



Five-Minute Tax Briefing[®]

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Highlights

Automatic Consent Procedures for Income Inclusion Changes: Recently, the IRS issued Prop. Reg. 1.451-3, which provides that the all events test for recognizing income under the accrual method of accounting is generally met no later than when it's recognized on the taxpayer's Applicable Financial Statement (AFS). The IRS also released Prop. Reg. 1.451-8, which allows accrual method taxpayers to elect to defer a portion of the income associated with certain advance payments. In conjunction with the release of the proposed regulations, the IRS modified Rev. Proc. 2018-31 to provide automatic consent procedures for taxpayers changing their accounting method to apply Prop. Reg. 1.451-3 and/or 1.451-8. In addition, automatic consent procedures are available for taxpayers that change the manner in which they recognize amounts in revenue in an AFS and that want to change their accounting method. The changes are effective for tax years beginning after 12/31/17, or in the case of specified credit card fees, for tax years beginning after 12/31/18. Rev. Proc. 2019-37.

IRS Announces New Relief Procedures for Certain Expatriated Individuals: The IRS has unveiled new procedures that help certain individuals who relinquished their U.S. citizenship to comply with their U.S. tax and filing obligations and receive relief for back taxes. The new program applies to individuals who (1) have not filed U.S. tax returns as U.S. citizens or residents, (2) owe a limited amount of back taxes, and (3) have net assets of less than \$2 million. Individuals whose noncompliance was nonwillful will be relieved from paying U.S. taxes if (1) they file all outstanding

U.S. tax returns for their expatriation year and the five prior years and (2) their total tax liability for the six years does not exceed \$25,000. Individuals who relinquished their U.S. citizenship any time after 3/18/10 can take advantage of these procedures, assuming they satisfy all requirements. More information is available at www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens . News Release IR 2019-151 . See NTA-1076 in this issue for a detailed discussion of the new procedures.

IRS Issues Final and New Proposed Bonus Depreciation Regulations:The IRS has issued final bonus depreciation regulations under IRC Sec. 168(k) that adopt, with modifications, regulations proposed in August 2018. Among other things, the final regulations clarify that qualified improvement property placed in service after 2017 isn't eligible for bonus depreciation unless a legislative change is made. In addition, the final regulations provide that only production costs of a qualified film, television, or live theatrical production for which a deduction would have been allowable under IRC Sec. 181 are eligible for bonus depreciation. In conjunction with the final regulations, the IRS has released new proposed regulations that, among other things, add rules regarding consolidated groups, self-constructed property, and the application of the midquarter convention. The proposed rules also provide that lessors of property to a regulated public utility or certain vehicle dealers generally are eligible for bonus depreciation. TD 9874 and REG-106808-19

Other Current Releases

Applicable Federal Rates for October:The Section 7520 rate for October 2019 is 1.8%, while the Applicable Federal Rates (AFRs) are as follows (Rev. Rul. 2019-23):

	Annual	Semiannual	Quarterly	Monthly
Short-term (≤ 3 years)	1.69%	1.68%	1.68%	1.67%
Mid-term (> 3 years but ≤ 9 years)	1.51%	1.50%	1.50%	1.50%
Long-term (> 9 years)	1.86%	1.85%	1.85%	1.84%

Income Tax—IRS Issues Proposed Regulations on Built-in Gains and Losses of Loss Corporations:Under IRC Sec. 382(h), built-in gains recognized within five years of an ownership change increase a loss corporation's Section 382 limit, whereas recognized built-in losses are subject to the limit. Notice 2003-65 outlines two alternative approaches (the Section 1374 approach and the Section 338 approach) on the identification of built-in items for Section 382(h) purposes. Recently, the IRS issued proposed regulations (REG-125710-18) that would require loss corporations to use the Section 1374 approach, with modifications to better account for COD income and contingent liabilities. According to the IRS, the Section 1374 approach is more consistent with the text and purpose of IRC Sec. 382 and would simplify tax administration. The regulations are proposed to be effective for ownership changes occurring after the date they are adopted as final; however, taxpayers and their related parties may generally rely on the regulations if consistently applied. Prop. Regs. 1.382-2 and 1.382-7 .

IRS Accepting New Applicants for Compliance Assurance Process: Through the Compliance Assurance Process (CAP) program, taxpayers and the IRS seek to resolve issues prior to the filing of a tax return. Recently, the IRS announced that for the first time since 2015, new corporate applicants that meet certain eligibility requirements can apply for the CAP program. Applicants must (1) have assets of \$10 million or more; (2) be a U.S. publicly traded corporation with a legal requirement to prepare and submit SEC Form 10-K, Form 10-Q, and Form 8-K; and (3) not be under investigation by, or in litigation with, any government agency that would limit the IRS's access to current tax records. The application period runs from 9/16/19 to 10/31/19, and the IRS will inform applicants if they are accepted into the program around 1/31/20. Details about the CAP program are available at www.irs.gov/businesses/corporations/compliance-assurance-process. News Release IR 2019-154.

IRS Discontinuing Certain Tax Forms for 2019: The IRS has announced that it is discontinuing (making obsolete) the following tax forms for 2019: (1) Sch. 4 (Form 1040 (merged with Sch. 2)); (2) Sch. 5 (Form 1040 (merged with Sch. 3)); (3) Sch. 6 (Form 1040 (merged with Form 1040 and Form 1040-SR)); (4) Sch. C-EZ (Form 1040 (Sch. C will be used)); (5) Form 2555-EZ and its instructions (Form 2555 will be filed instead); and (6) Form 8965 and its instructions (no longer applicable to tax years after 2018). The IRS also has announced that Form 1099-H and its instructions will be obsoleted after the 2019 tax year. The announcement is available at www.irs.gov/pub/irs-dft/f8965--dft.pdf.

IRS Offers Settlement for Microcaptive Insurance Schemes: The IRS is presenting a time-limited settlement offer to certain taxpayers under audit who participated in abusive microcaptive insurance transactions. Those eligible for this offer will be notified by letter with the applicable terms. The settlement requires substantial concession of the income tax benefits claimed by the taxpayer, along with appropriate penalties (unless good faith, reasonable reliance is shown). Taxpayers who receive letters, but choose not to participate, will continue to be audited by the IRS under its normal procedures. In addition, they will not be eligible for any potential future settlement initiatives. Currently, settlement procedures are limited to taxpayers with at least one open year under exam; however, the IRS will continue to assess whether the program should be expanded to others. According to the agency, notices have been sent to up to 200 taxpayers. News Release IR 2019-157.

Retirement Plans—Surviving Spouse May Roll over Distribution from Decedent's Plan: The taxpayer's husband was a participant in a Section 457(b) plan. Before his death, he named his estate as the sole beneficiary of his account in the plan. The taxpayer, who was the sole beneficiary of her husband's residual estate, sought to roll over her husband's account in the plan to an IRA established and maintained in her name. However, the plan's recordkeeper disallowed the rollover because the husband's estate, and not the taxpayer, was the named beneficiary. The IRS privately ruled that the taxpayer (1) may be treated as having received the distribution from the plan for purposes of IRC Sec. 402(c); (2) is eligible to roll over the distribution from the plan to an IRA established and maintained in her name; and (3) will not be required to include the amount

distributed in her gross income for federal tax purposes for the calendar year in which the distribution and rollover occur. Ltr. Rul. 201936009 .

Tax-exempt Organizations—Proposed Regulations on the Reporting Requirements of Exempt Organizations:In *Bullock* (124 AFTR 2d 2019-5354), a Montana District Court set aside Rev. Proc. 2018-38 , which provided that tax-exempt organizations, other than those described in IRC Sec. 501(c)(3) , no longer had to report donor information on Sch. B (Schedule of Contributors) of Form 990, Form 990-EZ , and Form 990-PF. In response, the IRS has issued proposed regulations (REG-102508-16) that would align final regulations under IRC Sec. 6033 with certain statutory amendments and reporting relief announced through subregulatory guidance, including Rev. Proc. 2018-38. This gives interested parties the opportunity to comment on the elimination of Sch. B reporting requirements, as required by the Administrative Procedure Act (APA). In addition, the IRS will not impose a penalty under IRC Sec. 6652(c) on tax-exempt organizations that relied on Rev. Proc. 2018-38 for a tax year ending on or after 12/31/18, and on or prior to 7/30/19. Prop. Reg. 1.6033-2 and Notice 2019-47 .

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