

UPDATES AND OTHER TIDBITS

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Tags

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I.R.S. ADDRESSES LEGISLATIVE WORKAROUNDS FOR S.A.L.T. DEDUCTION LIMITATIONS

The Tax Cuts and Jobs Act (“T.C.J.A.”) placed a \$10,000 cap on the amount of state and local tax (“S.A.L.T.”) an individual taxpayer can deduct on his or her Federal income tax return. To address this limitation, some states are considering or have already adopted legislative proposals allowing taxpayers to make payments to charitable funds that satisfy certain state purposes (e.g., public education). Those payments would be credited against and thereby reduce a portion of the S.A.L.T. otherwise owed. The objective of these proposals is to allow taxpayers to characterize a payment as a deductible charitable contribution for Federal income tax purposes, as opposed to a payment otherwise subject to the \$10,000 cap. In response to these proposals, the I.R.S. recently issued Notice 2018-54 alerting taxpayers that Federal law controls the proper characterization of such payments for Federal income tax purposes. The notice suggested that the I.R.S. will issue regulations addressing the Federal income tax treatment of such transfers, which will be governed by substance over form principles.

PRIVATE EMPLOYEES MAY DEFER INCOME RECOGNITION FROM STOCK OPTIONS

An employee who is granted a nonqualified stock option is required to include the fair market value of the stock (reduced by the price paid, if any) in gross income for the year in which the employee’s rights in the stock are vested. The rights in the stock become vested when they are transferable or are not subject to substantial risk of forfeiture, whichever occurs first.

Unlike an employee of a publicly held company who may have tax liability by selling the stock on a readily available stock market, the employee of a closely held company may have to dip into their own pocket to cover the tax liability. This may cause some employees to let the options lapse rather than incur substantial tax liability.

The T.C.J.A. introduced Code §83(i), which allows a qualified employee to defer the income attributable to stock received in connection with the exercise of an option, or in the settlement of a restricted stock unit (“R.S.U.”).

If a qualified employee receives such stock and elects application of the new provision, then a taxable event will arise in the year that includes the earliest of the following events:

- The date the qualified stock becomes transferable (including transferable to the employer)
- The date the employee becomes an excluded employee (as explained below)
- The date any stock of the corporation becomes readily tradeable on an established securities market
- Five years after the rights of the employee in the stock are transferable or are not subject to a substantial risk of forfeiture (whichever date is earlier)
- The date the employee revokes the deferral election

The deferral is not available to (i) any employee who currently owns, or in the past ten years had owned, 1% or more of the corporation; (ii) any current or former C.E.O. or C.F.O.; (iii) persons related to the C.E.O. or C.F.O.; or (iv) anyone who is currently, or was in the past ten years, one of the four highest compensated officers of the corporation. Furthermore, the issuing corporation must be closely held at the time of both the issuance of the stock option or R.S.U. and at the time services were performed by the employee. The corporation must also have a written plan under which at least 80% of its U.S. employees are granted stock options.



CRYPTOCURRENCY ACCOUNTING GUIDANCE

In a letter dated May 30, 2018, the American Institute of Certified Public Accountants (“A.I.C.P.A.”) urged the I.R.S. to issue a more comprehensive guide on the tax treatment of cryptocurrencies. Generally speaking, the I.R.S. will treat cryptocurrency as “property” per its announcement in Notice 2014-21.¹ The A.I.C.P.A. requested confirmation that charitable contributions of cryptocurrencies greater than \$5,000 are treated the same as contributions of publicly traded stock (which do not require a qualified appraisal) and confirmation that cryptocurrencies can be held in retirement accounts. I.R.S. guidance was also requested on acceptable methods for

- valuing and documenting cryptocurrencies,
- computation of capital gains and losses,
- availability of alternative accounting methods,
- availability of the mark-to-market election for qualified dealers and traders,
- installment sales,
- foreign reporting requirements, and
- other reporting matters.

¹ For a further discussion of virtual (crypto) currencies see [FK article].