

Tax Alert: New IRS Guidance on the Work Opportunity Tax Credit and Tangible Property Regulations

Two recent IRS developments could affect businesses' 2014 income tax returns

The IRS recently released guidance on two significant areas that affect many businesses — the Work Opportunity Tax Credit (WOTC) and the tangible property regulations. Both pieces of guidance apply to 2014 income tax returns. The former can help certain employers save taxes, and the latter can help small businesses reduce administrative burdens and compliance costs.

Extension for meeting WOTC certification requirement

The WOTC was among those provisions extended through Dec. 31, 2014, by the Tax Increase Prevention Act of 2014, which was passed last December. The credit is for employers that hire individuals who are members of targeted groups, including certain qualified veterans.

Taxable employers that hired targeted group members can claim the tax credit as a general business credit against their income tax. Before an employer can claim the credit, it must obtain certification from a “designated local agency” (DLA) that the hired individual is indeed a targeted group member. The employer normally must submit IRS Form 8850, “Pre-Screening Notice and Certification Request for the Work Opportunity Credit,” to the DLA no later than the 28th day after the individual begins work for the employer.

The retroactive extension of the WOTC for 2014 at the end of the year, however, meant that many employers would need additional time — the 28-day period had already expired for many of the covered employees hired in 2014. Thus, the IRS has given employers until April 30, 2015, to request certification from their DLAs for members of targeted groups hired in 2014.

A timely request for certification doesn't eliminate the need for an employer to receive a certification before claiming the credit, though. So employers may need to file for a tax return extension.

Easier tangible property regulation compliance

In 2013, the IRS released final regulations on the tax treatment of expenditures related to tangible property. The regs provide guidance on how to comply with Internal Revenue Code Sections 162 and 263, which require the capitalization of amounts paid to acquire, produce or improve tangible property but allow amounts for incidental repairs and maintenance of property to be deducted. The regs explain how to distinguish between capital expenditures and deductible business expenses.

The regs generally apply to tax years beginning on or after Jan. 1, 2014. They affect all businesses that own or lease tangible property, including buildings, machinery, vehicles, furniture and equipment.

Many of the small businesses affected asked the IRS to make it simpler for them to begin applying the regs. The IRS has now granted some relief, available for 2014 tax returns. It released a new procedure that allows qualified small businesses to make certain changes in their method of accounting on a “cut-off” basis — with an adjustment under Sec. 481(a) that

takes into account amounts paid or incurred, and dispositions, only in taxable years beginning on or after Jan. 1, 2014.

The Sec. 481(a) adjustment generally accounts for how a taxpayer treated the items being changed in prior years to avoid duplication of deductions or omission of income. Under the new procedure, amounts paid or incurred, and dispositions, before Jan. 1, 2014, continue to be accounted for under the former method and require no adjustment.

The simplified procedure generally is available to small businesses — including sole proprietors — with total assets of less than \$10 million on the first day of the tax year for which the accounting method change is effective or average annual gross receipts of \$10 million or less for the prior three tax years. These tests are applied at the trade or business level. For example, a C corporation holding company with three single-member limited liability companies (SMLLCs) must apply the tests at the SMLLC level.

The IRS has also waived the requirement to file Form 3115, “Application for Change in Accounting Method,” for small business taxpayers who opt to use the simplified procedure for 2014. Qualified taxpayers may therefore implement the regulations on their tax returns without the burdens associated with Form 3115, although some may nonetheless find it advisable to file the form.

A taxpayer who properly files Form 3115 typically receives prior-year “audit protection” for the item affected by the method change. In other words, the IRS can’t audit open tax years and charge the taxpayer interest and penalties for underpayments related to use of the previous method. Some small business taxpayers may want to file Form 3115 to ensure audit protection.

Be aware, too, that the waiver of the Form 3115 requirement applies only to accounting method changes related to the tangible property regulations. Changes associated with other items still require the filing of Form 3115.

What if you’ve already filed your 2014 return with a Form 3115? The IRS has created a transition rule that permits qualified small business taxpayers to withdraw their Form 3115 by filing an amended return on or before the due date of the taxpayer’s timely filed (including any extension) original federal income tax return for the requested year of change.

Navigating turbulent tax waters

Tax planning requires ongoing navigation of constantly churning waters. Your tax advisors can help you comply with all the requirements for obtaining the WOTC credit, determine the most advantageous approach to compliance with the tangible property regulations and stay on top of additional tax developments.

FOR MORE INFORMATION

If you have questions about this alert, please contact John Evans, Partner, by phone at 212.503.6380 or by email at jevans@markspaneth.com or any of our Marks Paneth professionals.

Any advice in this communication should be considered in the context of the services we are providing to you. Preliminary advice should not be relied upon and may be insufficient for penalty protection.

© **Marks Paneth LLP** 2015 | www.markspaneth.com
NEW YORK CITY | WASHINGTON, DC | NEW JERSEY | LONG ISLAND | WESTCHESTER |
CAYMAN ISLANDS