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IRS Issues Ruling on REIT Qualified Health Care Properties

The IRS issued [Private Letter Ruling 202020007](#) in which it found that independent retirement living facilities were not health care facilities under Section 856(e)(6)(D) (ii); therefore, the direct or indirect operation or management of facilities by a wholly-owned taxable REIT subsidiary of a REIT would not prevent it from being treated as taxable REIT subsidiary under Section 856(l)(3)(A). (Section references are to the Internal Revenue Code of 1986, as amended.) The IRS also found that income from certain services provided at property was not impermissible tenant service income and, therefore would not cause any portion of rents received by a taxpayer to fail to qualify as rents from real property under Section 856(d).

Court of Appeals Affirms Foreign-Tax Credits Generated by STARS Transaction Properly Disallowed

The U.S. Court of Appeals for the Eighth Circuit has [affirmed a district court ruling](#) that a taxpayer was not entitled to foreign-tax credits that were generated as part of a Structured Trust Advantaged Repackaged Securities (STARS) transaction and that the taxpayer was subject to the negligence penalty for claiming those credits. The taxpayer asserted that the purpose of STARS was to borrow a significant amount of money at a very low-interest rate, to diversify its funding sources, to reduce its liquidity risk, and to provide a stable source of funding for a period of years; therefore, STARS had economic substance. The IRS argued that the trust-component of STARS was a sham transaction and, therefore, the taxpayer was ineligible to claim foreign-tax credits for its payment of U.K. taxes arising from the trust component. The court found that the taxpayer was not entitled to the foreign tax credits it claimed because the trust component of STARS was a sham transaction.

IRS Issues Guidance on Interpreting U.S. Treaty References to NAFTA

The IRS issued [Announcement 2020-60](#), stating that it will interpret references to the North American Free Trade Agreement (NAFTA) in U.S. income tax treaties as references to the Agreement between the U.S., Mexico and Canada (USMCA) when the USMCA goes into force on July 1. Limitation on benefit articles in U.S. income tax treaties normally provide objective tests by which a resident may qualify for treaty benefits, provided that the resident meets all other requirements specified in the treaty for claiming the benefit. Some treaties provide for a limitation on benefit “derivative benefit” tests that contain explicit references to a “resident of a state that is a party to NAFTA.”

IRS Advises No Abandonment Loss for Previously Capitalized IPO Costs

The IRS, in [Legal Advice Issued by Associate Chief Counsel 2020-003](#), determined that a taxpayer may not deduct, as an abandonment loss, previously capitalized costs

that facilitated an initial public offering when the taxpayer later ceased to be a publicly-traded company after a “take-private” transaction.

IRS Issues Proposed Reliance Regulations Reflecting TCJA Changes to Rehabilitation Credit

The IRS released proposed reliance regulations ([REG-124327-19](#)), setting out rules regarding the Section 47 rehabilitation tax credit that reflect changes to that credit made by the 2017 Tax Cuts and Jobs Act (TCJA).

Illinois Issues Withholding Tax Guidance Related to COVID-19

The Illinois Department of Revenue (Department) issued an [informational bulletin](#) to out-of-state employers, whose employees are Illinois residents, now working from home due to the coronavirus (COVID-19) crisis. These employees may now be subject to Illinois withholding requirements since employee compensation is subject to Illinois withholding if an employee has performed normal work duties in Illinois for more than 30 working days. The employer may be required to register with the Department and withhold Illinois income tax from the employee. The guidance does not impact out-of-state employers from states with a reciprocal agreement with Illinois, which



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include Iowa, Kentucky, Michigan and Wisconsin. The Department will waive penalties and interest for out-of-state employers who do not withhold Illinois income taxes when the sole reason the employee is working from home is due to the COVID-19 crisis. Employees will be required to make estimated tax payments if they expect their tax liability to exceed \$1,000 after subtracting Illinois withholding and credits.