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## IRS Provides Automatic Consent to Adopt TCJA Inclusion-in-Income Accounting Methods

The IRS has issued Revenue Procedure 2019-37 (<https://www.irs.gov/pub/irs-drop/rp-19-37.pdf>) providing that taxpayers may obtain the IRS' automatic consent to change a method of accounting to comply with (1) the all-events test of Section 451(b) and related Proposed Regulation Section 1.451-3, and (2) receipts of advance payments under Section 451(c) and related Proposed Regulation Section 1.451-8. (See our prior coverage of the proposed regulations here (<https://www.stradley.com/insights/publications/2019/09/tax-insights-september-12-2019>)).) (Section references are to the Internal Revenue Code of 1986, as amended.)

## IRS Rules RIC Permitted to Revoke Calendar Year Election to Calculate Excise Tax

The IRS issued Private Letter Ruling 201934004 (<https://www.irs.gov/pub/irs-wd/201934004.pdf>) allowing a regulated investment company (RIC) to revoke its election under Section 4982(e)(4) to use the calendar year to calculate the 4% excise tax imposed by Section 4982. When the fund originally made its election, it hoped that the election would relieve the administrative burden associated with separate calculations of the fund's capital gain net income, mark-to-market gains and losses, and specified gains and losses for excise tax and income tax purposes. However, the fund found that the election created additional administrative complexities due to the time constraints in declaring dividends at least equal to the required distribution.

## IRS Issues Proposed Reliance Regulations on Calculating Built-In Gains and Losses

The IRS has issued proposed reliance regulations (REG-125710-18 (<https://www.federalregister.gov/documents/2019/09/10/2019-18152/regulations-under-section-382h-related-to-built-in-gain-and-loss>)) on the items of income and deduction that are included when calculating built-in gains and losses under Section 382.

## IRS Issues Proposed Reliance Regulations on Exempt Organization Filings

The IRS has issued proposed reliance regulations (REG-102508-16 (<https://www.federalregister.gov/documents/2019/09/10/2019-19501/guidance-under-section-6033-regarding-the-reporting-requirements-of-exempt-organizations>)) that would update information reporting regulations that are generally applicable to tax-exempt organizations under Section 501(a). The regulations reflect statutory amendments and reporting relief announced through other regulatory guidance (e.g., revenue procedures).

Some highlights of the proposed regulations are as follows:

- The proposed regulations would amend the final regulations by adding two new provisions to reflect items that have been added to Section 6033(b) (describing information to be included in the return of a 501(c)(3) organization), but that have not yet been added to the list in the regulations of items generally required to be reported on an organization's annual information return. These items are found in Sections 6033(b)(10) (relating to taxes imposed on certain lobbying and political

expenditures by 501(c)(3) organizations) and 6033(b) (11) (relating to taxes imposed with respect to an organization, an organization manager or any disqualified person on any excess benefit transaction under Section 4958). The proposed regulations also would incorporate (1) the statutory reporting requirements found in Section 6033(h) (relating to controlling organizations); (2) the Section 6033(k) reporting requirements for sponsoring organizations described in Section 4966(d)(1) (e.g., total number of donor-advised funds and the value of assets in such funds); and (3) the Section 6033(l) reporting requirements related to supported organizations of a supporting organization.

- The proposed regulations would amend the final regulations to reflect the \$50,000 gross receipts filing threshold currently in effect, rather than the \$5,000 gross receipts threshold found in Section 6033(a)(3)(A)(ii), and the application of the \$50,000 threshold to organizations other than those listed in Section 6033(a)(3)(C). As a result, the proposed regulations would provide that the gross receipts threshold for all organizations (other than private foundations and supporting organizations) formed in the U.S. would be \$50,000.
- The proposed regulations would provide that organizations described in Section 501(c)(3) generally would be required to continue to provide names and addresses of contributors of more than \$5,000 on their Forms 990, 990-EZ and 990-PF. Additionally, current Treasury Regulations Section 1.6033-2(a)(2)(iii)(d) provides that organizations described in Sections 501(c) (7) (social clubs), (c)(8) (fraternal beneficiary societies) or (c)(10) (domestic fraternal societies) generally must report the name of each person who contributes more than \$1,000 to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals. The proposed regulations would remove reference to the provision of names of those who contribute over \$1,000 for a specific charitable purpose to such organizations.

The preamble to the proposed regulations states, in part, the following, which should be of interest to churches, integrated auxiliaries, or conventions or associations of churches, and the IRS invites comments on the topic:

The Treasury Department and the IRS request comments on any other grants of section 6033 related reporting relief announced pursuant to past exercises of the Commissioner's discretion that should be incorporated into the regulations or any other clarifications to reflect statutory changes. For example, these proposed regulations do not incorporate Rev. Proc. 96-10, 1996-1 C.B. 138, which relieves from a filing requirement under



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section 6033(a) certain organizations that are operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches because it is unclear whether Rev. Proc. 96-10 currently has practical application. The relevant language provided indicates that these types of organizations are likely supporting organizations under section 509(a)(3). Section 509(a)(3) provides public charity status to organizations, known as supporting organizations, that are operated, supervised, or controlled by, or in connection with, one or more specified organizations described in section 509(a)(1) or (2), which includes churches, conventions or associations of churches, and some integrated auxiliaries of churches.

The Pension Protection Act of 2006, Public Law 109-280, modified the Secretary's general discretion under section 6033(a)(3)(B) so that the Secretary is no longer permitted to relieve a supporting organization of its filing requirements. The Treasury Department and the IRS expect that few, if any, organizations meeting the requirements of Rev. Proc. 96-10 may still rely on this revenue procedure given the 2006 statutory change; thus, incorporating the provisions of Rev. Proc. 96-10 into regulations is unnecessary. However, the Treasury Department and the IRS request comments on the continued usefulness of Rev. Proc. 96-10.

### **IRS Provides Penalty Relief Relating to Failure to Report Donor Information**

The IRS issued Notice 2019-47 (<https://www.irs.gov/pub/irs-drop/n-19-47.pdf>) providing penalty relief for certain tax-exempt organizations that relied on Revenue Procedure 2018-38 (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/07/tax-insights-july-25-2018>)), which excused them from reporting the names and addresses of their contributors on Schedule B of their Forms 990 (or 990-EZ) for tax years ending on or after Dec. 31, 2018, and on or before July 30, 2019.