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IRS Issues Proposed Regulations Reducing Federal Charitable Contribution by Amount of State or Local Tax Credit

The IRS has issued proposed regulations (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-18377.pdf>) with an accompanying News Release (<https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-charitable-contributions-and-state-and-local-tax-credits>) that provide amendments to regulations under Section 170 in an effort to shut down workarounds to the cap on state and local tax deductions enacted by the 2017 Tax Cuts and Jobs Act (TCJA). The TCJA limits an individual taxpayer's federal, state and local tax deduction to \$10,000. Certain state programs allowed for a transfer of property under a state or local tax credit program to be treated as a charitable contribution for federal income tax purposes, thus allowing an individual taxpayer to still receive a federal tax benefit beyond the \$10,000 limit. However, the proposed regulations under Section 170, which governs charitable contribution deductions, generally require a taxpayer who makes a contribution to an eligible entity listed in Section 170(c) to reduce the amount of their charitable contribution deduction on their federal return by any state or local tax credit that the taxpayer receives with respect to that contribution. These rules apply to contributions made to new and existing state tax credit programs. Therefore, the proposed regulations, if adopted, would impact the ability of a person to claim a charitable contribution deduction for contributions under a state tax credit program such as the Pennsylvania Educational Improvement Tax Credit (EITC) program. An example in the regulations, although not specifically mentioning the EITC, illustrates this point. The example provides that if a state grants a 70 percent state tax credit and the taxpayer pays \$1,000 to an eligible entity, the taxpayer receives a \$700 state tax credit, but the taxpayer must reduce the \$1,000 charitable contribution by the \$700 state tax credit, leaving an allowable charitable contribution deduction of \$300 for federal income tax purposes. The proposed regulations also apply to payments made by trusts or decedents' estates in determining the amount of their contribution deduction. The proposed regulations are applicable to amounts paid or property transferred after Aug. 27, 2018. (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Issues Interim Rules for Calculating Unrelated Business Taxable Income

The IRS, in Notice 2018-67 (<https://www.irs.gov/pub/irs-drop/n-18-67.pdf>), has provided interim rules for determining whether a tax-exempt organization has more than one unrelated trade or business and how to calculate unrelated business taxable income with respect thereto, pending the issuance of regulations. The Notice also addresses the net operating loss deduction and treatment of global intangible low-taxed income for purposes of determining the unrelated business income tax.

IRS Rules Exchange of Mortgage-Backed Securities Not a Taxable Exchange

The IRS held, in Revenue Ruling 2018-24 (<https://www.irs.gov/pub/irs-drop/rr-18-24.pdf>), that the exchange of Freddie Mac mortgage-backed participation certificates for Freddie Mac uniform mortgage-backed securities, plus cash in some cases, did not create a taxable exchange to the taxpayer. Under Section 1001, a taxpayer recognizes gain or loss on the exchange of property for other property that is materially different. The IRS found that the securities described in Revenue Ruling 2018-24 were not materially

different because the change in the remittance cycle between the two instruments did not constitute a significant modification to the security.

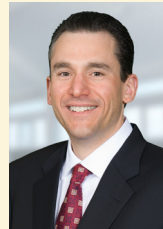
IRS Issues Guidance on Changes to Deduction for Executive Compensation

The IRS, in Notice 2018-68 (<https://www.irs.gov/pub/irs-drop/n-18-68.pdf>), has provided guidance with respect to the changes made by the TCJA to Section 162(m) on the disallowance of a deduction for publicly held corporations for remuneration paid to a “covered employee.” The notice clarifies the definition of “covered employee” and provides guidance regarding certain agreements that are not covered by the new rule.

IRS Updates FATCA FAQs to Provide Additional Guidance on QI Certifications

The IRS updated its list of general frequently asked questions (FAQs) (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal#certification%20requirement%20under%20section%2010.03>) under the Foreign Account Tax Compliance Act.

A qualified intermediary must make certain certifications under its agreement with the IRS to meet its withholding responsibilities. The FAQs provide additional guidance on what must be done by the responsible officer of a qualified intermediary upon an event of default or material failure prior to the above certifications being made.



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