

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-50
December 14, 2015

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2015-82, page 859.

This notice increases the de minimis safe harbor limit provided in regulations § 1.263(a)-1(f)(1)(ii)(D) for a taxpayer without an applicable financial statement from \$500 to \$2,500.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

Increase in De Minimis Safe Harbor Limit for Taxpayers Without an Applicable Financial Statement

Notice 2015–82

PURPOSE

This notice provides an increase in the de minimis safe harbor limit provided in § 1.263(a)–1(f)(1)(ii)(D) of the Income Tax Regulations for a taxpayer without an applicable financial statement (“AFS”).

BACKGROUND

On September 17, 2013, the Treasury Department and the Internal Revenue Service (“IRS”) issued final regulations under §§ 1.162–3, 1.162–4, 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3 (T.D. 9636, 2013–43 I.R.B. 331, 78 Fed. Reg. 57686) to provide guidance on the application of §§ 162(a) and 263(a) of the Internal Revenue Code (“Code”) to amounts paid to acquire, produce, or improve tangible property (“final tangible property regulations”). The final tangible property regulations are applicable to taxable years beginning on or after January 1, 2014. Optionally, a taxpayer may choose to apply the final tangible property regulations to taxable years beginning on or after January 1, 2012, and before January 1, 2014.

In addition to clarifying the requirements under §§ 162(a) and 263(a), the final tangible property regulations also include several simplifying provisions that are elective and prospective in application, and are intended to ease taxpayers’ compliance with the regulations and reduce administrative burden. Section 1.263(a)–1(f), for example, provides a de minimis safe harbor election that permits a taxpayer to not capitalize, or treat as a material or supply, certain amounts paid for tangible property that it acquires or produces during the taxable year provided the taxpayer meets certain requirements and the property does not exceed certain dollar limitations. If such requirements are met, amounts paid for the qualifying property generally may be deducted un-

der § 162, provided the amount otherwise constitutes an ordinary and necessary business expense in carrying on a trade or business. See § 1.263(a)–1(f)(3)(iv).

Under § 1.263(a)–1(f)(1)(ii)(D), a taxpayer without an AFS (as defined in § 1.263(a)–1(f)(4)) may elect to apply the de minimis safe harbor if, in addition to other requirements, the amount paid for the property subject to the de minimis safe harbor does not exceed \$500 per invoice (or per item as substantiated by the invoice). In contrast, under § 1.263(a)–1(f)(1)(i)(D), a taxpayer with an AFS may elect to apply the de minimis safe harbor if, in addition to other requirements, the amount paid for the property does not exceed \$5,000 and the taxpayer treats the amount paid as an expense on its AFS in accordance with its written accounting procedures. A larger safe harbor limitation is reasonable for a taxpayer with an AFS because an AFS provides independent assurance that the taxpayer’s de minimis policies are consistent with the requirements of generally accepted accounting principles (“GAAP”) and do not materially distort the taxpayer’s financial statement income.

The de minimis safe harbor provided under § 1.263(a)–1(f) was intended as an administrative convenience whereby a taxpayer is permitted to deduct small dollar expenditures for the acquisition or production of new property or for the improvement of existing property, which otherwise must be capitalized under § 263(a). The de minimis safe harbor does not limit a taxpayer’s ability to deduct otherwise deductible repair or maintenance costs that exceed the amount subject to the safe harbor. The safe harbor merely establishes a minimum threshold below which all qualifying amounts are considered deductible. Consistent with longstanding federal income tax rules, a taxpayer may continue to deduct all otherwise deductible repair or maintenance costs, regardless of amount.

After the final tangible property regulations were issued, the Treasury Department and the IRS received numerous letters from representatives of small business

taxpayers requesting that the Treasury Department and the IRS increase the de minimis safe harbor limit for taxpayers that do not have an AFS. In Rev. Proc. 2015–20, 2015–9 I.R.B. 694, the Treasury Department and the IRS formally requested comments on whether it is appropriate to increase the de minimis safe harbor limit provided in § 1.263(a)–1(f)(1)(ii)(D) for a taxpayer without an AFS to an amount greater than \$500, and, if so, what amount should be used and the justification for considering that amount appropriate.

DISCUSSION

The Treasury Department and the IRS received more than 150 comment letters suggesting an increase in the amount of the de minimis safe harbor limit for taxpayers without an AFS. The suggested increased amount ranged from \$750 to \$100,000. Generally, commenters wrote that the \$500 limitation was too low to effectively reduce the administrative burden of complying with the capitalization requirement for small business taxpayers that frequently purchase tangible property in their trades and businesses. Commenters noted that the cost of many commonly expensed items (for example, tablet-style personal computers, smart phones, and machinery and equipment parts) typically surpass the current \$500 per item or invoice threshold provided in § 1.263(a)–1(f)(1)(ii)(D). Commenters also stated that the \$500 threshold does not correspond to the financial accounting policies of many small businesses, which frequently permit the deduction of amounts in excess of \$500 as immaterial. Commenters noted that without an increase in the de minimis safe harbor limit for taxpayers without an AFS, a capitalization threshold in excess of \$500 can only be substantiated by establishing that a taxpayer’s policy results in the clear reflection of income for federal income tax purposes, resulting in additional burden and uncertainty for taxpayers. Finally, many commenters expressed concern regarding the disparate treatment of taxpayers with an AFS compared to those without an AFS under the safe harbor requirements,

stating that obtaining an AFS is cost prohibitive for many small businesses and does not adequately justify the substantially lower de minimis ceiling for these taxpayers.

Section 1.263(a)-1(f)(1)(ii)(D) permits the IRS to change the safe harbor limit to an amount identified in published guidance in the Federal Register or in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b)).

Having considered taxpayers' comments, the goal of the final tangible property regulations to reduce administrative burden, and the concern that taxpayers' methods of accounting clearly reflect income, the § 1.263(a)-1(f)(1)(ii)(D) de minimis safe harbor limitation for a taxpayer without an AFS is increased from \$500 to \$2,500.

EFFECTIVE DATE

This Notice is effective for costs incurred during taxable years beginning on or after January 1, 2016.

AUDIT PROTECTION

For taxable years beginning before January 1, 2016, the IRS will not raise upon examination the issue of whether a taxpayer without an AFS can utilize the de minimis safe harbor provided in § 1.263(a)-1(f)(1)(ii) for an amount not to exceed \$2,500 per invoice (or per item as substantiated by invoice) if the taxpayer otherwise satisfies the requirements of § 1.263(a)-1(f)(1)(ii). Moreover, if the taxpayer's use of the de minimis safe harbor provided in § 1.263(a)-1(f)(1)(ii) is an issue under consideration in examination,

appeals, or before the U.S. Tax Court in a taxable year that begins after December 31, 2011, and ends before January 1, 2016, the issue relates to the qualification under the safe harbor of an amount (or amounts) that does not exceed \$2,500 per invoice (or per item as substantiated by invoice), and the taxpayer otherwise satisfies the requirements of § 1.263(a)-1(f)(1)(ii), then the IRS will not further pursue the issue.

CONTACT INFORMATION

The principal author of this notice is Christine Merson of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Merson at (202) 317-5100 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

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INTERNAL REVENUE BULLETIN

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