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ABA Tax Section Submits Comments on Proposed Partnership Transaction Regulations

The American Bar Association (ABA) Section of Taxation has submitted comments (https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/012920comments.pdf) to the IRS on partnership transaction proposed regulations pursuant to authority under section 337(d). (All section references are to the Internal Revenue Code of 1986, as amended.) Under current law, sections 311(b) and 336(a) require a corporation that distributes appreciated property to its shareholders to determine gain as if the property were sold for its fair market value. In 2019, Treasury issued proposed regulations that would amend and modify final regulations issued in 2018 (2019 Proposed Regulations). In response to such 2019 Proposed Regulations, the ABA Section of Taxation submitted the following comments:

1. The ABA expressed agreement with the expanded definition of Stock of the Corporate Partner provided for in the 2019 Proposed Regulations and with the addition of the requirement that the Controlling Corporation has a direct or indirect interest in the Corporate Partner. The ABA recommended that those provisions of the 2019 Proposed Regulations be adopted with the modifications described immediately below.

2. With respect to a Controlling Corporation, the ABA recommended that the Corporate Partner be limited to reflect the percentage of stock of a Corporate Partner held, directly or indirectly, by the Controlling Corporation.

3. The ABA advised that if the Affiliated Group Exception is removed, we recommend that final Regulations provide a "grandfather" rule pursuant to which a transaction undertaken by a partnership that would have qualified for the Affiliated Group Exception prior to the issuance of final regulations would continue to be excluded from treatment as a Section 337(d) Transaction following the issuance of final regulations.

4. The ABA recommended that final Regulations retain the Disposition Exception in Regulation Section 1.337(d)-3(f)(2), but remove the Disposition Exception Exclusion and the Sale or Distribution Requirement.

IRS PLR Holds That State's Tax Credit Is Qualifying Income to REIT

IRS holds in Private Letting Ruling 202005018 (https://www.irs.gov/pub/irs-wd/202005018.pdf) (see also Private Letter Ruling 202005017 (https://www.irs.gov/pub/irs-wd/202005017.pdf)) that income attributable to a state's tax credit program is qualifying income to a real estate investment trust (REIT) for purposes of Section 856. The state allows taxpayers to claim a credit against their state tax liability for a percentage of the eligible costs incurred to rehabilitate a hazardous waste site on property located within an economically distressed area. The taxpayer, a REIT, represented to the IRS that it owned an indirect interest in a property located within a designated economically distressed area in such a state that will be redeveloped and remediated. The taxpayer anticipated that it would sell the tax credits earned from the redevelopment and remediation of such property to other eligible persons, and the proceeds from such sale would be used to offset the actual costs of the project. The taxpayer represented that substantially all of the income from the project would be qualifying income for purposes of Section 856. The IRS held that such income received from selling the tax credits would be qualifying income to the taxpayer and noted that holding as such would not interfere with the objectives of Congress in enacting the relevant portions of Section 856.

IRS Announces Form 1023 Must Be Filed Electronically

The IRS announced in Revenue Procedure 2020-8 (https://www.irs.gov/pub/irs-drop/rp-20-08.pdf) (which modifies Revenue Procedure 2020-5 (https://www.irs.gov/pub/irs-irbs/irb20-01.pdf) discussing procedures for issuing determination letters for exempt organizations) that Form 1023, Application for Recognition of Exemption Under Section 501(c)(3), must be filed electronically. This requirement went into effect Jan. 31, but paper Forms 1023 postmarked on or before April 30 will be accepted in accordance with the requirements of the revenue procedure.

Proposed Pennsylvania Budget Released

Pennsylvania Governor Tom Wolf released the proposed budget for the 2020-2021 fiscal year (https://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Pages/default.aspx). The 2020-2021 fiscal year proposed budget is $36.056 billion, a 4.22% increase from the prior fiscal year. The budget continues to focus on investments in education, expanded workforce development programs, addressing the opioid epidemic and improving state government efficiencies. The proposed budget also focuses on infrastructure improvements and environmental protection.

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