STRADLEY RONON

Tax Insights

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Tax Practice Group

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IRS Issues Forms to Make, and to Revoke, Partnership Audit "Push Out" Election

The IRS has issued new Forms 8988 (Election for Alternative to Payment of the Imputed Underpayment – IRC Section 6226) (https://www.stradley.com/-/media/files/publications/2019/02/form-8988.pdf?la=en&hash=56DED0D3C6161AEB335F1D634E9E26AB) and 8989 (Request to Revoke the Election for Alternative to Payment of the Imputed Underpayment) (https://www.stradley.com/-/media/files/publications/2019/02/form-8989.pdf?la=en&hash=47648E06DD6A4566610E2CD62E6BC958) to be used by partnerships to make or revoke, respectively, the election to "push out" partnership adjustments, etc., to their partners, under the centralized partnership audit regime. (If you are having trouble viewing these forms, try downloading them to your desktop and opening them using Adobe Reader.) Under the centralized partnership audit regime, adjustments to partnership-related items are determined at the partnership level. The tax attributable to those adjustments also is assessed and collected at the partnership level in the form of an imputed underpayment determined under Section 6225. (Section references are to the Internal Revenue Code of 1986, as amended.) A partnership may elect to "push out" the adjustments determined at the partnership level, in which case the tax attributable to the adjustments is assessed and collected from the partnership's partners. The election must be made within 45 days of the date on which the final partnership adjustment (FPA) is mailed by the IRS. A partnership may make an election with respect to one or more imputed underpayments identified in an FPA. For example, where the FPA includes a general imputed underpayment and one or more specific imputed underpayments, the partnership may make an election with respect to any or all of the imputed underpayments.

ICI and SIFMA Comment on Diversification Relief for Insurance Companies

The ICI (Investment Company Institute) and the SIFMA (Securities Industry and Financial Markets Association) have requested clarification (https://www.sifma.org/resources/submissions/single-security-initiative-and-diversification-under-section-817h/) on the election to treat some mortgage-backed securities as having deemed issuers when meeting the asset diversification requirements, addressing which entity is treated as the issuer of some to-be-announced contracts and the application of the deemed issuance ratio to some mortgage-backed securities. (See our prior coverage here: https://www.stradley.com/insights/publications/2018/10/tax-insights-october-24-2018)

Transcript Available for IRS Hearing on Opportunity Fund Regulations

A transcript is available for a Feb. 14 public IRS hearing on proposed regulations (REG-115420-18) (https://www.stradley.com/-/media/files/publications/2019/02/opportunity-zone-transcript.pdf?la=en&hash=796E32975C3944056C47BAAB25E3F085) concerning investment in qualified opportunity funds.

Transcript Available for IRS Hearing on Proposed GILTI Regulations

A transcript is available of a Feb. 13 public IRS hearing on proposed regulations (REG-104390-18) (https://www.stradley.com/-/media/files/publications/2019/02/gilti-transcript.pdf?la=en&hash=FF2FFD600366B31AA48C5CDD892853FB) concerning guidance on global intangible low-taxed income (GILTI).

Pennsylvania Releases Marketplace Sales Guidance

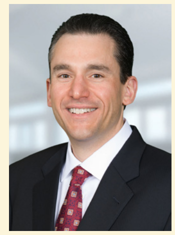
The Pennsylvania Department of Revenue (Department) has provided information (https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/SUT/MarketPlaceSales/Pages/default.aspx) regarding the different types of marketplace sellers and their tax notification and reporting requirements under the marketplace seller provisions. The Department notes that a single business can be a marketplace facilitator, a remote seller and a referrer, or any combination of these, depending on the seller's activities. A marketplace facilitator contracts with a marketplace seller to list or advertise the seller's goods and services, collects payment from customers, and remits the payment back to the seller. A remote seller makes sales directly to customers in Pennsylvania but does not maintain a place of business in Pennsylvania. A referrer receives a commission, fee or other consideration from a seller for listing or advertising the seller's goods or services, and directs the purchaser to the seller's forum, but does not collect payment from the purchaser. Persons or business entities that print or publish newspapers, or that provide internet advertising services, are not classified as referrers unless the person or business provides the seller's shipping terms and information on whether the seller charges sales tax. Businesses that have elected not to collect sales tax must provide Pennsylvania customers with information notices that list the customer's purchases, with the purchase price, for all products for which the seller did not collect sales tax. Pennsylvania customers will also receive annual notices detailing purchases for which sales tax was not collected, with similar information reported to the Department. Pennsylvania purchasers who buy goods without paying Pennsylvania sales tax are required to remit Pennsylvania use tax.

New Jersey Provides Information on VCP for Unclaimed Property

Business entities that are not compliant with the Uniform Unclaimed Property Act have the option to participate in the Unclaimed Property Administration's (UPA) Voluntary Compliance Program (VCP) (https://www.unclaimedproperty.nj.gov/vcpunclaim.shtml) as an alternative to a potentially more arduous and costly full compliance audit. Benefits of the VCP include the removal of all late penalties if the entity successfully completes the program. Step 1 of the program is to complete the VCP Admissions Form. If the business entity is admitted into the program, Step 2 is to sign a Voluntary Disclosure Agreement (VDA). In Step 3, the business entity has 90 days from the date of the finalized VDA to produce the records resulting from the internal audit of accounting records to be reviewed by the UPA. The reach-back period under the VDA is 10 years. The final step in the VCP is the finalization, approval and reporting of unclaimed property. The entire VCP must not take more than 180 days from the date of the finalized VDA to the time unclaimed property is reported and remitted.

New York Issues Guidance on Repatriation Income, FDII and GILTI

In light of the changes to the Internal Revenue Code by the 2017 federal Tax Cuts and Jobs Act, the New York Department of Taxation and Finance has issued guidance to taxpayers regarding mandatory deemed repatriation income, foreign-derived intangible income (FDII) and GILTI. See: New York Technical Service Bureau Memorandum No. TSB-M-19(1)C (regarding corporation tax) (https://www.tax.ny.gov/pdf/2019/corp/m19-1c.pdf) and New York Technical Service Bureau Memorandum No. TSB-M-19(1)I (regarding individual and fiduciary tax) (https://www.tax.ny.gov/pdf/2019/inc/m19-1I.pdf).



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