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Proposed regulations under section 451(b) and (c); OIRA review completed

OMB's Office of Information and Regulatory Affairs (OIRA) has completed its review of proposed regulations under section 451(b) and (c) concerning the timing of income rules used by accrual method taxpayers.

The proposed regulations concern provisions added to the Code by the U.S. tax law enacted in December 2017—(Pub. L. No. 115-97), the law that is at times referred to as the "Tax Cuts and Jobs Act" (TCJA).

OIRA reports its review of the following proposed regulations was completed on August 20, 2019:

- **RIN: 1545-BO68:** *Drafting regulations regarding the timing of inclusion in gross income under 451(b) [TCJA]*

- **RIN: 1545-BO78:** *Guidance on new section 451(c) [TCJA]*

Treasury regulations that are identified as "major" regulations are subject to review by OMB's OIRA before issuance, pursuant to Executive Order 13771. Now that OIRA review has been completed, Treasury and the IRS can be expected to release these proposed regulations (the timing of their release is not known).

Background

Section 451(b) provides special rules for the tax year of inclusion. Under the 2017 tax law, accrual method taxpayers must recognize income no later than the tax year in which the item is recognized as revenue on an applicable financial statement (i.e., the "all events test" is satisfied no later than the year in which the revenue is recognized for financial accounting purposes). This book-conformity requirement does not apply, however, either to an item of gross income earned in connection with a mortgage servicing contract, or to any item of gross income for which the taxpayer uses a special method of accounting provided under any other provision of the Code, except for the various rules for debt instruments contained in sections 1271-1288 concerning the rules for original issue discount (OID), discount on short-term obligations, market discount, and stripped bonds and coupons.

The proposed regulations under section 451(c) are described on the OIRA website as follows:

> *Section 451 generally governs the timing of income and provides that any item of gross income shall be Included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period. In general, amounts received by an accrual method taxpayer for goods or services to be provided in the future (advance payments) must be included in gross income in the taxable year of receipt. See 451; Schlude v. Commissioner, 372 U.S. 128 (1963); Rev. Rul. 84-31, 1984-1 C.B. 127.*
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> *Generally, under 451(c), for an accrual method taxpayer, deferral is permitted to the extent that an advance payment received is not recognized as revenue in an applicable financial statement in the year the payment is received. Any remaining portion of such advance payment is recognized in gross income in the taxable year following the taxable year in which such payment is received. Section 451(c) also codifies much of the treatment of advance payments under Rev. Proc. 2004-34 and permits the allocation of the transaction price to performance obligations if consistent with applicable financial statements.*

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.