Stradley Ronon

Tax Insights

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Tax Practice Group

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IRS Releases Guidance on Determination of Substantially Equal Periodic Payments

The IRS, in Notice 2022-06, has provided guidance on whether a series of payments from an individual account under a qualified retirement plan is considered a series of substantially equal periodic payments as provided in Section 72(t). (All Section references are to the Internal Revenue Code of 1986, as amended.) Section 72(t) provides for an additional income tax on early withdrawals from qualified retirement plans, generally withdrawals before age 59½. However, this additional tax does not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and designated beneficiary. The Notice provides three methods to use to determine if a series of payments are considered substantially equal periodic payments: required minimum distribution method, fixed amortization method and fixed annuitization method. The Notice also sets out additional rules that need to be followed in making the determination. The Notice replaces Rev. Rul. 2002-62 and Notice 2004-15 for any series of payments commencing on or after Jan. 1, 2023.

IRS Issued Proceedings for Determination of Employment Status

The IRS, in Rev. Proc. 2022-13, has provided information regarding a request for and the issuance of guidance on employment status under Section 7436. Generally, Section 7436 provides for Tax Court review of two types of employment tax determinations made by the IRS: worker reclassification and section 530 relief determinations, and it allows the court to ascertain the proper amount of employment tax, penalties and additions to tax resulting from those determinations.

NYSBA Submits Report on Net Operating Loss Application to CFCs

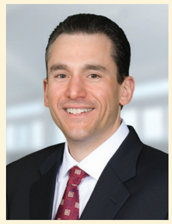
The New York State Bar Association Division of Taxation (NYSBA) has submitted a report to the IRS and the Department of the Treasury discussing the application of Section 382, which limits net operating loss carryforwards and certain built-in losses to foreign corporations that undergo an ownership change. In particular, the report discusses issues relating to the application of Section 382 to controlled foreign corporations (CFCs) that are not engaged in a U.S. trade or business. The report recommends that there should be some form of limitation on the use of CFC attributes when a CFC is acquired and sets forth possible revisions to the Treasury Regulations promulgated under Section 382.

NYSBA Submits Comments on Proposed Wash Sale Rule Amendments

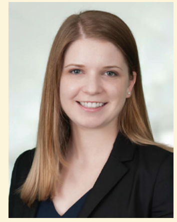
The NYSBA has submitted comments to Congress on the amendments to the wash sale rules under Section 1091 as proposed in the "Build Back Better Act." Section 1091(a) disallows any deduction from the sale or other disposition of shares of stock or securities where the taxpayer has acquired or has entered into a contract or option to acquire substantially identical stock or securities within the period beginning 30 days before the sale and ending 30 days after the sale. The letter addresses what it considers the four main amendments to the rule and proposes certain modifications.

NJ Division of Taxation Announces Acquiescence to Application of Federal "At-Risk" Rules

The New Jersey Division of Taxation has announced that it has acquiesced to the Superior Court of New Jersey Appellate Division decision, Sept. 3, 2020, in Andrew J. Shechtel v. Director, Division of Taxation, 32 NJ Tax 180 (App. Div. 2020). The Shechtel decision determined that for New Jersey Gross Income Tax (NJ-GIT) purposes, taxpayers should follow the Section 465 "at-risk" limitations. The announcement of the acquiescence states that the ruling applies to partners in partnerships and sole proprietors, but that it is not applicable to shareholders of an S-corporation. In addition, it provides that taxpayers may not use a loss following the "at-risk" rules if they have previously used the loss for NJ-GIT purposes. Lastly, the announcement provides that taxpayers can file amended returns provided certain requirements apply.



Christopher C. Scarpa



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