

Current Developments

Federal Bar Association Tax Law Conference

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Moderator:

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Agenda

- REG-104872-18 – Revocation of Treas. Reg. 1.451-5
- T.D. 9843 – Allocation of Costs under Simplified Methods/Rev. Proc. 2018-56
- REG-106089-18 – Limitation on Deduction for Business Interest Expense
- Notice 2018-80 – Guidance under Section 451(b) Relating to Market Discount
- Rev. Proc. 2018-60 – Method Changes Under Section 451(b)
- Rev. Proc. 2018-40 – Small Business Taxpayers Changes
- Rev. Proc. 2019-10 – Method Change for Insurance Company to Change its Basis of Computing Reserves
- Bluebook
- 2018-2019 PGP Items

REG-104872-18

Revocation of Treas. Reg. 1.451-5

- October 15, 2018 – IRS released proposed regulations to remove TR 1.451-5 as a result of TCJA changes
 - Historic advance payments rules (including 2-year deferral for inventorable goods) overridden by new IRC 451(c)
 - Section 451(c) one-year deferral similar to RP 2004-34 one-year deferral
 - Taxpayer deferring two years under TR 1.451-5 will have to change method of accounting for tax years beginning after December 31, 2017
 - Government requested comments on whether any changes to the existing procedural rules under section 446 are necessary due to this removal, i.e., automatic change?

T.D. 9843 – Allocation of Costs under Simplified Methods/Rev. Proc. 2018-56

- November 18, 2018 – IRS released final regulations modifying TR 1.263A-1, -2, and -3 to address allocation of certain costs to property produced or acquired for resale by taxpayers
- Clarify the treatment of negative adjustments related to certain costs (negative 263A costs) required to be capitalized to property produced or acquired for resale
- Provide for a new simplified method of accounting, the modified simplified production method (MSPM), for taxpayers that are treated as producers under 263A
- Offer several safe harbors and de minimis rules to reduce the administrative burden and complexities associated with complying with the new rules
- Rev. Proc. 2018-56 – provided automatic method changes for taxpayers using using a simplified method or changing to a simplified method to recharacterize costs, and temporarily permit taxpayers to make an automatic change to revoke a taxpayer's historical absorption ratio election.

REG-106089-18 – Limitation on Deduction for Business Interest Expense

- Issued proposed regulations addressing the broadly applicable business interest expense deduction limitation
- Subsequent Discussion
 - Broad definition of interest
 - Various methods for allocating items within groups of related entities
 - Defining the scope of exceptions from section 163(j)
 - Complexity with the rules applying differently to different entity types
 - Complexity re: application of rules to partnerships and partners

Notice 2018-80 – Guidance under Section 451(b) Relating to Market Discount

- Announced that the IRS and Treasury intend to issue proposed regulations providing the accrued market discount is not includible in income under new section 451(b)
 - i.e., market discount will continue to be taken into account solely under the rules of section 1276, and section 451(b) will not accelerate the recognition of market discount in income as it potentially can for OID
- Effective overturn of *Capital One*
- Juxtaposition between JCT expressly stating that section 451(b) applies before Subchapter P, with market discount rules functioning on the principle of realization, which FN 872 indicates section 451(b) does not revise

Rev. Proc. 2018-60 – Method Changes Under Section 451(b)

- Provides automatic procedures for taxpayers to change various methods of accounting to comply with amendments to section 451(b)
- Filing a Form 3115 vs. “streamlined” procedures
- Audit protection?
- Varying section 481(a) adjustment periods

Rev. Proc. 2018-40 – Small Business Taxpayers Changes

- Issued August 3, 2018
- Provides the procedures by which a small business taxpayer may obtain automatic consent to change its method of accounting to reflect the statutory changes provided by the TCJA
- Reduced filing requirements
- Transition rule – non-automatics → automatic
- Requests comments containing suggestions for future guidance under sections 263A, 447, 448, 460, and 471

Rev. Proc. 2019-10 –Insurance Company Method Change for its Basis of Computing Reserves

- Provides procedures for insurance companies to change the basis of computing reserves under section 807(f)
- Ability to aggregate multiple changes during the same taxable year in methods, assumptions, or factors?
- Certain information requested on Forms 3115 filed

Bluebook

- Changes to section 451
 - Realization vs. recognition
 - Gross vs. net issue and availability of cost offset for accelerated revenue
 - Allocation of transaction price (section 451(b)(4))
 - Treatment of advance payments
 - Certain special methods of accounting, e.g., OID
- Other issues addressed/omitted?

2018-2019 PGP Items

- Certain goals for 2018-2019 year?
- Highlights of List
 - Guidance under section 162(f) and section 6050X
 - Revenue procedure under section 168(k) and 179 concerning elections and computation of depreciation
 - Definitional and other guidance under new section 451(b) and (c)
 - Regulations?

Questions