



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

April 21, 2015

Internal Revenue Service
Attn: CC: PA: LPD: PR
(Rev. Proc. 2015-20), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: [Revenue Procedure 2015-20](#), Request for Comment on de *minimis* Safe Harbor Limit

Dear Sir/Madam:

The American Institute of Certified Public Accountants (AICPA) commends the Internal Revenue Service (IRS) and Department of the Treasury (“Treasury”) for requesting input on whether it is appropriate to increase the de *minimis* safe harbor limit provided in Treas. Reg. § 1.263(a)–1(f)(1)(ii)(D) for a taxpayer without an applicable financial statement (AFS). Furthermore, we appreciate the government’s issuance of Rev. Proc. 2015-20 which provides administrative relief for small businesses¹ complying with the [tangible property regulations](#) (“Repair Regulations”).

To reduce the unnecessary compliance burdens placed on small businesses, the AICPA recommends increasing the de *minimis* safe harbor threshold amount for taxpayers without an AFS from \$500 to \$2,500.² We also recommend adjusting the threshold amount on an annual basis for inflation to maintain the fairness and incentive of the intended benefit, and to expand the AFS definition to allow more taxpayers to benefit from the higher \$5,000 threshold. As we and our members have previously discussed with you, we are concerned about the administrative impact of the low amount (\$500) of the de *minimis* safe harbor threshold for taxpayers without an AFS.³

¹ For purposes of this letter, we have assumed that a small business taxpayer is a taxpayer with average annual gross receipts of \$10 million or less for the prior three taxable years, under rules similar to those applicable under sections 263A(b)(2)(B) and 460(e)(1)(B)(ii).

² The AICPA previously commented on increasing the safe harbor de *minimis*. A copy of the letter can be found at the AICPA comment letter on [\\$500 de minimis Safe Harbor Threshold and Retrospective Application of Final Tangible Property Regulations \(T.D. 9636\) for Small Businesses](#), dated October 8, 2014.

³ An applicable financial statement is a financial statement that is (i) a financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10-K or the Annual Statement to Shareholders); (ii) a certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional) that is used for credit purposes, reporting to shareholders, partners, or similar persons, or any other substantial non-tax purpose; or (iii) a

Background

Treasury Reg. § 1.263(a)-1(f) provides a *de minimis* safe harbor election for taxpayers. The *de minimis* safe harbor election currently provides two threshold amounts: \$500 for taxpayers without an AFS and \$5,000 for taxpayers with an AFS. Adjusting these threshold amounts in future tax periods for inflation is not currently provided for in the Repair Regulations; however, the IRS and Treasury retain the authority to change these threshold amounts through published guidance.⁴

A taxpayer electing to apply the *de minimis* safe harbor generally is permitted to deduct amounts paid to acquire, produce, or improve tangible property for tax purposes provided certain requirements are met. Taxpayers with an AFS must have written capitalization procedures in place as of the beginning of the applicable tax year that provide for expensing amounts paid for property costing less than a specified dollar amount, or property with a useful life of 12 months or less. The taxpayer must expense the property in its AFS in accordance with such procedures. The deduction covered by the safe harbor election is limited to \$5,000 per invoice (or per item, if substantiated on the invoice).

A taxpayer without an AFS must have accounting procedures in place as of the beginning of the tax year for expensing amounts paid for property costing less than a specified dollar amount, or property with a useful life of 12 months or less. The taxpayer must expense the property in its books and records according to such procedures. The deduction covered by the safe harbor election is limited to \$500 per invoice (or per item, if substantiated on the invoice).

Reduction of Administrative Burden

The AICPA understands that the intent of the \$500 *de minimis* safe harbor election is to reduce the administrative burden of applying the complex set of capitalization rules for business taxpayers without an AFS (e.g., small business taxpayers). However, we are concerned that the \$500 threshold is too low to effectively achieve this underlying objective. Through an informal survey we conducted with our members, many small business owners stated that repairs are consistently over \$500 (parts are at least \$250 and labor is at least \$250). A cell phone or printer easily cost over \$500 and are replaced quickly making it administratively impractical and costly to track. One small business owner prepared a cost/benefit analysis for a small business taxpayer concluding that the benefit of increasing the safe harbor *de minimis* far outweighed the cost.⁵

financial statement (other than a tax return) required to be provided to the federal or a state government or any federal or state agency (other than the SEC or the IRS).

⁴ See page 18, [T.D. 9636](#).

⁵ When multiplied by an average tax rate of 5.3% (for a family of 4) (Congressional Budget Office, "[The Distribution of Household Income and Federal Taxes, 2008 and 2009](#)," July 10, 2012) the difference between a \$500 deduction and a \$2,500 deduction by an S Corporation would produce *up to* an additional \$106 (\$2,000 X 5.3%) in the year of the repair. Additionally, a repair between \$500 and \$2,500 might necessitate the filing of Form 4562, which is estimated to take 4 hours and 58 minutes of preparation and remittance time in addition to learning about the law and record keeping responsibilities, which bring the total to an [estimated 39.6 hours per year](#). In the first year of a single instance of a full \$2,500 expense, a taxpayer would expect to save \$106 for 39.6 hours of time, or

The analysis also noted that the IRS has a corresponding administrative burden. Therefore, we strongly recommend increasing the threshold for taxpayers without an AFS from \$500 to \$2,500.

Relation with Section 179

The IRS states that the safe harbor de *minimis* threshold in conjunction with section 179, election to expense certain depreciable business assets, provides significant tax simplification to small businesses. Unfortunately, this is not always the case. For a small business, section 179 allows for the expensing of the asset, but never-the-less requires tracking of the item on the depreciation schedule. Section 179 lessens the burden of computing depreciation but it does not lessen the burden of tracking the expenditure – which can be costly.

Furthermore, not all states permit the section 179 deduction and not all property qualifies for the section 179 deduction. For example, land and land improvements (i.e., paved parking lots, docks, fences), leased property, property used for lodging, air conditioning or heating units do not qualify for the section 179 deduction. For this type of property, taxpayers only have the safe harbor de *minimis* as an alternative method to lessen the administrative burden for asset expensing and/or recovery. Unfortunately, often times the cost of these types of property is well over the current safe harbor de *minimis* threshold leaving taxpayers with no administrative relief, which is the same position taxpayers are faced with when the state does not permit the section 179 deduction.

Finally, enhanced section 179 relief has been temporary in nature and is, therefore, arguably unreliable. The section 179 deduction limit was reduced by current statute to \$25,000 for tax year 2015 with a phase-out of the benefit starting at \$200,000 of total tax year 2015 purchases. Stimulus acts over the past several years have generously increased the limits of the section 179 deduction on an annual and somewhat unpredictable basis. In recent tax years these increases occur at the end of the applicable tax year far after taxpayers have purchased qualified property and administratively tracked these purchases. These late tax year changes cannot be relied upon with any certainty and further support the need for a more realistic safe harbor limitation for non-AFS filing taxpayers.

Clear Reflection of Income Test

To deduct amounts in excess of the \$500 threshold, small businesses must prove that expensing such amounts “clearly reflects income.” The clear reflection of income test can be subjective and difficult to apply for any taxpayer, especially for small businesses. The test is based on the taxpayer’s facts, circumstances, and interpretations of those facts and circumstances by the taxpayer and IRS. Thus, it is arbitrary and difficult to apply, and often results in controversy between the IRS and taxpayers. Large businesses (e.g., taxpayers with an AFS), however, are allowed the higher \$5,000 threshold. Subjecting small businesses to the clear reflection of

\$2.68 per hour, rounded, which is well below the poverty level and minimum wage. Further, Form 4562 might now have to be filed for multiple years.

income test at merely \$500, adds unnecessary complexity and compliance burdens to small businesses.

Current Capitalization Policies

We also believe the \$500 threshold does not accurately reflect the current capitalization policy threshold for many small businesses. Our informal survey suggests that many of our members themselves as well as their small business clients have already adopted a minimum capitalization threshold in excess of \$500 as very few items costing \$500 or less have a useful life of greater than one year. Such results suggest that the \$500 threshold would not provide impactful relief for many small businesses. Therefore, we believe an increase in the threshold amount for taxpayers without an AFS is warranted to achieve the stated goal of the *de minimis* safe harbor election for such taxpayers.

Expansion of the AFS Definition for \$5,000 Safe Harbor *de minimis* Threshold

The AICPA believes the requirement that a taxpayer have an AFS to use the \$5,000 *de minimis* threshold unfairly discriminates against smaller taxpayers, and recommends an alternative test to allow such taxpayers to use the *de minimis* rule.⁶

The AICPA recommends that Treasury expand the definition of an approved AFS to include a reviewed set of financial statements. Reviewed financial statements are in accordance with Statements on Standards for Accounting and Review Services and provide reasonable assurance that there are no material modifications that have been made or should be made for them to be in conformity with the applicable financial reporting framework.⁷

Outside third parties, such as banks and creditors, often rely on reviewed financial statements to provide them comfort in the financial statements of a company. One small business member in our survey pointed out, “the analytic procedures involved in a review can be used as a standard for reliance sufficient to permit a higher level of deduction. Many small businesses are required by their banks to have a reviewed financial statement prepared annually and thus this standard would permit many more businesses to benefit from the higher level of deduction.”

Conclusion

The AICPA strongly recommends the IRS and Treasury increase the \$500 *de minimis* safe harbor threshold for taxpayers without an AFS to \$2,500, adjusted on an annual basis for inflation, to offer meaningful relief to small business taxpayers and to also expand the AFS definition to permit more business to benefit from the \$5,000 *de minimis* safe harbor threshold.

⁶ AICPA comment letter on “[Comments on Proposed & Temporary Regulations under Sections 162\(a\), 168, and 263\(a\) Regarding Deduction and Capitalization of Expenditures Related to Tangible Property \(REG-168745-03 and TD 9564\) and Revenue Procedures 2012-19 and 2012-20](#)” dated July 16, 2012.

⁷ For a detailed explanation of the differences between a compilation, a review, and an audit, please reference the [AICPA Comparative Overview](#) document.

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The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a 125-year heritage of serving the public interest. Our members advise clients on Federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our recommendations. If you have any questions, please contact me at (801) 523-1051 or tlewis@sisna.com; or you may contact Jane Rohrs, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (202) 370-2290, or jrohrs@deloitte.com; or Melanie Lauridsen, Senior Technical Manager – AICPA Tax Advocacy, at (202) 434-9235, or mlauridsen@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee

cc: Andrew Keyso, Jr., Associate Chief Counsel (Income Tax & Accounting), Internal Revenue Service
Scott Dinwiddie, Special Counsel to the Associate Chief Counsel (Income Tax & Accounting), Internal Revenue Service
Ken Beck, Taxation Specialist, Office of Tax Legislative Counsel, Department of the Treasury
Merrill Feldstein, Senior Counsel (Income Tax and Accounting), Internal Revenue Service