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IRS Issues Ruling on REIT Qualifying Income

The IRS issued Private Letter Ruling 201820012 (<https://www.irs.gov/pub/irs-wd/201820012.pdf>) holding that to the extent a partnership's assets constitute real property, an offer representing a REIT's future right to purchase interests of the partnership that holds assets that a REIT would be treated as owning in proportion to any partnership interests it purchased, was an interest in real property for purposes of Section 856(c)(5)(C), and payment for waiver of the offer is gain from the disposition of a real property interest within meaning of Sections 856(c)(2)(D) and 856(c)(3)(C). Section references are to the Internal Revenue Code of 1986, as amended.

IRS Issues Notice on Workarounds to Avoid Limit on State and Local Tax Deduction

The IRS issued Notice 2018-54, 2018-24 IRB (<https://www.irs.gov/pub/irs-drop/n-18-54.pdf>) and an accompanying News Release (<https://www.irs.gov/newsroom/irs-issues-notice-on-state-and-local-tax-deductions>), stating that it intends to propose regulations addressing the federal income tax treatment of certain payments made by taxpayers to state-established "charitable funds" for which they receive a credit against their state and local taxes. Such funds were designed as a workaround adopted by a number of states to avoid the new limits on the state and local tax deduction under the Tax Cuts and Jobs Act. The Notice indicates that the characterization of these payments would be determined under the Internal Revenue Code and informed by substance-over-form principles, and not the label assigned by the state.

Pennsylvania Issues Guidance on Applying Nextel

In October 2017, the Pennsylvania Supreme Court decided *Nextel Communications of the Mid-Atlantic, Inc. v. Commw.* (see our prior coverage here (<https://www.stradley.com/insights/publications/2017/10/tax-insights-october-25-2017>)), in which the court held that the \$3 million cap on the net operating loss deduction (NOL) violated the Uniformity Clause of the Pennsylvania Constitution, but left in place the 12.5 percent of taxable income limitation on the NOL deduction. On Nov. 16, 2017, the Department of Revenue issued PA Corporation Tax Bulletin 2017-01 (http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2017-01.pdf) announcing that the flat-dollar cap on the NOL is not available for taxable years starting in 2017 and thereafter, but left the issue of the application of the *Nextel* decision to years starting prior to Jan. 1, 2017 open pending a final decision of the Pennsylvania Supreme Court. In order to provide greater clarity for corporate taxpayers, the Department of Revenue has announced, in PA Corporation Tax Bulletin 2018-02 (http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2018-02.pdf), that it will not apply the *Nextel* decision to tax years starting before Jan. 1, 2017, but will determine the corporate net income tax liability for tax years starting after Dec. 31, 2006 and through Dec. 31, 2016 by allowing the greater of the flat dollar cap or the percentage cap as authorized by statute prior to the *Nextel* decision. For tax years starting before Jan. 1, 2007, the Department will determine corporate net income tax liability by applying the flat dollar cap as authorized by statute prior to the *Nextel* decision.

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