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## IRS Issues Revenue Procedure on Accounting Method Changes

The IRS, in [Revenue Procedure 2021-34](#) (which modifies Rev. Proc. 2019-43 and 2015-33), has provided procedures for taxpayers to follow in order to obtain automatic consent of the Commissioner of the IRS to change its method of accounting under Section 446 and to comply with related Treasury Regulations under Sections 451, 263A, 461 and 471. (See our prior coverage on Rev. Proc. 2019-43 [here](#).) (Unless otherwise provided herein, Section references are to the Internal Revenue Code of 1986, as amended.) Section 451, regarding the timing of income inclusion under an accrual method of accounting, was amended by the 2017 Tax Cuts and Jobs Act (TCJA). Section 451(b) was amended to provide that, for an accrual method taxpayer, the all-events test for an item of gross income, or portion thereof, is met no later than when the item, or portion thereof, is included in revenue for financial accounting purposes on an applicable financial statement. Section 451(c) was amended to provide that an accrual method taxpayer may use the deferral method of accounting provided in section 451(c) for advance payments. Final regulations under Section 451 were issued in Dec. 2020. (See our prior coverage [here](#)). The final regulations obsolete Rev. Proc. 2004-33, Rev. Proc. 2004-34, Rev. Proc. 2005-47, Rev. Proc. 2011-18, Rev. Proc. 2013-29, and Notice 2018-35 for taxable years beginning on or after Jan. 1, 2021. A taxpayer that relied on the now obsoleted guidance must determine whether a change in method of accounting occurs once it ceases to use the obsoleted guidance.

Rev. Proc. 2021-34 specifically addresses modifications to Rev. Proc. 2019-43. For example, certain eligibility rules provided in Rev. Proc. 2019-43 are temporarily inapplicable. Additionally, modifications are made relating to (1) changes in the overall method of accounting from the cash method to an accrual method, (2) credit card late fees and cash advance fees, (3) advance payments, (4) changes in applicable financial statements for purposes of applying certain revenue recognition methods of accounting, (5) changes in the timing of recognition of income due to the New Standards, (6) changes in the timing of income recognition and (7) timing of incurring inventory costs. Rev. Proc. 2021-34 also modifies Rev. Proc. 2015-13, as revised. Rev. Proc. 2021-34 is effective for Forms 3115, Application for Change in Accounting Method, filed on or after Aug. 12, 2021.

## IRS Issues Revenue Procedure on OID Safe Harbor

The IRS, in [Revenue Procedure 2021-35](#) which modifies Rev. Proc. 2013-26, provides additional guidance and clarification on the safe harbor method of accounting for original issue discount (OID) on a pool of credit card receivables for purposes of Section 1272(a) (6) (the proportional method). Rev. Proc. 2021-35 reflects changes made to the treatment of certain credit card fees by Section 451(b) of the Code, as amended by the TCJA and related Treasury regulations (as discussed above). The proportional method generally allocates to an accrual period an amount of unaccrued OID for the pool that is proportional to the amount of the stated redemption price at maturity (SRPM) of the pool that is paid by cardholders during the accrual period. With the amendment of Section 451(b), credit card late fees, credit card cash advance fees and interchange fees are now subject to the income inclusion rule under Section 451 instead of the timing rules for OID. However, certain credit card fees are not subject to Section 451 and so the revenue procedure modifies the guidance to state that an item of income subject to the timing rules under Section 451, and the related Treasury

Regulations, will not be taken into account to determine whether the debt instrument has any OID.

### IRS Issues Safe Harbor for Employee Retention Credit

The IRS, in [Revenue Procedure 2021-33](#), has released a safe harbor that permits a taxpayer to exclude certain items from gross receipts for purposes of determining eligibility to claim the employee retention credit. The employee retention credit was first enacted by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020, part of the Consolidated Appropriations Act, 2021 (CAA). Eligible employers are entitled to claim the employee retention credit against the employer's share of Medicare tax, or the portion of Tier 1 tax under the RRTA that is equivalent to the employer's share of Medicare tax after these taxes are reduced by any applicable credits. The safe harbor permits an employer to exclude the following items from "gross receipts": (1) the amount of the forgiveness of a Paycheck Protection Program loan, (2) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, enacted as Title III of Division N of the CAA and (3) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021. An employer is not required to apply the safe harbor, but must follow the procedures in the revenue procedure to properly use the safe harbor.

### IRS Provides Transition Relief for Work Opportunity Tax Credit

The IRS has released [Notice 2021-43](#), which provides transition relief for certain employers claiming the Work Opportunity Tax Credit (WOTC). Specifically, the notice extends the 28-day deadline for employers to request certification from a designated local agency that an individual who begins work on or after Jan. 1, 2021, and before Oct. 9, 2021, is a member of certain targeted groups that are resident within an empowerment zone.



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### IRS Releases Practice Unit on Reportable Transaction Penalty

The IRS has released a [practice unit](#) on Section 6707A, the penalty for failure to include reportable transaction information with a return. Under Section 6707A, a penalty is imposed on any taxpayer who fails to disclose reportable transaction information, which is required to be included on a return pursuant to Section 6011 or, where applicable, on a statement sent to the IRS. The penalty is 75% of the decrease in tax shown on the return as a result of the transaction (or which would have resulted from the transaction if it was respected for federal tax purposes) and is capped at \$200,000 (\$100,000 for a natural person) in the case of a listed transaction and \$50,000 (\$10,000 for a natural person) for any other reportable transaction. There are five categories of reportable transactions: (1) listed transactions, (2) confidential transactions, (3) transactions with contractual protection, (4) loss transactions and (5) transactions of interest. The practice unit goes into detail about the process by which the penalty under Section 6707A would apply to a taxpayer.