STRADLEY RONON

Tax Insights

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IRS Rules on Effect of Share Repurchases by Acquiring Corporation

In Private Letter Rulings 201801005 (https://www.irs.gov/pub/irs-wd/201801005.pdf) and 201801012 (https://www.irs.gov/pub/irs-wd/201801012.pdf), the IRS ruled that a share repurchase by an acquiring corporation that was treated as part of a merger but occurred subsequent to the merger will be treated as being made from all public shareholders of the acquiring corporation on a pro rata basis for the purposes of testing the effect of the share repurchases on a related distribution under Section 355(e). (Section references are to the Internal Revenue Code of 1986, as amended (Code).)

IRS Updates List of Countries Requiring Cooperation With an International Boycott

The IRS has published a current list (https://www.gpo.gov/fdsys/pkg/FR-2018-01-08/pdf/2018-00123.pdf) of countries that require or may require participation in or cooperation with an international boycott within the meaning of Section 999(b)(3).

JCT Lists Expiring Federal Tax Provisions Through 2027

The Joint Committee on Taxation released a listing (https://www.jct.gov/publications.html?func=startdown&id=5057) of federal tax provisions (other than those providing time-limited transition relief after the repeal of an underlying rule) that expired or are currently scheduled to expire between 2016 and 2027.

IRS Releases Practice Unit on Self-Employment Tax in US Territories and Stock Basis Ordering Rules

The IRS released an international practice unit (https://www.irs.gov/pub/int_practice_units/jto_c_09_07_03.pdf) on the self-employment tax obligations of U.S. citizens and resident aliens who are self-employed in a U.S. territory and have net self-employment income of $400 or more. The IRS also released a practice unit (https://www.irs.gov/pub/int_practice_units/sco_c_53_04_01_03_03.pdf) on the stock basis ordering rules, which are used in determining whether a nondividend distribution is tax-free or a loss is currently deductible.

PA Announces Disallowance and Recovery of 100 Percent Depreciation Under Code Section 168(k)

The Pennsylvania Department of Revenue published Corporation Tax Bulletin 2017-02 (http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Tax%20Bulletins/CT/ct_bulletin_2017-02.pdf), announcing that any deduction for depreciation of qualified property under Section 168(k) of the Code must be added back to Pennsylvania taxable income for corporate net income tax purposes (in accordance with Section 401(3)1.(q) of the Tax Reform Code of 1971 (TRC)). Section 401(3)1.(r) of the TRC provides for the recovery of the disallowed depreciation of qualified property that was claimed and allowable under Section 168(k) of the Code by providing for an additional deduction in certain circumstances. The additional deduction is permitted "if a deduction for depreciation of qualified property was included in taxable income in accordance with paragraph (q)." In the case of 100 percent depreciation claimed for qualified property under Section 168(k), this additional deduction is not applicable because there is no deduction for depreciation of qualified property included in taxable income in accordance with TRC Section 401(3)1.(q). As a result, the bulletin notes, Pennsylvania law requires the amount of a 100 percent deduction under Section 168(k) to be added back to taxable income, and it provides no additional mechanism for cost recovery (depreciation) with respect to the qualified property. This means that there is no Pennsylvania corporate net income tax benefit for taxpayers that take advantage of the immediate expensing mechanism under the Code as amended by the recent Tax Cuts and Jobs Act. Under TRC Section 401(3)1.(s), the taxpayer may take an additional deduction when the qualified property is sold or otherwise disposed of during a taxable year to the extent the amount of depreciation claimed has not been fully recovered. The change is effective for property placed in service after Sept. 27, 2017.

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