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Tax Insights

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Income From Termination of Agreement Is Qualifying PTP Income

In Private Letter Ruling 201721007 (https://www.irs.gov/pub/irs-wd/201721007.pdf), the IRS ruled that the receipt of a termination payment by a publicly traded limited partnership from a customer constitutes qualifying income within the meaning of Section 7704(d)(1)(E). (Section references are to the Internal Revenue Code of 1986, as amended.) Pursuant to several agreements with the customer, the publicly traded limited partnership agreed to process crude oil, to provide pipeline transportation services and to construct (or cause to be constructed) certain assets, including a splitter, a facility and pipelines. The agreements also provided the customer with the right to terminate the agreements for any reason and at any time before the date on which the facility and pipelines are placed in service upon payment of reimbursement payments, an accelerated tolling fee, and an accelerated tariff fee (collectively, the “termination payment”).

IRS Rules on the Tax Consequences of a Reorganization

In Private Letter Ruling 201721014 (https://www.irs.gov/pub/irs-wd/201721014.pdf), the IRS ruled that if a series of steps qualifies as a reorganization under Section 368(a)(1):

> (1) The distribution of stock will constitute a distribution of property with respect to the stock of the parent/target to which Section 301 applies. The excess, if any, of the amount of such distribution with respect to a share of the parent/target stock over the amount of such distribution treated as a dividend will be applied against and reduce the shareholder’s adjusted basis in the share, and any remaining excess will be treated as gain from the sale or exchange of property under Sections 301(c)(2) and (c)(3).
>
> (2) Gain shall be recognized to the parent/target as if it sold the stock distributed to its shareholders at its fair market value on the date of the reorganization pursuant to Section 361(c)(2).

In the ruling, the parent/target intends to exchange all of its common stock in a subsidiary for voting common stock in the subsidiary. The subsidiary/acquiring will neither assume any of the parent/target’s liabilities nor receive any of the parent/target’s assets subject to liabilities. The shareholder may contribute cash to the capital of the parent/target to enable it to pay off liabilities. Alternatively, the shareholder may pay or assume liabilities of the parent/target. The parent/target will convert to a limited liability company and no election will be made for it to be taxed as a corporation.

IRS Rules on Tax Consequences of Business Separation and Combination

In Private Letter Ruling 201721002 (https://www.irs.gov/pub/irs-wd/201721002.pdf), the IRS ruled on a series of proposed transactions intended to separate

certain business assets and operations of a taxpayer into two publicly held, worldwide groups and to combine the business of an unrelated corporation with the taxpayer. The proposed transactions include distributions, contributions, liquidations and mergers.

NYSBA Tax Section Submits Report on Predecessor and Successor Regs in Section 355

The NYSBA submitted comments regarding temporary and proposed regulations under Section 355(e). Among other recommendations, the NYSBA suggested that the definition of a "predecessor" be limited to situations in which the distributing corporation and a potential predecessor corporation (or its Section 381 successor) are members and that the "implicit permission" concept (used in the temporary regulations in determining the existence of a plan) be removed or clarified to avoid the per se imputation of a potential predecessor corporation's activities to the distributing corporation.

NJ Tax Court Holds Denying Deduction for Royalty Payments Would Be Unreasonable

In BMC Software, Inc. successor by merger to BMC Software Distribution, Inc. v. Director, Div. of Taxation (https://www.judiciary.state.nj.us/attorneys/assets/opinions/summaries/tax/squibs_2017.pdf), the New Jersey Tax Court held that the plain language and substance of an agreement between certain related members of the taxpayer show that payments were made by the subsidiary for obtaining the license to use and distribute the parent's prewritten software, original and updates thereto, a proprietary product. Therefore, the subsidiary's payments qualified as an intangible expense/cost for purposes of the addback provisions of N.J.S.A. 54:10A-4.4. However, the court ruled that the payments were excepted from the addback statute because the payments were substantively equivalent to payments made by either the parent or the subsidiary to unrelated third parties under transactions involving the same subject and object (sale of prewritten computer software license and service contracts). The court, therefore, permitted a deduction for such payment because denying it would be "unreasonable" under N.J.S.A. 54:10A-4.4(c)(1).

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Pennsylvania DOR Publishes April-May 2017 Tax Newsletter

Pennsylvania released its April-May 2017 Tax Newsletter (http://www.revenue.pa.gov/GeneralTaxInformation/News%20and%20Statistics/Documents/Tax%20Update/taxupdate_190.pdf) with information on the 2017 Tax Amnesty Program.

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