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Insights

IRS Provides Updated Guidance Related to Recent COVID-19 Releases

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Guidance continues to be issued by various governmental agencies regarding the Paycheck Protection Program (the "PPP") established by the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). On April 30, 2020, the Internal Revenue Service ("IRS") issued new and supplementary information regarding certain tax aspects of the PPP and the CARES Act.

Notice 2020-32: No Deduction for Business Expenses Paid with PPP Loan Proceeds

In Notice 2020-32 ("Notice 20-32"), the IRS provides clarifying guidance regarding the tax treatment of otherwise deductible expenses incurred in a taxpayer's trade or business when the taxpayer receives a loan (a "Covered Loan") under the PPP.

Notice 20-32 reiterates that the CARES Act excludes from taxable income the amount of loan forgiveness related to Covered Loan proceeds used for the payment of **eligible expenses**. However, the CARES Act is silent as to whether deductions otherwise allowable under Sections 162 and 163 of the Internal Revenue Code (the "Code") are allowed given the loan forgiveness is provided on a tax-free basis. In Notice 20-32, the IRS makes clear that expenses funded with forgiven Covered Loan proceeds are not tax deductible. The IRS has justified its position in Notice 20-32 by citing a need to prevent a double tax benefit. However, the notice has already received backlash from Senate Finance Committee Chair Chuck Grassley, R-Iowa and House Ways and Means Committee Chair Richard E. Neal, D-Mass and it is possible that future legislation may address the deduction disallowance.

IRS Provides Updated FAQs on Net Operating Loss ("NOL") Deductions

The IRS provided updated FAQ's regarding the process for claiming expedited refunds for prior tax years resulting from NOL deductions, as permitted under the CARES Act amendment of section 172(b)(1) of the Code providing for a **five-year carryback of NOLs arising in tax years beginning after December 31, 2017 and before January 1, 2021**. Starting on April 17, 2020 and until further notice, the IRS will accept eligible refund claims Form 1139 (corporate) submitted via fax to 844-249-6236 and eligible refund claims Form 1045 (individual) submitted via fax to 844-249-6237. Important note: These numbers are not for general use; taxpayers should not use these for anything besides Forms 1139 or 1045 (and accompanying materials). Other submissions will not be processed.

Revenue Procedure 2020-29 Permits Electronic Ruling Requests

In Revenue Procedure 2020-29, the IRS allows for the electronic submission of requests for letter rulings, closing agreements, determination letters, and information letters under the jurisdiction of the IRS Office of Chief Counsel, and for determination letters issued by the IRS Large Business and International Division. Until these temporary procedures are modified or superseded, both paper and electronic requests for the described advice will be accepted.

IRS Provides Update to FAQs on the CARES Act Employee Retention Credit

The IRS added approximately 90 new sets of questions and answers regarding the employee retention credit established by the CARES Act (the "ERC"). Please reference our **April 3, 2020** and **March 27, 2020** articles for a summary of these credits. This April 30th update follows the March 31 IRS release of an initial set of FAQ's concerning the ERC and a similar March 31 FAQ release from the Senate Finance Committee. The April 30 update includes the following statement from the IRS: "This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case." A link to the IRS FAQ page is provided **here**.

If you have any further questions, comments or concerns, please feel free to contact **Kendall A. Schnurpel** or a member of our **Business, Acquisitions & Securities team**.