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TCJA Book-Tax Conformity Rule Inapplicable to Market Discount

The IRS issued Notice 2018-80 (<https://www.irs.gov/pub/irs-drop/n-18-80.pdf>) announcing that it intends to issue proposed regulations providing that market discount is not includible in income under Section 451(b), as amended by the Tax Cuts and Jobs Act (TCJA). (Section references are to the Internal Revenue Code of 1986, as amended.) This guidance is applicable as of Jan. 1, 2018. Section 451(b) provides that the all-events test is met with respect to an item of gross income no later than when the taxpayer takes that item of gross income into account as revenue for financial accounting purposes in an “applicable financial statement.” Under Section 451(b)(2), the general rule in Section 451(b)(1) does not apply to any item of gross income for which the taxpayer uses a special method of accounting, other than items accounted for under a provision of Part V of Subchapter P, which contains Sections 1271 through 1288. Section 1276(a)(1) treats gain (if any) on the disposition of a market discount bond as ordinary income to the extent that the gain does not exceed the accrued market discount on the bond. Under Section 1276(a)(3), any partial principal payment on a market discount bond is includible in gross income to the extent the payment does not exceed accrued market discount on the bond.

IRS Proposes Removing Debt/Equity Documentation Requirements

The IRS has issued proposed reliance regulations (REG-130244-17 (<https://www.federalregister.gov/documents/2018/09/24/2018-20652/proposed-removal-of-section-385-documentation-regulations>)) that would remove the Section 385 documentation requirements (i.e., the portion of the final Section 385 regulations issued in 2016 that provided rules for the documentation necessary to determine whether certain related party interests in a corporation are treated as stock or indebtedness for federal income tax purposes). The documentation requirements, the applicability of which had already been delayed until 2019, had been identified for possible removal last year pursuant to President Donald Trump’s directive to reduce regulatory burdens.

IRS Issues Statement on Section 355 Active Trade or Business Requirement

The IRS has issued a statement (<https://www.irs.gov/newsroom/irs-statement-regarding-the-active-trade-or-business-requirement-for-section-355-distributions>) indicating that it is contemplating issuing guidance on the active trade or business requirement under Section 355(b). Specifically, the statement notes that certain entrepreneurial ventures whose activities consist of long periods of research and development often collect little income (ordinarily a requirement in determining an active trade or business), yet nonetheless incur significant expenses and perform the day-to-day operational and managerial functions historically associated with an “active” business. The IRS also requests comments and indicates that it will entertain requests for private letter rulings on these matters.

House Approves Part of Round Two of Tax Reform

The full House on Sept. 27 passed two acts as part of its second phase of tax reform. The House voted 240-177 to approve the Family Savings Act (H.R. 6757) and by a margin of 260-156 approved the American Innovation Act (H.R. 6756). The third act of the three-part bill, yet to be voted on, is the Small Business Tax Cuts Act (H.R. 6760). (See our prior coverage here (<https://www.stradley.com/insights/publications/2018/09/tax-insights-september-19-2018>).)