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What is Required for a Form 3115 Involving Repairs and Small Purchases?

-by Neil E. Harl

The succession of regulations involving repairs from 2006 through 2008 and 2011, all of which were withdrawn, to the final regulations issued in 2013 emphasized, to varying degrees, that IRS was favorably inclined toward a “safe harbor” for small taxpayers which was sometimes expressed in terms of a “qualified taxpayer.” The Preamble to the final regulations in the “Explanation of Provisions” referred to a “safe harbor” for small taxpayers.

“Qualified taxpayers” and “simplified procedures”

Revenue Procedure 2014-16 defined “qualified taxpayer” as a taxpayer whose average annual gross receipts for the three preceding taxable years was less than or equal to $10,000,000. That passage also referred to the requirements to complete particular sections of Form 3115 which were modified in Revenue Procedure 2014-54. In early 2015, IRS announced that they were making “it easier for small business owners to comply with the final tangible property regulations.” The announcement unveiled a “simplified procedure” which would allow 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.

That was followed by the blunt announcement in Rev. Proc. 2015-33 that “a taxpayer who changes the method of accounting employed in keeping his books shall, before completing his income upon such new method for purposes of taxation, secure the consent of the Commissioner.” That meant that only newly organized firms could use the “simplified procedure” outlined and authorized by Rev. Proc. 2015-20. That avenue was not to be available to taxpayers wishing to change their method of accounting and those firms must secure the consent of the Commissioner. That essentially narrowed the eligibility to use the “simplified procedure” to new, start-up firms if a change of accounting is involved.

Notice 2015-82 and the $2,500

The latest development, in the long-running saga over deductibility of repairs, is the rule, under the “safe harbor” provision, that small expenditures could be deducted as

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noted above. That was viewed as allowing expenditures of $500 or less of expenditures per invoice, or per item substantiated by an invoice, to be deducted annually for costs incurred on or after January 1, 2016. However, Revenue Procedure 2015-20 requested comments by April 21, 2015, on whether the $500 “safe-harbor” threshold for items written off as an ordinary and necessary business expense was appropriate. As explained in Revenue Procedure 2015-20, the “safe harbor” “merely establishes a minimum threshold below which qualified amounts are considered deductible.”

In Notice 2015-82, the Internal Revenue Service announced the increase in the “safe-harbor” expensing limit under the general rule from $500 to $2,500. The rules also permit taxpayers with an Applicable Financial Statement in place (few farmers and ranchers have such statements) to deduct up to $5,000.

**Requirements**

The “safe harbor” is elected by including a statement within each year’s federal income tax return, indicating that the taxpayer is adopting the “safe harbor” for the year for a business. The deduction applies to small repair expenditures as well as purchases such as tools.

**Possible collision of authorities**

As indicated above, the Internal Revenue Service acknowledged in Revenue Procedure 2015-33 that the Internal Revenue Code (which is enacted by Congress and signed into law by the President, not by the Internal Revenue Service or the Department of the Treasury) points out that a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary. Only start-up firms filing their first returns, can adopt any permissible method of accounting and otherwise “... consent must be secured from the Commissioner whether or not such method is proper or is permitted by the Internal Revenue Code or the regulations thereunder.”

That means taxpayers should be aware that a question could be raised where a “safe harbor” allowance collides with the statute.

**ENDNOTES**

3. Preamble to T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331. It is noted that Preambles merely provide an explanation of what is in the regulations and have little or no legal status.
8. 2015-1 C.B. 1067.
9. Id.
10. 2015-1 C.B. 694.
13. 2015-1 C.B. 694.
16. 2015-1 C.B. 1067.
17. I.R.C. § 446(e).

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**CASES, REGULATIONS AND STATUTES**

**by Robert P. Achenbach, Jr**

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**ANIMALS**

**HORSES.** The plaintiffs were riding a horse on a highway in the early evening when they were struck by a vehicle owned and driven by the defendant. The defendant argued at trial that the plaintiffs were 100 percent negligent in failing to have lights on the horse while riding the horse on a highway after dark. La. Rev. Stat. §§ 32:53, 32:301 and 32:124 require vehicles to be registered, licensed and display lighted lamps when operated between sunset and sunrise. The statutes also applied to vehicles drawn by animals. The trial court granted summary judgment to the plaintiffs on the issue of negligence in that none of the statutes applied to horses unless they were drawing a vehicle. The appellate court affirmed on the issue and held that, although unwise, the riding of the horse without lights was not negligence for violation of the statutes. However, the appellate court reversed the summary judgment, holding that the failure of the plaintiff’s to provide some illumination while riding a dark horse and wearing dark clothing after dark on a highway created an issue of fact as to the amount of negligence attributable to the plaintiffs for the accident. Prejean v. State Farm Mut. Auto. Ins. Co., 2016 La. App. LEXIS (La. Ct. App. 2016).