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Final Regulations Prevent Corporate Partners From Avoiding Gain in Partnership Transactions

The IRS has issued final regulations (TD 9833 (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-12407.pdf>)) under Sections 337(d) and 732(f), which generally adopt with minor clarifications temporary regulations issued in 2015, that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. The IRS noted, however, that it is considering proposing substantive amendments to the final regulations under Section 337(d), and described a number of the changes that it might make. (Section reference are to the Internal Revenue Code of 1986, as amended.)

The regulations prevent corporations from avoiding gain recognition using partnership interests. The guidance was issued, in part, as a reaction to the May Department Stores Co. transaction in which the company attempted to avoid gain on the disguised sale of some of its appreciated real estate through the use of a partnership to avoid the repeal of the *General Utilities* doctrine.

The preamble to the final regulations states that the IRS and Treasury received only one comment letter regarding the proposed and temporary regulations. That letter was submitted by the New York State Bar Association Tax Section (see our prior coverage here (<https://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-october-26-2016>)) and led to only a few “minor, nonsubstantive clarifications” of the Section 337(d) rules and no changes to the Section 732(f) rules, according to the preamble.

IRS Waives Certain Penalties Relating to Section 965 Transition Tax

The IRS issued news release IR 2018-131 (<https://www.irs.gov/newsroom/irs-offers-penalty-filing-relief-to-many-subject-to-new-transition-tax-on-foreign-earnings>) announcing that it will waive certain late-payment penalties relating to the new Section 965 transition tax. The IRS also provided additional information for individuals subject to the Section 965 transition tax regarding the due date for relevant elections. The information in the news release is explained in greater detail in frequently asked questions (<https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>) posted to the IRS’s website.

NYSBA Issues Report on TCJA Provisions Affecting Exempt Organizations

The New York State Bar Association Tax Section has submitted a report (http://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2018/1396_Report.html) addressing some provisions of the Tax Cuts and Jobs Act that impact exempt organizations, noting areas where interpretive guidance is needed, identifying issues regarding the new statutory language, and making some recommendations for guidance. The report addresses Section 512(a)(6) on the siloing of losses for purposes of calculating unrelated business income tax; Section 512(a)(7) on the treatment of some fringe benefits as unrelated business taxable income; some international provisions and their impact on the calculation of net investment income taxes and UBTI; Section 4960 on the imposition of a 21 percent excise tax on remuneration over \$1 million and “excess parachute payments” paid to some employees

of exempt organizations; and Section 4968 on the imposition of a 1.4 percent excise tax on the net investment income of some colleges and universities.

Reminder: Pennsylvania Withholding on Nonemployee Compensation and Lease Payments Effective July 1, 2018

Based on statutory changes in October 2018, anyone that pays Pennsylvania-source nonemployee compensation or business income to a nonresident individual or disregarded entity that has a nonresident member and is required to file a federal Form

1099-MISC is required to withhold an amount equal to the tax rate specified at Pa. Stat. Ann. 72 Section 7302 (presently 3.07 percent) from such payments. (See our prior coverage here (<https://www.stradley.com/insights/publications/2017/12/tax-insights-december-27-2017>)). Although these requirements became effective on Jan. 1, the Pennsylvania Department of Revenue stated that any income subject to the withholding provisions would not be subject to an underwithholding assessment if a payor fails to withhold for a period ending prior to July 1.



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