

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

*Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.*

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2018  
Stradley Ronon Stevens & Young, LLP  
All rights reserved.

## IRS Clarifies Willfulness Under FBAR Rules

The IRS released a Program Manager Technical Advice Memorandum ([https://www.irs.gov/pub/iranoa/pmta\\_2018\\_13.pdf](https://www.irs.gov/pub/iranoa/pmta_2018_13.pdf)) setting forth the definition of “willfulness,” and the standard of proof for establishing willfulness, for purposes of the penalty for willful violation of the requirements of the Report of Foreign Bank and Financial Accounts (FBAR).

## IRS No Longer Requires Donor Disclosure for Certain Exempt Organizations

The IRS issued Revenue Procedure 2018-38 (<https://www.irs.gov/pub/irs-drop/rp-18-38.pdf>), which provides that Form 990 filers, with the exception of Section 501(c)(3) organizations and Section 527 organizations (i.e., political organizations, such as political action committees), will no longer be required to release the names and addresses of their donors beginning with information returns for tax years ending on or after Dec. 31. The Revenue Procedure does not remove such disclosure requirements for Section 501(c)(3) and Section 527 organizations because the disclosure requirements for those types of exempt organizations are prescribed by statute. According to a Treasury Department news release (<https://home.treasury.gov/news/press-releases/sm426>), public transparency is not affected because the IRS was already not releasing donor information when it published Form 990 filings. Exempt organizations are still required to collect donor information and make it available to the IRS on request (e.g., as part of an audit). The press release indicates that the change is intended to better protect donor information and to simplify tax administration both for nonprofit organizations, which will not have to enter names and addresses into their Form 990 filings, and for the IRS, which will no longer have to redact information from Form 990 filings before publishing them. (Unless otherwise provided, section references are to the Internal Revenue Code of 1986, as amended.)

## IRS Plans to Issue Regulations on Suspension of Miscellaneous Itemized Deductions on Trusts and Estates

The IRS issued Notice 2018-61 (<https://www.irs.gov/pub/irs-drop/n-18-61.pdf>), in which it announced that it intends to issue regulations clarifying the effect of Section 67(g) on the deductibility of certain expenses described in Section 67(b) and Section 67(e), and Treasury Regulation Section 1.67-4, that are incurred by estates and non-grantor trusts. Section 67(g), which was added by the Tax Cuts and Jobs Act (TCJA), provides for the suspension of the deduction for miscellaneous itemized deductions. Estates and non-grantor trusts may rely on the Notice for tax years beginning after Dec. 31, 2017.

## IRS Issues Ruling on REIT Rents From Qualified Health Care Properties

The IRS issued Private Letter Ruling 201828008 (<https://www.irs.gov/pub/irs-wd/201828008.pdf>), in which it ruled that independent living facilities are congregate care facilities under Section 856(e)(6)(D)(ii) and constitute “qualified health care properties” under Section 856(e)(6)(D). Therefore, rental income received by a holding partnership from the lease of the facility to a partnership between a domestic taxable REIT subsidiary and single partner unrelated to the taxpayer under Section 856(d)(2)(B) will not be excluded from rents from real property by reason of Section 856(d)(2)(B), so long as the facility continues to be operated by an eligible independent contractor.

## CRS Releases a Report Evaluating Small Business Tax Benefits

The Congressional Research Service (CRS) issued a report ([https://www.everycrsreport.com/files/20180705\\_RL32254\\_16b87397dbe2054993144f989fd9f7148b01865d.pdf](https://www.everycrsreport.com/files/20180705_RL32254_16b87397dbe2054993144f989fd9f7148b01865d.pdf)) that examines the concept of small business tax benefits, lists what it considers the major small business tax benefits that have a general application, and analyzes what it considers the main arguments for and against federal support for small businesses.

## New York, Connecticut, New Jersey and Maryland File Lawsuit Challenging SALT Deduction Limit

New York, Connecticut, New Jersey and Maryland have filed a lawsuit ([https://ag.ny.gov/sites/default/files/salt\\_complaint\\_as\\_filed\\_with\\_exhibits.pdf](https://ag.ny.gov/sites/default/files/salt_complaint_as_filed_with_exhibits.pdf)) in the U.S. District Court for the Southern District of New York arguing that the reduction of the state and local tax (SALT) deduction enacted by the TCJA is unconstitutional and exceeds federal authority to impose a federal income tax. The TCJA capped the SALT deduction to \$10,000 of state and local property, income and sales taxes.

## Pennsylvania Supreme Court Upholds Soda Tax

The Pennsylvania Supreme Court, in *Williams v. City of Philadelphia* (<http://www.pacourts.us/assets/opinions/Supreme/out/Majority%20Opinion%20%20Affirmed%20%2010362404240314678.pdf?cb=1>), has affirmed a Commonwealth Court decision upholding the Philadelphia sweetened beverage tax (aka soda tax) and denying a request for a special injunction.

## Pennsylvania Commonwealth Court Rules on Financial Institution's Sales Tax Liability

The Pennsylvania Commonwealth Court, in *Victory Bank v. Commw.* (<https://cases.justia.com/pennsylvania/commonwealth-court/2018-236-f-r-2014.pdf?ts=1531841010>), has held that a financial institution that claimed a sales tax exemption on multiple purchases and installations of computer hardware and canned software used “for its protection or convenience in conducting financial transactions” based on the Financial Institution Security Equipment Regulation (FISE regulation) was not entitled to a refund of sales tax paid on the transactions. The FISE regulation (Pa. Code Title 61 Section 46.9) provides that a sale of security equipment, which is also installed, is a construction contract, and that the seller/installer may not charge sales tax on the contract price, because the seller/installer is considered the consumer of the property transferred in connection with the contract, and is therefore responsible for paying the applicable tax. There was no dispute that the taxpayer met the definition of “financial



Christopher C. Scarpa



Jacquelyn Gordon

For more information, contact Christopher C. Scarpa at 215.564.8106 or [cscarpa@stradley.com](mailto:cscarpa@stradley.com) or Jacquelyn Gordon at 215.564.8176 or [jgordon@stradley.com](mailto:jgordon@stradley.com).

institution” under the regulation and that the equipment met the definition of “security equipment.” However, at the time the FISE regulation was promulgated, there was no statutory definition of what constitutes a “construction contract,” so the exemption applied based on the definition of “installation” as provided by the FISE regulation. The term construction contract has since been statutorily defined as “[a] written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure” under Pa. Stat. Ann. Title 72 Section 7201(mm), and it is well-settled that a statute trumps an administrative agency regulation. The court found that since plugging in computer equipment does not rise to the level of a construction contract under the statute, and there is no other exemption applicable to the sale of computer hardware, canned software and related services, the seller was correct in collecting sales tax on the transactions, and no refund to the taxpayer was due.

## New Jersey Division of Taxation Issues Notice on Amnesty

The 2018 New Jersey Tax Amnesty will provide an opportunity for eligible taxpayers to file and pay their past-due taxes with reduced interest and no penalties. The Division of Taxation advises (<https://www.state.nj.us/treasury/taxation/amnesty.shtml>) that taxpayers can take advantage of amnesty for eligible periods that cover state tax liabilities for tax returns due on or after Feb. 1, 2009, through Sept. 1, 2017. The program may not begin until after Nov. 1, and is required to end by Jan. 15, 2019. The exact dates are to be determined. If taxpayers do not take advantage of amnesty, an additional 5 percent non-abatable penalty is imposed on any eligible debts not resolved during the amnesty period. The New Jersey Division of Taxation will be posting the amnesty start date, who is eligible and how to participate as details become available.