

## Tax News & Views Health Care Edition

### Relief for small businesses to adopt tangible property regulations

The Internal Revenue Service (IRS) recently issued a news release and [Revenue Procedure 2015-20](#) which will make it easier for small businesses to comply with the tangible property regulations. The simplified procedures are available to small businesses with assets totaling less than \$10 million or average annual gross receipts of \$10 million or less for the prior three taxable years.

#### Background

On September 13, 2013, the Treasury Department (Treasury) released final regulations ([T.D. 9636](#)) that provide guidance on the application of Internal Revenue Code (IRC) Section 263(a) to amounts paid to acquire, produce, or improve tangible property, as well as rules for materials and supplies and proposed regulations ([REG-110732-13](#)) addressing dispositions and general asset accounts (collectively, the "2013 Regulations"). The 2013 Regulations are generally effective for tax years beginning on or after January 1, 2014; however, taxpayers were permitted to apply them to tax years beginning on or after January 1, 2012. Changes to comply with or adopt the non-elective provisions in the 2013 Regulations generally will be made through an accounting method change by filing Form 3115, Application for Change in Accounting Method. The 2013 Regulations also allow taxpayers to make a number of annual elections, including a de minimis safe harbor election, a small taxpayer safe harbor election, and a capitalization election. These annual elections do not require a taxpayer to change its method of accounting.

Since the 2013 Regulations and the accompanying method change procedures were published, Treasury and the IRS have received numerous requests to further simplify the process for small businesses to start applying the final tangible property regulations. In particular, Treasury and the IRS were asked to permit small businesses to make changes in methods of accounting using a cut-off basis and without filing a Form 3115.

#### Relief for small businesses

Revenue Procedure 2015-20 allows a simplified procedure for small businesses to change a method of accounting under the final tangible property regulations on a

prospective basis for the first taxable year beginning on or after January 1, 2014. Under the simplified procedure, a small business may make certain tangible property changes in methods of accounting with an adjustment under IRC Section 481(a) that takes into account only amounts paid or incurred, and dispositions, in taxable years beginning on or after January 1, 2014. Effectively this allows small businesses to make the change on a cut-off basis. Taxpayers should be mindful that if they choose to use the cut-off basis, they will not receive audit protection for taxable years beginning prior to January 1, 2014.

In addition, small businesses are permitted to make certain tangible property method changes without filing a Form 3115. This gives the small business taxpayer the option of making certain tangible property method changes on the 2014 federal tax return without including a separate Form 3115 or separate statement. Of course, some taxpayers may still wish to file a Form 3115 anyway to retain a clear record of the change in accounting method.

The revenue procedure also requests comments from taxpayers on whether it is appropriate to increase the de minimis safe harbor limit for a taxpayer without an applicable financial statement to an amount greater than \$500, and if so, what amount should be used and the justification for considering that amount appropriate. Comments may be submitted to Treasury through April 21, 2015.

### IRS guidance on FICA refund claims for severance payments

In [Announcement 2015-8](#), the IRS provides guidance on the application of the decision in *U.S. v. Quality Stores, Inc.* (S. Ct. 03/25/2014 [113 AFTR 2d 2014-1326]) to claims for refund of employment taxes paid with respect to severance payments.

#### Background

On March 25, 2014, the Supreme Court unanimously held in *Quality Stores* that severance payments were wages subject to Federal Insurance Contribution Act (FICA) tax. The Supreme Court's ruling reversed the Sixth Circuit Court of Appeals decision. The *Quality Stores* case addressed severance payments made to workers who



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were involuntarily terminated as part of a Chapter 11 bankruptcy; the payments were not attributable to the rendering of any particular employment services. The Supreme Court concluded that the severance payments fell within IRC Section 3121's broad definition of "wages" for FICA tax purposes. The Supreme Court rejected the taxpayer's argument that the payments' tax treatment was altered by a special withholding provision in IRC Section 3402 regarding supplemental unemployment compensation benefits.

#### **Refund claims**

In the years leading up to the Supreme Court's decision, the IRS received refund claims for FICA taxes paid with respect to severance payments from over 3,000 taxpayers. The IRS had previously suspended action on the claims for refund, pending the Court's decision. As a result of the Supreme Court's holding in *Quality Stores*, the Service will disallow all claims for refund of FICA taxes paid with respect to severance payments (that do not satisfy a narrow exclusion contained in Revenue Ruling 90-72.) This includes all claims for refund that were held in suspense pending the resolution of *Quality Stores*.

#### **Did you know?**

##### **Updated revenue procedure on determination letters for qualified nonprofit health insurance issuers**

The IRS recently released [Revenue Procedure 2015-17](#), which supersedes Rev. Proc. 2012-11 and sets forth procedures for issuing determination letters and rulings on the exempt status of qualified nonprofit health insurance issuers (QNHI) described in IRC Section 501(c)(29). A QNHI seeking recognition of exemption must submit a letter application (rather than a form) with Form 8718, User Fee for Exempt Organization Determination Letter Request, and include the appropriate user fee.

#### **Final versions of 2014 forms for employer and insurer Affordable Care Act information reporting**

The IRS has posted final forms and instructions for employers to voluntarily report the health coverage they offered to employees in 2014. The forms include Form 1095-B, Health Coverage, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. The forms are used to report information to the IRS and covered individuals regarding health insurance coverage. Reporting is voluntary for calendar year 2014. Reporting will be mandatory for employers for calendar year 2015, with the first forms being due in January 2016.

#### **Deloitte Thoughtware**

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