

## TAX ALERT

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**February 17, 2015**

### **IRS Provides Relief to Small Businesses from Filing Form 3115 Related to Tangible Property Regulations**

In our prior communication dated November 18, 2014, we informed you about the tangible property regulations issued by the IRS. The regulations explain when amounts paid to acquire, produce, or improve tangible property can be deducted and when they must be capitalized. [Click here](#) to read that newsletter.

On February 13, 2015, the IRS issued a Revenue Procedure that offers significant relief to small business taxpayers from the requirements of filing Form 3115, Application for Change in Accounting Method, to comply with the final tangible property regulations (“TPRs”) and certain asset disposition regulations, which were originally issued in December 2013.

#### **Qualification**

This relief is available to a taxpayer with one or more separate and distinct trades or businesses that has either:

1. Total assets of less than \$10 million as of the first day of the tax year; or
2. Average annual gross receipts of \$10 million or less for the prior three tax years

The criteria for relief is applied separately to each of the taxpayer’s trades or businesses. A taxpayer’s separate and distinct trade or business that does not meet one or both criteria does not qualify for relief.

NOTE: All taxpayers are still required to comply with the final TPRs in their first tax year beginning on or after January 1, 2014. The relief provision reduces the filing and compliance requirements related to expenditures incurred prior to the 2014 tax year.

#### **Options**

The relief allows qualifying taxpayers (based on the criteria above) to make changes to comply with the TPRs on a cutoff basis that only takes into account amounts paid or incurred, as well as dispositions, in tax years beginning on or after January 1, 2014. If a taxpayer chooses to make the changes on a cutoff basis, they may be made without filing Form 3115 for the taxpayer’s first tax year beginning on or after January 1, 2014. In other words, a taxpayer does not need to file Form 3115 for the 2014 tax year to comply with the covered changes if the taxpayer applies the changes on a cutoff basis and, therefore, does not have a tax adjustment related to expenditures prior to 2014.

NOTE: A taxpayer that applies the changes on a cutoff basis (meaning without filing Form 3115) does not receive audit protection for amounts subject to the change for tax years beginning prior to January 1, 2014.

Also, a taxpayer choosing not to file a Form 3115 to comply with the TPRs may not make a late partial disposition election. This means the taxpayer will be unable to claim retirement losses on previously retired assets or asset components. This election allows a taxpayer to claim a retirement loss on the undepreciated basis of previously retired asset components, such as the roof of a building. These losses can be significant for even small taxpayers. Consequently, many taxpayers who otherwise qualify for the relief provided in the new revenue procedure may choose not to exercise it. Similarly, taxpayers who compute sizeable favorable tax adjustments for implementing the TPRs (by finding significant capitalized expenditures that are deductible under the TPRs) may decline the relief.

## Summary

- A taxpayer that qualifies for relief based on the criteria above is not required to file Form 3115 in order to comply with the tangible property regulations.
- They must still comply for expenditures incurred on or after January 1, 2014, but do not have to look back at prior year expenditures to determine if a tax adjustment is required.
- However the consequences of using this relief provision include:
  - no audit protection for expenditures prior to 2014,
  - no ability to take favorable tax deductions for those expenditures, and
  - no ability to deduct a current loss for assets that were retired or replaced in prior years. &

**Like many tax matters, these rules are complex and we have only provided a brief overview of the issues. For more information, please contact your Green Hasson Janks advisor for further details at 310.873.1600.**

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