



IPB Submits Comments to IRS re: Tax Accounting Provisions for Small Businesses Contained in the TCJA

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IPB partners Les Schneider and Pat Smith, along with associate Robert Daily, submitted a comment letter to the IRS this week, in response to Rev. Proc. 2018-40, 2018-34 I.R.B. 320, recommending changes to proposed small business accounting regulations (REG-132766-18) that include the treatment of inventory in the form of raw materials and purchases of inventoriable goods and components as well as the costs of inventory and fixed assets and non-inventory property.

Summary of Comments

IPB's comments mainly relate to the following four subjects that we addressed in our prior comments:

1. Inventory in the form of raw materials of a qualifying small business taxpayer that the taxpayer elects to treat as non-incidental materials and supplies may be considered "used or consumed" and, hence, deductible, when the raw materials are used or consumed in the course of production of work-in-process and finished goods, rather than when the finished goods are completed and sold to a customer.
2. Purchases of inventoriable goods and components by a qualifying small business taxpayer that the taxpayer elects to treat as non-incidental materials and supplies should be eligible for the de minimis exception in Treas. Reg. 1.263(a)-1(f), so that the cost of these de minimis materials and supplies may be deducted at the time of their purchase, provided they otherwise satisfy the requirements in Treas. Reg. 1.263(a)-1(f).



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3. The cost of inventory produced by a qualifying small business taxpayer that the taxpayer elects to treat as non-incidental materials and supplies and that the taxpayer elects to exclude from the application of section 263A should be required to include only direct material costs. Direct labor and overhead costs incurred to produce the inventoriable goods should be excluded from the cost basis of the goods and may be deducted as paid or incurred.

4. The cost of fixed assets and non-inventory property produced by a qualifying small business taxpayer that the taxpayer elects to exclude from the application of section 263A is permitted to be limited in terms of its capitalized costs to direct material costs, direct labor costs and variable overhead costs directly associated with the production of property used in the taxpayer's trade or business. Fixed overhead costs and general type overhead costs like general and administrative costs should be deductible as paid or incurred.

IPB's comments were profiled in an article in the September 1 issue of *Tax Notes*, "Firm Requests Further Small Business Inventory Simplifications," which noted that "The Ivins attorneys join other practitioners in warning that the final sale position isn't useful for taxpayers with raw materials inventory. Congress intended the inventory alternatives as a way for small business taxpayers to simplify their tax compliance requirements, but the interpretation of the non-incidental materials and supplies alternative seems more likely to complicate matters, according to the letter."