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What is a “Qualifying Taxpayer” under the Repair Regulations?

-by Neil E. Harl*

The final repair regulations\(^1\) which were similar but not identical to the temporary repair regulations\(^2\) were to be followed by all taxpayers commencing in taxable years beginning on or after January 1, 2014.\(^3\) The temporary regulations were to become effective, generally, for taxable years beginning on or after January 1, 2012 but Ann. 2013-7 stated that the effective date for T.D. 9564 would be January 1, 2014.\(^4\) That aspect created considerable confusion among taxpayers and tax practitioners.

However, one question posed for the various regulations has been – do small taxpayers have to meet the same classification and reporting requirements as large taxpayers? The answer came, not in the regulations, except for a hint,\(^5\) but in Rev. Proc. 2014-16\(^6\) and Rev. Proc. 2014-54.

**Duties of “qualified taxpayers”**

Rev. Proc. 2014-16\(^6\) in Section 3.01(4) (1)(c)(ii) defines “qualified taxpayer” as a taxpayer whose average annual gross receipts, as determined under § 1.263(a)-3(h)(3), of the three preceding taxable years is [sic] less than or equal to $10,000,000. This definition would cover a high percentage of farm and ranch firms.

But the key question is what a “qualified taxpayer” is required to do. In subsection (c)(i) of that passage in Section 3.01(4)(1) a qualified taxpayer” is nonetheless required to complete only the following information on Form 3115 –

- The identification section of page 1 (above Part I);
- The signature section at the bottom of page 1;
- Part I, line 1(a);
- Part II, all lines except lines 11, 13, 14, 15 and 17;
- Part II, line 13, if the change is to depreciating property;
- Part IV, lines 25 and 26; and
- Schedule E, if applicable.

Rev. Proc. 2014-54\(^9\) restates the requirements as to what a “qualified taxpayer” must do in filing a Form 3115 and modifies the last two requirements as follows –

- Part IV, lines 24, 25 and 26, and
- Schedule E, lines 3, 4a, 4b and 4c.

In paragraph (6) of the same Revenue Procedure, Rev. Proc. 2014-54\(^9\) alters the last requirement above for Schedule to state –

- Schedule E, line 3.

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In conclusion

It is clear that compliance with the final regulations, 1 Rev. Proc. 2014-16 2 and Rev. Proc. 2014-54 3 is not an insignificant task, especially the first time through the procedure. One wonders if all of this complexity is justified in light of – (1) the trend to allow a write-off of a substantial part of the income tax basis in the first year, with the trend toward minimizing depreciation; and (2) the taxpayer and tax practitioner time necessary to comply fully with the published authorities.

ENDNOTES

5. See the Preamble to T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331, under the heading of “Explanation of Provisions,” section VI(D)(2)(E), for a brief discussion of a “safe harbor” for small taxpayers. Note that Preambles merely provide an explanation of what is in the regulations and have no legal status. In the last paragraph under (E) mention is made of a safe harbor for building property held by “small taxpayers” but there is no mention of a definition for “small taxpayer” and the language mentions only “buildings.” It does allude to a tax return filing rather than a Form 3115 filing but in the context only for “buildings.”
7. 2014-2 C.B. 675 (which is 62 pages in length).