



TaxNewsFlash

United States

No. 2018-540
December 4, 2018

U.S. Tax Court: Summary judgment denied; “deposit method” for customer payment

The U.S. Tax Court today denied the IRS’s motion for summary judgment in a case concerning the taxpayer’s income tax liability for 2008. The Tax Court found “there exist genuine disputes of material fact” as to whether the taxpayer had adopted the deposit method of accounting with respect to one customer payment.

The case is: *Thrasys, Inc. v. Commissioner*, T.C. Memo 2018-199 (December 4, 2018). Read the [opinion](#) [PDF 90 KB]

Summary

The taxpayer was in the business of developing and creating custom software. During 2008, the taxpayer received but did not report a \$15 million payment from one customer. The taxpayer claimed that this payment was an advance payment, and that tax on this amount was properly deferred to 2009 under the “deferral method” of accounting permitted by Rev. Proc. 2004-34.

The IRS countered that the taxpayer could not use the deferral method of accounting because adopting that method would have been an impermissible change in its method of accounting, absent consent of the IRS Commissioner before changing the accounting method.

The Tax Court, in denying the IRS’s motion for summary judgment, noted the following:

- First, the taxpayer treated only one customer payment (the \$15 million) as a “deposit” for book and federal income tax purposes. The Tax Court stated: “A question of a material fact exists as to whether [this] ‘deposit’ treatment displayed the consistency required to constitute a method of accounting on the basis of which [the taxpayer] ‘regularly compute[d] its income.’”

- Second, a change in method of accounting does not include a change in treatment resulting from a change in underlying facts. Here, the taxpayer treated the \$15 million differently because its independent auditor believed that this payment might have to be refunded to the customer and thus needed to be reflected on the taxpayer's financial statement as a customer "deposit" offset with a deposit obligation. As the court noted, the taxpayer and its auditor "may reasonably have believed that treating the \$15 million payment as a deposit was a required 'change in treatment resulting from a change in underlying facts.'"

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)