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Subject: Good News: IRS Releases Notice Affecting Contributions to Georgia HEART

Good News:

1. Additional guidance released by the IRS eliminates any potential federal income tax cost for taxpayers who contribute to a qualified rural hospital organization (RHO) in exchange for a state income tax credit. And, of course, their 100% state income tax credit remains intact.
2. The IRS confirmed the potential federal deductibility of contributions to a qualified RHO by pass-through entities as ordinary and necessary business expenses.

Late yesterday, the U.S. Department of the Treasury issued final rules and additional guidance on the federal income tax treatment of payments made under state and local tax credit programs, retroactive to August 27, 2018. Although the regulations prevent charitable contributions made in exchange for state tax credits from circumventing the new limitation on state and local tax (SALT) deductions, the IRS issued a notice providing a “safe harbor” that (subject to the \$10,000 SALT cap) allows individual taxpayers who itemize deductions to treat contributions made in exchange for tax credits as payments of state or local taxes for federal income tax purposes: <https://home.treasury.gov/news/press-releases/sm705>.

This safe harbor means that no taxpayers will incur any cost in connection with contributing to a RHO. The contributions made to a RHO will be offset by a 100% Georgia income tax credit and, for those who fall short of the full \$10,000 in SALT deductions, contributions up to the \$10,000 cumulative SALT limit may be treated as state income tax payments which will be deductible for federal income tax purposes.

Additionally, in Item #7 in the Summary of Comments Section, on page 27 of the [IRS Final Regulations](#), the IRS explains that “taxpayers engaged in a trade or business may be permitted a Section 162 [ordinary and necessary business expense] deduction for amounts paid to charitable organizations in some circumstances.” In the line of court cases cited by the IRS in support of this treatment (Marquis v. Commissioner, 49 T.C. 695 (1968), et al.), payments made by a pass-through business entity with the reasonable expectation of anticipated benefit to the business will qualify for a federal business expense deduction. As a result, RHO contributors who own interests in pass-through business entities and their CPAs or financial advisors should consider whether, under this IRS guidance and legal precedent, business entities are able to make payments to RHOs which constitute ordinary and necessary business expenses that are fully deductible for federal income tax purposes. For instance, in the appropriate circumstances, a pass-through business entity may be able to take a federal business expense deduction related to payments made in support of a rural hospital organization located in the community in which it does business, as such an investment can have the effect of improving access to healthcare for its workers and attracting other new businesses to the community.

The IRS Notice explains that, “The Treasury Department and the IRS will continue to study comments involving the effect of the final regulation on various business entities and will provide additional guidance as needed.” This means there will be an opportunity for tax professionals to educate Treasury and IRS officials about the need for further clarification of this opportunity for a business expense deduction in cases where a state income tax credit is available to the business, including the publication of detailed examples under different case scenarios. Meanwhile, Georgia HEART will communicate with the Georgia Department of Revenue to facilitate the implementation of this tax treatment of payments by pass-through entities and ensure the proper outcome at both the state and federal levels.

We will inform you of any further developments relating to these matters. Meanwhile, please feel free to contact us with any questions you may have.

Best regards,

Kate Saylor
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