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IRS Proposes Regulations on Retirement Plan Hardship Distributions

The IRS issued proposed regulations (<https://www.federalregister.gov/documents/2018/11/14/2018-24812/hardship-distributions-of-elective-contributions-qualified-matching-contributions-qualified>) that modify the safe harbor requirements for hardship distributions from certain retirement plans. Generally, amounts deferred under retirement plans cannot be distributed before the employee's severance from employment, death or disability, or his or her attainment of the age 59 1/2. However, early distributions on account of hardship are allowed from certain retirement plans that provide for elective deferrals. Under current regulations, a distribution is made on account of hardship only if the distribution is both made on account of an immediate and heavy financial need of the employee and necessary to satisfy such financial need as long as it does not exceed the amount of the need. A distribution is deemed to be made on account of an immediate and heavy financial need if the distribution is for certain expenses and payments related to (i) medical needs of the employee; (ii) purchase of the employee's principal residence; (iii) education of the employee; (iv) the prevention of the employee's eviction from or foreclosure on his or her principal residence; (v) burial or funeral of certain of the employee's family members; and (vi) repair of the employee's principal residence.

The proposed regulations modify the safe harbor rules by adding that a primary beneficiary under the retirement plan may also qualify for the medical expense, educational expense and funeral expense safe harbors. Additionally, the proposed regulations add a new safe harbor for expenses and losses incurred by an employee on account of a FEMA-declared disaster. The proposed regulations also modify the rules for determining whether the distribution amount is necessary to satisfy the financial need.

IRS Issues PLR On Brownfield Credits for Purposes of REIT Asset and Income Tests

In Private Letter Ruling 201845001 (<https://www.irs.gov/pub/irs-wd/201845001.pdf>) the IRS held that brownfield credits are a receivable for purposes of the REIT asset qualification test and income therefrom is qualifying income for REIT qualification. In the ruling, the taxpayer and its wholly-owned subsidiary incurred significant expenditures in connection with the remediation of adverse environmental conditions at a brownfield site and, as such, the taxpayer is eligible for brownfield tax credits. In order to qualify as a REIT, at least 75 percent of the value of a corporation's total assets must be represented by real estate assets, cash and cash items (including receivables), and government securities, and the corporation must derive at least 75 percent of its gross income from real estate sources and at least 95 percent of its gross income from real estate sources, dividends, interest and gains from the sale of securities. For purposes of the 75 percent asset test, a receivable will qualify only if it arises in the ordinary course of a REIT's operations and is not purchased from another person. Because neither the taxpayer nor the subsidiary purchased the credits, and the right to receive the credits arose from the development of real property on land in connection with the leasing business of taxpayer and subsidiary, the right is a receivable that arises in the ordinary course of taxpayer's operations and qualifies under the asset qualification test. The taxpayer represented that, for purposes of the gross income tests, the income generated from the brownfield site will be qualifying income. Although income attributable to the receipt or accrual of brownfield credits is not an enumerated source of qualifying income in the Internal Revenue Code, the Secretary of the Treasury has the discretion to determine

qualifying income for purposes of this test. Here, the income attributable to the brownfield sites is held to be qualifying income because its inclusion does not interfere with or impede the objectives of the REIT qualification rules that restrict income generally to passive income sources from real estate.

IRS Reminds Taxpayers About Increased Deductions for Certain Depreciable Property

The IRS reminded small business taxpayers (<https://www.irs.gov/newsroom/new-tax-law-allows-small-businesses-to-expense-more-expands-bonus-depreciation>) that the expensing limitation under Section 179 (section references are to the Internal Revenue Code of 1986, as amended), was increased to \$1 million and the phaseout amount was increased to \$2.5 million under the 2017 Tax Cuts and Jobs Act. The maximum

amount that can be deducted was also increased to \$1 million. Section 179 allows a taxpayer to deduct all or part of the cost of any Section 179 property in the year such property is placed in service. Section 179 property includes business equipment and machinery, office equipment, livestock and, if elected, qualified real property.

New Jersey Announces New Tax Amnesty Program

The New Jersey Tax Amnesty Program (<https://www.state.nj.us/treasury/taxation/taxamnesty-notice.shtml>) is available for state tax liabilities for tax returns due on or after Feb. 1, 2009, and before Sept. 1, 2017. The program began on Nov. 15, 2018, and will end on Jan. 15, 2019.



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