

Part III - Administrative, Procedural, and Miscellaneous

Transition Relief for Certain Partnerships and Other Pass-Thru Entities Under § 470

Notice 2007-4

PURPOSE

This notice extends by one year the transition relief in Notice 2006-2, 2006-2 I.R.B. 278, and Notice 2005-29, 2005-13 I.R.B. 796, provided previously to partnerships and other pass-thru entities that are treated under § 470 of the Internal Revenue Code as holding tax-exempt use property solely as a result of the application of § 168(h)(6).

BACKGROUND

Section 848 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418, 1602 (AJCA), enacted on October 22, 2004, added § 470, which imposes new limitations on the deductibility of losses relating to tax-exempt use property. Under § 470(c)(2), "tax-exempt use property" has the meaning provided under § 168(h) (with certain modifications). Under § 168(h)(6), if any property that is not otherwise "tax-exempt use property" under § 168(h) is owned by a partnership that has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and any allocation to the tax-exempt entity of partnership items is not a qualified allocation, an amount equal to the tax-exempt entity's proportionate share of the property generally is treated as tax-exempt use property. Section 168(h)(6)(E) provides that, for purposes of determining whether property is tax-exempt use property, rules similar to those applicable to partnerships apply to other pass-thru entities. Section 849(a) of the AJCA

provides that § 470 generally applies to leases entered into after March 12, 2004.

Section 403(ff) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2632, amended § 849(a) of the AJCA to provide that, in the case of property treated as tax-exempt use property solely by reason of § 168(h)(6), § 470 applies to property acquired after March 12, 2004.

Notice 2006-2 and Notice 2005-29 provide transition relief to partnerships and other pass-thru entities that are treated by § 470 as holding tax-exempt use property as a result of the application of § 168(h)(6). Specifically, Notice 2006-2 and Notice 2005-29 provide that, in the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2006, and January 1, 2005, respectively, the Internal Revenue Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6). Notice 2006-2 was issued subsequent to the receipt by the Treasury Department of a letter from the Chairmen and Ranking Members of both the Senate Finance Committee and House Ways and Means Committee requesting that the Treasury Department consider extending the transition relief provided in Notice 2005-29 for taxable years beginning before January 1, 2006.

On September 29, 2006, the Tax Technical Corrections Act of 2006 was introduced in Congress. This legislation addresses, among other things, the application of § 470 to partnerships and other pass-thru entities with tax-exempt use property as a result of § 168(h)(6). See H.R. 6264, 109th Cong. 2nd Sess. § 6(e) (2006) and S. 4026, 109th Cong. 2nd Sess. § 6(e) (2006). The Chairmen of the Senate Finance Committee

and House Ways and Means Committee solicited comments regarding the legislation. As of the date of this notice, no congressional action has been taken on the legislation.

If enacted in its current form, the legislation will be effective retroactively, in the case of property treated as tax-exempt use property solely by reason of § 168(h)(6), to property acquired after March 12, 2004. However, the DESCRIPTION OF THE TAX TECHNICAL CORRECTIONS ACT OF 2006, as prepared by the Staff of the Joint Committee on Taxation (October 2, 2006, JCX-48-06), provides that it is not intended that the effective date of the legislation supersede the rules set forth in Notice 2006-2 and Notice 2005-29, with respect to the application of § 470 in the case of partnerships and other pass-thru entities, for taxable years of these entities beginning in 2005 and 2004, respectively. The Service will continue to apply the rules set forth in Notice 2005-29 and Notice 2006-2. Additionally, in the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years beginning before January 1, 2007, the Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6).

EXTENSION OF TRANSITION RELIEF

In the case of partnerships and other pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2007, the Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6). Abusive transactions involving partnerships and other pass-thru entities remain subject to challenge by the Service under other provisions of the tax law.

EFFECT ON OTHER DOCUMENTS

Notice 2006-2 and Notice 2005-29 are modified and superseded.

DRAFTING INFORMATION

For further information regarding this notice, contact John Aramburu of the Office of the Associate Chief Counsel (Income Tax & Accounting) at (202) 622-4960 (not a toll-free call).