Tax Accounting

BY JAMES E. SALLES

In this month's issue:

- Utilities' accounting methods remain in the limelight as the Fourth Circuit upholds the trial court in *Dominion Resources, Inc. v. United States*,[1] and Florida Power and Light's consolidated group files a follow-on petition with the Tax Court.
- The IRS continues to face heat about requiring sellers of "merchandise" to use accrual accounting, as the Ninth Circuit affirms the Tax Court's holding that asphalt was not merchandise in *Jim Turin & Sons, Inc. v. Commissioner*,[2] and the Tax Court extends the same analysis to liquid concrete used by a construction contractor in *Vandra Bros. Construction Co., Inc. v. Commissioner*,[3] while a key Congressman presses Treasury about the limitations on the relief granted in Revenue Procedure 2000-22.[4]
- In *American Express Co. v. United States*,[5] the Court of Federal Claims employs a deferential standard in sustaining the IRS's refusal to permit the taxpayer to report credit card fees under the revenue procedure applicable to advance payments for services.
- The Tax Court applies the "all events" test to a publisher's liability for royalties in *Newhouse Broadcasting Corp. v. Commissioner*.[6]
- A district court applies the accounting method change rules to depreciation adjustments in *H.E. Butt Grocery Co. v. United States*.[7]

UTILITIES' ACCOUNTING FEATURED AGAIN

Last month's discussion of the Tax Court's companion holdings in *Midamerican Energy Co. v. Commissioner*[8] and *Florida Progress Corp. v. Commissioner*,[9] noted that the cases involving utilities required to "repay" windfalls to their customers in the form of lower rates fell into two basic categories. If the requirement to repay was tied closely enough to the original receipt, the whole transaction was simply treated as a loan.[10] Otherwise, the utilities would simply report less gross income while the reduced rates were in effect.[11] Florida Progress, in fact, provided an example of both models being applied to different regulatory orders.

Fourth Circuit Applies Code Section 1341

The exception that proves both rules is *Dominion Resources, Inc. v. United States*.[12] Like its counterparts in *Midamerican Energy* and *Florida Progress*, the utility member of the Dominion group, Virginia Power, recognized a windfall under its regulatory accounting when its deferred tax liability was reduced as a result of the Tax Reform Act of 1986. Like them, also, it was required by state regulators to reduce its rates to compensate for the extra income.

The form the orders took was a little different, however. In 1991, regulators ordered Virginia Power to "refund" fixed amounts to its customers in general and to electricity wholesalers and military service customers in particular. For convenience, the refunds were made based upon electricity customers had purchased in the previous twelve months. However, the critical fact appears to have been that Virginia Power's obligation to pay depended on past, rather than future, purchases.[13]

In *Dominion Resources*, the district court found that a loan-type obligation to repay had not been in existence from the beginning, distinguishing regulatory schemes where the amounts received were understood all along to be subject to subsequent adjustment, and therefore the whole transaction could not be treated as a loan from the outset. However, the court also found that the 1991 orders imposed an obligation on Virginia Power to *repay* amounts it received in the past, rather than merely requiring Virginia Power to sell electricity at cheaper rates in the future. Therefore, the court held, the taxpayer was entitled to compute its liability under Section 1341 of the Internal Revenue Code (Code), which applies when a taxpayer returns amounts received in past years under

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a "claim of right."[14] This was the treatment for which the taxpayers unsuccessfully argued, on different facts, in *Midamerican Energy* and *Florida Progress*.

The Fourth Circuit has now affirmed. Much of its opinion deals with various arguments the government raised about the scope of Code Section 1341. However, the appellate panel expressly affirmed the district court's holding that Virginia Power had both a receipt under claim of right and a subsequently imposed obligation to repay it, and explicitly rejected the government's argument that the "refund" did not qualify as such because it could not be made to precisely the same customers as had been "overcharged".[15]

FPL Group Files Petition

The Tax Court may have an opportunity to revisit the "claim of right" issue in disposing of a follow-on petition filed by the *Florida Progress* group under a new name. The original *Florida Progress* case covered the group's 1986–88 years, while the petition in the new case, *FPL Group, Inc. v. Commissioner*,[16] covers 1994 and 1995. However, the petition presents, among many other issues, what appears to be the same Code Section 1341 question disposed of in the earlier case.

The bulk of the amount in controversy as to this issue appears to represent further "refunds" of the same windfall reduction in deferred tax expense, although there is also a reference to smaller "refunds" reflecting fees paid by the federal Department of Energy (DOE).[17] Presumably the facts concerning the deferred tax expense are the same as in the prior proceeding, and the issue will be resolved, at least before the Tax Court, consistently with that court's prior holding. Whether the facts concerning the DOE fees are distinguishable cannot be made out from the petition.

Asbestos Removal

Another issue common to both *Dominion Resources* and the *FPL Group* petition is the tax treatment of asbestos removal costs.

The taxpayer in *Dominion Resources* owned an old power plant in downtown Richmond that dated from 1901. The plant shut down in 1973, and thereafter the property remained idle until the taxpayer began exploring the possibility of selling the property or donating it to a local charity in 1989. At that point, it was discovered that the plant and fixtures included a considerable amount of asbestos, as well as harboring some other hazardous substances. Plans for disposition were put on hold while the property was cleaned up over three years. An executive testified that the taxpayer conducted the cleanup principally to avoid potential liability and had no immediate plans for the property, which continued unused after the cleanup.

As discussed in last month's column,[18] expenditures that improve an asset beyond its condition when acquired will generally be capital. The government evidently argued along similar lines that asbestos removal is always an "improvement,"[19] at least when the asbestos dates from the property's construction, as apparently was the case here.[20] However, the district court found it unnecessary to reach that issue, focusing instead on the fact that the cleanup cost twice the property's appraised value and, most critically, prepared it for an entirely new use. The court relied upon the established "put *versus* keep" test: expenditures incurred to *put* property in usable condition, rather than merely to *keep* it in that state, have to be capitalized.[21] That the taxpayer had no immediate plans to put the power plant property to any use at all was irrelevant. The Fourth Circuit affirmed on essentially the same analysis.[22]

The *FPL Group* petition presents the asbestos issue in what appears to be a somewhat different setting. The petition represents that "[a]sbestos was removed where incidentally necessary to inspect equipment (e.g., piping) surrounded by the asbestos, and to perform necessary repairs (e.g., boilers and other equipment) where needed. Also, if asbestos had deteriorated to the point that it could no longer perform its insulating function, the deteriorated section would be removed and replaced by another insulating material."[23] If indeed these expenditures are relatively small and incurred in the context of a regular program of repairs and maintenance, then the facts will be distinguishable from *Dominion Resources*.

On the other hand, the expenditures *do* remove asbestos, thus putting the property into a different, and presumably better, state than it was to begin with. The Tax Court might have to reach the "*per se* improvement" argument the court avoided in *Dominion Resources*. Environmental remediation costs in general, and asbestos removal in particular, have been trouble spots since the Supreme Court's key decision in *INDOPCO, Inc. v. United States*,[24] and it will be interesting to see how the Tax Court comes out on the issue.

MORE DEVELOPMENTS ON "MERCHANDISE" FRONT

Previous columns[25] have addressed the spate of cases reflecting recent IRS attempts to enforce the regulations' mandate that taxpayers selling "merchandise" employ accrual accounting,[26] and various Congressional efforts to clarify or limit application of this rule. Further developments confirm that this remains a "hot" issue.

Ninth Circuit Affirms *Turin*

Jim Turin & Sons v. Commissioner [27] was one of several cases in which the Tax Court has held that two medical clinics[28] and assorted contractors[29] did not have to keep inventories or adopt accrual accounting because of the drugs and various site supplies consumed in the course of their operations. The Tax Court's focus in these cases was principally on the fact that the taxpayers were providing goods only incidentally to their provision of services. The Turin firm was a paving contractor, and the Tax Court held that it was not required to inventory its emulsified asphalt as a "merchandise held for sale," citing its earlier similar decision in *Galedrige Construction, Inc. v. Commissioner*.[30]

The Ninth Circuit has now affirmed, albeit coming at the "merchandise" issue from a somewhat different perspective. Critical to the court's analysis was that because emulsified asphalt became useless in hours, "there is no inventory that can be purchased late in one tax year and held over to the next."[31] That fact led the court to conclude that it would be an abuse of discretion for the IRS to seize on this transient "inventory" to require that the taxpayer achieve a "substantial identity of result"[32] to full-fledged accrual accounting for sales and purchases. The only difference in results between the cash and accrual methods in such circumstances would be that attributable to receivables and payables. That cannot be enough to rule out use of the cash method, or else that method could never be used.[33]

The appellate court explicitly confined its holding to circumstances where the product was physically impossible to inventory, dismissing cases cited by the Commissioner as off point because they all involved goods that "were or *could* be stored in inventory."[34] Likewise, it distinguished *Epic Metals Corp. v. Commissioner*,[35] which imposed accrual accounting based upon a momentary possession of title, on the grounds that the metal decking involved in that case *could* have been warehoused, even though it was not. This analysis might well have produced a different result than that reached by the Tax Court in *Osteopathic Medical*, for example, or even in some of the other "contractor cases." The judicial picture should become clearer over time as more of these cases make their way to the appellate courts.

Vandra Bros. Construction Co.

Shortly after the Ninth Circuit issued its opinion in *Turin*, the Tax Court handed the IRS another defeat in *Vandra Bros. Construction Co. v. Commissioner*,[36] a memorandum case involving another contractor. The taxpayer specialized in laying concrete in public sites such as city streets and sidewalks. Most of its materials cost represented liquid concrete, which its supplier delivered and which generally had to be poured within an hour of its arrival at the site, although the taxpayer also bought stone, reinforcing steel, and other items as needed. The court found the facts indistinguishable from those in *RACMP Enterprises, Inc. v. Commissioner*,[37] and held that because "[the] petitioner did not contract to sell the materials but rather contracted to provide finished walkways, repaired streets, and the like," the supplies consumed in the process were not "merchandise."

Representative Manzullo Writes the TLC

Meanwhile, Congressional pressure continues on Treasury and the IRS to expand relief for "small" taxpayers beyond that granted in Revenue Procedure 2000-22.[38] That procedure defines a "small" taxpayer as one with revenues of less than $1 million. At a hearing in April, members of the House Small Business Committee had suggested a $5 million threshold by analogy to Code Section 448.[39]

Treasury recently released a letter from Congressman Donald Manzullo (R-Ill.), chairman of that committee's Subcommittee on Tax, Finance, and Exports, to Treasury's Tax Legislative Counsel, Joseph Mikrut, asking why Treasury did not adopt the Small Business Administration's definition of a small business (also a $5 million threshold), and inquiring about steps to inform the public about, and prevent arbitrary enforcement of, the supposedly "new" policy of requiring larger taxpayers to adopt accrual accounting. The Treasury response appears not yet to have been released.

CREDIT CARD FEES CANNOT BE DEFERRED

Treasury Regulation Section 1.451-5 permits deferral of certain advance payments for goods, and Revenue Procedure 71-21[40] does likewise for advance payments for services. Where those provisions do not apply, the IRS argues, based upon the Supreme Court case law culminating in *Schlude v. Commissioner*,[41] that all advance payments for goods, services, or anything else are immediately reportable as income. For the most part, the courts have agreed, with a possible exception for rare cases in which performance must necessarily occur on a particular date.[42]

Scope of Revenue Procedure 71-21

The IRS has taken the position that credit card fees are not eligible for deferral under Revenue Procedure 71-21 because they are not advance payments for services but for access to credit.[43] The Tax Court has addressed this issue in two companion cases. The taxpayer in *Barnett Banks of Florida v. Commissioner*[44] began charging fees when it added a range of services to its previous no-charge accounts, and the fee was ratably refundable if the customer cancelled the card during the year. By contrast, the fee in *Signet Banking Corp. v. Commissioner*[45] was specifically described in the account documents as a fee paid to establish credit, and was not refundable. On these facts, the Tax Court held that the taxpayer in *Barnett* fell under the terms of Revenue Procedure 71-21 while the taxpayer in *Signet* did not.

American Express had traditionally reported its credit card fees immediately upon receipt. Denied permission to change methods under the IRS policy, Amex sued for a refund in the Court of Federal Claims. American Express' fees, like Barnett's, were refundable, and it contended that the non-service component of its fees was *de minimis* and thus that its case more closely resembled *Barnett* than *Signet*. However, the Court of Federal Claims declined the invitation to engage in "close factual distinctions" based on the Tax Court cases. Instead, it reasoned that the critical question was whether the taxpayer had shown that the IRS abused its discretion in interpreting its own revenue procedure the way that it had. The court concluded that the taxpayer had not made the requisite showing and granted summary judgment to the government.

Procedural Considerations

The difference in analysis was in part due to the different procedural posture in which the taxpayers found themselves. The taxpayer in *Barnett* had amortized the fees into income from when it first began charging them at all,[46] as did the taxpayer in *Signet*, at least for the years at issue.[47] In those cases, the IRS was trying to force the taxpayers to change their accounting method, while they resisted on the grounds that Revenue Procedure 71-21 established that their method clearly reflected income.

By contrast, American Express was reporting its fees upon receipt and thus had to run the gamut of the requirement to secure consent to changes of accounting method. It could not argue that the IRS abused its discretion by requiring it to remain on its existing accounting method. Under *Schlude* and similar cases, this treatment was correct, and in general, the IRS does not have to permit taxpayers to change from one correct accounting method to another. The taxpayer was left with the argument that, having promulgated generally applicable administrative relief, the IRS abused its discretion by refusing to permit American Express to use it. The court held, in effect, that the IRS's interpretation of its own revenue procedure to exclude credit card fees was not unreasonable.

DEDUCTING ROYALTIES UNDER THE "ALL EVENTS" TEST

Conditions Precedent and Conditions Subsequent

Accrual basis taxpayers generally take a liability into account (deducting it in appropriate cases) when

1. All the events have occurred that establish the fact of the liability;
2. The amount can be determined with reasonable accuracy; and
3. "Economic performance" has occurred as to the liability.[48]

While contingencies ("conditions precedent") will prevent accrual of a deduction under the first prong of this "all events" test, "conditions subsequent" will not. Thus, in *Helvering v. Russian Finance & Construction Corp.*,[49] a mining contract provided that the taxpayer would be forgiven its liability for "deferred royalties" if the contract were cancelled for reasons other than its breach of the agreement. The court held that the taxpayer could accrue a deduction for the royalties as the mining took place because "[t]he possibility that a present liability may subsequently be discharged by some condition subsequent does not prevent its accrual."[50] Likewise, in *United States v. Hughes Properties*,[51] the Supreme Court held it irrelevant that the taxpayer might not have to pay the accumulated "progressive jackpot" on its slot machines if it went out of business, apparently regarding this possibility as a condition subsequent.

Newhouse Broadcasting

In *Newhouse Broadcasting Corporation v. Commissioner*,[52] the Tax Court considered the distinction between conditions precedent and conditions subsequent in connection with author royalties paid by Newhouse's book publishing subsidiary, Random House. Royalties were credited upon sales, with chargebacks for returns for which "a reasonable reserve" was withheld from payments. They were *not* contingent upon collection. On its financial statements (but not its tax returns), Newhouse reduced its sales by a reserve for returns, and reduced royalties payable by an amount reflecting consistent assumptions regarding returns ("royalty reserve").

The IRS sought to require the taxpayer to reduce its deductions for royalty expense by the "royalty reserve," arguing that the taxpayer was not really liable for these amounts because its own estimates indicated that it would never have to pay them. However, once the books were sold, nothing more had to occur for Random House to be liable. Something more did have to occur for Random House *not* to be liable: books had to be returned. Consequently, the court held that the possibility of returns was a condition subsequent and not an impediment to accrual.

The court's analysis seems in line with existing precedents. *All* book sales were subject to the possibility of returns, and no category of royalties payable was any more contingent than the rest. If the royalties were indeed contingent, all the payables should have been disallowed, not merely the reserve. The reserve represented the portion of the liability the taxpayer expected not to pay, but this, standing alone, means little.[53] Uncertainty about ultimate payment does not prevent accrual unless the liability is expressly contingent upon ability to pay[54] or, perhaps, it can be said "categorically" from the outset that it will never be paid.[55] The outcome in *Newhouse* is also consistent with authorities requiring that sellers must accrue receivables as income even though there may be a high probability of returns[56] or nonpayment.[57]

CORRECTIONS TO DEPRECIATION METHODS

Code Section 446(e) requires taxpayers to secure IRS consent to changes in accounting methods. Such a change in accounting *methods* must be distinguished from the correction of a "mathematical or posting error," or a change in treatment due to a change in underlying facts.[58] In *H.E. Butt Grocery Co. v. United States*,[59] a district court considered how these rules applied to depreciation adjustments.

The taxpayer in *Butt Grocery* had reviewed its depreciation and discovered two types of mistakes. There had been a number of data entry errors in which, for example, the wrong asset code had been entered, resulting in use of the wrong depreciation schedule. However, the taxpayer also conducted a "cost segregation study" that disclosed that it had incorrectly treated some costs incurred upon opening new stores as nonresidential real property, whereas they should have been classified as 5- and 15-year property. It filed amended claims and ultimately sued for a refund.

A Split Decision

The government's defense on the depreciation issues was that these adjustments reflected an unauthorized effort to retroactively change accounting methods. The district court initially granted the government summary judgment on all the depreciation issues in an unpublished order issued last year. The opinion reported in the tax services was issued in disposing of the taxpayer's motion for reconsideration. On revisiting the issue, the court held that the data entry errors could be corrected on amended returns, relying on the exception for "mathematical or posting errors," which courts have frequently been willing to extend to any kind of obviously unintentional error.[60]

That left the store costs that the taxpayer sought to reclassify based on its cost segregation study. Showing their age, the Treasury regulations under Section 446 provide that changes in depreciation schedules resulting from changes in the estimate of an asset's useful life are not changes in method. Under traditional depreciation accounting, such determinations were inherently factual, and, as the regulations noted, were "traditionally corrected by adjustments in the current and future years."[61] However, factual determinations of useful life and salvage value are no longer determinative under the ACRS and MACRS regimes used for most assets since 1981. The court rejected the taxpayer's attempt to rely on this obsolete passage and reaffirmed its order granting summary judgment to the government as to this part of the claim.

The regulations state that the decision to treat a class of assets as depreciable is a method of accounting.[62] The *Butt Grocery* court went one step further and held that placing a class of assets in one depreciation category rather than another another is likewise a method. The result was broadly consistent with the pre-ACRS regulations under which a change in method for the assets in a particular depreciation account was a change in method.[63]

1. 219 F.3d 359 (4th Cir. 2000).

2. 219 F.3d 1103 (9th Cir. 2000), *aff'g* 75 T.C.M. (CCH) 2534 (1998).

3. 80 T.C.M. (CCH) 125 (2000).

4. 2000-20 I.R.B. 1, discussed in 1(10) *Corp. Bus. Tax'n Monthly* Vol. 1, No. 10 (July 2000).

5. 47 Fed. Cl. 127 (2000).

6. 80 T.C.M. (CCH) 179 (2000).

7. 86 A.F.T.R.2d ¶ 2000-5048 (W.D. Tex. Feb. 9, 2000).

8. 114 T.C. No. 35 (June 30, 2000).

9. 114 T.C. No. 36 (June 30, 2000).

10. E.g., Houston Industries, Inc. v. United States, 125 F.3d 1442 (Fed. Cir. 1997); Illinois Power Co. v. Commissioner, 792 F.2d 683 (7th Cir. 1986); Florida Progress, *supra*.

11. E.g., Roanoke Gas Co. v. United States, 977 F.2d 131 (4th Cir. 1992); Iowa Southern Utilities Co. v. United States, 841 F.2d 1108 (Fed. Cir. 1988); WICOR, Inc. v. United States, 99-2 U.S.T.C. ¶ 50,951 (E.D. Wis. 1999); Midamerican Energy, *supra*; Florida Progress, *supra.*

12. 48 F. Supp. 2d 527 (E.D. Va. 1999), *aff'd*, 219 F.3d 359 (4th Cir. 2000).

13. Id. at 532–33 & nn. 1–2.

14. Id. at 541–48.

15. 219 F.3d at 368-70.

16. Tax Ct. Dkt. No. 6655-00, petition (hereinafter "FPLPetition") available as Tax Analysts Doc. No. 2000-19091 (June 14, 2000).

17. FPL Petition, ¶ 5.i.

18. 1(12) *Corp. Bus. Tax'n Monthly* 25, 26–28 (September 2000).

19. See 48 F. Supp. 2d at 554 n.18.

20. See id. at 548 n.15.

21. Id. at 551–53, citing, *inter alia*, Estate of Walling v. Commissioner, 373 F.2d 190 (3d Cir. 1967) and Jones v. United States, 279 F. Supp. 772 (D. Del. 1968).

22. 219 F.3d at 370-72.

23. FPL Petition, ¶ 5.a.(3).

24. 503 U.S. 79 (1992).

25. 1(12) *Corp. Bus. Tax'n Monthly* 25, 28–29 (September 2000); 1(10) *Corp. Bus. Tax'n Monthly* Vol. 1, No. 10 (July 2000); 1(9) *Corp. Bus. Tax'n Monthly* 34 (June 2000).

26. Treas. Reg. § 1.446-1(c)(2)(i).

27. 75 T.C.M. (CCH) 2534 (1998), *aff'd*, 219 F.3d 1103 (9th Cir. 2000).

28. Osteopathic Medical Oncology and Hematology, P.C. v. Commissioner, 113 T.C. 376 (1999), *acq. in result*, AOD 2000-05 (April 27, 2000); Mid-Del Therapeutic Center, Inc. v. Commissioner, 79 T.C.M. (CCH) 1875 (2000).

29. RACMP Enterprises, Inc. v. Commissioner, 114 T.C. 211 (2000); Vandra Bros. Construction Co. v. Commissioner, 80 T.C.M. (CCH) 125 (2000). (described below); Turin, *supra*; Galedrige Construction, Inc. v. Commissioner, 73 T.C.M. (CCH) 2838 (1997).

30. 73 T.C.M. (CCH) 2838 (1997).

31. 119 F.3d at 1107.

32. Cf. Wilkinson-Beane, Inc. v. Commissioner, 420 F.2d 352 (1st Cir. 1970).

33. Accord, e.g., Ansley-Sheppard-Burgess Co. v. Commissioner, 104 T.C. 367, 371–75 (1995).

34. 119 F.3d at 1108.

35. 48 T.C.M. (CCH) 357 (1984), *aff'd without published opinion*, 770 F.2d 1069 (3d Cir. 1985).

36. 80 T.C.M. (CCH) 125 (2000).

37. 114 T.C. 211 (2000), discussed in 1(9) *Corp. Bus. Tax Monthly* 34, 36 (June 2000).

38. 2000-20 I.R.B. 1.

39. See 1(9) *Corp. Bus. Tax'n Monthly* 34, 37 (June 2000).

40. 1971-2 C.B. 549.

41. 372 U.S. 128 (1963).

42. See Artnell Co. v. Commissioner, 400 F.2d 981 (7th Cir. 1968) (baseball ticket revenues).

43. Gen. Couns. Mem. 39434 (May 31, 1985).

44. 106 T.C. 103 (1996).

45. 106 T.C. 117 (1996), *aff'd*, 118 F.3d 239 (4th Cir. 1997).

46. 106 T.C. at 114–15 & n.9.

47. 106 T.C. at 124.

48. I.R.C. § 461(h); Treas. Reg. § 1.461-1(a)(2).

49. 77 F.2d 324 (2d Cir. 1935).

50. Id. at 327.

51. 476 U.S. 593, 605–06 (1986).

52. 80 T.C.M. (CCH) 179 (2000).

53. See Hughes Properties, 486 U.S. at 606 ("potential nonpayment of an accrued liability exists for every business").

54. E.g., Putoma Corp. v. Commissioner, 66 T.C. 652, 661–62 (1976), aff'd, 601 F.2d 734 (5th Cir. 1979), distinguishing United Control Corp. v. Commissioner, 38 T.C. 957 (1962), *acq.* 1966-1 C.B. 3.

55. See Cohen v. Commissioner, 21 T.C. 855, 857 (1954), *acq.* 1954-2 C.B. 4, discussing earlier case law.

56. E.g., Record Wide Distributors v. Commissioner, 682 F.2d 204 (8th Cir. 1982), *cert. denied*, 459 U.S. 1171 (1983).

57. E.g., Moore v. Commissioner, 45 T.C.M. (CCH) 557 (1983).

58. Treas. Reg. § 1.446-1(e)(2)(i)(b).

59. 86 A.F.T.R.2d ¶ 2000-5048 (W.D. Tex. Feb. 9, 2000).

60. See, e.g., Korn Industries, Inc. v. United States, 532 F.2d 1352, 1355–56 (Ct. Cl. 1976) (inadvertently omitting cost elements from finished goods inventory); Evans v. Commissioner, 55 T.C.M. (CCH) 902 (1998) (cash basis individuals' prematurely reporting bonus).

61. Treas. Reg. § 1.446-1(e)(2)(ii)(b); cf. id. ("Achange in the method of accounting . . . does not include a change in treatment resulting from a change in underlying facts.")

62.Id.