Tax Accounting

BY JAMES E. SALLES

In this month's column:

- The Tax Court addresses when a change in accounting method has occurred in *FPL Group v. Commissioner*.[1]
- Revenue Ruling 2001-4[2] addresses the treatment of the costs of periodic aircraft overhauls.
- Congress repeals the prohibition on accrual taxpayers' use of the installment method in the Installment Tax Correction Act of 2000.[3]
- The IRS tweaks its administrative exemption from accrual accounting for small taxpayers in Revenue Procedure 2001-10.[4]
- Congress expands the category of "brownfield" cleanup costs eligible for favorable expensing treatment under Code Section 198.
- The Tax Court holds that a "contract for deed" is sufficient to transfer the tax ownership of realty in *Keith v. Commissioner*.[5]

REPAIRS VERSUS IMPROVEMENTS

A recent Tax Court case holds that a utility attempted an impermissible change of accounting method when it tried to switch from capitalizing certain costs as improvements to deducting them as repairs. The taxpayer in *FPL Group, Inc. v. Commissioner*[6] is the consolidated group that includes Florida Power & Light Co., which lately has seen its share of tax litigation in general and tax accounting issues in particular. An earlier column discussed a case involving its predecessor that addressed issues arising from a state-imposed reduction in utility rates.[7] The new group's taxable years 1994 and 1995 are also the subject of a Tax Court petition presenting several issues, including the tax treatment of asbestos costs.[8]

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Background

FPL Group was a fairly routine change-of-method case that boiled down to a dispute about what was the taxpayer's *present* method of accounting. The taxpayer kept its books in conformity with the overlapping requirements of the Federal Energy Regulatory Commission (FERC) and the Florida Public Service Commission (FPSC). One important concern of the regulators was defining the proper "retirement unit" for plant and equipment. Replacing an entire "retirement unit" was a capital expenditure, while the cost of repairs or of replacing only some components of a retirement unit was expensed. The taxpayer consistently followed its regulatory accounting in distinguishing between "repairs" and "improvements" on its books, although the precise criteria employed varied: with FPSC permission, the taxpayer implemented several hundred minor refinements over a five-year period.

For tax purposes, the taxpayer followed its book accounting — itself something of a moving target, as explained above — with a few specific departures. The taxpayer elected a regulatory safe harbor, left over from the heyday of the asset depreciation range (ADR) depreciation regime, that permitted deducting a "percentage repair allowance" based upon the property's cost.[9] The returns also showed an isolated "schedule M" adjustment reflecting a special reserve for damage caused by Hurricane Andrew. Finally, the taxpayer claimed some additional deductions for repairs on amended returns for 1992 that were partially allowed by the Internal Revenue Service (IRS).

The issue in *FPL Group* was whether the change of method rules precluded the taxpayer from arguing that it should have deducted more, and capitalized less, of these repair-type costs in its taxable years 1988 through 1992. The Tax Court granted partial summary judgment for the IRS, holding that the change would be a change in method of accounting.

Analysis

Reclassifying a regularly incurred category of expenditure — including the cost of acquiring a particular type of asset — between capital and ordinary is clearly a change in method of accounting.[10] However, in order for there to be a change in method of accounting, there has to be a change in policy as opposed to merely a change in facts. For example, the taxpayer in *St. James Sugar Co-op, Inc. v. United States*[11] successfully argued that it had consistently applied the "market not to exceed net realizable price" method of inventory pricing, and therefore did not change methods when it shifted bases because of a price spike in the spot market.

The taxpayer in *FPL Group* similarly argued that its consistent practice had been "to deduct expenditures [for repairs to the extent allowed" under the regulations, and to use its book figures as a "reasonable approximation" of the amount deductible under that standard. Thus, the taxpayer concluded, it could later change its numbers without changing methods. However, the court found that while doubtlessly aware that its regulatory accounting was not perfect from a tax perspective, the group had essentially adopted the "follow the FPSC" method of accounting with specific modifications. Therefore, when the taxpayer tried to deduct expenses it had capitalized on its books, it was trying to change its method of accounting retroactively, which is not allowed.[12]

An attempt to argue that the IRS already had allowed a method change when it partially allowed the amended returns for 1992 likewise went nowhere. The court evidently concluded the refunds represented only the allowance of additional expenses of the same type that were already being deducted, and that in any event they were not the considered allowance of a request for a change in method.

Outlook

FPL Group reinforces the lesson drawn from such earlier cases as *Wayne Bolt & Nut Co. v. Commissioner*[13] that a practice need not be mathematically predictable in order to constitute a method of accounting. In *Wayne Bolt*, the court found a change in method when the taxpayer changed from its prior practice of approximating its inventory from an analysis of a small portion of its "inventory cards" to actually performing a physical count, even though, nominally at least, both practices were directed at arriving at a figure for actual inventory at cost. The court in *FPL* Group likewise found the taxpayer's former practice of "following the FPSC" to be a method, even though this "method" accommodated constant minor changes in specific practices, and theoretically the goal of both the taxpayer's old "FPSC" method and its new practices was to arrive at the "right" depreciation deduction under the tax rules.

IRS ADDRESSES AIRCRAFT MAINTENANCE

On a somewhat related topic, the IRS knocked another tax accounting item off its 2000 Business Plan in December by issuing Revenue Ruling 2001-4, which addresses the somewhat contentious subject of how to treat the costs of periodic aircraft maintenance.

The aircraft maintenance controversy is about allocating the cost of periodic overhauls between capitalizable improvements and deductible expense. This is basically the same issue that the Tax Court addressed in connection with the towboat engine overhauls in the *Ingram Industries*[14] case discussed in last month's column. As frequently the case in controversies involving "periodic maintenance" programs, there is also a lurking issue involving the so-called "plan of rehabilitation" doctrine.

Plans of Rehabilitation

The "plan of rehabilitation" doctrine was originally a rule of convenience, and dates at least as far back as 1930, when the Board of Tax Appeals remarked casually in a one-paragraph discussion of a secondary issue that "to fix a door or patch plaster might very well be treated as an expense when it is an incidental minor item arising in the use of the property in carrying on business, and yet, as here, be properly capitalized when involved in a greater plan of rehabilitation, enlargement and improvement of the entire property."[15] Expenditures that form part of a "general plan" for "rehabilitation, modernization, and improvement" of a piece of property must be capitalized into the basis of that property, even if, examined in isolation, they might qualify for deduction.[16]

There are two basic requirements for capitalization under the "plan of rehabilitation" doctrine. Firstly, there must be a plan for working some noticeable "improvement" in the property. Curing a momentary lapse in a hotel's four-star rating does not qualify,[17] but restoring a property that had completely fallen out of usable condi-

tion,[18] fitting it for a new use,[19] or materially extending its initially contemplated useful life[20] would.

Secondly, the expenditure must relate to the asset that is the subject of the plan. The Ninth Circuit held in *Moss v. Commissioner*[21] that acquiring carpets, drapes and furniture for hotel rooms was not part of a "plan of rehabilitation" of the hotel, but simply the replacement of separate assets with useful lives of their own. The IRS National Office has similarly ruled that decontaminating land was not part of the rehabilitation of the building on it, although both projects were under way at once.[22]

Aircraft Maintenance Programs

Whether, and how much, to capitalize the costs of periodic aircraft maintenance surfaced as a potential issue a few years ago. A much criticized[23] 1996 private ruling[24] asserted that such costs were capital because they "result[ed] in substantial improvements to the overall condition of the engine" and were legally required to continue to operate the aircraft, even though, back in the 1970s, the IRS had won a case on when such costs were deductible without ever raising the capitalization issue.[25] In support of its conclusion, the ruling cited *Wolfsen Land & Cattle Co. v. Commissioner*,[26] which required a property owner to capitalize the costs of restoring an irrigation system to its initial condition, and an array of authorities concerning "plans of rehabilitation."

The basic flaw in the ruling's analysis was that the periodic maintenance was necessary, indeed legally required, in order for the aircraft to be usable for the term of its *initially contemplated* useful life. Periodic maintenance that does not extend an asset's initially contemplated useful life should be deductible. The fact that the asset's useful life might be cut short if the maintenance were not performed should not affect the outcome. The same might be said of any repair, whether necessitated by wear and tear over time or a sudden event such as breakage. Simply stating these propositions, however, does not necessarily yield an easy solution in a particular case. The outcome may depend on the choice of the relevant asset (*e.g.*, do we look at the aircraft or its engine?) and the definition of its initially contemplated useful life.

In 1999, industry representatives met with Treasury officials concerning the problem. Late that year, the Air Transport Association (ATA) submitted an outline of a draft revenue ruling,[27] and in an apparent response, the IRS included "guidance on deduction and capitalization of . . . cyclical maintenance costs" on its 2000 Business Plan.[28] Revenue Ruling 2001-4 evidently constitutes the promised guidance.

Revenue Ruling 2001-4

Although the facts have been somewhat refined and fleshed out, Revenue Ruling 2001-4 closely tracks the ATA draft ruling. Both rulings explore the interplay between the general deductibility of periodic maintenance costs recognized in *Ingram Industries* and similar cases and the "plan of rehabilitation" doctrine in three different scenarios. In each ruling, a full deduction is allowed in the first scenario; the second provides for splitting the costs between capital and ordinary; while in the last, all the expenditures must be capitalized.

In both cases, the first scenario addresses "pure" periodic maintenance. The published ruling specifically refers to the most extensive of the FAA-required maintenance checks (known as a "heavy maintenance visit" or an "overhaul"). This includes repair of any parts of the aircraft that are excessively worn or damaged, and the replacement of "dysfunctional" equipment or other components, and can involve substantial outlays. (The ruling cited an expenditure of $2 million as compared to a $15 million original cost for the aircraft.) Citing among other authorities *Ingram Industries*, the IRS ruled that the full cost of the maintenance — including any incidental replacement of components — is deductible so long as the work performed serves only to keep the aircraft "in an ordinarily efficient operating condition over its anticipated useful life for the uses for which the property was acquired" and does not enhance its value, life expectancy, or use. The ruling also makes clear that the appropriate focus is on the "airframe as a whole" and that the replacement of individual parts does not matter unless "major components or substantial structural parts" are involved. These holdings appear to mark abandonment of the IRS' line of reasoning in its earlier private ruling.

The second scenario in both rulings involves the same maintenance work being performed in tandem with specific improvements being made to the aircraft. The ATA draft had listed as typical such improvements the installation of "hush kits," collision avoidance systems, weather systems, and modernization of the cockpit equipment. In Revenue Ruling 2001-4, the taxpayer replaced all the "skin panels" on the belly of the fusilage and added some additional features such as smoke detection and crash warning systems and air phones.

The IRS ruled that while the cost of the special projects had to be capitalized because they "materially improved" the aircraft, adding to its value, these "discrete capital improvements" did not affect the treatment of the maintenance costs that simply happened to be being incurred at the same time. Thus, the taxpayer could continue to deduct the costs of the maintenance.

The final scenario in the ATA draft concluded that all the expenditures of commissioning newly purchased aircraft for service in the taxpayer's fleet were capitalizable — even though partly consisting of the same FAA-mandated maintenance — presumably on the grounds that they fitted property for a new use. The published ruling's counterpart scenario more directly implicates the "plan of rehabilitation" doctrine. An aging aircraft was subjected to a thorough overhaul including both the "heavy maintenance" described in the first scenario and the specific projects described in the second, plus much more. The IRS ruled that all the expenditures should be capitalized as incurred in connection with a "general plan of rehabilitation, modernization and improvement" that substantially extended the aircraft's useful life.

ACCRUAL TAXPAYERS CAN USE INSTALLMENT METHOD AGAIN

In the waning days of the second millennium, Congress passed, and President Clinton signed, a retroactive repeal of the 1999 prohibition on accrual basis taxpayers' use of the installment method.[29] A prospective repeal had passed the House of Representatives in March 2000 as part of the abortive "small business" relief package,[30] but the issue had then dropped out of sight until it suddenly surfaced in mid-December as part of a post-election budget deal with the outgoing Republican Congress.

History

In its fiscal 2000 budget plan, the Clinton administration pushed for the closing of various "loopholes," including a prohibition on the use of the installment method by accrual method taxpayers.[31] The theory behind this proposal was apparently that the installment method was designed as a special relief for "small," and presumably cash method, taxpayers engaging in isolated dispositions of assets and that accrual method taxpayers, mostly corporations, have no business using it.

Amid the year-end scrabble for revenue raisers, Congress obliged by providing that to the extent that income from a given sales transaction would otherwise be reportable under an accrual method, the installment method would not be available. The ban on use of the installment method was effective for transactions occurring on or after December 17, 1999.[32]

An outcry followed, chiefly from representatives of small business. Many small businesses become accrual basis taxpayers because they use inventories. Strictly speaking, the regulations require only the accrual of purchases and sales, and permit taxpayers to continue to report other items of income and deduction on the cash basis.[33] However, few taxpayers make use of this "hybrid" option, and Code Section 448 prohibits most larger corporations from using cash accounting at all.

The 1999 law meant that if an accrual method business was disposed of in an asset sale, or in a stock sale accompanied by an election under Code section 338, the full tax would be due immediately even though the consideration might be payable only over several years. Entrepreneurs perceived the new law as substantially narrowing their options for structuring the sale of their businesses and reducing their net proceeds.

Broader Initiative to Come?

By the following spring, the House Small Business Committee was already discussing repealing the installment method ban in connection with initiatives[34] to permit small taxpayers to use the cash method notwithstanding inventories.[35] A version of the latter proposal found its way into the "small business" package in October,[36] only to die in the face of Administration hostility. While Congress ultimately repealed the ban on use of the installment method retroactively to enactment, the broader cash method question was left unresolved. The "small taxpayer" proposal will likely resurface in what is expected to be an active tax legislation season.

"SMALL TAXPAYER" PROCEDURE UPDATED

In the meantime, the IRS refined its own version of the "small taxpayer" initiative in Revenue Procedure 2001-10.[37] This new procedure updates, with minor modifications, Revenue Procedure 2000-22,[38] which the IRS issued late last spring in response to Congressional pressure to exempt small sellers of "merchandise" from

the requirement to keep inventories and accrue their purchases and sales. Both procedures permit taxpayers with annual revenues of $1 million or less to use the cash method of accounting and to treat their merchandise in the same manner as "non-incidental supplies." Taxpayers must track the quantity of such supplies on hand and may deduct their cost only as they are used, but need not employ formal inventory accounting.[39]

The changes made by Revenue Procedure 2001-10 appear to be mostly administrative: for example, clarifying that various categories of taxpayers are eligible to use the special transition rules in the procedure and providing guidance as to the computation of the cumulative adjustment. However, there appear to be two relatively minor substantive changes. The new procedure adds an exclusion for entities or arrangements treated as "tax shelters" under Code Section 448. That section employs a relatively wide definition of "tax shelter" which can sweep in, for example, entities other than "C" corporations whose ownership interests offer limited liability and/or are registered under the securities laws, or both.[40] On the other hand, while Revenue Procedure 2000-22 prohibited its use by taxpayers that regularly used a method other than the cash method in reporting to owners or for credit purposes, Revenue Procedure 2001-10 lifts this specific conformity requirement in favor of a general requirement to keep adequate books and records, including any needed reconciliation schedules.

These changes are retroactively effective. Revenue Procedure 2001-10, like its predecessor, is effective for taxable years ending on or after December 17, 1999. If the return for an eligible year was filed on or before January 16, 2001, taxpayers have until June 15, 2001 to file amended returns.

"BROWNFIELDS" RULES LIBERALIZED

Another Congressional Christmas present, albeit for a more limited class of taxpayers, was an expansion of favorable treatment for the cost of cleaning up contaminated industrial and commercial properties known as "brownfields."

Code Section 198, enacted in 1997, allowed taxpayers to elect a current deduction for such cleanup costs, but this favorable treatment was confined to properties located in "empowerment zones" or "enterprise communities," and certain other "targeted areas," and the provision was scheduled to expire December 31, 2001. There were various proposals afoot to extend the sunset date, and bills to lift the geographic restrictions were also introduced in both the House and Senate.[41] A more limited expansion of the category of eligible properties passed the House in July,[42] but matters had ground to a halt in the Senate as the White House and Congressional leaders played their annual game of chicken. The omnibus appropriation bill that eventually passed Congress when the legislative logjam was broken extends Code Section 198 for two years, and also lifts the geographical restriction completely for cleanup costs incurred after the date of enactment.[43]

STILL MORE IRS GUIDANCE: SOFTWARE COSTS

The end-of-year crush of administrative guidance also included Revenue Procedure 2000-50,[44] which allows the use of certain "safe harbors" in amortizing computer software costs. Revenue Procedure 2000-50 updates an earlier procedure, Revenue Procedure 69-21,[45] to reflect 1993 statutory changes and other developments.

Background: Revenue Procedure 69-21

Revenue Procedure 69-21 represented an IRS attempt to resolve various practical issues, including uncertainty about the application of Code Section 174 (which allows a choice between a current deduction and five-year amortization for research and experimental expenditures) to the cost of self-developed software. Taxpayers were allowed a choice between deducting such costs and amortizing them (over the five-year period prescribed in Code Section 174 unless the taxpayer "clearly establishe[d]" a shorter period as appropriate). In another simplifying assumption, the procedure also allowed a computer and related software that were purchased as part of a "package deal" to be depreciated together. The cost of other purchased software was to be amortized, again over five years unless the taxpayer could demonstrate a shorter useful life.

There matters stood until Code Sections 197 and 167(f) were enacted in 1993. Code Section 197 provides for fifteen-year amortization of the cost of most acquired (as opposed to self-developed) intangible assets ("section 197 intangibles"). Computer software (except for certain customized software acquired along with a business) is not a "section 197 intangible,"[46] but

Code Section 167(f) provides for amortizing its cost over 36 months, beginning when the software is placed in service. These provisions naturally overrode Revenue Procedure 69-21 to the extent that they applied. However, Code Section 167(f) does not trump Code Section 174, so that taxpayers could still choose between expensing and five-year amortization for software costs that could qualify as research and experimental expenses.

Revenue Procedure 2000-50

Revenue Procedure 2000-50 generally updates Revenue Procedure 69-21 to take into account the new statutory amendments. As to self-developed software, taxpayers are allowed to choose between three-year amortization under Code Section 167(f) or either a current deduction or five-year amortization under Code Section 174. Acquired software — unless treated as part of the cost of the computer — must be amortized over three years under Code Section 167(f). The new procedure also updates the various definitions to reflect the new provisions, and adds a caveat that specifies that the general allowance of a current deduction for software rental or license fees is not intended to override general capitalization principles.

For taxable years ending on or after December 1, 2000, the IRS will not disturb any treatment of computer software costs that conforms with Revenue Procedure 2000-50. For earlier taxable years, the IRS will not disturb the taxpayer's treatment so long as it is not "markedly inconsistent" with the procedure. Under this looser standard, the IRS will not challenge taxpayers' use of a different amortization period for either self-developed or acquired software so long as the period used is no longer than 60 months (and no shorter than 36 months in the case of expenditures subject to Code Section 167(f)).

TAX COURT REVERSES ITSELF ON "CONTRACTS FOR DEED"

The Tax Court closed out the year with a significant decision on the issue of when a sale becomes complete for tax purposes.

Background

Under an accrual method, when a sale is completed determines when the seller recognizes income. The seller's rights become "fixed" at the moment of sale, even though the transaction might be unwound later. Numerous authorities have required merchants selling property subject to a right of return to accrue income, although returns might be common,[47] or even the normal outcome, as in the case of containers.[48]

Cash basis sellers do not have to accrue income, but when the sale becomes complete may remain important in other contexts, for example in determining when a "deposit" received in advance of a casual sale becomes income. Inventory sellers generally recognize income when they are paid, even if this takes place before the goods are actually sold,[49] but in sales of non-inventory property reportable under section 1001, the seller will not report any deposits received until the actual sale takes place. The timing of the sale may also determine when the buyer's obligations become real debt, rather than mere executory promises, for purposes of determining whether an amount paid constitutes interest[50] or applying imputation provisions.[51]

Benefits and Burdens of Ownership

The basic rule is that a sale or disposition of property is complete when the "benefits and burdens of ownership" have been transferred. The next question, obviously, is when that happens.

For personal property covered by the Uniform Commercial Code (UCC), the answer is usually fairly simple. Absent sham transaction issues or other unusual considerations,[52] a routine sale of personal property is complete when title passes under the UCC, since that event marks the transfer of the "benefits and burdens of ownership" under substantive law. When a vendor ships goods but retains title, as in a typical consignment arrangement, the vendor still owns the goods and does not have to report income.[53] On the other hand, a retailer's bulk sale of its inventory in place was respected, even though the taxpayer continued to sell the goods on its own premises as agent for its buyer and the whole deal amounted to a factoring arrangement.[54]

Applying the "benefits and burdens of ownership" standard to transactions involving non-inventory property is a little more complicated. Long ago, it was settled that passage of formal legal title is not necessary for the transaction to constitute a completed sale for tax purposes.[55] A sale of real estate will be respected for tax purposes even if the seller retains legal title to the

property as security, so long as the benefits and burdens of ownership pass to the buyer.[56] When the "benefits and burdens" pass is a factual question, to be determined "based on the intent of the parties as evidenced by the written agreements read in light of the attendant facts and circumstances."[57]

In *Grodt & Mackay Realty, Inc. v. Commissioner*[58] — despite the taxpayer's name, a cattle tax shelter case — the Tax Court identified a laundry list of factors indicative of whether the benefits and burdens had passed: legal title; how the parties treat the transaction; whether the purported buyer acquires an equitable interest; whether the purported seller is presently obligated to deliver title and the purported buyer to pay; whether the buyer acquires the right to possession; and how the parties agree to allocate the risk of loss, the potential for gain, and the responsibility to pay taxes.

Contracts for Deed

In some states, real estate is commonly conveyed under executory contracts, frequently referred to as "contracts for deed," that promise to convey legal title under certain conditions. The terms of such contracts vary widely, and there have been occasional disputes about whether and when a contract for deed transfers the benefits and burdens of ownership. Sometimes the question is posed as whether "equitable title" has been conveyed under state law. For example, in the recent memorandum case of *Musgrave v. Commissioner*,[59] the Tax Court held that a bargain sale to a church was complete, and the sellers entitled to a charitable deduction, when the contract for deed was executed. The court surveyed Texas law and concluded that the contract conveyed full equitable title to the property as against third parties, although the buyer did not have a full equitable title as against the seller — by which the court apparently meant the unconditional right to demand formal conveyance of the property — until the conditions of the contract were met.

There has been some doubt concerning the treatment of sales made under contracts for deed on nonrecourse terms. In *Baertschi v. Commissioner*,[60] the Tax Court ruled *en banc* that a contract for deed was not an absolute sale when in the event of default, the seller could only repossess the property without any right of recourse for any deficiency against the buyer. The Sixth Circuit reversed, reasoning that the no-recourse clause alone should not forestall a completed sale, at least on the facts of *Baertschi* where the buyer had made nonrefundable payments to the extent of 29% of the purchase price in the year of sale. However, some uncertainty persisted about the Tax Court's position.

Keith v. Commissioner

On December 29, the Tax Court issued its reviewed opinion in *Keith v. Commissioner*.[61] The taxpayer in *Keith* sold residential real estate to mostly low-income buyers on installment terms, reporting income on an accrual method. As was customary in the vicinity, the sales were made under contracts for deed. The contracts were voidable upon default by the buyer, in which case no further payments would be due beyond those that had already accrued under the terms of the contract.

The taxpayer argued that because of the buyer's lack of personal liability the sales were not complete until she actually got paid. However, the Tax Court held that the contracts conveyed equitable title under state (Georgia) law, and the fact that the buyers' obligations were nonrecourse did not prevent a completed sale. In so doing, the court cited the Sixth Circuit's opinion in *Baertschi* with approval and announced that it would no longer follow its own contrary holding that had been reversed in that case.

This clarification of the Tax Court's position is in keeping with the thrust of the law. Taken to its logical conclusion, the Tax Court's *Baertschi* holding could mean that a nonrecourse sale would not be respected for tax purposes until the whole purchase price was paid, if the seller did not convey legal title. This would be manifestly ridiculous, not to mention contrary to established law that tax consequences should not hinge on the nuances of state law conveyancing.

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1. 115 T.C. No. 38 (Dec. 13, 2000).
2. 2001-3 I.R.B. 1.
3. Pub. L. No. 106-573.
4. 2001-2 I.R.B. 272.
5. 115 T.C. No. 42 (Dec. 29, 2000).
6. 115 T.C. No. 38 (Dec. 13, 2000).
7. Florida Progress Corp. v. Commissioner, 114 T.C. No. 36 (2000), discussed in J. Salles, Tax Accounting, 1(12) *Corp. Bus. Tax'n Monthly* 25, 25-26 (Sept. 2000).
8. FPL Group v. Commissioner, Tax Ct Dkt No. 6655-00 (June 14, 2000), discussed in J. Salles, Tax Accounting, 2(1) *Corp. Bus. Tax'n Monthly* 36, 37-38 (Oct. 2000).
9. *See* Reg. § 1.167(a)-11(d)(2).
10. *See, e.g.*, Treas. Reg. §1.446-1(e)(2)(ii)(b) (changing to capitalizing "the cost

of a class of depreciable assets"); Southern Pacific Transportation Co. v. Commissioner, 75 T.C. 497, 680-83 & n.211 (1980) (regulation applied equally to change from capitalizing to expensing certain costs of maintaining rail facilities).

11. 79-2 U.S.T.C. ¶ 9476 at 87,720-21 (E.D. La. 1979), *aff'd on another issue*, 643 F.2d 1219 (5th Cir. 1981).

12. *See, e.g.*, Rev. Proc. 97-27, § 2.04, 1997-1 C.B. 680, 682.

13. 93 T.C. 500 (1989).

14. 80 T.C.M. (CCH) 532 (2000).

15. Cowell v. Commissioner, 18 BTA 997, 1002 (1930) (reviewed).

16. *E.g.*, United States v. Wehrli, 400 F2d 686, 689 (10th Cir. 1968).

17. Moss v. Commissioner, 831 F2d 833, 842 (9th Cir. 1987).

18. *See, e.g.*, Jones v. United States, 279 F Supp. 772 (D. Del. 1968).

19. *See, e.g.*, Dominion Resources, Inc. v. United States, 219 F3d 359 (4th Cir. 2000), discussed in J. Salles, Tax Accounting, 2(1) Corp. Bus. Tax'n Monthly 36, 37-38 (Oct 2000).

20. *E.g.*, Vanalco, Inc. v. Commissioner, 78 TCM (CCH) 251 (1999).

21. 831 F2d 833 (9th Cir. 1987).

22. TAM 199952075 (Aug. 28, 1999); *see also* Burgess J.W. Raby & William L. Raby, "When Push Comes to Shove on Engine Maintenance Expenses," 89 *Tax Notes* 655, 657-58 (Oct. 30, 2000).

23. See, e.g., William L. Raby and Burgess J.W. Raby, "Capitalizing the Cost of Aircraft Engine Overhauls," 71 *Tax Note*s 1221, 1221 (May 27, 1996).

24. P.L.R. 9618004 (Jan. 23, 1996).

25. World Airways v. Commissioner, 564 F2d 886, 887 (9th Cir. 1977), *aff'g* 62 T.C. 786, 789-805 (1974).

26. 72 T.C. 1 (1979), discussed in J. Salles, Tax Accounting, 2(5) *Corp. Bus. Tax'n Monthly* 32-35 (Feb. 2001).

27. Letter from James A. Hultquist of the Air Transport Association to Annette Smith, Deputy Tax Legislative Counsel, Oct. 27, 1999, Tax Analysts Doc. No. 1999-35803.

28. Treasury Office of Tax Policy and Internal Revenue Service, 2000 Priority Guidance Plan, *reprinted at* 86 *Tax Notes* 1819, 1822 (March 27, 2000).

29. H.R. 3594, *enacted as* Pub. L. No. 106-573, *repealing* Pub. L. No. 106-170, §536(a)(1), codified at IRC §453(a)(2).

30. H.R. 3081, Small Business Tax Fairness Act of 2000, § 107.

31. General Explanation of the Administration's Revenue Proposals 146 (February, 1999).

32. Tax Relief Extension Act of 1999, Pub. L. No. 106-170 § 536(a), (c).

33. *See Reg.* §1.446-1(c)(2)(iv).

34. *E.g.*, H.R. 2273, 106th Cong. (1999), by Reps. Talent and English; S. 2246, 106th Cong. (2000), by Sens. Bond and Grassley.

35. *See, e.g.*, "Mikrut Says Treasury Needs Time to Assess Cases Before Issuing Cash Method Guidance" *Daily Tax Repor*t at G-7 (Apr. 6, 2000), describing a hearing on April 5, 2000.

36. H.R. 5542, §210, incorporated by reference in H.R. 2614, 106th Cong., 2d Sess., *reprinted at* H.R. Rep. No. 106-1004 at 28-29 (Oct. 25, 2000).

37. 2001-2 I.R.B. 272.

38. 2000-20 I.R.B. 1008.

39. Treas. Reg. §1.162-3.

40. *See* I.R.C. §§ 448(a)(3), 461(i)(3), 1256(e)(3)(B).

41. H.R. 4003 (106th Cong., 2d Sess.) (by Cong. Weller for himself and others); S. 2436 (106th Cong., 2d Sess.) by Sen. Abraham.

42. H.R. 4923 (106th Cong., 2d Sess.) §102.

43. H.R. 4577, enacted as Pub. L. No. 106-554, §1(a)(7), enacting by cross-reference H.R. 5662, Community Renewal Tax Relief Act of 2000, §162, codified at IRC §198(c), (h).

44. 2000-52 I.R.B. 1.

45. 1969-2 C.B. 303.

46. *See* I.R.C. §197(e)(3).

47. *E.g.*, Record-Wide Distributors v. Commissioner, 682 F.2d 204 (8th Cir. 1982).

48. E.g., La Salle Cement Co. v. Commissioner, 59 F2d 361 (7th Cir.), *cert. denied,* 287 U.S. 624 (cement sacks); Okonite Co. v. Commissioner, 4 T.C. 618, 627-28 (1945), *aff'd on other issues*, 155 F2d 248 (3d Cir.), *cert. denied*, 329 US 764 (1946) (reels for wire and cable).

49. *E.g.*, Hagen Advertising Displays, Inc. v. Commissioner, 47 T.C. 139 (1966) (reviewed), *aff'd,* 407 F2d 1105 (6th Cir. 1969); *cf.* Reg. §1.451-5 (providing deferral in specific circumstances).

50. *Compare* International Paper Co. v. United States, 33 Fed Cl 384, 387-96 (1995) ("interest" in purchase contract was part of purchase price when accrued before the sale) *with, e.g.*, Starker v. United States, 602 F2d 1341, 1356 (9th Cir. 1979) ("growth factor" accruing after seller conveyed ownership was disguised interest).

51. *See, e.g.,* Williams v. Commissioner, 63 T.C.M. (CCH) 2959, 2964-67 (1992), *aff'd,* 1 F.3d 502, 504-07 (7th Cir. 1993) (applying Code Section 483).

52. *See, e.g.,* Grodt & McKay Realty, Inc. v. Commissioner, 77 TC 1221 (1981), discussed below.

53. *E.g.,* Hallmark Cards, Inc. v. Commissioner, 90 TC 26 (1988).

54. Hart, Schaffner & Marx and subsidiaries v. Commissioner, 44 TCM (CCH) 184 (1982).

55. *E.g.* Commissioner v. Union Pacific Railroad Co., 86 F.2d 637, 639 (2d Cir. 1936); *accord, e.g.,* Pacheco Creek Orchard Co. v. Commissioner, 12 BTA 1358 (1928).

56. *See, e.g.*, Williams, 1 F3d at 505 and authorities cited.

57. International Paper, 33 Fed Cl at 393; *accord, e.g.*, Williams, 63 TCM (CCH) at 2965.

58. 77 T.C. 1221, 1237-38 (1981), citing authorities.

59. 80 T.C.M. (CCH) 341 (2000).

60. 49 T.C. 289 (1967) (reviewed), *rev'd*, 412 F2d 494 (6th Cir. 1969).

61. 115 T.C. No. 42 (Dec. 29, 2000).