for:

- certain depreciable property acquired and placed in service after Sept. 27, 2017, by the taxpayer during its taxable years ending on or after Sept. 28, 2017, and before the taxpayer's first taxable year that begins on or after Jan. 1, 2021;
- certain plants planted or grafted, as applicable, after Sept. 27, 2017, by the taxpayer during its taxable years ending on or after Sept. 28, 2017, and before the taxpayer's first taxable year that begins on or after Jan. 1, 2021; and
- components acquired or self-constructed after Sept. 27, 2017, of certain larger self-constructed property and placed in service by the taxpayer during its taxable years ending on or after Sept. 28, 2017, and before the taxpayer's first taxable year that begins on or after Jan. 1, 2021.

The Revenue Procedure. allows a taxpayer that retroactively applies Treasury Regulation Sections 1.168(k)-2 and 1.1502-68 (which allows taxpayers to choose to apply the rules thereunder prior to the applicability dates) or relies on the 2019 proposed regulations to either make a late election or to revoke an election under Sections 168(k)(5), (k)(7), or (k)(10), or Treasury Regulation Section 1.168(k)-2(c) of the 2019 proposed regulations, for the taxpayer's taxable years ending on or after Sept. 28, 2017, and before the taxpayer's first taxable year that begins on or after Jan. 1, 2021.

PA DOR Issues Telework Guidance

The Pennsylvania Department of Revenue (PA DOR) has issued guidance relating to telecommuting during the COVID-19 pandemic. The guidance provides the sourcing of an employee's income does not change if such an employee is temporarily working from home because of the pandemic. For example, the compensation of non-residents who were working in PA before the pandemic remains PA sourced income for all PA tax purposes. Conversely, the compensation of PA residents who were working out-of-state before the pandemic remains sourced to the other state, and such employees would still be able to claim a resident credit for tax paid to the other state on the compensation. A Pennsylvania employer is required to withhold against the compensation paid to a non-resident employee temporarily working from home due to the COVID-19 pandemic in a state that doesn't have a reciprocity agreement with Pennsylvania. As a result of the COVID-19 pandemic causing people to temporarily work from home, the department will not seek to impose Corporate Net Income Tax nexus or Sales and


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Use Tax nexus solely on the basis of this temporary activity. This guidance will be in effect until the earlier of June 30, 2021, or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted.

Philadelphia DOR Updates Withholding Guidance

The Philadelphia Department of Revenue (DOR) has updated its wage tax guidance for Philadelphia-based employers. It provides that a non-resident employee is not subject to the wage tax when the employer requires them to perform a job outside of Philadelphia, including working from home for the days spent fulfilling such work. However, a non-resident employee who works from home for his or her convenience (regardless of employer authorization) is not exempt from the wage tax. Non-resident employees who had Wage Tax withheld during the time they were required to perform their duties from home in 2020, may file for a refund with a wage refund petition in accordance with the guidance.