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IRS Issues Final Regulations Regarding Eligible Terminated S Corporations

The IRS has issued [final regulations](#) related to Section 1371(f), which was added to the Code by the 2017 Tax Cuts and Jobs Act, regarding eligible terminated S-corps. The regulations provide guidance on the definition of an eligible terminated S-corp (ETSC) and rules relating to distributions of money by such a corporation after the post-termination transition period (PTTP). The final regulations generally adopt the proposed regulations with some changes. (See our prior coverage [here](#).) Generally, a distribution by a C corporation to its shareholders with respect to their stock ownership is treated as a taxable dividend to the extent of the corporation's earnings and profits. However, following the termination of a corporation's S election, shareholders of the resulting C corporation can, during the PTTP, treat the C corporation's distribution as a distribution from the corporation's accumulated adjustments account (AAA). Shareholders receive such distributions tax-free to the extent of their basis in the stock for which they received the distribution, and the distribution is taxed as gain from the sale of property to the extent the distribution exceeds the shareholder's basis in that stock. Once a corporation exhausts its AAA, subsequent distributions are treated as dividends.

The final regulations address, among other items, (1) the issue of retroactive revocations and the qualification as an ETSC, (2) the applicability of the PTTP and ETSC rules to an S-corp with no accumulated earnings & profits, (3) the application of Section 481, method of accounting changes, to qualified subchapter S subsidiaries of an ETSC, and (4) adjustments to the treatment of new shareholders of an ETSC. (Section references are to the Internal Revenue Code of 1986, as amended (the Code).)

IRS Notice Extends Applicability Date of Foreign Currency Regulations

The Department of the Treasury and the IRS, in [Notice 2020-73](#), announced the intent to defer the applicability date of certain final regulations under Section 987 and certain related final regulations by one additional year. (See our prior coverage [here](#).) Affected regulations likely will be Treasury Regulation Sections 1.861-9T, 1.985-5, 1.987-11, 1.988-1, 1.988-4, 1.989(a)-1, 1.987-2, and 1.987-4 and the applicability date is expected to be moved to taxable years beginning after Dec. 7, 2021. The Notice provides that the applicability date of Treasury Regulation Section 1.987-12 is not intended to be amended.

IRS Acknowledges Minor Editorial Changes in Business Interest Limitation Final Regulations

The IRS, in News Release [2020-212](#), acknowledged that the final regulations regarding the limitation on the business interest that were published in the Federal Register vary slightly from those issued in [TD 9905](#). The version of the final regulations published in the Federal Register contains minor editorial changes, but state that taxpayers may rely on the final regulations for any taxable year beginning after Dec. 31, 2017, provided that certain conditions are met.

ABA Tax Section Requests Guidance on Disaster Loss Election

The American Bar Association's Tax Section submitted a [letter](#) to the IRS requesting guidance on the disaster loss election under Section 165(i) with regards to the COVID-19 pandemic. The letter states that the declaration of a federal disaster, like the President made in March 2020 with respect to COVID-19, activates certain parts of the Code, including

Section 165(i). Section 165(i) provides an election for a taxpayer to claim a disaster loss in the taxable year immediately preceding the year of the disaster. The letter suggests recommendations regarding (a) the attribution of losses to COVID-19, (b) the definition of “other casualty” under Treasury Regulation Section 1.165-7, and (c) the application and scope of the election with respect to separate transaction and/or trades or businesses.

Philadelphia Will Forgo Citywide Property Tax Reassessment

The City of Philadelphia has [announced](#) that due to operational concerns caused by the COVID-19 pandemic, it will forgo a citywide reassessment of all property values for tax year 2022. This means that assessments for most properties will remain unchanged from current levels set for the 2021 tax year. Only properties that had new construction, expiring abatements, renovations, subdivisions, consolidations, or errors in prior year assessments will be reassessed.

California Updates FAQs Regarding State Nexus

The California Franchise Tax Board updated its [COVID-19 FAQs](#) to provide guidance to corporations regarding the California franchise tax. For California franchise tax purposes, corporations are required to file a tax return and are subject



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to the minimum franchise tax if they are “doing business” in California. As a result of California’s stay at home order in March 2020 (Executive Order N-33-20), some corporations who previously may not have had connections with California now did because employees resident in California were required to work from their homes. The FAQs provide guidance regarding whether or not such a corporation meets certain thresholds required to be considered “doing business” in California.