

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



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IRS Provides Safe Harbor for Deducting Expenses if PPP Loan Is Not Forgiven

The IRS issued [Revenue Procedure 2020-51](#) in which it provides a safe harbor allowing a taxpayer to claim a deduction in 2020 for certain otherwise deductible eligible expenses if the taxpayer received a Paycheck Protection Program (PPP) loan which (1) at the end of the taxpayer's 2020 tax year the taxpayer expects to be forgiven in a tax year after the 2020 tax year, and; (2) in a post-2020 tax year, the taxpayer's request for forgiveness of the loan is denied, in whole or in part, or the taxpayer decides never to request forgiveness of the loan.

Under one safe harbor, an eligible taxpayer who satisfies the safe harbor requirements may deduct non-deducted eligible expenses on the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the 2020 tax year, or amended return for the 2020 tax year. Under the other safe harbor, an eligible taxpayer who satisfies the safe harbor requirements may deduct non-deducted eligible expenses on the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for a subsequent tax year (i.e., a tax year after the 2020 tax year). Eligible taxpayers may, but do not need to, use this safe harbor to deduct non-deducted eligible expenses in a subsequent tax year because those taxpayers may deduct the non-deducted eligible expenses in the year that the loan forgiveness is denied under general tax principles, assuming that the taxpayer does not elect to the use the first safe harbor mentioned above.

IRS Issues Guidance on Deducting Expenses When PPP Loan Is Forgiven

The IRS issued [Revenue Ruling 2020-27](#), which states that a taxpayer that received a covered loan guaranteed under the PPP and paid or incurred certain otherwise deductible expenses may not deduct those expenses in the tax year in which the expenses were paid or incurred if, at the end of such tax year, the taxpayer reasonably expects to receive forgiveness of the covered loan based on the expenses it paid or accrued during the covered period, even if the taxpayer has not applied for forgiveness of the covered loan by the end of such tax year.

IRS Issues Final UBTI Regulations

The IRS has released [final regulations \(TD 9933\)](#) that provide guidance on how an exempt organization subject to the unrelated business income tax determines if it has more than one unrelated trade or business and, if so, how the exempt organization calculates its unrelated business taxable income. The final regulations adopt proposed regulations issued in April (see our prior coverage [here](#)) with modifications, highlights of which include:

- **NAICS 2-digit codes.** The final regulations clarify that once an exempt organization determines that it carries on unrelated trades or businesses, the exempt organization then identifies its separate unrelated trades or businesses based on the most accurate NAICS 2-digit codes describing the activities. If two activities have the same NAICS 2-digit code, they can be aggregated for purposes of Section 512(a)(6).
- **Changing NAICS 2-digit codes.** In response to comments, the final regulations remove the restriction in the proposed regulations on changing NAICS 2-digit codes. Instead, the final regulations require an exempt organization that changes the NAICS 2-digit code of a separate unrelated trade or business to report the change in the tax year of the change in accordance with forms and instructions.

- **The unadjusted gross-to-gross method.** In response to commenters' recommendations, the final regulations clarify that allocation of expenses, depreciation, and similar items to separate unrelated trades or businesses when determining UBTI is not reasonable if the cost of providing a good or service in a related and an unrelated activity is substantially the same, but the price charged for that good or service in the unrelated activity is greater than the price charged in the related activity, and no adjustment is made to equalize the price difference for purposes of allocating expenses, depreciation, and similar items based on revenue between related and unrelated activities.

For example, if an exempt social club charges nonmembers a higher price than it charges members for the same good or service but does not adjust the price of the good or service provided to members for purposes of allocating expenses, depreciation, and similar items attributable to the provision of that good or service, the allocation method is not reasonable.

- **Qualified partnership interest.** In general, for exempt organizations, the activities of a partnership are considered the activities of the exempt organization partners. However, comments to the proposed regulations explained the difficulty of obtaining information regarding the trade or business activities of lower-tier partnerships. Therefore, as a matter of administrative convenience for both the exempt organization and the IRS, the proposed regulations permitted but did not require an exempt organization to aggregate its UBTI from an interest in a partnership with more than one unrelated trade or business (including unrelated trades or businesses conducted by lower-tier partnerships) if it met certain requirements ("qualifying partnership interest," or QPI).

The proposed regulations identified a partnership interest as a QPI if it met the requirements of either the de minimis test or the control test (now the "participation test"), both discussed below. Additionally, the proposed regulations permitted the aggregation of any QPI with all other QPIs, resulting in the treatment of the aggregate group of QPIs (along with associated debt-financed income under Section 514 and qualifying S corporation interests as a single "investment activities" trade or business for purposes of Section 512(a)(6)(A).

As stated in the preamble to the proposed regulations, the "percentage interest level" for QPIs was intended as a proxy to identify partnership interests in which the exempt organization does not significantly participate. If the percentage interest level indicates that an exempt organization does not significantly participate in a partnership, the exempt organization is not likely to be able



Christopher C. Scarpa



Jacquelyn Gordon

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Jacquelyn Gordon at 215.564.8176 or jgordon@stradley.com.

to easily obtain the information required to identify the trades or businesses conducted, directly or indirectly, by the partnership that are unrelated trades or businesses with respect to the exempt organization partner.

The proposed regulations provided that, once an organization designates a partnership interest as a QPI, it cannot thereafter identify the trades or businesses conducted by the partnership that are unrelated trades or businesses with respect to the exempt organization using NAICS 2-digit codes unless and until the partnership interest is no longer a QPI.

- **General partner prohibition.** The proposed regulations also clarified that any partnership in which an exempt organization is a general partner is not a QPI, regardless of the exempt organization's percentage interest. Responding to a comment comparing managing members of limited liability companies (LLCs) to general partners in a partnership, the IRS stated that it does not believe it is appropriate, at this time, to expand the general partner prohibition to managing members of LLCs. Accordingly, the final regulations adopt the proposed regulations with the clarification that general partner status is determined under applicable state law.

IRS Updates Guidance for Filing Delinquent International Information Returns

On its website, the IRS has [updated its guidance](#) for taxpayers who need to file a delinquent international information return (the Delinquent International Information Return Submission (DIIRS) Procedures) and are not under civil examination or criminal investigation by the IRS. International information returns that may be covered under the DIIRS procedure: Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts; Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner; Form 5471, Information Return of U.S. Person with Respect to Certain

Foreign Corporations; Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, Form 8938, Statement of Specified Foreign Financial Assets; Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, and Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

IRS Releases Draft 2021 Instructions for Forms 1099-MISC and 1099-NEC

The IRS has released [draft 2021 instructions](#) for Form 1099-MISC, Miscellaneous Information, and Form 1099-NEC, Nonemployee Compensation.