Part III - Administrative, Procedural, and Miscellaneous

Extension of Transition Relief for Certain Partnerships and Other Pass-Thru Entities under § 470

Notice 2006-2

PURPOSE

This notice extends by one year the transition relief provided in Notice 2005-29, 2005-13 I.R.B. 796, under § 470 of the Internal Revenue Code to partnerships and other pass-thru entities that are treated as holding tax-exempt use property 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, enacted on October 22, 2004, added § 470, which imposed 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 rules similar to those applicable to partnerships in determining whether property is tax-exempt use property apply to other pass-thru entities. Section 470 generally applies to leases entered into after March 12, 2004.

Notice 2005-29 provides 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 2005-29 provides that in the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2005, 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).

The Treasury Department and the Service understand that Congress is considering possible legislation that would affect the application of § 470 to certain transactions involving partnerships and other pass-thru entities.

EXTENSION OF TRANSITION RELIEF

In the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2006, 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 2005-29 is 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).