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IRS Issues Final Regulations on Transportation Expenses

The IRS has issued [final regulations \(TD 9939\)](#) regarding the elimination of the deduction for certain employer-provided transportation and other fringe benefits. The 2017 Tax Cuts and Jobs Act (TCJA) amended Section 274 to disallow a deduction for the expense of any qualified transportation fringe (QTF). (Section references are to the Internal Revenue Code of 1986, as amended, unless otherwise noted.) The TCJA also added Section 274(l), which provides that no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of the taxpayer in connection with travel between the employee's residence and place of employment, except as necessary for ensuring the safety of the employee, effective for transportation and commuting expenses paid or incurred after Dec. 31, 2017. Section 132 generally excludes the value of such fringe benefits from the employee recipient's gross income.

The final regulations substantially adopt the proposed regulations with certain modifications and clarifications and address the following for QTF: (i) definitions, (ii) optional allocation for QTF parking expenses, (iii) calculation of disallowance of QTF parking expenses (general rule, qualified parking limit methodology, and primary use methodology) and, (iv) exceptions. The final regulations also address transportation and commuting expenses.

IRS Provides Guidance on SECURE Act Changes to Retirement Plan Safe Harbors

The IRS released [Notice 2020-86](#), which provides guidance with respect to safe harbor plans under Sections 102 and 103 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). Section 102 of the SECURE Act increases the 10 percent cap for automatic enrollment safe harbor plans. Section 103 of the SECURE Act eliminates certain safe harbor notice requirements for plans that provide for safe harbor nonelective contributions and adds new provisions for the retroactive adoption of safe harbor status for those plans. This notice is not intended to provide comprehensive guidance as to Sections 102 or 103 of the SECURE Act, but rather is intended to assist taxpayers by providing guidance on particular issues while the Treasury Department and the IRS develop regulations.

IRS Notifies Taxpayers Regarding Qualified Opportunity Funds

The IRS, in a [news release](#), states that it has started sending letters to taxpayers who attached (or indicated they attached) a Form 8996, Qualified Opportunity Fund, to their tax return indicating that they may need to take additional actions related to Qualified Opportunity Funds (QOF) in order to: (i) meet the annual self-certification requirement, or (ii) correct a Form 8949, Sales and other dispositions of Capital Assets, or deferral election. Failure to act or otherwise respond to such letters may result in the IRS referring the tax accounts for examination.

PA DOR Repeals Policy Statement on Withholding Tax Requirements

The Pennsylvania Department of Revenue (PA DOR) [repealed a statement of policy](#) that provided guidelines for the implementation of the withholding tax requirements imposed on partnerships, associations, and Pennsylvania S Corporations having non-resident partners, members or shareholders. This statement of policy no longer reflects current tax

processes and systems. The repeal takes effect immediately upon publication in the Pennsylvania Bulletin and is applicable to tax years beginning on or after Jan. 1, 2021.

Philadelphia Updates Nexus and Apportionment Policies

The City of Philadelphia Department of Revenue (Philadelphia DOR) has released an [updated policy](#) on nexus and apportionment in light of COVID-19. With regard to nexus, the Philadelphia DOR will temporarily waive the legal nexus threshold established under §19-2603 of the Philadelphia Code and under Section 103 of the Business Income and Receipts Tax (BIRT) Regulations, which considers the presence of employees working temporarily from home within Philadelphia as establishing sufficient nexus for out-of-Philadelphia businesses. This waiver applies if and when an employee works from home solely as a result of the COVID-19 pandemic. This temporary guidance will be in effect until the earlier of June 30, 2021, or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted. This policy is consistent with guidance issued by the Pennsylvania Department of Revenue regarding Telework During the COVID-19 pandemic.

For purposes of the sourcing receipts for BIRT and Net Profits Tax (NPT): (i) the services of Philadelphia non-resident employees who previously performed services from within assigned business locations in Philadelphia, but now are performing services from home solely as a result of the



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COVID-19 pandemic, will be sourced to Philadelphia and (ii) the services of Philadelphia resident employees, who previously performed services outside of Philadelphia, but now are performing services at their Philadelphia homes solely as a result of the COVID-19 pandemic, will not be sourced to Philadelphia. This special sourcing rule is an exception that applies only for the duration of the Governor and Mayor's emergency stay-at-home orders issued in response to the COVID-19 coronavirus health emergency.

This guidance is in line with the PA DOR's earlier guidance. (See our prior coverage [here](#).)