



Advocacy: the voice of small business in government

March 24, 2015

VIA ELECTRONIC SUBMISSION

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224
Notice.Comments@irsounsel.treas.gov

Re: Changes in Accounting Periods and in Methods of Accounting, Rev. Proc. 2015-20

Dear Mr. Wilkins:

The Office of Advocacy (Advocacy) offers the following comment to the Internal Revenue Service (IRS) in response to the above-referenced revenue procedure issued on February 13, 2015.¹ Rev. Proc. 2015-20 provides guidance on accounting requirements, commonly referred to as the “repair regulations,” related to the acquisition, production, or improvement of tangible property. The repair regulations direct when businesses must capitalize purchases of property and when businesses are permitted to deduct expenses in the year the businesses incur the expenditure. The IRS issued Rev. Proc. 2015-20 with the intent to make it easier for business owners to comply with the repair regulations. The revenue procedure also requested comment on whether the \$500 safe harbor threshold contained in the repair regulations should be raised. Advocacy commends the IRS for simplifying compliance with the repair regulations. However, based on feedback from small businesses, Advocacy strongly encourages the IRS to increase the \$500 safe harbor threshold.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial

¹ Rev. Proc. 2015-20, 2015-9 I.R.B. 694 available at http://www.irs.gov/irb/2015-9_IRB/ar09.html.

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held roundtables with small entities on this issue on February 14, 2013 and February 12, 2015. Advocacy has also spoken with other small business stakeholders.

Background

In 2011, the IRS issued temporary regulations regarding when businesses must capitalize purchases of property and when businesses are permitted to deduct them.⁶ These requirements, known as the repair regulations, affect nearly every small business across the country. The repair regulations impact businesses with depreciable assets, or businesses that buy, sell, improve, or dispose of assets.

In 2013, the IRS issued a final rule implementing the repair regulations.⁷ Although the repair regulations generally require a business to capitalize amounts paid to acquire or produce property, the final rule provides a safe harbor which permits a business to immediately expense the cost of property in the year that the cost was incurred as long as the property does not exceed a certain dollar amount. For businesses with an applicable financial statement,⁸ the safe harbor amount is limited to \$5,000 per invoice item. Businesses without an applicable financial statement are limited to a \$500 deduction amount per item.

On February 13, 2015, the IRS issued Rev. Proc. 2015-20 with the intent to make it easier for business owners to comply with the repair regulations. The simplified procedure allows small businesses to change a method of accounting under the repair regulations on a prospective basis for the first taxable year beginning on or after January 1, 2014. The new simplified procedure is generally available to small businesses, including sole proprietors, with assets totaling less than \$10 million or average annual gross receipts totaling \$10 million or less.

Rev. Proc. 2015-20 also requested comment on whether the \$500 safe harbor threshold should be raised for businesses that choose to deduct rather than capitalize expenses.

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ *Id.*

⁶ 76 Fed. Reg. 81060 (Dec. 27, 2011).

⁷ 78 Fed. Reg. 57686 (Oct. 21, 2013).

⁸ Applicable financial statements are a type of certified audited financial statement filed with the SEC.

Small Business Feedback

As described above, Advocacy has performed outreach and heard from a number of small business owners and representatives about the repair regulations. These small business stakeholders are pleased that the IRS revenue procedure will simplify compliance with the repair regulations. However, many small business owners have also expressed concern to Advocacy that the \$500 safe harbor is too low. Advocacy believes that the threshold should be raised to a level that takes into account the higher costs associated with practices and processes necessary to maintain applicable financial statements. If the threshold is kept at \$500, Advocacy is concerned that small businesses will be discouraged from utilizing the safe harbor.

As an example, one small business owner noted to Advocacy that something as “mundane and small as a tool box” could cost \$600 and would be above the safe harbor threshold. Another small business owner stated that “I cannot get a broken window repaired for less than \$500 typically.”

Further, some small business representatives observed that larger companies already have (or can afford) applicable financial statements while small businesses generally do not already have and cannot afford applicable financial statements. Therefore, many small businesses cannot take advantage of the larger \$5,000 safe harbor limit because of these additional compliance costs realized by small businesses. They are at a disadvantage relative to larger businesses that already have or can afford applicable financial statements.

Small business stakeholders in contact with Advocacy are in agreement that the current safe harbor is too low. These small business owners and representatives suggested to Advocacy different monetary thresholds to which the safe harbor should be raised to account for unique and additional compliance costs that would preclude these entities from being able to use this safe harbor. One representative small business owner, a CPA for other small businesses, stated that raising the safe harbor to \$1,000 would cover most of the repairs for which her clients paid. Several small business owners observed that the safe harbor should be raised to \$2,500 based on the costs of most repairs and depreciable assets. One small business owner indicated that the safe harbor should be raised to \$5,000 even if businesses do not have applicable financial statements.

Recommendation

Advocacy recommends that the IRS increase the \$500 safe harbor for the repair regulations to a higher amount. Advocacy further encourages the IRS to continue to conduct outreach to determine the most appropriate level to which the safe harbor should be raised. Advocacy also suggests that the IRS conduct a study to help determine the optimal level of the safe harbor. Advocacy stands ready to assist the IRS in its outreach efforts with small business.

Advocacy commends the IRS for simplifying compliance with the repair regulations and looks forward to working with the IRS. If you have any questions or require additional information please contact me or Assistant Chief Counsel Dillon Taylor at (202) 401-9787 or by email at Dillon.Taylor@sba.gov.

Sincerely,



Claudia Rodgers
Acting Chief Counsel for Advocacy



Dillon Taylor
Assistant Chief Counsel for Advocacy

Copy to: The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget