Current Federal Tax Developments

Week of September 28, 2020

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ACCOUNTING
CONTINUING EDUCATION

KAPLAN

CURRENT FEDERAL TAX DEVELOPMENTS
WEEK OF SEPTEMBER 28, 2020
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ADDITIONAL SET OF FINAL REGULATIONS ON BONUS DEPRECIATION RELEASED BY IRS

Citation: TD 9916, 9/21/2020

Another set of final regulations[1] have been issued by the IRS on bonus depreciation under the Tax Cuts and Jobs Act (TCJA). These regulations make final, with revisions, proposed regulations issued in 2019 (REG-106808-19).

Selected items highlighted by the IRS in the preamble related to areas that received comments from the proposed regulations or were revised from what was in those regulations are discussed below.

Floor Plan Financing Interest Impact on Bonus Depreciation

The IRS provides that the bar on claiming bonus depreciation related to floor plan financing interest only applies if the taxpayer is actually subject to the business interest limitation found at IRC §163(j) for the year in question. Reg. §1.168(k)-2(b)(2)(ii)(G) provides that bonus depreciation is not allowed for property acquired during the year:

> (G) Used in a trade or business that has had floor plan financing indebtedness, as defined in section 163(j)(9)(B) and §1.163(j)-1(b)(18), if the floor plan financing interest expense, as defined in section 163(j)(9)(A) and §1.163(j)-1(b)(19), related to such indebtedness is taken into account under section 163(j)(1)(C) for the taxable year. Such property also must be placed in service by the taxpayer in any taxable year beginning after December 31, 2017. Solely for purposes of section 168(k)(9)(B) and this paragraph (b)(2)(ii)(G), floor plan financing interest expense is taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness only if the business interest expense, as defined in section 163(j)(5) and §1.163(j)-1(b)(3), of the trade or business for the taxable year (which includes floor plan financing interest expense) exceeds the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year. If the trade or business has taken floor plan financing interest expense into account pursuant to this paragraph (b)(2)(ii)(G) for a taxable year, this paragraph (b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year. This paragraph (b)(2)(ii)(G) does not apply to property that is leased to a lessee's trade or business that has had floor plan financing indebtedness, by a lessor's trade or business that has not had floor plan financing indebtedness during the taxable year or that has had floor plan financing indebtedness but did not take into account floor

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[1] TD 9916, September 21, 2020 (date released by the IRS. The publication date of the regulations in *Federal Register* is the date the regulations are treated as issued),

> plan financing interest expense for the taxable year pursuant to this paragraph (b)(2)(ii)(G).[2]

However, in the preamble to the final regulations, the IRS declined to allow a business with floor plan financing to opt out of being able to claim floor plan financing interest as a deduction in addition to business interest in order to obtain bonus depreciation for the assets acquired in the year:

> A commenter on the 2019 Proposed Regulations requested that these final regulations allow a trade or business that has business interest expense, including floor plan financing interest expense, that exceeds the sum of the amounts calculated under deduction to the sum of the amounts under section 163(j)(1)(A) and (B), and not be precluded by section 168(k)(9)(B) from claiming the additional first year depreciation deduction. The Treasury Department and the IRS do not interpret section 163(j)(1) as allowing such an option. Consistent with the plain language of section 163(j)(1), §1.163(j)-2(b)(1) provides that the amount allowed as a deduction for business interest expense for the taxable year generally cannot exceed the sum of (1) the taxpayer's business interest income for the taxable year, (2) 30 percent of the taxpayer's adjusted taxable income for the taxable year, and (3) the taxpayer's floor plan financing interest expense for the taxable year. Pursuant to section 2306(a) of the CARES Act, the adjusted taxable income percentage is increased from 30 to 50 percent for any taxable year beginning in 2019 or 2020, subject to certain exceptions. Because neither section 163(j)(1) nor §1.163(j)-2(b) provide an option for a trade or business with floor plan financing indebtedness to include or exclude its floor plan financing interest expense in determining the amount allowed as a deduction for business interest expense for the taxable year, the Treasury Department and the IRS decline to adopt this comment.[3]

But the IRS did commit to providing guidance to taxpayers who had taken such a position on their 2018 Federal income tax return:

> The commenter also requested that the Treasury Department and the IRS provide transition relief for taxpayers that treated, on their 2018 Federal income tax returns, section 163(j)(1) as providing an option for a trade or business with floor plan financing indebtedness to include or exclude its floor plan financing interest expense in determining the amount allowed as a deduction for business interest expense for the taxable year. Further, the commenter requested transition relief for taxpayers with a trade or business with floor plan financing indebtedness that want to revoke their elections not to claim the additional first year depreciation for property placed in service during 2018 in order to rely on the 2019 Proposed Regulations. The

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[2] Reg. §1.168(k)-2(b)(2)(ii)(F)

[3] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, A. Property described in section 168(k)(9)(B)

> Treasury Department and the IRS intend to issue published guidance that will address these requests.[4]

Five Year Lookback Rule for Prior Depreciable Interest

The IRS also discusses some clarifications made to the five year lookback rule. The preamble describes this rule found in the Proposed Regulations:

> Section 1.168(k)-2(b)(3)(iii)(B)(1) of the 2019 Final Regulations provides that property is treated as used by the taxpayer or a predecessor at any time prior to acquisition by the taxpayer or predecessor if the taxpayer or the predecessor had a depreciable interest in the property at any time prior to such acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property. To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, the 2019 Final Regulations also provide that only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property are taken into account (Five-Year Safe Harbor). If the taxpayer and a predecessor have not been in existence for this entire five-year period, the 2019 Final Regulations provide that only the number of calendar years the taxpayer and the predecessor have been in existence are taken into account.[5]

Based on comments, the IRS noted that some clarifications were found to be required for this provision:

> In connection with comments received on the Five-Year Safe Harbor and the Partnership Lookthrough Rule, the Treasury Department and the IRS reviewed the Five-Year Safe Harbor and determined that clarification of this safe harbor would be beneficial. One commenter requested clarification of the Five-Year Safe Harbor as to: (1) whether the "placed-in-service year" is the taxable year or the calendar year; and (2) whether the portion of the calendar year covering the period up to the placed-in-service date of the property is taken into account. The commenter also requested clarification regarding the application of the Five-Year Safe Harbor to situations where the taxpayer or a predecessor was not in existence during the entire 5-year lookback period. Specifically, the commenter pointed out that the safe harbor in the 2019 Final Regulations could be read to apply only to those periods in the 5-year lookback period that both the taxpayer and a predecessor are in existence, and not to those periods in the 5-year lookback period during which the taxpayer or a predecessor, or both, were in existence and had a depreciable interest in the property later acquired and placed in service by the taxpayer. The commenter suggested that the Five-Year Safe Harbor be clarified to say that the

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[4] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, A. Property described in section 168(k)(9)(B)

[5] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, a. Five-year safe harbor

> taxpayer and each predecessor is subject to a separate lookback period that begins no earlier than the date such person came into existence.
>
> The Treasury Department and the IRS intended the "placed-in-service year" to be the current calendar year in which the property is placed in service by the taxpayer. Also, the Treasury Department and the IRS intended the portion of that calendar year covering the period up to the placed-in-service date of the property to be considered in determining whether the taxpayer or a predecessor previously had a depreciable interest. This approach is consistent with an exception to the de minimis use rule in §1.168(k)-2(b)(3)(iii)(B)(4) of the 2019 Proposed Regulations, which is discussed in greater detail in part I.B.1.b of this Summary of Comments and Explanation of Revisions section. Pursuant to that exception, when a taxpayer places in service eligible property in Year 1, disposes of that property to an unrelated party in Year 1 within 90 calendar days of that placed-in-service date, and then reacquires the same property later in Year 1, the taxpayer is treated as having a prior depreciable interest in the property upon the taxpayer's reacquisition of the property in Year 1. This rule would be superfluous if the Five-Year Safe Harbor did not consider the portion of the calendar year covering the period up to the placed-in-service date of the property.
>
> Accordingly, §1.168(k)-2(b)(3)(iii)(B)(1) is amended to clarify that the five calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the property determined without taking into account the applicable convention, are taken into account to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition (lookback period). Section 1.168(k)-2(b)(3)(iii)(B)(1) also is amended to adopt the suggestion of the commenter that each of the taxpayer and the predecessor be subject to a separate lookback period. These final regulations clarify that if the taxpayer or a predecessor, or both, have not been in existence during the entire lookback period, then only the portion of the lookback period during which the taxpayer or a predecessor, or both, have been in existence is taken into account to determine if the taxpayer or the predecessor had a depreciable interest in the property. More examples have been added to clarify the application of the Five-Year Safe Harbor.[6]

The revised portion of Reg. §1.168(k)-2(b)(3)(iii)(B)(1) reads as follows:

> … To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to the acquisition, only the five calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the

[6] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, a. Five-year safe harbor

> property without taking into account the applicable convention, are taken into account (lookback period). If either the taxpayer or a predecessor, or both, have not been in existence for the entire lookback period, only the portion of the lookback period during which the taxpayer or a predecessor, or both, as applicable, have been in existence is taken into account to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to the acquisition. …[7]

De Minimis Use

The Proposed Regulations provided a *de minimis* use exception to the prior use rule which is described as follows:

> Section 1.168(k)-2(b)(3)(iii)(B)(4) of the 2019 Proposed Regulations provides an exception to the prior depreciable interest rule in the 2019 Final Regulations when the taxpayer disposes of property to an unrelated party within 90 calendar days after the taxpayer originally placed such property in service (De Minimis Use Rule). The 2019 Proposed Regulations also provide that the De Minimis Use Rule does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property.[8]

The IRS notes that a commenter requested clarification on three situations regarding the *de minimis* use provision:

> A commenter on the 2019 Proposed Regulations asked for clarification regarding the application of the De Minimis Use Rule in the following situations:
>
>> (1) The taxpayer places in service property in Year 1, disposes of that property to an unrelated party in Year 1 within 90 calendar days of that original placed-in-service date, and then reacquires and again places in service the same property later in Year 1 and does not dispose of the property again in Year 1;
>>
>> (2) The taxpayer places in service property in Year 1, disposes of that property to an unrelated party in Year 2 within 90 calendar days of that original placed-in-service date, and then reacquires and again places in service the same property in Year 2 or later; and
>>
>> (3) The taxpayer places in service property in Year 1 and disposes of that property to an unrelated party in Year 1 within 90 calendar days of that original placed- in-service date,

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[7] Reg. §1.168(k)-2(b)(3)(iii)(B)(1)

[8] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, b. De minimis use

> then the taxpayer reacquires and again places in service the same property later in Year 1 and disposes of that property to an unrelated party in Year 2 within 90 calendar days of the subsequent placed-in-service date in Year 1, and the taxpayer reacquires and again places in service the same property in Year 4.[9]

The IRS first addresses the disposition to an unrelated party and reacquisition in the same year, agreeing with the commenter's view of the proper treatment only if the property was initially acquired after September 27, 2017:

> In situation 1, the additional first year depreciation deduction is not allowable for the property when it was initially placed in service in Year 1 by the taxpayer pursuant to §1.168(k)-2(g)(1)(i) of the 2019 Final Regulations. The additional first year depreciation deduction also is not allowable when the same property is subsequently placed in service in Year 1 by the same taxpayer under the De Minimis Use Rule in the 2019 Proposed Regulations. The commenter asserted that the additional first year depreciation deduction should be allowable for the property when it is placed in service again in Year 1 and is not disposed of again in Year 1, because the additional first year depreciation deduction is not allowable for the property when it initially was placed in service in Year 1 by the taxpayer. The Treasury Department and the IRS agree with this comment if the property is originally acquired by the taxpayer after September 27, 2017. The Treasury Department and the IRS decline to adopt this comment with respect to property that was originally acquired by the taxpayer before September 28, 2017, as the exception to the De Minimis Use Rule was intended to prevent certain churning transactions involving such property. The Treasury Department and the IRS believe that property that is placed in service, disposed of, and reacquired in the same taxable year is more likely to be part of a predetermined churning plan.[10]

Next, the IRS looks into the situation where the property is still disposed of within 90 days, but the disposition is in the tax year following acquisition:

> In situation 2, the additional first year depreciation deduction is allowable for the same property by the same taxpayer twice (in Year 1 when the property is initially placed in service, and in Year 2 when the property is placed in service again). This result is consistent with the De Minimis Use Rule in the 2019 Proposed Regulations, and this result is not changed in these final regulations.[11]

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[9] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, b. De minimis use

[10] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, b. De minimis use

[11] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, b. De minimis use

Finally, the IRS looks at the situation involving multiple dispositions of the same property, each within 90 days of an acquisition:

> In situation 3, the De Minimis Use Rule provides only one 90-day period that is disregarded in determining whether the taxpayer had a depreciable interest in the property prior to its reacquisition. That 90-day period is measured from the original placed-in-service date of the property by the taxpayer. As a result, the second 90-day period in situation 3 (during which the taxpayer reacquired the property in Year 1, again placed it in service in Year 1, and then disposed of it in Year 2) is taken into account in determining whether the taxpayer previously used the property when the taxpayer again places in service the property in Year 4.[12]

The IRS modified the *de minimis* use provision found at Reg. §1.168(k)-2(b)(3)(B)(4) to read as follows:

> (4) De minimis use of property. If a taxpayer acquires and places in service property, the taxpayer or a predecessor did not previously have a depreciable interest in the property, the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer, without taking into account the applicable convention, and the taxpayer reacquires and again places in service the property, then the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(1) and (b)(3)(iii)(B)(1) of this section. If the taxpayer originally acquired the property before September 28, 2017, as determined under §1.168(k)-1(b)(4), and the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property to the unrelated party, then this paragraph (b)(3)(iii)(B)(4) does not apply. For purposes of this paragraph (b)(3)(iii)(B)(4), an unrelated party is a person not described in section 179(d)(2)(A) or (B), and §1.179-4(c)(1)(ii) or (iii), or (c)(2).[13]

Partnership Lookthrough Rule Withdrawn

The IRS has decided to withdraw the partnership lookthrough rule related to used property found in the Proposed Regulations. The IRS describes the now withdrawn rule as follows:

> The Partnership Lookthrough Rule provides that a person is treated as having a depreciable interest in a portion of property prior to the

[12] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used property, 1. Depreciable Interest, b. De minimis use

[13] Reg. §1.168(k)-2(b)(3)(iii)(B)(4)

> person's acquisition of the property if the person was a partner in a partnership at any time the partnership owned the property. The Partnership Lookthrough Rule further provides that the portion of property in which a partner is treated as having a depreciable interest is equal to the total share of depreciation deductions with respect to the property allocated to the partner as a percentage of the total depreciation deductions allocated to all partners during the current calendar year and the five calendar years immediately prior to the partnership's current year.[14]

The IRS then notes that a commenter pointed out that the rule would create significant complexity since even a minor interest in a partnership required a partner to look through the entity:

> One commenter requested that the Treasury Department and the IRS withdraw the Partnership Lookthrough Rule and replace it with a rule that treats a taxpayer as having a depreciable interest in an item of property only if the taxpayer was a controlling partner in a partnership at any time the partnership owned the property during the applicable lookback period.

The IRS determined this comment was appropriate and decided to withdraw the regulation.

> The Treasury Department and the IRS agree with the commenter that the Partnership Lookthrough Rule should be withdrawn. The Treasury Department and the IRS have determined that the complexity of applying the Partnership Lookthrough Rule would place a significant administrative burden on both taxpayers and the IRS. For this reason, these final regulations withdraw the Partnership Lookthrough Rule. Therefore, under these final regulations, a partner will not be treated as having a depreciable interest in partnership property solely by virtue of being a partner in the partnership. The Treasury Department and the IRS have determined that a replacement rule that applies only to controlling partners is not necessary because the related party rule in section 179(d)(2)(A) applies to a direct purchase of partnership property by a current majority partner, and the series of related transactions rules in §1.168(k)-2(b)(3)(iii)(C) prevents avoidance of the related party rule through the use of intermediary parties.[15]

Series of Related Transactions

The Proposed Regulations contained the following provision for a series of related transactions when dealing with the used property issue:

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[14] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, 2. Application to Partnerships

[15] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, 2. Application to Partnerships

> Section 1.168(k)-2(b)(3)(iii)(C) of the 2019 Proposed Regulations provides special rules for a series of related transactions (Proposed Related Transactions Rule). The Proposed Related Transactions Rule generally provides that the relationship between the parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. The Proposed Related Transactions Rule also provides that the relationship between the parties in a series of related transactions is not tested in certain situations. For example, a party in the series that is neither the original transferor nor the ultimate transferee is disregarded in applying the relatedness test if the party placed in service and disposed of the property in the party's same taxable year or did not place the property in service. The relationship between the parties also is not tested if the step is a transaction described in §1.168(k)-2(g)(1)(iii) (that is, a transfer of property in a transaction described in section 168(i)(7) in the same taxable year that the property is placed in service by the transferor). Finally, the 2019 Proposed Regulations provide that the Proposed Related Transactions Rule does not apply to syndication transactions or when all transactions in the series are described in §1.168(k)-2(g)(1)(iii).[16]

While the IRS rejected some suggestions to modify the rule, it did agree that some modifications were necessary. The preamble provides:

> …[T]he Treasury Department and the IRS agree that the Proposed Related Transactions Rule should be simplified. The Treasury Department and the IRS also agree that this rule should be modified to take into account changes in the relationship between the parties, including a party ceasing to exist, over the course of a series of related transactions. For example, assume that, pursuant to a series of related transactions, A transfers property to B, B transfers property to C, and C transfers property to D. Under the Proposed Related Transactions Rule, relatedness is tested after each step and between D and A. Assume further that, at the beginning of the series, C was related to A but, prior to acquiring the property, C ceases to be related to A, or A ceases to exist. The Proposed Related Transactions Rule does not address how to treat such changes.[17]

Thus, the IRS makes the following three changes to the rule in the final regulations:

> Accordingly, these final regulations provide that each transferee in a series of related transactions tests its relationship under section 179(d)(2)(A) or (B) with the transferor from which the transferee directly acquires the depreciable property (immediate transferor) and

[16] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, 3. Series of Related Transactions

[17] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, 3. Series of Related Transactions

with the original transferor of the depreciable property in the series. The transferee is treated as related to the immediate transferor or the original transferor if the relationship exists either immediately before the first transfer of the depreciable property in the series or when the transferee acquires the property. Any transferor in a series of related transactions that ceases to exist during the series is deemed to continue to exist for purposes of testing relatedness.

These final regulations also provide a special rule that disregards certain transitory relationships created pursuant to a series of related transactions. More specifically, if a party acquires depreciable property in a series of related transactions in which the acquiring party acquires stock, meeting the requirements of section 1504(a)(2), of a corporation in a fully taxable transaction, followed by a liquidation of the acquired corporation under section 331, any relationship created as part of such series of transactions is disregarded in determining whether any party is related to such acquired corporation for purposes of testing relatedness. This rule is similar to §1.197-2(h)(6)(iii) and properly reflects the change in ownership of depreciable property in a series of related transactions without taking into account certain transitory relationships the purpose of which is unrelated to the additional first year depreciation deduction.

Finally, these final regulations provide that, if a transferee in a series of related transactions acquires depreciable property from a transferor that was not in existence immediately prior to the first transfer of the property in the series (new transferor), the transferee tests its relationship with the party from which the new transferor acquired the depreciable property. Examples illustrating these revised rules are provided in these final regulations.[18]

Qualified Improvement Property

Between the time the Proposed Regulations were issued in 2019 and the final regulations were issued in September of 2020 Congress passed the CARES Act. The CARES Act corrected a drafting error in the TCJA, making qualified improvement property eligible for bonus depreciation. This affects the definition of bonus property provided for in the regulations:

Section 1.168(b)-1(a)(5) of the 2019 Final Regulations defines the term "qualified improvement property" for purposes of section 168. Section 168(e)(6), as amended by section 13204 of the TCJA, and §§1.168(b)-1(a)(5)(i)(A) and (ii) provide the definition of that term for improvements placed in service after December 31, 2017. Section 2307 of the CARES Act amended section 168(e)(3)(E), (e)(6), and (g)(3)(B). Section 2307(a)(1)(A) of the CARES Act added a new clause (vii) to the end of section 168(e)(3)(E) to provide that qualified improvement property is classified as 15-year property. Section

[18] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, I. Operational Rules, B. Used Property, 3. Series of Related Transactions

> 2307(a)(1)(B) of the CARES Act amended the definition of qualified improvement property in section 168(e)(6) by providing that the improvement must be "made by the taxpayer." In addition, section 2307(a)(2) of the CARES Act amended the table in section 168(g)(3)(B) to provide a recovery period of 20 years for qualified improvement property for purposes of the alternative depreciation system under section 168(g). These amendments to section 168(e) and (g) are effective as if included in section 13204 of the TCJA and, therefore, apply to property placed in service after December 31, 2017.[19]

The IRS describes the changes made to the regulations as follows:

> As a result of these changes by section 2307 of the CARES Act, these final regulations amend §1.168(b)-1(a)(5)(i)(A) to provide that the improvement must be made by the taxpayer.[20]

The language of the final regulation provides:

> (A) For purposes of section 168(e)(6), the improvement is made by the taxpayer and is placed in service by the taxpayer after December 31, 2017;[21]

The preamble goes on to discuss what is meant by *made by the taxpayer*:

> The Treasury Department and the IRS are aware of questions regarding the meaning of "made by the taxpayer" with respect to third-party construction of the improvement and the acquisition of a building in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions) that includes an improvement previously made by, and placed in service by, the transferor or distributor of the building. In this regard, the Treasury Department and the IRS believe that an improvement is made by the taxpayer if the taxpayer makes, manufactures, constructs, or produces the improvement for itself or if the improvement is made, manufactured, constructed, or produced for the taxpayer by another person under a written contract. In contrast, if a taxpayer acquires nonresidential real property in a taxable transaction and such nonresidential real property includes an improvement previously placed in service by the seller of such nonresidential real property, the improvement is not made by the taxpayer.[22]

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[19] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, B. Qualified Improvement Property

[20] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, B. Qualified Improvement Property

[21] §1.168(b)-1(a)(5)(i)(A)

[22] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, B. Qualified Improvement Property

The preamble also discusses how this rule impacts property acquired in a transaction described in a IRC §168(i)(7) described nonrecognition transaction (such as an incorporation subject to IRC §351 or a contribution to a partnership under IRC §721):

> Consistent with section 168(i)(7) (pertaining to treatment of transferees in certain nonrecognition transactions), the Treasury Department and the IRS also believe that if a transferee taxpayer acquires nonresidential real property in a transaction described in section 168(i)(7)(B) (for example, section 351 or 721), any improvement that was previously made by, and placed in service by, the transferor or distributor of such nonresidential real property and that is qualified improvement property in the hands of the transferor or distributor is treated as being made by the transferee taxpayer, and thus is qualified improvement property in the hands of the transferee taxpayer, but only for the portion of its basis in such property that does not exceed the transferor's or distributor's adjusted depreciable basis of this property. However, because the basis is determined by reference to the transferor's or distributor's adjusted basis in the improvement, the transferee taxpayer's acquisition does not satisfy section 179(d)(2)(C) and §1.179-4(c)(1)(iv) and thus, does not satisfy the used property acquisition requirements of §1.168(k)-2(b)(3)(iii). Accordingly, the qualified improvement property is not eligible for the additional first year depreciation deduction in the hands of the transferee taxpayer.[23]

The following example was added to the final regulations to illustrate the treatment for qualified improvement property:

REG. §1.168(K)-2(B)(2)(III)(I), EXAMPLE 9

(1) G, a calendar-year taxpayer, owns an office building for use in its trade or business and G placed in service such building in 2000. In November 2018, G made and placed in service an improvement to the inside of such building at a cost of $100,000. In January 2019, G entered into a written contract with H for H to construct an improvement to the inside of the building. In March 2019, H completed construction of the improvement at a cost of $750,000 and G placed in service such improvement. Both improvements to the building are section 1250 property and are not described in §1.168(b)-1(a)(5)(ii).

(2) Both the improvement to the office building made by G in November 2018 and the improvement to the office building that was constructed by H for G in 2019 are improvements made by G under §1.168(b)-1(a)(5)(i)(A). Further, each improvement is made to the inside of the office building, is section 1250 property, and is not described in §1.168(b)-1(a)(5)(ii). As a result, each improvement meets the definition of qualified improvement property in section 168(e)(6) and §1.168(b)-1(a)(5)(i)(A) and (a)(5)(ii). Accordingly, each improvement is 15-year property under section 168(e)(3) and is described in §1.168(k)-2(b)(2)(i)(A). Assuming all other requirements of this section are met, each improvement

[23] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, B. Qualified Improvement Property

made by G qualifies for the additional first year depreciation deduction for G under this section.[24]

Clarification of the Breadth of the Transferor/Predecessor Rule

In response to a comment, the IRS has revised the regulations to clarify limits on the application of the term "predecessor" for a transferor of an asset to another party. The preamble notes:

> Section 1.168(k)-2(a)(2)(iv)(B) of the 2019 Final Regulations defines a predecessor as including a transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor. A commenter requested clarification of whether this definition was intended to apply only with respect to the specific property transferred or more broadly. The Treasury Department and the IRS intended the definition of a "predecessor" in §1.168(k)-2(a)(2)(iv)(B) of the 2019 Final Regulations to be property-specific. Similarly, the Treasury Department and the IRS intended the definition of a "class of property" in §1.168(k)-2(f)(1)(ii)(G) of the 2019 Final Regulations (regarding basis adjustments in partnership assets under section 743(b)) to be partner-specific.[25]

To clarify the issue, the IRS made the following minor modifications to the regulations:

> Accordingly, these final regulations amend §1.168(k)-2(a)(2)(iv)(B) of the 2019 Final Regulations to substitute "the" for "an", and these final regulations amend §1.168(k)-2(f)(1)((ii)(G) of the 2019 Final Regulations to substitute "Each" for "A".[26]

The IRS also removed a predecessor provision involving trusts, determining it was duplicative:

> Pursuant to §1.168(k)-2(a)(2)(iv)(E) of the 2019 Final Regulations, a transferor of an asset to a trust is a predecessor with respect to the trust. The Treasury Department and the IRS intended that this provision apply only to transfers involving carryover basis. Because §1.168(k)-2(a)(2)(iv)(B) of the 2019 Final Regulations applies to such transfers, these final regulations remove §1.168(k)-2(a)(2)(iv)(E) of the 2019 Final Regulations.[27]

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[24] REG. §1.168(K)-2(B)(2)(iii)(I)

[25] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, C. Predecessor and class of property

[26] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, C. Predecessor and class of property

[27] TD 9916, Preamble, SUPPLEMENTARY INFORMATION, Summary of Comments and Explanation of Revisions, II. Definitions, C. Predecessor and class of property

SECTION: 642
FINAL REGULATIONS ISSUED ON TREATMENT OF EXCESS DEDUCTIONS ON TERMINATION FOLLOWING TCJA ADDITION OF IRC §67(G)

Citation: TD 9918, 9/21/20

The IRS has issued the final regulations dealing with the post-TCJA treatment of excess deductions on termination in TD 9918.[28]

Previously Reg. §1.642(h)-2 had treated excess deductions on the termination of an estate or trust as miscellaneous itemized deductions for the beneficiary. The Tax Cuts and Jobs Act (TCJA) added IRC §67(g), effective for tax years beginning in 2018, that provided individuals would no longer receive a deduction for miscellaneous itemized deductions.

In Notice 2018-61 the IRS indicated that the agency was considering whether the treatment of such items as miscellaneous itemized deductions was appropriate following the effective date of IRC §67(g). In May of 2020 the IRS released proposed regulations (REG-113295-18) that would provide that the nature of such deductions would be determined by their treatment at the trust level. The final regulations adopt the proposed regulations with some modifications.

IRC §67(e) Treatment Overrides IRC §67(g) Disallowance

Some had worried when the TCJA was passed that expenses that are treated as incurred because an asset is in a trust and deductible in computing the trust's adjusted gross income would be treated as nondeductible due to IRC §67(g). The final regulations clarify that IRC §67(e) removes those expenses from the bar on deduction found at IRC §67(g).

> (ii) Not disallowed under section 67(g). Section 67(e) deductions are not itemized deductions under section 63(d) and are not miscellaneous itemized deductions under section 67(b). Therefore, section 67(e) deductions are not disallowed under section 67(g).[29]

[28] TD 9918, September 21, 2020 (release date by IRS – the date published in the *Federal Register* will be the official date the regulations are treated as issued), https://www.irs.gov/pub/irs-drop/td-9918.pdf (retrieved September 26, 2020)

[29] Reg. §1.67-4(a)(1)(ii)

No Guidance on Impact of §67(e) on Computation of the Alternative Minimum Tax

The preamble provides that these regulations will not provide any guidance on whether such deductions under IRC §67(e) are or are not deductible in computing a trust or estate's alternative minimum tax. The preamble notes:

> Two commenters requested that the regulations address the treatment of deductions described in section 67(e)(1) and (2) in determining an estate or non-grantor trust's income for alternative minimum tax (AMT) purposes. The commenters suggested that such deductions are allowable as deductible in computing the AMT. The treatment of deductions described in section 67(e) for purposes of determining the AMT is outside the scope of these regulations concerning the effects of section 67(g); therefore, these regulations do not address the AMT. Further, no conclusions should be drawn from the absence of a discussion of the AMT in these regulations regarding the treatment of deductions described in section 67(e) for purposes of determining the AMT.[30]

Treatment of Excess Deductions on Termination by the Beneficiary

The final regulations add in the body of the regulations, rather than a conclusion provided in an example, that the deductions retain their nature in the hands of the beneficiary. The added text is found at Reg. §1.642(h)-2(a)(2):

> (2) Treatment by beneficiary. A beneficiary may claim all or part of the amount of the deductions provided for in paragraph (a) of this section, as determined after application of paragraph (b) of this section, before, after, or together with the same character of deductions separately allowable to the beneficiary under the Internal Revenue Code for the beneficiary's taxable year during which the estate or trust terminated as provided in paragraph (c) of this section.[31]

The character of the expense is detailed at Reg. §1.642(h)-2(b)(1):

> (b) Character and amount of excess deductions--(1) Character. The character and amount of the excess deductions on termination of an estate or trust will be determined as provided in this paragraph (b). Each deduction comprising the excess deductions under section 642(h)(2) retains, in the hands of the beneficiary, its character (specifically, as allowable in arriving at adjusted gross income, as a non-miscellaneous itemized deduction, or as a miscellaneous itemized deduction) while in the estate or trust. An item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Internal Revenue Code and must be separately

[30] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, A. Section 67

[31] Reg. §1.642(h)-2(a)(2)

> stated if it could be so limited, as provided in the instructions to Form 1041, *U.S. Income Tax Return for Estates and Trusts*, and the Schedule K–1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credit, etc.*, or successor forms.[32]

As was provided by the proposed regulations, the nature of the deductions passing out is determined by the trust or estate by using the mechanisms found in Reg. §1.652(b)-3 for determining the nature of income that makes up distributable net income of the trust or estate. The estate or trust determines the nature of the excess deductions using the following three steps:

- Deductions directly allocable to a class of income must be allocated to that class of income, using provisions found at Reg. §1.652(b)-3(a). For instance, real estate taxes paid on rental property would be used to offset that rental income.
- Any income remaining after the allocation of direct expenses is then subjected to the allocation of remaining deductions in accordance with provisions found at Reg. §1.652(b)-3(b) and (d). Generally, the trustee is allowed to exercise discretion in allocating remaining deductions, meaning that the trustee can attempt to offset less favored deductions for individuals at this level by using them against remaining income. So the trustee could take remaining real estate taxes subject to the $10,000 annual deduction limit that were allowed on the trust return against interest income and other investment income to remove the deduction from the calculation of excess deductions on termination. As well, if expenses directly related to a class of income exceeded that income, that excess deduction also becomes available to offset other income in this step.
- Finally, once all income has been eliminated, the remaining deductions comprise the excess deductions on termination, allocated to the beneficiaries in accordance with Reg. §1.642(h)-4.[33]

The trustee would normally strive to have the excess deductions on termination be made up of items of deduction allowed in the computation of adjusted gross income for the trust or estate, which normally would produce the most favorable result for the beneficiary.

As was mentioned in our article discussing the proposed regulations, the IRS's detailed example of allocating expenses[34] in the proposed regulations appeared to improperly treat the real estate taxes on the rental as being an itemized deduction when computing the make-up of excess deductions on termination. The IRS received a number of comments on this issue and others in the example, and revised that example:

> Multiple commenters noted that Example 2 raises several issues that could be potentially relevant to that example, such as whether the

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[32] Reg. §1.642(h)-2(b)(1)

[33] Reg. §1.642(h)-2(b)(2)

[34] Ed Zollars, "Proposed Regulations Upon Which Taxpayers May Rely Issued For Excess Deductions on Termination," *Current Federal Tax Developments* website, May 8, 2020, https://www.currentfederaltaxdevelopments.com/blog/2020/5/8/proposed-regulations-upon-which-taxpayers-may-rely-issued-for-excess-deductions-on-termination (retrieved September 26, 2020)

> decedent was in a trade or business and the application of section 469 to estates and trusts. To avoid these issues, which are extraneous to the point being illustrated, one commenter suggested that the example be revised so that the entire amount of real estate expenses on rental property equals the amount of rental income. The Treasury Department and the IRS did not intend to raise such issues in the example and consider both issues to be outside the scope of these regulations. Accordingly, the Treasury Department and the IRS adopt the suggestion by the commenter and modify Example 2 to avoid these issues by having rental real estate expenses entirely offset rental income with no unused deduction.
>
> Commenters also noted that Example 2 does not properly allocate rental real estate expenses because the example characterizes the rental real estate taxes as itemized deductions. These commenters asserted that real estate taxes on property held for the production of rental income are not itemized deductions but instead are allowed in computing gross income and cited to section 62(a)(4) as providing that ordinary and necessary expenses paid or incurred during the taxable year for the management, conservation, or maintenance of property held for the production of income under section 212(2) that are attributable to property held for the production of rents are deductible as above-the-line deductions in arriving at adjusted gross income. One commenter suggested that, if the goal of Example 2 is to illustrate state and local taxes passing through to the beneficiary, then the example should include state income taxes rather than real estate taxes on rental real estate. The Treasury Department and the IRS have revised this example in the final regulations to include personal property tax paid by the trust rather than taxes attributable to rental real estate.
>
> Lastly, commenters noted that Example 2 does not demonstrate the broad range of trustee discretion in §1.652(b)-3(b) and (d) for deductions that are not directly attributable to a class of income, or deductions that are, but which exceed such class of income, respectively. In response to these comments, the Treasury Department and the IRS have modified Example 2 to illustrate the application of trustee discretion as found in §1.652(b)-3(b) and (d).[35]

The revised example reads as follows:

EXAMPLE 2, COMPUTATIONS UNDER SECTION 642(H)(2), REG. §1.642(H)-5(B)

(1) Facts. D dies in 2019 leaving an estate of which the residuary legatees are E (75%) and F (25%). The estate's income and deductions in its final year are as follows:

<u>Income:</u>

- Dividends - $3,000

[35] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, B. Section 642(h), 7. Example 2

- Taxable Interest - $500
- Rent - $2,000
- Capital Gain - $1,000

Total Income: $6,500

Deductions:

Section 62(a)(4) deductions:

- Rental real estate expenses - $2,000

Section 67(e) deductions:

- Probate fees - $1,500
- Estate tax preparation fees - $8,000
- Legal fees - $2,500

Non-miscellaneous itemized deductions:

- Personal property taxes - $3,500

Total deductions: $17,500

(2) Determination of character. Pursuant to §1.642(h)–2(b)(2), the character and amount of the excess deductions is determined by allocating the deductions among the estate's items of income as provided under §1.652(b)–3. Under §1.652(b)–3(a), the $2,000 of rental real estate expenses is allocated to the $2,000 of rental income. In the exercise of the executor's discretion pursuant to §1.652(b)–3(b), D's executor allocates $3,500 of personal property taxes and $1,000 of section 67(e) deductions to the remaining income. As a result, the excess deductions on termination of the estate are $11,000, all consisting of section 67(e) deductions.

(3) Allocations among beneficiaries. Pursuant to §1.642(h)–4, the excess deductions are allocated in accordance with E's (75 percent) and F's (25 percent) interests in the residuary estate. E's share of the excess deductions is $8,250, all consisting of section 67(e) deductions. F's share of the excess deductions is $2,750, also all consisting of section 67(e) deductions.

4) Separate statement. If the executor instead allocated $4,500 of section 67(e) deductions to the remaining income of the estate, the excess deductions on termination of the estate would be $11,000, consisting of $7,500 of section 67(e) deductions and $3,500 of personal property taxes. The non-miscellaneous itemized deduction for personal property taxes may be subject to limitation on the returns of both B and C's trust under section 164(b)(6)(B) and would have to be separately stated as provided in §1.642(h)–2(b)(1).

Reporting Excess Deductions on Termination Information by an Estate or Trust

While not addressed in the regulation text, in the preamble the IRS discusses how this information is to be reported to beneficiaries. The preamble states:

> Section 1.642(h)-2(b)(1) of the proposed regulations provides that an item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Code and must be separately stated if it could be so limited, as provided in the instructions to Form

> 1041, *U.S. Income Tax Return for Estates and Trusts*, and the Schedule K-1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credit, etc.* Commenters requested that the Treasury Department and the IRS provide guidance on how the excess deductions are to be reported by both the terminated estate or trust and by its beneficiaries. The Treasury Department and the IRS released instructions for beneficiaries that chose to claim excess deductions on Form 1040 in the 2019 or 2018 taxable year based on the proposed regulations. In addition, the Treasury Department and the IRS plan to update the instructions for Form 1041, Schedule K-1 (Form 1041), and Form 1040, *U.S. Individual Income Tax Return*, for the 2020 and subsequent tax years to provide for the reporting of excess deductions that are section 67(e) expenses or non-miscellaneous itemized deductions.[36]

The instructions for 2018 and 2019 referenced above are found on the IRS website.[37]

The IRS notes that since some states do not conform to §67(g), some taxpayers may need access to miscellaneous itemized deduction excess deduction information for state tax purposes. However, the agency declined to provide information for such reporting in the regulations since the matter is not one that impacts federal returns.

> The Treasury Department and the IRS are aware that the income tax laws of some U.S. states do not conform to the Code with respect to section 67(g), such that beneficiaries may need information on miscellaneous itemized deductions of a terminated estate or trust. However, because miscellaneous itemized deductions are currently not allowed for Federal income tax purposes, that information is not needed for Federal income tax purposes. Therefore, it would not be appropriate to modify Federal income tax forms to require or accommodate the collection of such information while this deduction is suspended. Estates, trusts, and beneficiaries are advised to consult the relevant state taxing authority for information about deducting miscellaneous itemized expenses on their state tax returns[38]

Trustees will likely find they will receive requests to prepare this information for beneficiaries even when no return is required to be file in the state where the beneficiary resides.

Net Operating Loss Clarification

Some commenters had requested the IRS change one example found in the regulations to illustrate how a beneficiary would carry back a net operating loss carryover passed

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[36] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, B. Section 642(h), 3. Reporting of excess deductions

[37] Reporting Excess Deductions on Termination of an Estate or Trust on Forms 1040, 1040-SR, and 1040-NR for Tax Year 2018 and Tax Year 2019, IRS website, September 19, 2020 revision, https://www.irs.gov/forms-pubs/reporting-excess-deductions-on-termination-of-an-estate-or-trust-on-forms-1040-1040-sr-and-1040-nr-for-tax-year-2018-and-tax-year-2019 (retrieved September 26, 2020)

[38] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, B. Section 642(h), 3. Reporting of excess deductions

out by the estate or trust. In the preamble the IRS responds by noting that, in fact, beneficiaries are not now, or were they under pre-TCJA law, able to carry such a loss back:

> Section 642(h)(1) provides a specific rule that allows the beneficiary to succeed to a net operating loss carryover of the estate or trust and deduct the amount of the net operating loss over the remaining carryover period that would have been allowable to the estate or trust but for the termination of the estate or trust. The phrase in section 642(h)(1) "the estate or trust has a net operating loss carryover" means that the estate or trust incurred a net operating loss and either already carried it back to the earliest allowable year under section 172 or elected to waive the carryback period under section 172(b)(3), and now is limited to carrying over the remaining net operating loss. Accordingly, because the net operating loss is a carryover for the estate or trust, the beneficiary succeeding to that net operating loss may, under section 642(h)(1), only carry it forward.[39]

The IRS added a specific reference to this rule in Example 1, found at Reg. §1.642(h)-5(a), and notes that the beneficiaries cannot carry back a net operating loss carryover passed out of a trust or estate in its final year.

Effective Date and Impact on Pre-2018 Years

The final regulations apply to years beginning after the regulations are published in the *Federal Register*, but the proposed regulations may be relied upon for years beginning after December 31, 2017 and before the final regulations are published.[40]

The IRS explicitly deals with a question some had raised with regard to the proposed regulations—does the change in the nature of excess deductions on termination mean that this treatment should have been applied in prior years? And, therefore, would it be appropriate to file claims for refund where a taxpayer would have paid less tax in a pre-2018 tax year (the taxpayer was subject to the alternative minimum tax, did not itemize deductions or had some or all of the excess deductions offset by the 2% of adjusted gross income floor for miscellaneous itemized deductions)?

The IRS answer argues that the prior treatment was an appropriate interpretation of the provision that was within the discretion of the IRS, and thus will not allow taxpayers to use this new view of excess deductions on termination for years beginning before 2018:

> One commenter requested that §1.642(h)-2 of the proposed regulations be applied retroactively not only to taxable years beginning after December 31, 2017, but to all open years. The commenter asserted that the existing regulation treating excess deductions on termination of an estate as a miscellaneous itemized deduction was in error. As an example, the commenter argues that the current

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[39] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, B. Section 642(h), 6. Example 1

[40] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, C. Applicability Dates

regulations mistakenly describe section 67(e) expenses as an exception to the rules applicable to miscellaneous itemized deductions, and therefore requested that the final regulations be applicable to all open years. The Treasury Department and the IRS have the authority to treat an excess deduction on termination of an estate or trust as a single miscellaneous itemized deduction. See section 642(h). The suspension under section 67(g) of miscellaneous itemized deductions caused the Treasury Department and the IRS to reconsider the treatment of excess deductions under section 642(h)(2) because the Treasury Department and the IRS do not interpret section 67(g) as suspending such deductions allowable under section 642(h)(2). The Treasury Department and the IRS interpret section 67(g) as not disallowing excess deductions succeeded to beneficiaries from terminated estates and trusts under section 642(h)(2). Therefore, taxpayers may rely on these regulations as of the effective date of section 67(g), but not for earlier periods.[41]

SECTION: 7502
IRS WILL TREAT RETURNS IMPACTED BY CCH OUTAGE ELECTRONICALLY FILED BY SEPTEMBER 17 AS FILED ON SEPTEMBER 15

Citation: Memorandum for All Services and Enforcement Employees, External Tax Software Outage on September 15, 2020, 9/24/2020

The IRS has granted relief related to the CCH electronic filing software outage that took place on September 15, 2020.[42]

CCH suffered an outage in their online systems that began in the afternoon of October 15, 2020 and continued throughout the evening. CPAs that used their systems found themselves unable to submit tax returns electronically on the last day to timely file extended partnership income tax returns.

The inability to timely file the returns creates more than just late payment penalty concerns—some elections are only valid if made with a timely filed return. Thus, a number of CPAs were very concerned about the impact of this system failure on their clients.

[41] TD 9918, Preamble, SUMMARY INFORMATION, Summary of Comments and Explanations, C. Applicability Dates

[42] Memorandum for All Services and Enforcement Employees, External Tax Software Outage on September 15, 2020, September 24, 2020, https://www.irs.gov/pub/irs-utl/9-15-20-outage-memo.pdf (retrieved September 25, 2020)

The IRS has taken note of the situation and offered the following relief:

> IRS will treat as timely filed a return and any elections that were filed with that return (for example, a Form 3115, *Application for Change in Accounting Method*) that were impacted by the September 15, 2020, external tax software outage if the taxpayer successfully e-filed the return and any elections that were filed with that return by September 17, 2020.

Some may be wondering why the IRS finally announced the date the late filed return had to be filed by a week later. After all, is it fair to require tax professionals to act before the IRS gives the relief guidance? The agency's emphasis in the following paragraph makes it clear that when such situations take place, taxpayers and their advisers are expected to attempt to correct issues as soon as possible—and, it would seem, not wait to hear from the agency to find out what the deadline to take action will be:

> As a matter of routine course, the IRS encourages all taxpayers who cannot file on time to file for an extension, if they are eligible. A taxpayer who is not eligible for an extension should make <u>every attempt</u> to file on the due date or as soon as possible afterwards. *(emphasis in the original document)*