Stradley Ronon

Tax Insights

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IRS Expects to Issue Additional Guidance on Unemployment Compensation Excludable from Gross Income Under American Rescue Plan

IRS Commissioner Charles Rettig, in oral and written testimony before the House Ways and Means Subcommittee on March 18, stated that persons who received unemployment benefits in 2020 and who filed a 2020 federal income tax return without excluding certain unemployment benefits pursuant to the American Rescue Plan, should wait to file a return because the IRS expects to be able to rectify that issue without the need for amended returns, but will issue additional guidance. In his testimony, the Commissioner also addressed the IRS's current backlog of processing 2019 federal tax returns, new business tax relief, resuming in-person operations, and more.

IRS Updates FAQs on the 2020 Recovery Rebate Credit

The IRS has updated its FAQS on the 2020 Recovery Rebate Credit. Specifically, the IRS has announced that, as of March 18, 2021, the 2020 Recovery Rebate Credit amount will no longer be applied to past-due federal income tax debts. Additionally, the IRS has addressed issues taxpayers may face after filing their 2020 federal income tax return.

Forms 990-T Due on or After April 15 Must Be E-Filed

The IRS has notified taxpayers that Form 990-T, Exempt Organization Business Income Tax Return, must be filed electronically for such 2020 forms due on or after April 15, 2021. The Taxpayer First Act required certain exempt organizations to file tax returns electronically for tax years beginning after July 1, 2019. The IRS has continued to accept the 2019 tax-year versions of Form 990-T on paper, pending its conversion to electronic format. Form 990-T has been updated for e-filing of returns, and now any 2020 Form 990-T with a due date on or after April 15, 2021, must be filed electronically.

IRS Issues Practice Unit on Transition Tax

The IRS has issued a practice unit on the transition tax under Section 965. (All Section references are to the Internal Revenue Code of 1986, as amended.) Section 965, which was amended by the 2017 Tax Cuts and Jobs Act, requires United States shareholders (as defined under Section 951(b)) to pay a transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. Section 965 allows U.S. shareholders to reduce the amount of the income inclusion based on deficits in earnings and profits with respect to other specified foreign corporations. Generally, a specified foreign corporation means either a controlled foreign corporation (CFC), as defined under Section 957, or a foreign corporation (other than a passive foreign investment company, as defined under Section 1297, that is not also a CFC) that has a U.S. shareholder that is a domestic corporation. The practice unit goes through a detailed explanation of the rules under Section 965 and provides several examples regarding its application to taxpayers.

Taxpayer Subject to 10% Additional Tax on Early Withdraw from IRA

In Catania v. Commissioner, TC Memo 2021-33, the Tax Court held that a distribution from an IRA was subject to the 10% additional tax for early withdraw even though the IRA funds originated from an employer-sponsored 401(k) plan. Under Section 72(t), a 10% additional tax is imposed on distributions from qualified retirement plans, which does not include IRAs. There are several exceptions to this rule, two of which are that the tax does not apply if the distribution is made on or after the date on which the employee attains age 59 ½ or is made to an employee after separation from service after attainment of age 55. The taxpayer separated from service with his employer when he was 55 and rolled over the funds from the employer-sponsored 401(k) plan into an IRA. The funds were withdrawn from the new IRA when the taxpayer was 57. The Tax Court held that neither exception applied to the taxpayer because Section 72(t) does not apply to distributions from an IRA, and the taxpayer was subject to the 10% additional tax.

ABA Submits Comment Letter on Centralized Partnership Audit Regime

The American Bar Association (ABA) Section of Taxation has submitted a comment letter to the IRS in which it discusses the stranded overpayment problem resulting from a change in the final regulations that implement the centralized partnership audit regime, which was enacted by the Bipartisan Budget Act of 2015 (BBA). The letter suggests that changes made with the final regulations, issued in February 2019, can be read to cap the benefit of a reduction in reviewed year tax liability attributable to an Administrative Adjustment Request (AAR) filed by a partnership under Section 6227 to a partner's reporting year tax liability. The AAR process allows partnerships to self-correct for errors and other changes. Partnerships may "push out" changes to partnership-related items to their partners using AARs. A non-passthrough partner, in turn, may effectively offset a favorable pushout adjustment from affected years against other unfavorable items in the reporting year when taking these adjustments into account at the partner level. Under the BBA, partnerships must make a cumulative computation of the total overpayment or underpayment of tax attributable to a change reported on an AAR. The limitation, referred to as the "Stranded Overpayment Problem", emerges to the extent that the "negative tax" attributable to a partner's favorable pushout adjustments exceeds the partner's chapter 1 tax liability for the taxable year in which the partnership furnishes pushout statements to the partner, otherwise known as the reporting year. The letter suggests that in order to solve or mitigate the Stranded Overpayment Problem, the IRS should consider revising the regulations, extend relief available under Rev. Proc. 2020-23, or consider an evergreen superseding partnership return rule.

Philadelphia DOR Introduces No Tax Liability Forms

The Philadelphia Department of Revenue has announced that many small- and medium-sized businesses can now submit an annual No Tax Liability (NTL) form instead of filing a full Business Income & Receipt Tax (BIRT) return. Businesses that have $100,000 or less in Philadelphia taxable gross receipts traditionally had to file a BIRT return even though the business did not owe any tax. Now, such businesses can submit, online or in paper form, the new NTL form to fulfill their tax-filing obligations.

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Philadelphia DOR Abates Certain Interest & Penalties

The Philadelphia DOR and the Philadelphia Law Department have amended Regulation Section 404, Article IV. The amendment abates interest and penalties on BIRT, Net Profits Tax, Earnings Tax, and School Income Tax for tax year 2020 paid no later than May 17, 2021. The alert reminds taxpayers that the due date to pay real estate tax remains March 31, 2021.

Delaware DOR Issues Guidance on Remote Work Wages

The Delaware Division of Revenue (DOR) has issued Technical Information Memorandum 2021-2, which provides guidance on the treatment of wages from remote work in 2020. Taxpayers may treat all days on which they actually worked from a home outside of Delaware during March 22, 2020 through May 31, 2020, as days worked outside of Delaware on Schedule W on their Delaware personal income tax return. From and after June 1, 2020, taxpayers may report days worked from home as days worked outside of Delaware on Schedule W if the taxpayer's employer directed the employee to work from home and directed that employees were not permitted to work at the Delaware location or alternatively if the employer strongly encouraged remote work but required an employee seek advance permission to return in person. Once individual taxpayers were again permitted discretion to return to offices within Delaware in person, taxpayers may not report days worked from home as days worked outside of Delaware on Schedule W if the employee elected, but was not required, to work remotely.