# CURRENT FEDERAL TAX DEVELOPMENTS – JANUARY 19, 2014

## SECTION: 48
## CERTIFICATION AND QUALIFICATION RULES FOR SMALL WIND ENERGY PROPERTY QUALIFYING FOR 30% BUSINESS TAX CREDIT ISSUED

Citation: Notice 2015-4, 1/13/15

In Notice 2015-4 the IRS provided information on property qualifying for the credit under IRC §48 for placing in service small wind energy property.

The credit is equal to 30% of the basis of qualifying property placed in service for periods ending prior to January 1, 2017. The property must be:

- Constructed, reconstructed, or erected by the taxpayer (or acquired by the taxpayer if the original use of the property commences with the taxpayer);
- Subject to depreciation (or amortization in lieu of depreciation); and
- Meets the performance and quality standards (if any) that have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy) and are in effect at the time of the acquisition of the property.

Qualifying property uses a “qualifying small wind turbine” to generate electricity. Such a turbine must have a nameplate capacity of no more than 100 kilowatts (kW).

This notice provides information on what will be a qualifying small wind turbine. First, the turbine must meet the quality standards set forth in one of the following:

- American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA); or
- International Electrotechnical Commission 61400-1, 61400-12, and 61400-11 (IEC)

The date the standards will be tested is the date the turbine is placed in service for tax purposes.

The notice provides that a manufacturer may provide the certification that its device meets the appropriate standard. The certification will be issued by an eligible certifier (a third party that is accredited by the American Association for Laboratory Accreditation or other similar accreditation body) and the certification can provide the certification in a form that is appropriate to allow the taxpayer to retain the information for tax purposes, including as a printable certification on the manufacturer’s website.

The certification must contain the following items:

- The name and address of the manufacturer; (b) The property name and model number;
- The name and address of the eligible certifier;
- The nameplate capacity of the wind turbine; and
- A signed and dated statement by the eligible certifier that the property complies with the performance and quality standards of AWEA or IEC

The manufacturer will need to retain records to support the qualification of its device and make them available for inspection by the IRS upon request by that agency.

The taxpayer may rely upon the certification and does not need to attach the certification to the return upon which a credit is claimed. However the taxpayer must maintain this certification as part of its books and records required pursuant to Reg. §1.6001-1(a) in support of its tax returns. Such records would need to be kept for as long as the matter is relevant to a tax return for which tax may be assessed by the IRS.

If the IRS determines that a certification is in error or the manufacturer fails to satisfy the documentation requirements, the IRS will publish a notice of withdrawal of the right of the manufacturer to issue a reliance certification. Taxpayers who purchase turbines after that notice is issued will no longer be allowed to rely upon that certification, but those who purchased the turbine on or before that date (even if not installed until after that date) will be able to rely upon the erroneous certification.

A manufacturer that issues an erroneous notification may be subject to various penalties. The notice specifically notes that a liability may exist in that case:

- Under §7206 for fraud and making false statements; and
- Under §6701 for aiding and abetting an understatement of tax liability (in the amount of $1,000 per return on which a credit is claimed in reliance on the certification)

The notice is effective for property acquired or placed in service after January 26, 2015.

## SECTION: 71
## DESPITE ATTORNEY'S ADVICE THAT TAXPAYER COULD OFFSET CHILD SUPPORT PAYMENTS AGAINST CHILD-RELATED EXPENSES PAID DIRECT, ENTIRE STATED AMOUNT OF CHILD SUPPORT MUST BE USED TO REDUCE AMOUNT DETERMINED TO BE ALIMONY

Citation: Becker v. Commissioner, TC Summary Opinion 2015-2, 1/13/15

A number of hurdles must be cleared to obtain a deduction for alimony for federal tax purposes. In the case of *Becker v. Commissioner*, TC Summary Opinion 2015-2, the taxpayer ran afoul of the "pay child support first" provision found at IRC §71(c)(3).

Under that provision, if a taxpayer is required to pay both child support and payments that otherwise qualify as alimony under the divorce or separation instrument and the payments are less than specified, the payments are first applied against the child support portion and only any amount in excess of the required child support payments may be deducted as alimony.

The taxpayers was advised by his attorney that he should deduct amounts he paid for child related payments from the amounts he was paying his former spouse for child support. The he reduced those payments and so paid less than the amount specified in the divorce instrument.

On his original return the taxpayer deducted both the amounts he paid for child support and those he paid for alimony. At trial he agreed he should not have a deduction for the amounts he paid that he determined was the balance of child support due after deducting the expenses his attorney advised him to deduct. But the remaining amounts should be deductible as alimony.

Regardless of the propriety of that advise on the state law level, the Tax Court noted that the IRC specified a result. His divorce decree provided he would pay $8,205 for alimony and $8,307 for child support in 2011. His payments for 2011 amounted to $9,688. Thus, his deduction for alimony was $9,688 less the child support amount of $8,307, or $1,381.

Advisers must remember that federal tax on alimony quite often diverges from state law, and state law rules may be irrelevant in the end regarding the federal tax treatment of payments.

## SECTION: 446
## ACCOUNTING METHOD CHANGE REVENUE PROCEDURES CONSOLIDATED AND REVISED

Citation: Revenue Procedures 2015-13 and 2015-14, 1/16/15

Just prior to the deluge of accounting method change requests triggered by the capitalization/repair regulations made final in 2014 the IRS has issued a newly consolidated and revised pair of Revenue Procedures dealing with changes in accounting methods.

The old "default" automatic change Revenue Procedure (Revenue Procedure 2011-14) had the list of automatic changes as an appendix to the procedure and later Revenue Procedures would amend the main procedure.

The IRS has decided this time to separate the general procedures from the list of changes. [Revenue Procedure 2015-13] contains the general rules for applying for a method change while [Revenue Procedure 2015-14] has the list of automatic changes, their specific procedures and the change number.

Revenue Procedure 2015-13 amplifies, modifies and clarifies Revenue Procedure 2011-14. Revenue Procedure 2011-14 is also mainly superseded, with only the second sentences of Sections 14.01 and 14.02, as well the full text of Sections 14.04, 14.05, 14.06 and 14.07 remaining in effect. Revenue Procedure 97-27 is clarified, modified and superseded.

Revenue Procedure 2011-14 notes the following significant changes that affect both Revenue Procedures 2011-14 and 97-27:

- A sale or exchange of 50 percent or more of the total interest in partnership capital and profits under § 708(b)(1)(B) is a transaction that constitutes the cessation of a partnership's trade or business for purposes of this revenue procedure. [Section 3.04(2)(f))]
- Clarifies and modifies the rules for when a method of accounting for an item is under consideration to provide that an issue is under consideration as of the date of the operative written notification to the taxpayer. [Section 3.08]
- Clarifies that an item ceases to be an issue under consideration after an examination ends unless the examining agent provides the taxpayer with written notification that the item is an issue placed in suspense. [Section 3.08(1)]
- Clarifies that a corporation that is or was formerly a member of a consolidated group has an issue under consideration before examination if the same item is an issue under consideration before examination for any member of that consolidated group for the taxable year(s) that the corporation was a member of the consolidated group. [Section 3.08(1)]
- Clarifies that an entity (including a limited liability company) treated as a partnership or an s corporation for federal income tax purposes also has an issue under consideration before examination if the same item is an issue under consideration in an examination of a partner, member, or shareholder's federal income tax return. [Section 3.08(1)]
- Clarify that, for an entity treated as a partnership or s corporation, a method of accounting is an issue under consideration before an appeals office or a federal court if it is an issue under consideration by an appeals office or a federal court for a partner, member, or shareholder's federal income tax return. [Sections 3.08(2) and 3.08(3)]
- Clarifies that a corporation that is or was formerly a member of a consolidated group is before a federal court during the period of time the consolidated group is before a federal court for the taxable year(s) it was a member of the consolidated group. [Section 3.08(3)]
- Clarifies the term "taxpayer" in the context of a member of a consolidated group. In the case of a consolidated group, except as otherwise provided in this revenue procedure, "taxpayer" refers to the individual member of the consolidated group for which the change in method of accounting is requested or the common parent of the group acting on behalf of that member. For example, to determine eligibility for a window period in section 8.02(1)(a) or 8.02(1)(b) the length of time a member of a consolidated group has been under examination is calculated at the member level, which may be different from the length of time, if any, the member's current common parent has been under examination. [Section 3.17(2)]
- Clarifies the rule that a taxpayer continues to be under examination when examination reports the taxable year(s) under examination to the Joint Committee on Taxation. [Section 3.18(5)]
- Modifies the rules for when a taxpayer under examination may file a Form 3115 by replacing "issue pending" and "consent of director" in Rev. Proc. 97-27 and Rev. Proc. 2011-14 with broad eligibility rules that allow taxpayers under examination to request changes in method of accounting. However, see sections 7.03(3)(b) and 8.02(1). [Section 5.01]

- Clarify the rules for how foreign corporations and foreign partnerships that are not required to file a federal income tax return file a Form 3115 and their controlling domestic shareholders and partners comply with the filing and other requirements regarding Forms 3115 and Consent Agreements. [Sections 6.03(a)(ii), 6.03(1)(a)(iii), 6.03(3)(b), and 6.03(3)(c)]
- Modifies the rules for the treatment of a §481(a) adjustment regarding a §381(a) transaction within a consolidated group in which the method of accounting that gave rise to a § 481(a) adjustment is carried over and used by the acquiring corporation. In that case, the portion of the §481(a) adjustment attributable to the short taxable year of the transferor ending on the date of the §381(a) transaction is treated as an intercompany item as defined in §1.1502-13(b)(2) and taken into account under the §1.1502-13 rules. [Section 7.03(2)(c)]
- Modifies the §481(a) adjustment period for taxpayers under examination with positive §481(a) adjustments. In that case, the §481(a) adjustment period is two taxable years, unless the Form 3115 is filed in a three-month or 120-day window, the present method is not before the director, or the applicant is a new member of a consolidated group in CAP. [Section 7.03(3)(b)]
- Modifies the de minimis election for a one-year adjustment period for a positive §481(a) adjustment to make it available for a positive § 481(a) adjustment that is less than $50,000. [Section 7.03(3)(c)]
- Provides an optional election for a one-year adjustment period for a positive §481(a) adjustment for taxpayers with an eligible acquisition transaction. Also, provides that a taxpayer is not eligible to make a late election except in unusual and compelling circumstances. [Sections 7.03(3)(d) and 6.03(4)(b)]
- Provides, consistent with existing practice, a term and condition that requires a taxpayer to maintain accounting records for the year of change and subsequent taxable years to support the method of accounting for which consent is granted to the taxpayer. [Section 7.06]
- Provide, consistent with existing practice, additional terms and conditions specific to (a) certain foreign corporations, (b) trades or businesses of a domestic corporation, domestic partnership, or other United States person that affect the amount of foreign source taxable income, and (c) foreign partnerships. [Sections 7.07, 7.08 and 7.09]
- Modifies the rules for when a taxpayer under examination filing a Form 3115 may receive audit protection by replacing the 90-day window that began on the first day of the taxpayer's taxable year in Rev. Proc. 97-27 and Rev. Proc. 2011-14 with a three-month window that applies to taxpayers that have been under examination for at least 12 consecutive months as of the first day of the three-month window. In general, the three-month window begins on the fifteenth day of the seventh month of the taxable year and ends on the fifteenth day of the tenth month of the taxable year, to correspond to the extended due date of a taxpayer's federal income tax return. In addition, a CFC or 10/50 corporation that has had an issue under consideration within the meaning of Section 3.08(4) for at least 24 consecutive months and all of its controlling domestic shareholders that are under examination have been under examination for at least 24 consecutive months is eligible to change its method of accounting during the three-month window if the method of accounting is not an issue under consideration within the meaning of Section 3.08(1) or an item placed in suspense. [Section 8.02(1)(a)]
- Modified to make a CFC or 10/50 corporation ineligible for the 120-day window. [Section 8.02(1)(b)]
- Modify the rules for when a taxpayer under examination filing a Form 3115 may receive audit protection outside of a window period. These rules replace the previous requirement that the taxpayer acquire the director’s statement consenting to the filing of the Form 3115 prior to filing the Form 3115. [Sections 8.02(1)(c), 8.02(1)(e), and 8.02(1)(f)]

- Modifies the rules for when a taxpayer under examination filing a Form 3115 may receive audit protection by permitting the parent of a consolidated group to request a change in method of accounting on behalf of a consolidated group member that is under examination solely because it joined the consolidated group in a taxable year for which the group is participating in the CAP. However, the member's method of accounting to be changed must not be an issue under consideration. [Section 8.02(1)(d)]
- Provides a limited time frame after the member joins the consolidated group for the parent to file the Form 3115 for a year of change that is the taxable year the corporation became a member of the consolidated group, which in some cases permits the common parent of the consolidated group to file the Form 3115 up to 30 calendar days after the end of the taxable year. [Section 6.03(2)(a)(ii)]
- Modifies the rules for audit protection to provide that the IRS may require a CFC or 10/50 corporation to change its method of accounting for a taxable year preceding the requested year of change if any of the controlling domestic shareholders computed an amount of foreign taxes deemed paid with respect to the CFC or 10/50 corporation that exceeds 150 percent of the average amount of foreign taxes deemed paid by the shareholder with respect to the CFC or 10/50 corporation for the three preceding taxable years. [Section 8.02(5)]
- Clarifies the rules for a §481(a) adjustment to provide that if the director makes a correction to the amount of the §481(a) adjustment, ordinarily the director will take the entire amount of the correction into account for the earliest taxable year in the §481(a) adjustment period that is under examination, regardless of whether the statute of limitations on the assessment of tax under §6501 has not expired for one or more taxable years in the adjustment period. [Section 12.02(2)]

The following changes in Revenue Procedure 2015-13 impacted only Revenue Procedure 2011-14 (the prior automatic change procedure):

- Clarify, consistent with the IRS's longstanding interpretation of Rev. Proc. 2011-14, that waiver of a scope limitation under Rev. Proc. 2011-14 or an eligibility requirement under this revenue procedure does not affect whether the taxpayer receives audit protection for the change in method of accounting. [Sections 5.01 and 8.02(1)]
- Clarify that a taxpayer may file a Form 3115 under the automatic change procedures notwithstanding the fact that the taxpayer previously filed a Form 3115 under the non-automatic change procedures for the same change in method of accounting and for the same year of change, in limited specified circumstances. [Sections 5.04(2) and 5.05(2)]
- Modifies section 6.02(1) of Rev. Proc. 2011-14 to require taxpayers to file a Form 3115 in all cases when requesting consent under the automatic change procedures. However, when permitted in the applicable section of the List of Automatic Changes, a taxpayer may file a short Form 3115. See Section 3.07(2). [Section 6.01]
- Modifies section 6.02(3)(a)(ii) of Rev. Proc. 2011-14 to require taxpayers to file a copy of the Form 3115 with the IRS in Ogden, UT for all changes in method of accounting requested under the automatic change procedures. [Section 6.03(1)(a)(i)(B)]
- Clarifies how taxpayers submit additional correspondence regarding a Form 3115 filed under the automatic change procedures to Ogden, UT. [Section 6.03(1)(e)]

Changes that impact only items in Revenue Procedure 97-27 (non-automatic changes) in Revenue Procedure 2015-13 include:

- Provide, consistent with the IRS's longstanding practice, that ordinarily the IRS will not consent to a taxpayer changing a method of accounting in the year it ceases to engage in a trade or business to which the change would relate. [Sections 5.03 and 11.02(1)]

- Modifies section 8.11 of Rev. Proc. 97-27 to generally invalidate a Consent Agreement if the taxpayer does not implement the change in method of accounting by the later of either the due date of the taxpayer's federal income tax return for the taxable year succeeding the year of change or one year from the date of issuance of the letter ruling. [Section 11.03(2)(c)]
- Modifies the rules for revising the year of change to provide that, if a taxpayer files its Form 3115 on or before the last day of the sixth month of the year of change, it may submit a written request to revise the year of change on or after, but not before, the first day of the taxable year following the original year of change. [Section 13.01(1)(b)]
- Modifies the §481(a) acceleration requirement for a revised year of change to generally require that no more than seventy-five percent of a positive §481(a) adjustment be taken into account in the revised year of change. [Section 13.01(3)]

In addition to consolidating the automatic method changes found in Revenue Procedure 2011-14 and various IRS documents issued since that procedure was issued, Revenue Procedure 2015-14 makes the following changes of its own to those methods:

- Section 3.01 relating to advances made by a lawyer on behalf of clients, is amplified and modified to include method changes involving cases handled on a non-contingent fee basis;
- Section 6.01, relating to impermissible to permissible methods of depreciation or amortization, is clarified to provide that a taxpayer can make a change under this section if the asset is depreciable or amortizable under the taxpayer's present or proposed method of accounting;
- Section 7.01, relating to changes for research and experimental (R&E) expenditures under §174, is amplified and modified. Section 7.01 of this revenue procedure now applies to a method change from treating R&E expenditures under any provision of the Code other than §174 (including § 263A) to treating R&E expenditures under §174. Section 7.01 of this revenue procedure also now applies where a taxpayer already has a valid § 174 election in effect, but fails to treat a portion of its R&E expenditures in accordance with its valid election. Under section 7.01 of this revenue procedure, the taxpayer may change its method regarding that portion of its R&E expenditures to conform to its valid election;
- Section 10.11, relating to changes for tangible property, is modified. Sections 10.11(3)(a)(vii), 10.11(3)(b)(vii) and 10.11(8)(a) are modified to remove the term "transaction" in describing costs in addition to commissions that facilitate the sale of property by a dealer in property. This term is removed to eliminate inconsistencies in the terms utilized in section 10.11 and to more accurately reflect the costs described under § 1.263(a)-1(e)(2);
- Section 11.01, relating to certain UNICAP methods used by resellers and reseller producers, is clarified to provide that the change does not apply to a reseller or reseller-producer that wants to change its method of accounting for interest capitalization;
- Section 11.09, relating to changes to a reasonable allocation method described in § 1.263A-1(f)(4) for self-constructed assets, is modified to provide that a reseller-producer may make this change, and that a producer or reseller-producer not capitalizing a cost subject to § 263A may make a change to capitalizing that cost under a reasonable method within the meaning of section 1.263A-1(f)(4) (other than the methods specifically described in § 1.263A-1(f)(2) or (3)) that the producer or reseller-producer is already using for self-constructed assets;
- Section 14.01, relating to overall change from the cash method to an accrual method, is clarified, amplified, and modified to provide that a concurrent change to a special method is permitted to be made, if such change is also an automatic change under this revenue procedure, a section of the Code, or regulations, or in other guidance published in the Internal Revenue Bulletin;
- Section 14.09, relating to changes from the cash to an accrual method for specific items, is modified to provide that the change does not apply to a change in method of accounting for interest that is not taken into account under § 1.446-2;

- Section 14.15, relating to debt issuance costs, is modified to include a change for capitalized debt issuance costs from one permissible method to another permissible method under the last sentence of § 1.446-5(b)(2) if the total original issue discount determined for purposes of § 1.446-5 is *de minimis*;
- Section 15.07, relating to advance payments, is modified to include a change for advance payments that are defined in § 1.451-5(a)(1);
- Section 15.10, relating to retainages, is clarified to provide that the change does not apply to retainages for long-term contracts that must be accounted for under the percentage-of-completion method under § 460, or to long-term-contracts accounted for under exempt percentage of completion method or the completed contract method and is modified to require a new separate designated automatic accounting method change number for retainages received under long-term contracts;
- Section 15.11, relating to advance payments – changes in applicable financial statements,(AFS), is modified to provide that a change under this section is made without audit protection under section 8.01 of Rev. Proc. 2015-13;
- Section 16.01, relating to Series E, EE, or I U.S. savings bonds, is modified to waive the requirement under section 6.03(1)(a) of Rev. Proc. 2015-13 to file an Ogden copy (formerly the national office copy under Rev. Proc. 2011-14) of the statement required by section 16.01(2)(b) of this revenue procedure;
- Section 18.01, relating to changes for long-term contracts, is amplified and modified to include a change made by a taxpayer that is required to change its method of accounting for its long-term contracts as defined in § 460(f) to the percentage of completion method (PCM) described in § 1.460-3(b)(2) if the taxpayer fails to use the PCM in the first taxable year and the succeeding taxable year(s);
- Section 19.01(3), relating to changes involving timing of incurring liabilities for vacation pay, is amplified and modified to include method changes involving sick pay, and severance pay. This change was previously limited to vacation pay;
- Section 21.16, relating to a change in computing ending inventory under the retail inventory method, is modified to provide that a retail LCM taxpayer may make a change to computing the cost complement to comply with § 1.471-8(b)(3), including a change from an improper method to an alternative method for computing the cost complement and a change from one method described in § 1.471-8(b)(3) to another method described in § 1.471-8(b)(3);
- Section 22.07, relating to changes within the inventory price index computation (IPIC) method, is modified and amplified to include changes from using a representative appropriate month to using an appropriate month, and is modified to provide that the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 is inapplicable in the case of a taxpayer using the 10 percent method described in § 1.472-8(e)(3)(iii)(C)(2) that makes a change under section 22.07(1)(f) of this revenue procedure;
- This revenue procedure clarifies that the eligibility rule in section 5.01(1)(c) of Rev. Proc. 2015-13 (relating to § 381(a) transactions) applies to the method changes described in the List of Automatic Changes in a manner consistent with the rules provided in § 1.381(c)(4)-1(a)(4) or (5) or § 1.381(c)(5)-1(a)(4) or (5);
- The following sections are added to the List of Automatic Changes in this revenue procedure to provide additional changes in method of accounting to be made under the automatic change procedures:
    - Section 4.02, relating to changes for conformity election by bank after previous election automatically revoked;
    - Section 5.02, relating to changes to comply with § 163(e)(3);
    - Section 10.12, relating to railroad track structure expenditures, is added to the List of Automatic Changes, consistent with Rev. Proc. 2002-65, 2002-2 C.B. 700, and Rev. Proc. 2001-46, 2001-2 C.B. 263. However, the eligibility rules in section 5.01(1) of Rev. Proc. 2015-13 apply to a change under section 10.12 of this revenue procedure;
    - Section 11.13, relating to changes to or within the U.S. ratio method;
    - Section 11.14, relating to depletion;

- Section 23.02, relating to changes from the mark-to-market method of accounting described in § 475 to a realization method of accounting; and
- Section 25.03, relating to changes in qualification as life/nonlife insurance company under § 816(a).

- The following sections are modified to provide that the eligibility rule in section 5.01(1)(d) of Rev. Proc. 2015-13 (final year of trade or business) applies to a taxpayer making a change under the automatic change procedures:
  - Section 2.01, relating to treating amounts received as loans;
  - Section 3.02, relating to ISO 9000 costs;
  - Section 3.03, relating to restaurant or tavern smallwares packages;
  - Section 3.04, relating to timber grower fertilization costs;
  - Section 10.03, relating to removal costs;
  - Section 21.02, relating to estimating inventory "shrinkage";
  - Section 21.09, relating to rotable spare parts;
  - Section 23.01, relating to commodities dealers, securities traders, and commodities traders electing to use the mark-to-market method of accounting under § 475(e) or (f);
  - Section 31.01, relating to de minimis original issue discount (OID); and
  - Section 33.02, relating to stated interest on short-term loans of cash method banks.
- The following sections are modified to provide that the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 (5-year item change) applies to a taxpayer making a change under the automatic change procedures:
  - Section 3.02, relating to ISO 9000 costs;
  - Section 3.03, relating to restaurant or tavern smallwares packages
  - Section 3.04, relating to Timber grower fertilization costs; and
  - Section 21.02, relating to Estimating inventory "shrinkage";
- The following sections are obsolete and are removed from the revenue procedure in their entirety:
  - Section 6.12, relating to depreciation of qualified revitalization building in the expanded area of a renewal community;
  - Section 6.13, relating to loss disallowance rule upon a disposition of an insurance contract acquired in an assumption re-insurance transaction;
  - Section 6.22, relating to Kansas additional first-year depreciation;
  - Section 11.03, relating to changes to no longer capitalize research and experimental expenditures under § 263A, is removed because it is now covered by new section 7.01(2)(a)(iv) of this revenue procedure, and is therefore obsolete; and
  - Section 13.01, relating to a change to comply with § 404(a)(11).
- Because the following sections can also be made under section 6.01 of this revenue procedure, they are removed from the revenue procedure in their entirety:
  - Section 6.04, relating to depreciation of modern golf course greens;
  - Section 6.05, relating to depreciation of original and replacement tire costs;
  - Section 6.06, relating to depreciation of gas pump canopies;
  - Section 6.07, relating to depreciation of utility assets;
  - Section 6.18, relating to depreciation of MACRS property acquired in a like-kind exchange or as a result of an involuntary conversion; and
  - Section 6.21, relating to a change in treatment of land from depreciable to nondepreciable property.

- Certain method changes described in the appendix of Rev. Proc. 2011-14 permitted a taxpayer to file a statement in lieu of a Form 3115. Section 6.01 of Rev. Proc. 2015-13 requires taxpayers to file a Form 3115 when requesting consent under the automatic change procedures. However, the following sections permit a taxpayer to request consent for a change on a short Form 3115: 11.13, 14.10, 17.01, and 19.08. Sections 15.11 and 16.01, and certain changes under section 14.04 of this revenue procedure continue to permit a taxpayer to file a statement in lieu of a Form 3115.
- The following sections are modified to include a reduced filing requirement of the Form 3115 by qualified small taxpayers:
  - Section 6.01, relating to a change from an impermissible to permissible method of accounting for depreciation;
  - Section 6.02, relating to a change from a permissible to permissible method of accounting for depreciation;
  - Section 6.08, relating to depreciation of cable TV fiber optics;
  - Section 6.09, relating to a change in general asset account treatment due to a change in the use of MACRS property;
  - Section 6.10, relating to a change in method of accounting for depreciation due to a change in the use of MACRS property;
  - Section 6.11, relating to depreciation of qualified non-personal use vans and light trucks;
  - Section 6.17, relating to a change from impermissible to permissible method of accounting for depreciation or amortization for disposed depreciable or amortizable property;
  - Section 6.23, relating to tenant construction allowances;
  - Section 6.26, relating to safe harbor method of accounting for determining the depreciation of certain tangible assets used by wireless telecommunications carriers under Rev. Proc. 2011-22; and
  - Section 10.07, relating to repairable and reusable spare parts.

At the end of Revenue Procedure 2015-14 is a contact list of IRS personnel, with phone numbers, for the various automatic changes contained in this ruling.

These procedures are generally effective for changes filed on or after January 16, 2015 for a change of year ending on or after May 31, 2014.

## SECTION: 453
## TAXPAYER ALLOWED TO REVOKE ELECTION OUT OF INSTALLMENT REPORTING WHERE ACCOUNTANT MADE ERROR IN COMPUTING TAXABLE INCOME

Citation: PLR 201503005, 1/16/15

Mistakes happen, but in this case the IRS allowed a tax advisers a "get of jail (not quite) free" card with regard to giving bad advice to a client due to an error in computing the taxpayer's taxable income when preparing a return. In PLR 201503005 the IRS granted the taxpayer the right to revoke an election out of the installment basis of accounting.

The taxpayer had sold an asset in the year in question, receiving 30% down and the remainder to be paid over time. The accountant when preparing the taxpayer's return for the year in question determined, based on the taxable income he computed, that the use of the installment method would not benefit the taxpayers in the year in question.

Based on this calculation, the accountant prepared the return in question reporting the entire gain. The accountant would later admit in an affidavit submitted with the ruling request that he was solely responsible for the election and that the taxpayer were not made aware (and they stated they weren't aware) that the return elected out of the installment method.

When preparing the next year's tax return, the accountant became aware of the error on the prior year's return. When the accountant properly computed the taxable income for that prior year, it was clear that the taxpayers would have benefitted from electing the installment method on that return.

As the ruling notes:

> Section 453(d)(1) and section 15A.453-1(d)(1) provide that a taxpayer may elect out of the installment method in the manner prescribed by the regulations. Section 15A.453-1(d)(3) provides that a taxpayer who reports an amount realized equal to the selling price including the full face amount of an installment obligation on a timely filed tax return for the taxable year in which the installment sale occurs is considered to have elected out of the installment method.
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> Except as otherwise provided in the regulations, section 453(d)(2) requires a taxpayer who desires to elect out of the installment method to do so on or before the due date (including extensions) of the taxpayer's federal income tax return for the taxable year of the sale. Section 15A.453-1(d)(4) provides that an election under section 453(d)(1) is generally irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. Section 15A.453-1(d)(4) provides that revocation of an election out of the installment method is retroactive and will not be permitted when one of its purposes is the avoidance of federal income taxes.

Since "avoidance" in "IRS-speak" translates into a reduction of taxes, that appears to present a problem, especially coupled with the caveat that the election out is generally irrevocable.

But in this case the IRS decided the facts were such that they were willing to grant the revocation of the election. The ruling concluded:

> In the instant case, Taxpayers' accountant erroneous computation when preparing Taxpayers' Year 1 federal return lead the accountant to elect out of the installment method under § 453. Taxpayers were not aware of the accountant's action. When the accountant realized his erroneous computation, he and Taxpayers filed a request for consent to revoke the election out of the installment method. The information submitted indicates that Taxpayers' desire to revoke the election is due to the accountant's oversight rather than hindsight by Taxpayers or a purpose of avoiding federal income taxes.

Thus the IRS allowed the taxpayers to go back and take advantage of the installment method on the return for the year of sale.

The good news for the accountant was that the client was able to avoid being stuck with taxes that otherwise would either have been due years later or, perhaps, in a lesser amount. Had that not been the case, the accountant may have found him/herself looking at a damage claim from the client.

While the accountant did not get off without any negative effects (it seems likely the accountant had to shepherd this request through the IRS without any compensation and also may likely had ended up footing the bill for the user fee), it was still a far preferable result to the alternative.

## SECTION: 6501
## WRONG DATES ON FORM 872 DID NOT CONTROL, FACTS MAKE CLEAR THE TAXPAYER'S ATTORNEY/CPA WAS AWARE IRS MEANT TO EXTEND YEAR UNDER EXAM

Citation: Hartland Management Services, et al v. Commissioner, TC Memo 2015-8, 1/12/15

In the case of *Hartland Management Services, et al v. Commissioner*, TC Memo 2015-8, the taxpayer argued that since the IRS put the wrong years on Forms 872, Consent to Extend the Time to Assess Tax, (which the taxpayer signed) the statute of limitations for the real years under examination had expired by the time the IRS actually issued notices of deficiency.

The examination in question involved various entities and individuals with differing year ends. The entities and year ends involved in the examination are noted below:

- Integra Engineering, LTD, Form 1120 for year ended November 30, 2008
- Craig J. Kunkel and Kim M. Kunkel for year ended December 31, 2008
- Hartland Management Services, Inc. Form 1120 for year ended May 31, 2009

All of the returns were filed by their unextended due dates originally, so each would see the statute for assessment of taxes expire three years after the due dates of the returns in question.

As normally occurs when an exam approaches the date when the statute will expire, the IRS requested that the taxpayers extend the statute of limitations. The IRS drafted Forms 872 for the taxpayers. However, in putting together the forms two errors were made in filling in the forms.

First, the IRS showed the "period ended" dates as not the actual fiscal year month and day, but rather the month and day of the unextended due dates. As well, rather than referencing the years in question, the IRS managed to put the soon to be current year (2012) on those line as well.

So the Forms 872 reflected the following dates:

- Integra Engineering, LTD, Form 1120 for period ended February 15, 2012
- Craig J. Kunkel and Kim M. Kunkel for period ended April 15, 2012
- Hartland Management Services, Inc. Form 1120 for period ended August 15, 2012

Effectively, the IRS entered the dates on which the statute would expire for each entity rather than the original period end dates.

The taxpayers signed and returned each of the forms in December of 2011 and the IRS area director executed the Forms a few days later.

The IRS continued on with the exam and eventually began to run close to the date granted to extend the statute on the original Forms 872. Though the IRS had issued final examination reports before the expiration of the period, the IRS (as normal) sent a request again to extend the statute, though this time showing correct dates.

This time the taxpayers refused to sign the forms. In fact, as the Court notes:

> On the additional Forms 872 for Integra and the Kunkels, someone from petitioners' counsel's law firm handwrote "Do not sign" on pages 1 and drew a large "X" through the signature pages.

There is no question that the IRS issued its notice of deficiency after the date on which the statute would have expired on its own. Therefore, if the taxpayers had not consented to an extension of the statute, the IRS's deficiency was issued too late and, therefore, no tax would be due regardless of whether the IRS's findings justified additional tax.

The taxpayers argued that, in fact, they had never agreed to extend the statute. Not surprisingly they pointed to the literal language on the Forms 872, drafted by the IRS, that provided for an extension of periods other than those under examination.

The IRS argued that this was merely a "scrivener's error" and argues that the parties unawareness of these errors constitute a "mutual mistake." That is, the actual intent of the parties when the documents were signed was to extend the statute on years under examination and that the taxpayers did not reasonably believe that they were really extending the literal periods noted on the Form 872.

The Tax Court, while noting that generally the IRS must bear the consequences of any defects in a document it prepares which it plans to use to establish an extension of the statute, nevertheless if there can be shown that the real agreement is different from what the document reflects the Court may reform the document to conform to that intent.

The Court found that evidence suggested strongly that the parties' intent was to extend the years under exam. The Court noted that the taxpayer's representative who signed the Form 872:

> … as a tax lawyer and a C.P.A., is presumed to be knowledgeable about Federal income tax law and procedure in general. Likewise, with his education and experience--and in the context of the communications between the parties--Bastian would, or should, have known that the years sought to be extended would be the ones nearing the expiration of their period of limitation. Lastly, the parties did not intend to extend the period of limitation for petitioners' tax years ending in 2012. Not only were the 2012 tax years still open at the time the initial Forms 872 were signed in 2011, but the forms referred to tax years with ending dates that did not match petitioners'. See *Atkinson v. Commissioner*, T.C. Memo. 1990-37, 58 T.C.M. (CCH) 1257, 1260 (1990) (stating under similar circumstances that where "the period for assessment of tax had not begun, it makes no sense that the parties would seek to extend it").

Thus, the Court did not find it plausible that he believed he was actually extending the statute for the periods that were shown on the Form 872. Rather, his representation for the years under exam, conversations with the IRS and understanding of the normal course of exams makes it clear he understood the intent of the IRS was to extend the period under exam, not the nonexistent periods mentioned in the Forms 872.

Thus, the Court found, the statute had been extended when the first set of Forms 872 were signed.

As a general rule, if there is an error of this sort that the taxpayer either was aware of or should have reasonably been aware of, the taxpayer (or, in this case, the taxpayer's representative) cannot ignore the error, execute the document and then, when it is too late for the IRS to correct the drafting, attempt to use that error against the IRS.

## SECTION: 6532
## DESPITE IRS LETTER CLAIMING FORMAL DENIAL "TO COME" TAXPAYER FOUND TO HAVE FILED CHALLENGE TO REFUND CLAIM DENIAL AFTER EXPIRATION OF STATUTE OF LIMITATIONS

Citation: Harper International Corp. v. United States, United States Court of Federal Claims, Docket No. 1:14-cv-00492, 2015 TNT 9-14, 1/12/15

Dealing with the statute of limitations when a taxpayer decides to challenge a denial of a refund claim by the IRS can be tricky. As the taxpayer in *Harper International Corp. v. United States*, United States Court of Federal Claims, Docket No. 1:14-cv-00492, 2015 TNT 9-14, discovered, you can't always take the IRS's statements in informal notes at face value.

The taxpayer had filed amended returns claiming it was due research credits. On May 2, 2012 the IRS issued a Notice of Disallowance to the taxpayer via certified mail, stating that if the taxpayer wanted to contest this claim it must file suit in District Court or the Court of Claims within two years of that letter.

However the next month the taxpayer received a note from the IRS, not sent via certified mail, dated June 5, 2012 stating that the IRS had decided to disallow the claim and, as well, that a formal notice of disallowance would be issued after which the taxpayer would have two years to file a challenge in Court. However, no later correspondence was ever received.

The taxpayer mailed its petition to the Court of Federal Claims on June 4, 2014, and it was received by the Court of Federal Claims on June 9, 2014.

The IRS argued that the filing was too late—the petition needed to have been filed by May 2, 2012.

The Court of Claims considered the evidence in front of it on this matter. The Court noted that, generally, the May 2, 2012 notice would have started the running of the two year statute. As well, the Court noted that IRC §6532(a)(4) provides:

> Any consideration, reconsideration, or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

The Court notes that, normally, IRC §6532(a)(4) serves to prohibit consideration of equitable considerations based on the actions of the IRS once the notice is mailed. While the taxpayer claimed four cases showed exceptions to this broad rule, the Court found that none of them were similar to the situation before the Court.

In this case, the June 5 notice did not admit to an error by the IRS, nor did it reflect that the prior notice had been withdrawn and should be ignored. While the fact that the note stated that a formal notice was to be forthcoming in the future, the fact was that the taxpayer had a notice of denial in hand and the June 5 note confirmed that same fact.

As well, the Court noted that even if it decided that the June 5 note should serve as a "substitute" notice of disallowance, the taxpayer failed to meet that deadline as well. While the petition was mailed via certified mail on June 4, that "timely mailing equals timely filing" rule only apply to petitions filed before the Tax Court, not those filed with the Federal Court of Claims.

This case serves as a reminder that where a statute of limitations issue is concerned, advisers should remember to go back to the strict tenets of the underlying statute and that statements of the IRS that may appear to create additional time to act may be found not to do so. Thus, advisers should take care to find the earliest possible statute date that could be argued to exist by the IRS and insure that action is taken before that date.

## SECTION: 7436
## TAX COURT HAS JURISDICTION SO LONG AS SECTION 530 QUALIFICATION IS AT ISSUE, EVEN IF NO DETERMINATION OF EMPLOYEE STATUS ISSUED BY IRS

Citation: American Airlines Inc. v. Commissioner, 144 TC No. 2, 1/13/15

When discussing "Section 530 relief" regarding payroll tax issues we are not, as many initially assume discussing §530 of the Internal Revenue Code (which actually deals with Coverdell Education Savings Accounts). Rather that term refers to a provision in the Revenue Act of 1978 found in Section 530 of the act that provides relief from liability in certain cases from payroll tax liabilities.

The relevant portion of the Revenue Act of 1978 states:

> (a) Termination of Certain Employment Tax Liability.--
>
> > (1) In general.--If--
> >
> > > (A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and
> > >
> > > (B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

Under IRC §7436(a) the Tax Court has jurisdiction in limited cases when Section 530 is involved. That provision provides:

Creation of Remedy.--If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that--

> (1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or
>
> (2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

The actual issues involved in the case of are not ones that many clients will run into—the IRS was arguing about whether American Airlines was required to withhold taxes on South American employees. However it does look at how far the Tax Court's jurisdiction may be extended in a Section 530 case.

The Tax Court agreed that, absent the Section 530 jurisdictional authority granted it under §7436(a), it would lack jurisdiction to hear the matter in this case.

This was not first time American Airlines had been examined on this issue. A prior exam covering 1992-96 had dealt with the same issue. The employees in questions flew routes in South America, operations that American had acquired from the now defunct Eastern Airlines. These individuals flew on flights to/from Miami to their home countries and normally spent only a few hours in the Miami area. Eastern had never treated these individuals as U.S. employees and American continued this practice.

The 1992-96 exam eventually made it Appeals. Appeals found that Section 530 applied in this case, as American was treating these individuals consistently over the periods in question and there was a reasonable basis for not treating them as a U.S. employee. Appeals also found that the result should be the same for all future periods.

There the matter remained until the IRS decided to look into the issue seven years later. The IRS examined the period from 2003-2006 and decided that American was responsible either for withholding under §1446 on U.S. source income on these employees or, alternatively, was subject to the regular payroll tax liabilities on these individuals. American challenged this position, arguing that Section 530 continued to shield them from these liabilities, adopting the line given in the decision of Appeals in the earlier case.

American paid the payroll tax liabilities but then filed with the Tax Court for both the §1446 and payroll tax issues. The IRS argued that because it had not made a determination regarding employment status and had issued the employment tax assessment solely as a "backup" position if it was found that §1446 did not apply, the Tax Court had no jurisdiction to deal with the payroll tax issue.

At this point, though, the only issue to be decided is whether the Tax Court had jurisdiction. The IRS argued that, in fact, there was no jurisdiction because the IRS never made a finding that these individuals were employees—and, in fact, American essentially agreed they were employees, just not whether they had a U.S. tax issue related to these individuals.

The Court notes that four criteria must be met in order for the Tax Court to have jurisdiction over a matter under §7436(a). Those criteria are:

- An examination in connection with the audit "of any person";
- A determination by the Secretary that "such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual";
- An "actual controversy" involving the determination as part of an examination; and
- the filing of an appropriate pleading in the Tax Court.

The IRS disputed that this case met either the second or third requirement were met. A failure to meet just one of those two requirements would strip the Tax Court of jurisdiction, so the Court looked at those two issues.

The IRS argues that there must be a controversy regarding employment status to trigger the "actual controversy" provision—and the parties all agreed these individuals were employees. However the Tax Court ruled that the actual controversy rule did not limit itself to a question of whether individuals were employees—rather, a question regarding whether a taxpayer is eligible for Section 530 relief is enough to meet this test.

The IRS argued, regardless, that they had made no determination that American was not eligible for Section 530 relief. The IRS argued that, despite the Appeals determination in the earlier exam, Section 530 was not properly at issue here. The IRS's belief is that Section 530 is limited to issues regarding whether someone is an employee, which is not an issue here. Therefore no determination under Section 530 is required here and, in this case, the IRS made no such determination.

The Court found the IRS's logic wanting. A decision not to decide that someone qualifies for Section 530 relief is effectively a decision to deny relief—that is, the question of whether Section 530 is applicable would necessarily involve a determination of at least its applicability.

The IRS finally argues that the whole point of the §7436(a) grant of jurisdiction was to allow the Tax Court to decide issues of worker classification and if there is no issue of worker classification in the case the Tax Court cannot have jurisdiction. The Court summarizes the IRS argument thus:

> Section 7436 is titled "Proceedings for Determination of Employment Status", and subsection (a) is titled "Creation of Remedy." Respondent suggests that these titles show that the Court's jurisdiction is limited to instances where a determination of worker classification was made.

The Tax Court rejected that view as well. The Court first rules that the title of the statute does not override the unambiguous meaning of the actual text of the statute.

The Court then turns to the provisions of §7436(a) and notes that the section provides jurisdiction if *either* of the two conditions is met. Thus, a denial of Section 530 relief independent of any determination of whether individuals are employees is enough to trigger Tax Court jurisdiction.

Thus, the Court finds it does have the right to hear this case.