



Five-Minute Tax Briefing[®]

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Highlights

Final Regulations Remove Debt versus Equity Documentation Requirements: The IRS has issued final regulations that remove the documentation requirements under Reg. 1.385-2 that determined whether certain related party interests in a corporation should be treated as debt or equity. The final regulations adopt without change regulations proposed in September 2018. According to the IRS, the burdens imposed by the documentation requirements outweighed the regulations' intended benefits. However, after further review, the agency may introduce a modified version of the documentation requirements. In addition, the IRS has announced that it intends to issue proposed regulations on when debt that is issued by a corporation to a controlling shareholder in a distribution or similar transaction should be treated as equity. The proposed regulations would alter existing rules to make them more streamlined and targeted. The final regulations are effective on the date they are published in the Federal Register. TD 9880 and REG-123112-19 .

IRS Announces Renewal and Processing of PTINs for 2020 Now Open: The IRS has announced that Preparer Tax Identification Number (PTIN) applications and renewals for the 2020 filing season are now being processed. All previously obtained PTINs expire on 12/31/19. Any tax practitioner who prepares or assists in the preparation of any federal tax return (or claim for refund) for compensation must have a valid PTIN or face penalties. Also, all enrolled agents must have a valid PTIN to maintain active status. Most applicants can apply for or renew a PTIN through the

IRS's online system. The PTIN also can be obtained by submitting a paper application on Form W-12 , which will take four to six weeks to process. There is currently no fee for obtaining or renewing a PTIN. e-News for Tax Professionals 2019-38.

New Guidance Issued for Centralized Partnership Audit Regime:The IRS has issued a memo that provides interim guidance for IRS Appeals employees on new case procedures for different phases of the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015 (BBA). The new partnership audit regime generally provides that adjustment, assessment, and collection of tax due to audit adjustments will occur at the partnership level. Previously, adjustments were passed through to partners with ensuing tax, penalty, and interest adjustments. The guidance is effective 10/18/19 and will be incorporated into the Internal Revenue Manual (IRM) Part 8.19 (Appeals Pass-Through Entity Handbook) and addresses several phases, including (1) early election into BBA, (2) Administrative Adjustment Request (AAR), (3) Notice of Proposed Partnership Adjustment (NOPPA), (4) modification disputes, and (5) Notice of Final Partnership Adjustment (FPA). Memorandum AP-08-1019-0013 can be found at www.irs.gov/pub/foia/ig/appeals/ap-08-1019-0013.pdf .

Other Current Releases

Income Tax—Attorney Had No Basis in His Labor:The taxpayer, an attorney, conducted his law practice through a wholly-owned S corporation. During the years at issue, the taxpayer didn't file a personal federal income tax return because he believed he wasn't required to pay any income tax. Among other things, he argued that IRC Secs. 83 , 1001, and 1012 entitle taxpayers to take into account their "basis in labor" (measured by fair market value) when computing tax liability for income from personal services. The Tax Court quickly dismissed this argument, noting that it's well established that the federal income tax applies to income for personal services and taxpayers have no basis in their labor. Nothing in IRC Sec. 83, 1001 , or 1012 provides otherwise. Therefore, the Court upheld the IRS's notice of deficiency and related penalties. *Michael C. Worsham* , TC Memo 2019-132 (Tax Ct.).

Income Tax—Finder's Fee for Acquired Business Not Deductible:The taxpayer, an Illinois plastics manufacturer, was acquired by one of Canada's largest institutional investors. Before closing, the investor agreed to pay a financial advisor a \$1.5 million finder's fee for bringing the two parties together. The funds, however, came directly from the acquired business. For the year at issue, the taxpayer deducted 70% of the fee pursuant to Rev. Proc. 2011-29. The IRS disallowed the deduction, arguing that the taxpayer failed to show the fee was an ordinary and necessary business expense. The Tax Court agreed, holding that (1) the taxpayer didn't pay the finder's fee to primarily benefit its business and (2) the payment wasn't an ordinary and necessary business expense. According to the Court, the services rendered by the financial advisor didn't supply the taxpayer with a business purpose directly linked to the payment. Therefore, the deduction was disallowed in full. *Plano Holding LLC*, TC Memo 2019-140 (Tax Ct.).

IRS LB&I and SB/SE Divisions Issue Joint Directive on Work Opportunity Tax Credit: The IRS's Large Business and International (LB&I) and Small Business/Self-employed (SB/SE) divisions have issued a joint directive to auditors on the treatment of Work Opportunity Tax Credit (WOTC) examinations under IRC Sec. 51. According to the directive, if a taxpayer consistently claims the WOTC in the year an employee is certified as a member of a targeted group (as opposed to when qualified wages are paid or incurred), the examiner shouldn't question this methodology. In addition, a taxpayer should be allowed an initial transition year to convert from its previous computation methodology to one that claims the WOTC in the certification year. According to the IRS, the directive should assist taxpayers that can't claim the WOTC for the year qualified wages are paid or incurred due to extended delays with the certification process. More information is available at www.irs.gov/businesses/corporations/lbi-and-sbse-joint-directive-on-the-work-opportunity-tax-credit-per-internal-revenue-code-section-51-irc-ss-51.

IRS Reminds Employers about the Benefits of Using EFTPS: The IRS reminds employers that the Electronic Federal Tax Payment System (EFTPS) can help them meet their tax obligations, whether they prepare and submit payroll taxes themselves or hire a payroll service provider. EFTPS is secure, accurate, easy to use, and provides immediate confirmation for each transaction. When a third-party sets up an account using the employer's Employer Identification Number (EIN), an EFTPS Inquiry PIN is generated for the employer's use. Using the EFTPS Inquiry PIN, the employer can monitor and ensure all required payments are being made by the payroll service provider. Email notifications are available to show (1) payments scheduled, (2) payment cancellation, (3) return of payments, and (4) reminders of scheduled payments. The IRS should be contacted as soon as possible if an employer suspects a problem with its payroll service provider. News Release IR 2019-171.

IRS TE/GE Division Releases Fiscal Year 2020 Program Letter: The IRS's Tax Exempt and Government Entities (TE/GE) division has released its Fiscal Year 2020 Program Letter, which summarizes the division's plans on executing compliance strategies. Specifically, TE/GE is focused on continually evaluating the following areas: (1) issues approved by the Compliance Governance Board to identify, prioritize, and allocate resources within the TE/GE filing population; (2) using data-driven approaches to select work; (3) referrals, claims, and other casework; (4) compliance contacts, which are used to address potential noncompliance, primarily through correspondence contacts known as *compliance checks* and *soft letters*; (5) determination letters; and (6) the Voluntary Correction Program (VCP) and other technical programs, such as Knowledge Management. The program letter is available at www.irs.gov/pub/irs-tege/tege-fy2020-program-letter.pdf.

Procedure—Annual Enrollment Renewal Application Period for EAs Opens November 1: The IRS has announced that the 2020 enrollment renewal application period for Enrolled Agents (EAs) is open from 11/1/19 through 1/31/20. EAs with a Social Security Number (SSN) ending in 4, 5, or 6 must renew their EA status or face expiration of their current enrollment on 3/31/20. To renew their status, EAs must (1) have an active Preparer Tax Identification Number (PTIN); (2) complete

a minimum of 72 hours of Continuing Education (CE) per enrollment cycle, with a minimum of 16 hours of CE (including two hours of ethics or professional conduct) for each year of the three-year enrollment period (different rules apply for a first-time renewal); and (3) pay the \$67 nonrefundable renewal fee. EAs may submit their enrollment renewal application and payment directly online through www.pay.gov . More information is available at www.irs.gov/tax-professionals/enrolled-agent-news .

Procedure—Notice of Deficiency Naming Related Party Was Ambiguous:A corporation received an 11-page document from the IRS purporting to be a notice of deficiency. Although the first four pages of the notice identified the corporation as the taxpayer, the last seven pages identified a related corporation as the taxpayer. A few months later, the IRS issued a second notice of deficiency. The IRS argued that the first notice was invalid because it failed to make a determination as to the responsible taxpayer under IRC Sec. 6212(a) . The corporation disagreed, claiming that the notice was valid because it identified the taxpayer in its opening pages and set forth deficiencies for two tax years. The Tax Court sided with the IRS, holding that the notice was ambiguous. It was inconsistent as to the identity of the taxpayer, and the corporation failed to prove the determinations related solely to its activities. *U.S. Auto Sales, Inc.*, 153 TC No. 5 (Tax Ct.).

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