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IRS Issues Final CFC Regulations Closing Certain Planning Opportunities

The IRS has issued final regulations (T.D. 9883) (<https://www.federalregister.gov/documents/2019/11/19/2019-24985/ownership-attribution-for-purposes-of-determining-whether-a-person-is-related-to-a-controlled>) that amend the controlled foreign corporation (“CFC”) related party and CFC active rent rules to close certain planning opportunities. The final regulations also adopt, without change, proposed regulations issued in May. The final regulations limit the attribution of stock ownership or other ownership interests (downward attribution) for purposes of determining whether a person is related to a CFC under Section 954(d)(3). (Section references are to the Internal Revenue Code of 1986, as amended.) Under the final regulations, stock owned by a partner, beneficiary, or shareholder will not be treated as owned by a partnership, trust, or corporation. The rule is applicable for tax years of CFCs ending on or after Nov. 19 and for the tax years of United States shareholders in which or with which such tax years end. The final regulations also provide guidance on determining whether a CFC derives rents in the active conduct of a trade or business for purposes of computing foreign personal holding company income.

Court of Appeals Decides FBAR Case

The U.S. Court of Appeals for the Federal Circuit held, in *Norman v. U.S.* (<http://www.ca9c.uscourts.gov/sites/default/files/opinions-orders/18-2408.Opinion.11-8-2019.pdf>), that the Court of Federal Claims properly upheld the FBAR penalty imposed against a schoolteacher, in an amount based on 50% of the account balance for her willful failure to report her interest in a Swiss bank account for post-2004 year. Contrary to taxpayer’s arguments, willfulness in FBAR context included recklessness, and per the Internal Revenue Manual, no showing of actual knowledge of obligation to file FBAR was required. The Court of Appeals also found that the taxpayer acted willfully insofar as she knowingly signed her return, which falsely indicated that she had no interest in any foreign bank account; opened the account as “numbered account;” signed a document inhibiting the bank from investing in U.S. securities on her behalf; received a withdrawal from account in cash; and made numerous false statements to IRS about her knowledge and control of the account during the audit.

IRS Issues Draft Instructions for Form 8978, Partner’s Audit Liability Under Section 6226

The IRS has issued draft instructions (<https://www.irs.gov/pub/irs-dft/i8978--dft.pdf>) for Form 8978, Partner’s Audit Liability Under Section 6226 (<https://www.irs.gov/pub/irs-dft/f8978--dft.pdf>), and Schedule A (Form 8978), Schedule of Adjustments Partners (<https://www.irs.gov/pub/irs-dft/f8978sa--dft.pdf>) (other than pass-through partners such as partnerships or S corporations). Form 8978 and Schedule A (Form 8978) is used to report adjustments shown on a Form 8986 received from a partnership that has elected to push out an imputed underpayment to its partners.

Pennsylvania Issues Updated Unclaimed Property Reporting Book

The Pennsylvania Treasury has released the 2019 edition of the Pennsylvania Unclaimed Property Annual Reporting Book (<https://www.patreasury.gov/pdf/unclaimed-property/Holder-Reporting-Book.pdf>). The book provides instructions on reporting and other information for holders of abandoned and unclaimed property and is updated to reflect changes made during the 2018 legislative season. ■

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