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Highlights

Calculating and Reporting the QBI Deduction for Tax-exempt Trusts: On its website, the IRS has issued guidance on calculating and reporting the Section 199A Qualified Business Income (QBI) deduction for tax-exempt trusts that have unrelated business income. When calculating the deduction, *taxable income* (before the QBI deduction) is the amount reported on line 36 of the 2018 Form 990-T minus the Section 512(b)(12) specific deduction (generally $1,000). In addition, QBI doesn't include items of income, gain, deduction, and loss from any unrelated trade or business that operated at a loss. Similarly, when computing the wage/investment limit, trusts shouldn't include any W-2 wages or qualified property from an unrelated trade or business that operated at a loss. The QBI deduction should be added to any specific deduction allowable and reported on line 37 of the 2018 Form 990-T. Trusts should then attach a statement identifying the amount of the QBI deduction claimed. More information is available at www.irs.gov/forms-pubs/trust-qualified-business-income-qbi-deduction-under-section-199a .

Fleet-average and Cents-per-mile Valuation Rules for 2019: The maximum value of employer-provided vehicles (including cars, vans, and trucks) first made available to employees for personal use in calendar-year 2019 for which the vehicle cents-per-mile valuation rule of Reg. 1.61-21(e) can be used is $50,400. The maximum value for 2019 under the fleet-average valuation rule of Reg. 1.61-21(d)(5)(v) is also $50,400. In the future (once regulations are amended to reflect TCJA changes), the IRS expects to publish these values in the annual notice providing standard mileage rates and the maximum standard auto cost for purposes of an allowance under a Fixed and Variable Rate (FAVR) plan. In addition, the IRS is providing (1) temporary relief from the consistency requirements in Reg. 1.61-21(e)(5) for use with the vehicle cents-per-mile valuation rule and (2) flexibility with the rules relating to the period of use for the fleet-average valuation rule. Notice 2019-34 .

IRS Releases Private Debt Collection Report for Fiscal Year 2018: The IRS has released to Congress its private debt collection report for fiscal year 2018. The report includes statistics on revenue received, program costs, and IRS assessments of agencies' professionalism and accuracy. According to the report, program revenue exceeded costs by approximately $51 million in fiscal year 2018. Since the beginning of the program in fiscal year 2016, revenue has exceeded costs by approximately $22 million. In addition, the IRS gave collection agencies a customer accuracy rating of 97.65% and a professionalism score of 99.61%. Taxpayers interacting with the agencies had a 93% satisfaction rate. The report also provides information on (1) the total number and amount of tax receivables provided to each agency for collection and (2) the total amounts collected by each contractor and the collection costs incurred by the IRS. For more on the private debt collection program, visit www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection .

Other Current Releases

Employment Tax—IRS Clarifies Treatment of CPEO Payments to Self-employed Individuals: In a recent Chief Counsel Advice (CCA), the IRS addressed the employment tax treatment of payments from Certified Professional Employer Organizations (CPEOs) to self-employed individuals. (The CCA was issued to clear up certain language used in the preamble to the 2016 proposed CPEO regulations.) In general, CPEO payments to self-employed individuals are not treated as wages for employment tax purposes. However, in the rare event the individual receives payments from the CPEO in two separate capacities (i.e., as a self-employed individual and a common law employee), the CPEO is treated as the employer for employment tax purposes with respect to the wages only. In addition, the CCA clarified that *any* payment made by a CPEO to a partner in a partnership must be treated and reported as a payment to a self-employed individual under IRC Sec. 6041. CCA 201916004 .

Income Tax—IRS Ruling Addresses Stock Redemption Made during S Corporation's PTTP: An S corporation, which was formerly a C corporation, terminated its S election. At that time, the company's AAA and accumulated E&P were $800x and $600x, respectively. During its Post-termination Transition Period (PTTP), the corporation redeemed 50 of its sole shareholder's 100 shares for $1,000x, which was characterized as a distribution subject to IRC Sec. 301. For the taxable period that included the redemption, the company had current E&P of $400x. The IRS ruled that the corporation should reduce its AAA to the extent of the redemption proceeds.

Therefore, the redemption eliminated the company's AAA of $800x, and the remaining $200x should be treated as a dividend under IRC Sec. 301(c)(1). Rev. Rul. 2019-13.

Income Tax—Related-party Transfers Didn't Increase Basis in S Corporation Stock: The taxpayer held interests in various LLCs, partnerships, and S corporations (collectively, the "affiliate companies"). In 2004, he formed an S corporation to purchase a condominium complex. During 2004–2008, the affiliate companies regularly paid expenses, such as payroll costs, on behalf of the S corporation. These transactions were recorded as an account payable, and a portion of that amount was allocated to the taxpayer as a shareholder loan. The taxpayer argued that the back-to-back affiliate company transactions increased his tax basis in the S corporation stock, which allowed him to carry back a substantial loss. The Tax Court disagreed, and the 11th Circuit affirmed. According to the 11th Circuit, the Tax Court correctly determined that the taxpayer failed to establish a bona fide debt that ran directly to him. *Homero F. Meruelo*, 123 AFTR 2d 2019-XXXX (CA 11).

Income Tax—S Corporation Shareholder Unable to Deduct Theft Losses: The taxpayer owned 50% of an S corporation that purchased distressed real estate properties in southern California. Unfortunately, the transactions turned out to be part of a complex real estate fraud scheme. Although the taxpayer's colleague met with an attorney and investigator (and even tried to scam the fraud scheme), the company neither filed a lawsuit nor submitted title insurance claims. On his 2011 income tax return, the taxpayer claimed a substantial theft loss under IRC Sec. 165, which was disallowed by the IRS. The Tax Court sided with the IRS, finding that the company's prospect of recovery in 2011 was unknowable and nothing more than speculation and conjecture. The company had not engaged an attorney, filed insurance claims, or made any effort to recoup any of the losses. Therefore, the taxpayer's theft loss deduction was improper. *Donnovan McNely*, TC Memo 2019-39 (Tax Ct.).

Income Tax—Taxpayer Required to Include Portion of State Tax Credit in Gross Income: The taxpayer owned the majority of an LLC that converted an abandoned Brooklyn shoe factory into a 134-unit rental property. Thanks to New York's Brownfield program, the taxpayer received a credit that first offset his state income tax liability. The excess then was transferred directly to him as a cash payment. The taxpayer argued that the cash portion of the credit was a nontaxable recovery of capital. The Court of Federal Claims disagreed, holding that the excess portion of the credit was nothing more than a cash transfer. The Court of Appeals for the Federal Circuit affirmed this decision, finding that the cash payment was taxable gross income because it was an undeniable accession to wealth over which the taxpayer had complete dominion and control. *Samuel Ginsburg*, 123 AFTR 2d 2019-XXXX (CA Fed. Cir.).

Procedure—Disclosure of Collection Activities to Divorced or Separated Spouses: The IRS's Small Business/Self-employed (SBSE) division has issued guidance to its employees on disclosing collection activities to taxpayers who filed joint returns, but are no longer married (or who separated and no longer reside in the same household). After receiving a verbal or written request from a taxpayer (and verifying his or her identity), IRS employees may *verbally* disclose the following information: (1) whether the IRS has attempted to collect the deficiency from the other spouse; (2) the amount collected, if any, and the current collection status; and (3) if suspended, the reason for suspension. IRS employees may not disclose the other spouse's location or telephone number; any information about the other spouse's employment, income, or assets; or the income level at which a currently not collectible account will be reactivated.

Retirement Plans—IRS Expands Retirement Plan Determination Letter Program: In a recent Revenue Procedure, the IRS has expanded the determination letter program for individually designed plans. Under this expansion, plan sponsors may submit determination letter applications for (1) individually designed statutory hybrid plans for the 12-month period beginning 9/1/19 and (2) certain individually designed merged plans on an ongoing basis. (Under Rev. Proc. 2016-37 , plan sponsors can still submit determination letter applications for initial plan qualification and for qualification upon plan termination.) In addition, the IRS has provided for a limited extension of the remedial amendment period under IRC Sec. 401(b) and for special sanction structures that apply to certain plan document failures discovered by the IRS during review of a plan submitted for a determination letter. The Revenue Procedure is effective 9/1/19. Rev. Proc. 2019-20 and News Release IR 2019-84.

Tax-exempt Organizations—Private Schools May Use Internet to Publicize Racially Nondiscriminatory Policy: In general, a tax-exempt private school must adopt a racially nondiscriminatory policy regarding students and operate in a bona fide manner in accordance with that policy. Under Rev. Proc. 75-50, a private school must publicize its policy to all segments of the general community it serves either in a newspaper of general circulation or through broadcast media. Recently, the IRS has modified Rev. Proc. 75-50 to allow a private school to display a notice of its racially nondiscriminatory policy on its primary publicly accessible Internet homepage at all times during its taxable year in a manner reasonably expected to be noticed by visitors. A link on the homepage to another page where the notice appears (or a notice that appears in a carousel or only by selecting a dropdown or by hover) is not acceptable. This updated guidance is effective 5/28/19. Rev. Proc. 2019-22.

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