

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **201852019**

Release Date: 12/28/2018

CC:ITA:B01: ADubert
POSTN-136051-18

[Third Party Communication:
Date of Communication: <Month> DD, YYYY]

UILC: 451.00-00

date: December 17, 2018

to: William G. Bissell
Office of Chief Counsel
(Large Business & International)

from: Peter E. Ford
Senior Counsel, Branch 1
(Income Tax & Accounting)

subject: Automatic consent request from an impermissible method under Rev. Proc. 2018-60

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Under Rev. Proc. 2018-60, 2018-51 I.R.B. 1045, may an accrual method taxpayer that recognizes an item of income on an impermissible method of accounting (i.e., one that does not comply with the all events test of § 451(b)(1)(C) of the Internal Revenue Code (Code)) obtain automatic consent of the Commissioner to change its method of accounting to comply with § 451(b)(1)(A)?

CONCLUSION

Yes. An accrual method taxpayer, whose present method of accounting for an item of gross income is impermissible under section 451(b)(1)(C), is eligible to use Rev. Proc. 2018-60 to obtain automatic consent of the Commissioner to change its method of accounting to comply with § 451(b)(1)(A), if the taxpayer otherwise satisfies the terms and conditions set forth in that revenue procedure.

FACTS

Taxpayer is an accrual method taxpayer with an applicable financial statement that files its tax return on a calendar year basis. Taxpayer proposes to adopt a method under

Rev. Proc. 2018-60 to comply with § 451(b), as amended by section 13221 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97 (December 22, 2017)(TCJA).¹ Taxpayer's present method of accounting is an impermissible method that does not comply with either the all events test of § 451, as amended by the TCJA or with § 451, prior to being amended by the TCJA.

LAW AND ANALYSIS

Section 13221 of the TCJA amended § 451, which relates to the timing of income recognition, for taxable years beginning after December 31, 2017.

Section 451(b)(1)(A), as amended, provides that the all events test with respect to any item of gross income (or portion thereof) shall not be treated as met any later than when such item (or portion thereof) is taken into account as revenue in an applicable financial statement of the taxpayer, or such other financial statement as the Secretary may specify (collectively, an AFS).²

Section 451(b)(1)(C), as amended, provides that the all events test is met with respect to any item of gross income if all the events have occurred which fix the right to receive such income and the amount of such income can be determined with reasonable accuracy.

Section 446(e) generally provides that a taxpayer who changes its method of accounting on the basis of which it regularly computes income in keeping its books shall, before computing taxable income under the new method, secure the consent of the Secretary. See section 1.446-1(e)(3)(ii).

Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067, and as modified by Rev. Proc. 2016-1, 2016-1 I.R.B. 1, and Rev. Proc. 2017-59, 2017-48 I.R.B. 543, provides the general procedures under § 446 and § 1.446-1(e) by which a taxpayer may obtain automatic consent of the Commissioner to change a method of accounting described in the List of Automatic Changes. Rev. Proc. 2018-31, 2018-22 I.R.B. 637 contains the current List of Automatic Changes.

Section 3 of Rev. Proc. 2018-60 modifies Rev. Proc. 2018-31 to provide automatic method change consent to comply with §§ 451(b)(1)(A) and 451(b)(4).³ Here, an accrual method taxpayer with an AFS seeks to rely on Rev. Proc. 2018-60 to obtain the

¹ Taxpayer is not seeking consent to adopt a method pursuant to Rev. Proc. 2018-29, 2018-22 I.R.B. 634, as modified by Rev. Proc. 2018-49, 2018-41 I.R.B. 548.

² Section 451(b)(1)(B), as amended, generally provides that § 451(b) does not apply to a taxpayer which does not have an AFS.

³ A method change request under § 451(b)(4) is not at issue in this request for advice. Rev. Proc. 2018-60 also permits certain taxpayers to make a change in method of accounting using a streamlined method change procedure if the change results in a zero § 481(a) adjustment or if the taxpayer requesting the change is a small business taxpayer.

automatic consent of the Commissioner to change from an impermissible method to a permissible method in compliance with § 451(b)(1)(A).

Section 3 of Rev. Proc. 2018-60 modifies the current List of Automatic Changes in Rev. Proc. 2018-31 and added a new section 16. Section 16.12(2) of Rev. Proc. 2018-31 provides that the revenue procedure applies to a taxpayer that wants to change to a method of accounting that treats an item of gross income, or portion thereof, as meeting the all events test no later than when such item, or portion thereof, is taken into account as revenue in its AFS under § 451(b)(1)(A). Similarly, section 16.12(1) of Rev. Proc. 2018-31 provides that the revenue procedure applies to an accrual method taxpayer with an AFS that wants to change its method of accounting for the recognition of income to a method of accounting that complies with § 451(b)(1)(A).

Rev. Proc. 2018-60 provides automatic consent for method changes to comply with § 451(b)(1)(A), as amended by the TCJA. The operative rule set forth in § 451(b)(1)(A) includes the requirements of the all events test under § 451(b)(1)(C). Thus, to satisfy § 451(b)(1)(A), a taxpayer must also comply with the all events test as defined in § 451(b)(1)(C).

Accordingly, a taxpayer that complies with all the terms and conditions set forth in Rev. Proc. 2018-60, may obtain automatic consent of the Commissioner to change from a method that is impermissible under § 451(b)(1)(C) to a permissible method that complies with § 451(b)(1)(A), as amended by TCJA.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-7003 if you have any further questions.