



TaxNewsFlash

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Proposed regulations: Timing of income inclusion under section 451 (text of regulations)

The U.S. Treasury Department and IRS this afternoon released two sets of proposed regulations concerning the timing of income inclusion under section 451, reflecting legislative changes made by the 2017 U.S. tax law (Pub. L. No. 115-97) that is often referred to as the “Tax Cuts and Jobs Act.”

- [Proposed regulations \(REG-104870-18\)](#) [PDF 446 KB] (20 pages as published in the Federal Register) concern the tax year of income inclusion under an accrual method of accounting.
- [Proposed regulations \(REG-104554-18\)](#) [PDF 446 KB] (17 pages as published in the Federal Register) concern advance payments for goods, services, and other items.

These regulations are scheduled to appear in the Federal Register on Monday, September 9, 2019.

The purpose of this report is to provide text of these proposed regulations. More detailed discussions will be provided by KPMG in future reports.

Background

Section 451 generally governs the timing of income and provides that any item of gross income is to be included in the gross income for the tax year in which it is received by the taxpayer, unless under the method of accounting used in computing taxable income, the 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 tax year of receipt.

Section 451(b) provides special rules for the tax year of inclusion. Under the 2017 tax law changes, 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.

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 an advance payment is recognized in gross income in the tax year following the tax 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.

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