



March 23, 2021

Mr. John Moriarty
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

**Re: Additional Procedural Guidance Request on Tax Methods and Periods Issues
Related to the Tax Cuts and Jobs Act**

Dear Mr. Moriarty:

The American Institute of CPAs (AICPA) commends the continued efforts of the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) to issue timely guidance related to Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA or the “Act”)¹ as well as Public Law 116-136, the Coronavirus Aid, Relief and Economic Security Act (CARES Act).² The AICPA recognizes and appreciates the significant volume of guidance that Treasury and the IRS have issued in recent months and acknowledges that the government is continuing to work on numerous urgent matters related to the coronavirus pandemic.

The final section 451³ regulations⁴ were published on January 14, 2021 and address the taxable year of inclusion under an accrual method of accounting and advance payments for goods, services, and other items. The final small business regulations⁵ were published on January 5, 2021 and address small taxpayer exceptions under sections 263A, 448, 460 and 471. The Consolidated Appropriations Act of 2021 (CAA2021),⁶ was signed into law on December 27, 2020 and changed the manner in which electing real property trades or businesses (RPTOB) depreciate certain residential rental property.

The AICPA requests additional procedural guidance with regard to recently issued final regulations and recent changes associated with the alternative depreciation system (ADS) recovery period change for certain residential rental property owned by electing real property trades or businesses.

¹ P.L. 115-97, 131 Stat. 2054.

² P.L. 116-136.

³ Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

⁴ T.D. 9941.

⁵ T.D. 9942.

⁶ P.L. 116-260.

Specifically, the AICPA requests guidance and provides recommendations in the following areas:

- I. Provide procedural guidance related to final section 451 regulations
- II. Provide procedural guidance related to final small business regulations
- III. Provide procedural guidance related to the ADS recovery period for residential rental property
- IV. Provide flexibility for impermissible accounting method changes and a waiver of the five-year scope limitation for impermissible to permissible depreciation method changes

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Connie Cunningham, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (310) 557-8544, or CCCunningham@bdo.com; Elizabeth Young, Senior Manager — AICPA Tax Policy & Advocacy, at (202) 434-9247, or elizabeth.young@aicpa-cima.com; or me at (612) 397-3071 or chris.hesse@CLAconnect.com.

Sincerely,



Christopher W. Hesse, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
Mr. Mark Mazur, Acting Assistant Secretary for Tax Policy, Department of the Treasury
Mr. William Paul, Acting Chief Counsel, Internal Revenue Service
Ms. Wendy Friese, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Mr. Timothy Powell, Tax Policy Advisor, Office of Tax Legislative Counsel, Department of the Treasury
Ms. Kathleen Reed, Branch Chief, Income Tax & Accounting, Internal Revenue Service

AMERICAN INSTITUTE OF CPAs

Additional Procedural Guidance Request on Tax Methods and Periods Issues Related to the Tax Cuts and Jobs Act

March 23, 2021

BACKGROUND

The final section 451 regulations address section 451(b) and (c), regarding the timing of income inclusion under an accrual method of accounting, including the treatment of advance payments for goods, services and certain other items. The regulations reflect changes made by the TCJA to add a book income condition to the all-events test for income tax recognition and codify one of the existing methods for deferring recognition of advance payments.

The final small business regulations implement legislative changes to sections 263A, 448, 460 and 471 that simplify the application of tax accounting provisions for some businesses with average annual gross receipts that do not exceed \$25 million, adjusted for inflation.

CAA2021 changed the manner in which electing RPTOB depreciate certain residential rental property.

The changes result in many complexities that taxpayers must evaluate so the AICPA appreciates any additional procedural guidance that can be issued expeditiously.

SPECIFIC COMMENTS

I. Provide procedural guidance related to final section 451 regulations

Overview

Treasury and the IRS are contemplating additional procedural guidance related to compliance with the section 451 regulations.

Recommendation

The AICPA recommends that Treasury and the IRS issue procedural guidance specifying automatic accounting method changes that may be necessary to assist our members with compliance related to the final section 451 regulations.

Analysis

Issuing guidance providing taxpayers with automatic accounting method changes in a timely manner will assist taxpayers with the implementation of the final rules, which apply to taxable years beginning on or after January 1, 2021. Guidance will also assist taxpayers that wish to apply the final rules early, for 2020 tax returns they are currently preparing. Additional sub-regulatory guidance would aid taxpayers in addressing issues they are encountering while

applying the final rules. For example, automatic accounting method changes with broad applicability would help taxpayers address more unforeseen issues as they comply with the final rules (to include a waiver of the prior five-year eligibility rule).

For example, providing automatic method changes related to adopting the regulations is critical to aid in timely and effective compliance. Specifically, with respect to the section 451 rules, taxpayers require guidance on how to make the changes related to the provisions, and whether the method change(s) would be implemented with a section 481(a) adjustment or using a cut-off approach. Additionally, we request confirmation that no accounting method change is required if a taxpayer's present method of accounting conforms to a method of accounting required or permitted in the final regulations. For example, if a taxpayer is presently using the Deferral Method under Rev. Proc. 2004-34, or the Deferral Method under Prop. Reg. § 1.451-8, and the section 451(c) Deferral Method in the final regulations produces an identical result in prior and prospective tax years, then, in order to conserve taxpayer and IRS resources, the filing of an accounting method change to comply with the final section 451 regulations is not required or appropriate.

II. Provide procedural guidance related to final small business regulations

Overview

Treasury and the IRS are contemplating additional procedural guidance for compliance with the final small business regulations.

Recommendation

The AICPA recommends that Treasury and the IRS issue timely additional procedural guidance for compliance with the final small business regulations allowing for automatic method change options.

Analysis

The small business regulations apply to tax years beginning after January 5, 2021; however, the final rules can be applied to earlier tax years. A factor to consider regarding the small business taxpayer provisions is the effective date of the final regulations. Adding automatic method change options to implement the final regulations will assist taxpayers given they can apply the rules for 2020. In particular, the final regulations include many potential inventory-related changes, and taxpayers may prefer to file those changes with their 2020 tax returns in order to comply and recognize the section 481(a) adjustments as soon as feasible. Additionally, including any potential guidance outlining the extent to which a taxpayer is permitted to apply the rules to prior taxable years would be helpful. The guidance should outline whether taxpayers are permitted to make the election in Treas. Reg. § 1.448-2(b)(2)(iii)(B) in a prior taxable year, despite the requirement that it is made on a timely filed return.

III. Provide procedural guidance related to the ADS recovery period for residential rental property

Overview

Treasury and the IRS are contemplating additional procedural guidance that will assist taxpayers with compliance related to the ADS recovery period change for residential rental property.

Recommendations

The AICPA recommends that Treasury and the IRS issue the following procedural guidance for electing RPTOBs to comply with the new legislation:

- Provide an update to designated change numbers 87 and 88 under sections 6.04 and 6.05 of Rev. Proc. 2019-43, to allow taxpayers to file a change in use accounting method change for property when an accounting method has not yet been adopted because a change in use was made in the immediately preceding year, but an impermissible method was adopted.
- Provide an update to designated change numbers 87 and 88 under sections 6.04 and 6.05 of Rev. Proc. 2019-43, to waive the scope limitation under section 5.01(1)(f) of Rev. Proc. 2015-13 for a taxpayer's four taxable years after a RPTOB election was made.

Analysis

The TCJA provided that RPTOBs could elect exception from the interest expense limitation under section 163(j). As an offset, section 168(g)(8) required those electing RPTOBs to depreciate nonresidential real property, residential rental property, and qualified improvement property (QIP) (collectively, "applicable real property") under the ADS. Revenue Procedure 2019-08 provided that this conversion to ADS was required for all applicable real property held by the RPTOB and was accounted for as a change in use under Treas. Reg. § 1.168(i)-4(d). However, the revenue procedure also provided that the conversion to ADS should be based on the ADS rules applicable to the year the property was placed in service, not the year in which the property was converted to ADS. This required residential rental property placed in service prior to January 1, 2018 to convert to a 40-year ADS life rather than the 30-year ADS life established by the TCJA for residential rental property placed in service after December 31, 2017. In 2021, the CAA2021 retroactively provided that electing RPTOBs are required to use a 30-year ADS recovery period for residential rental property placed in service prior to January 1, 2018.

Providing an update to designated change numbers 87 and 88, under sections 6.04 and 6.05 of Rev. Proc. 2019-43 would provide an exception that functions similarly to the "1-year depreciable property" exception provided under section 6.01(1)(b) of Rev. Proc. 2019-43. However, rather than applying to property *placed in service in the prior year*, it would relate to property subject to a *change in use in the prior year*. This exception would provide taxpayers with an opportunity to file an accounting method change when the RPTOB election was made

in the year immediately prior to the year of change. Without this guidance, any RPTOB with residential rental property that made an election for its 2019 tax year would not be permitted to comply with the 30-year life requirement added by CAA2021 through an automatic consent Form 3115, *Application for Change in Accounting Method*. Rather, the RPTOB would have to file an amended 2019 tax return, which is administratively burdensome, particularly for partnerships subject to the partnership audit rules under section 6221 that require filing administrative adjustment requests under section 6227.

In addition, providing an update to designated change numbers 87 and 88 under sections 6.04 and 6.05 of Rev. Proc. 2019-43, to waive the eligibility requirement under section 5.01(1)(f) of Rev. Proc. 2015-13 that a taxpayer not have made or requested a change for the same item during any of the five taxable years ending with the year of change will allow taxpayers to adopt the change required by the CAA2021 on an automatic basis. Without this guidance, any electing RPTOB that made an accounting method change related to residential rental property within the five years preceding its implementation of the change required by the CAA2021 cannot adopt the CAA2021 requirements on an automatic basis. The situation is similar to the waiver of the eligibility rules provided in Rev. Proc. 2020-25, which allow taxpayers to file an automatic accounting method change to change their method of accounting for depreciation of QIP.

IV. Provide flexibility for impermissible accounting method changes and a waiver of the five-year scope limitation for impermissible to permissible depreciation method changes

Overview

Given the many complexities and changes put in place by the TCJA, it is not uncommon for RPTOBs to inadvertently convert property that was not applicable real property, such as qualified leasehold improvements or land improvements, to ADS. Similarly, many RPTOBs converted the entire cost basis of their applicable real property to ADS even though they may not have had time to identify whether any personal property or other property with a different class life was included within the cost of that real property. Many taxpayers are only able to identify such property through cost segregation studies performed after the taxable year the property is placed in service, which could create procedural issues associated with implementing the method change in future years.

Recommendation

The AICPA recommends the following procedural updates to permit RPTOBs to more easily comply with the requirements of the TCJA:

- Provide an update to designated change number 7 under section 6.01(2) of Rev. Proc. 2019-43 to waive, for a limited period of time, the eligibility rule under section 5.01(1)(f) of Rev. Proc. 2015-13 for property held by a taxpayer at the beginning of the year a RPTOB election was made, and was subject (either correctly or incorrectly) to the change in use rules when the taxpayer made the RPTOB election.

- Provide an update to designated change number 7 under section 6.01(1)(b) of Rev. Proc. 2019-43 to allow taxpayers to file an automatic change in accounting method for property where an impermissible change in accounting method was made in the previous tax year.

Analysis

We request additional procedural relief for electing RPTOBs as it relates to impermissible to permissible depreciation changes to correct any improper depreciation methods after the taxable year in which the RPTOB election is made. In the real estate industry, it is not uncommon for a cost segregation study to be performed a few years after the property is initially placed in service. Due to resource constraints exacerbated by the COVID-19 pandemic, many taxpayers further delayed the implementation of cost segregation studies to future years, or may have made inadvertent errors in recording the classification of assets in their fixed asset records prior to the year they made the RPTOB election. Accordingly, these electing RPTOBs that erroneously converted non-real property to ADS at the time the RPTOB election was made are currently precluded from filing an automatic accounting method change to correct their depreciation for such non-real property assets. Therefore, the electing RPTOBs are subject to a prior five-year item change eligibility rule under section 5.01(1)(f) of Rev. Proc. 2015-13 for the non-real property assets, which occurred when such assets were inadvertently included in the change to ADS that was made in the year the RPTOB election was made. The taxpayer believed it was making a change in use under Treas. Reg. § 1.168(i)-4(d), which generally is not viewed as a change in accounting method under Treas. Reg. § 1.446-1(e)(2)(ii)(d)(3)(ii). Because the portion of the taxpayer's basis attributable to the non-real property assets did not qualify for this change in use treatment, it was an impermissible change in method of accounting for the non-real property assets. That change to an impermissible method implicates the five-year change prohibition. This prohibits an automatic accounting method change from an impermissible method to a permissible method of accounting for the non-real property assets.

Providing an update to designated change number 7 under section 6.01(2) of Rev. Proc. 2019-43, would allow taxpayers that made the RPTOB election the opportunity to properly identify the class of property that was inadvertently treated as applicable real property when it was acquired, or inadvertently misclassified, and would allow those taxpayers to file an automatic accounting method change for this property to use correct depreciation methods. Without this waiver, taxpayers seeking to change to a proper depreciation method for any class of property that was incorrectly treated as applicable real property and which was changed to ADS due to the RPTOB election would need to file a non-automatic accounting method change under Rev. Proc. 2015-13. Many taxpayers that place property in service prior to making a RPTOB election, and then wish to perform a cost segregation study in a subsequent year after the RPTOB election is made, are not aware of the tax accounting method change consequences when undertaking these steps. Such taxpayers may not realize they are precluded from filing an automatic accounting method change until the taxable year for which the cost segregation study is performed. Providing relief to taxpayers in these scenarios would mitigate an ongoing, but not obvious, unintended tax consequence because of the order in which the assets are placed in service, an RPTOB election is made, and a cost segregation study is performed. As the ordering of these events is generally not dictated by tax considerations, but by general business considerations and taxpayer resource constraints, waiving the prior five-year eligibility

requirement for an accounting method change that is generally non-controversial would conserve taxpayer, IRS exam, and IRS national office resources.

Accordingly, waiving the prior five-year change eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 for taxpayers that made a RPTOB election for the four taxable years after a RPTOB election is made with respect to all property held at the beginning of the taxable year that the election is made would provide additional benefit. Alternatively, if the IRS determines that the recommendation is too broad or would potentially permit abusive behavior by taxpayers, a temporary waiver of the five-year eligibility rule for taxable years beginning on or after January 1, 2018 and ending on or before December 31, 2022 would also provide assistance.

In addition, providing an update to designated change number 7 under section 6.01(1)(b) of Rev. Proc. 2019-43 would allow for an exception which functions similarly to the “1-year depreciable property” exception currently provided under section 6.01(1)(b) of Rev. Proc. 2019-43. However, rather than applying to property *placed in service in the prior year*, the exception would relate to property held at the beginning of the year in which a RPTOB election is made and where the ***RPTOB made an impermissible accounting method change in the prior year***. This exception would provide RPTOBs that made an election in the immediately preceding year and inadvertently converted property to ADS an opportunity to file an automatic accounting method change to correct the accounting method for property that is not applicable real property. This exception will provide the same benefits as discussed above with respect to changes necessitated by the CAA2021.