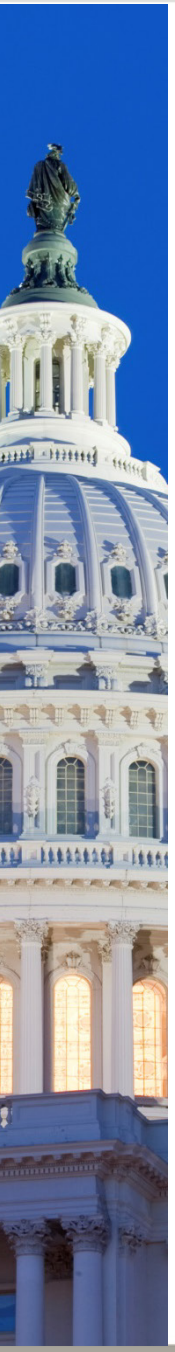
Managing Tax Audits and Appeals 2016

September 29-30, 2016

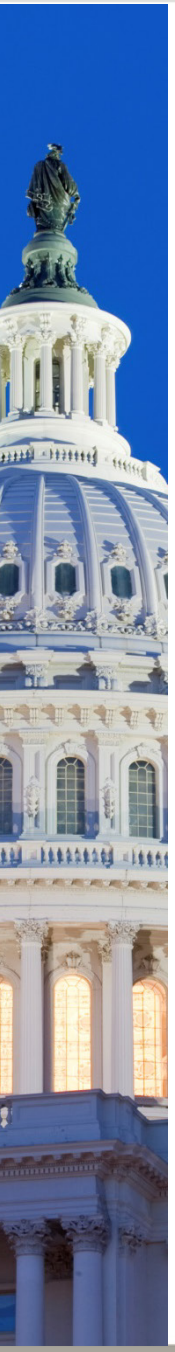
Washington, DC

Tax Accounting Controversies & Developments

Dwight Mersereau

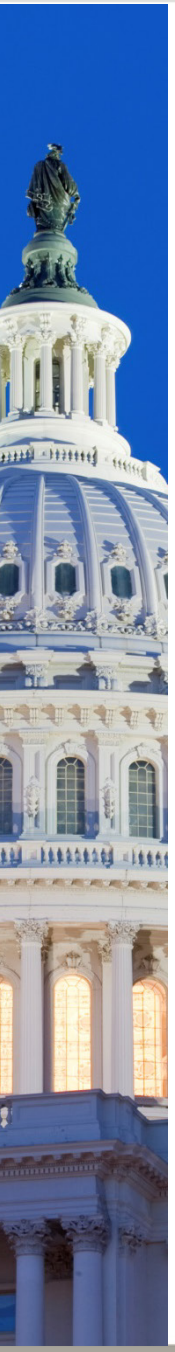


Resolving Accounting Method Issues



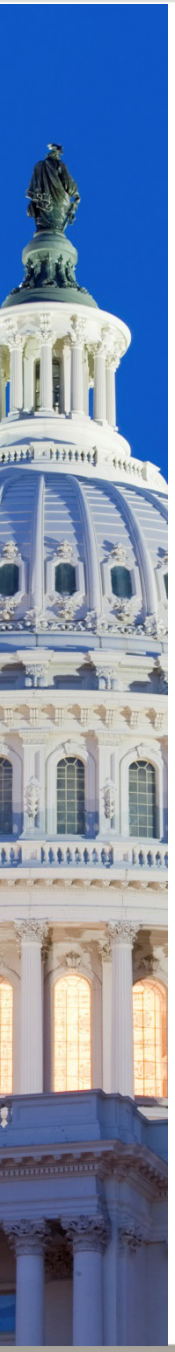
General Background

- A taxpayer adopts an impermissible method by using it on two consecutively filed returns.
- After adopting a method (either permissible or impermissible) the taxpayer must use the method for all items arising during the year, and from year to year.
- A taxpayer must obtain the consent of the Commissioner to change a method.



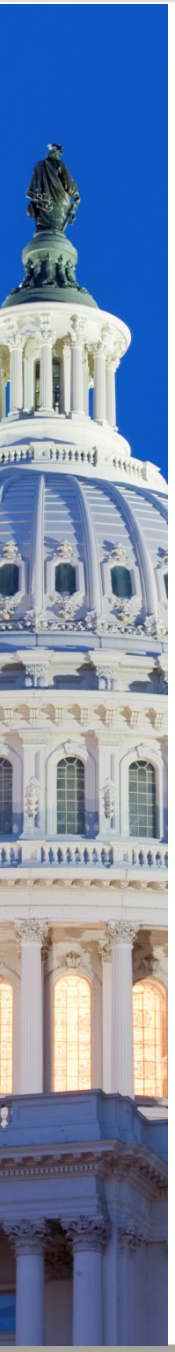
General Background

- Accounting methods determine when a taxpayer takes into account an item of income or deduction.
- A taxpayer may:
  - Adopt any permissible overall method on its first return; and
  - Any special method the first time it accounts for the item.



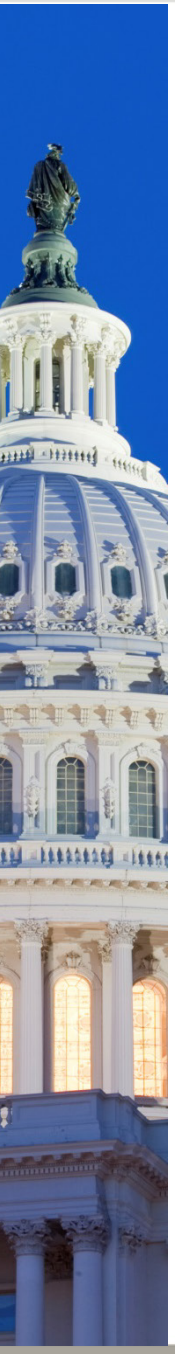
General Background

- What constitutes a change in method is not always clear, and it is the subject of frequent controversy.



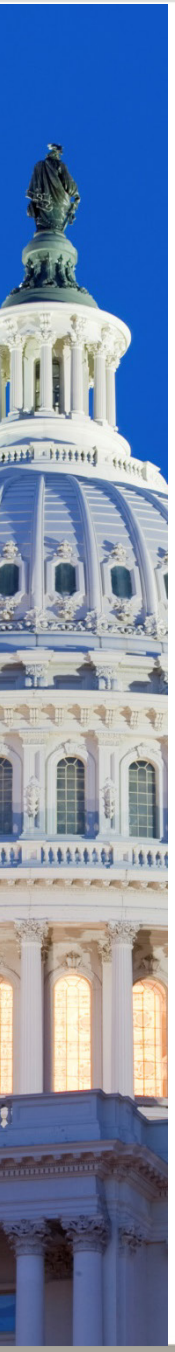
Changes Imposed by Exam

- Exam has the authority to change a taxpayer's method if—
  - Improper method - the taxpayer's method does not clearly reflect its income, or
  - the taxpayer has not regularly used a method
- Exam cannot change a taxpayer from a permissible method to a method Exam believes "more clearly reflects" the taxpayer's income.



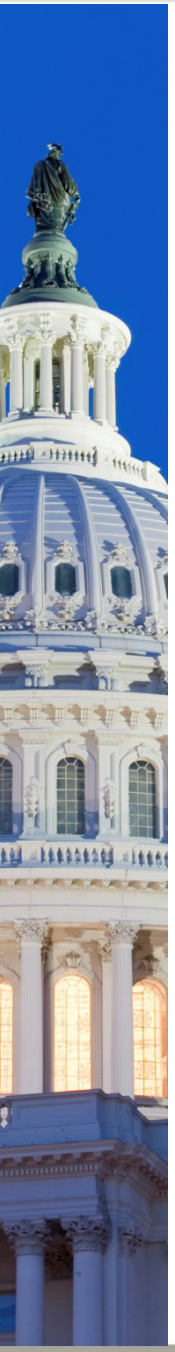
Changes Imposed by Exam

- Where Exam has authority to change a taxpayer's method, however, Exam can change the taxpayer to any method that it believes clearly reflects income.
  - Courts give great deference to the determination of the new method, and have even allowed Exam to change a taxpayer to a method that otherwise would be impermissible.



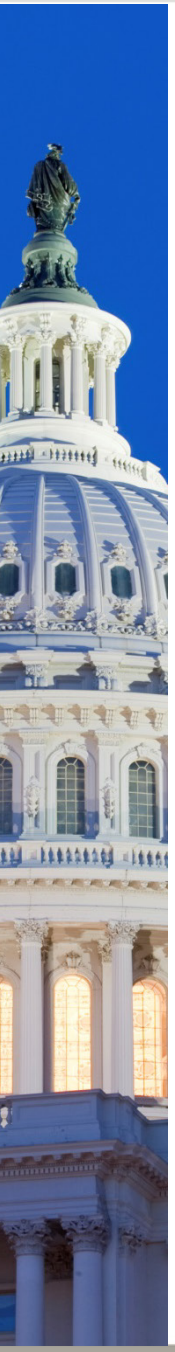
Changes Imposed by Exam

- Exam must notify the taxpayer in writing that it is changing the taxpayer's method.
  - In a closing agreement, if one is executed.
- Content of notice:
  - A statement that the issue is being treated as an accounting method change or a clearly labeled section 481(a) adjustment; and
  - A description of the new method.



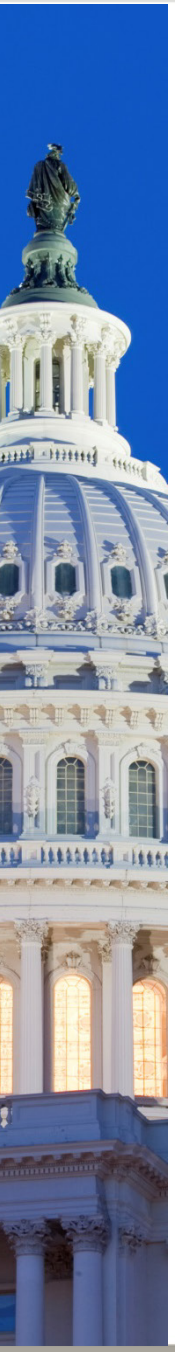
Changes Imposed by Exam

- If Exam does not provide the required notice, there is no change in method.
  - The taxpayer is required to continue to use its original method.
  - Exam and the taxpayer must treat all items in a manner to prevent duplications and omissions.



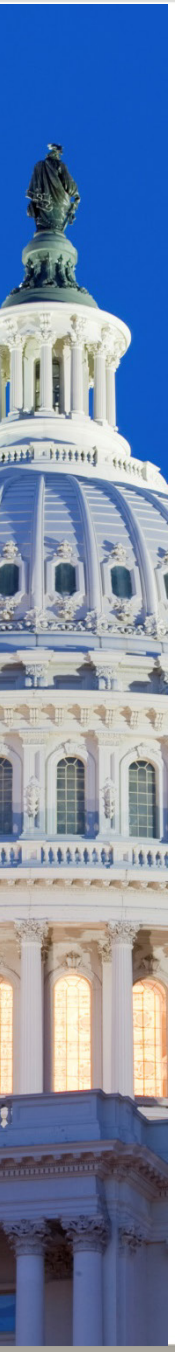
Changes Imposed by Exam

- If Exam determines the taxpayer is using an impermissible method, Exam may propose an adjustment with respect to the method only by changing the taxpayer's method.
  - Exam must change the taxpayer to a permissible method, not a method contrived to reflect hazards of litigation.



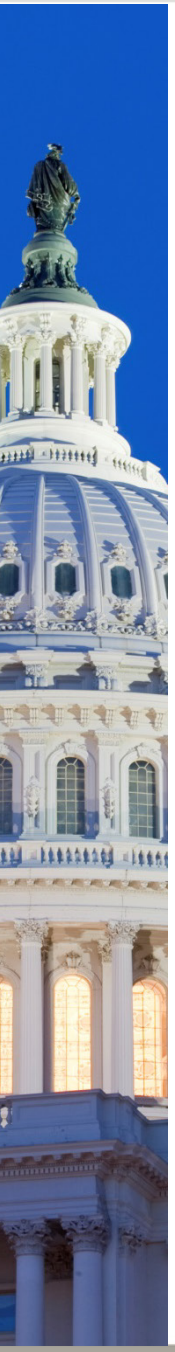
Changes Imposed by Exam

- Generally, Exam must make the change in the earliest year under examination (or, if later, the earliest year the method is impermissible).
  - Limited exception if the records are insufficient to allow a computation of the §481(a) adjustment and Exam cannot reasonably estimate it.



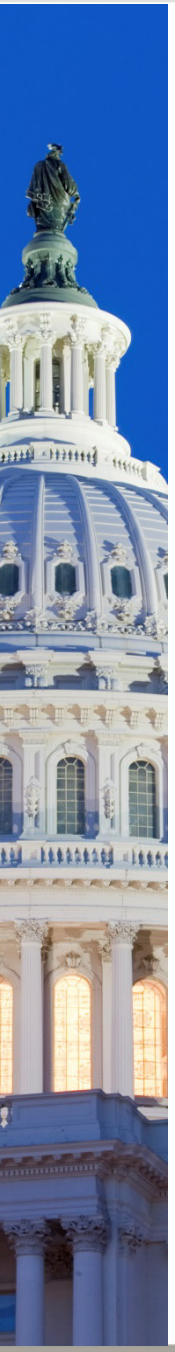
Changes Imposed by Exam

- Exam must compute a §481(a) adjustment, and cannot use a "cut-off" to reflect the hazards of litigation.
- Must include the entire amount of the §481(a) adjustment in the year of change.



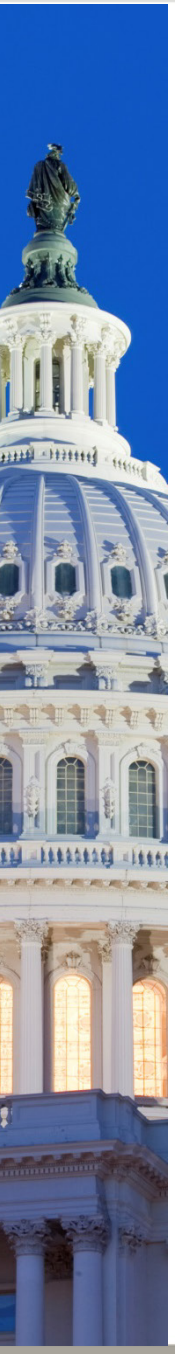
Resolution at Appeals

- Because of their mission to "resolve controversies without litigation," Appeals has greater flexibility than Exam.
- Appeals may resolve an accounting method issue using any means appropriate under the circumstances to reflect the hazards of litigation.



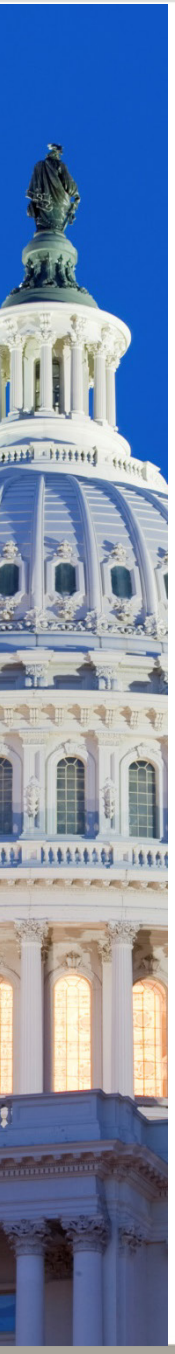
Resolution at Appeals

- Three examples of how Appeals can resolve accounting method issues:
  - Accounting Method Change;
  - Alternative-Timing Resolution;
  - Time-Value-Of-Money Resolution.



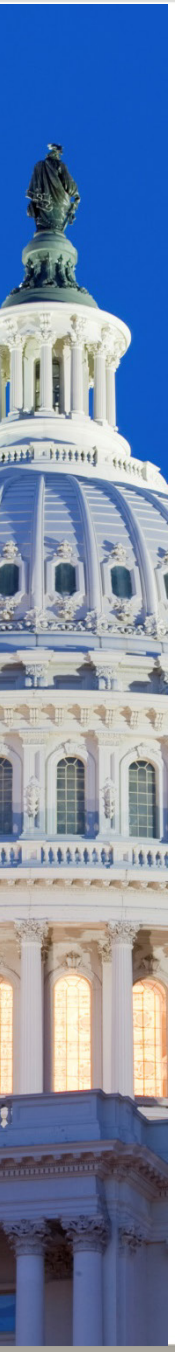
Resolution at Appeals

- Appeals can change a taxpayer to any permissible method, but unlike Exam, Appeals has flexibility with the terms and conditions.
- Appeals can:
  - Defer the year of change;
  - Use a “cut-off” method;
  - Compromise the amount of the §481(a) adjustment;
  - Spread the §481(a) adjustment over an extended period.



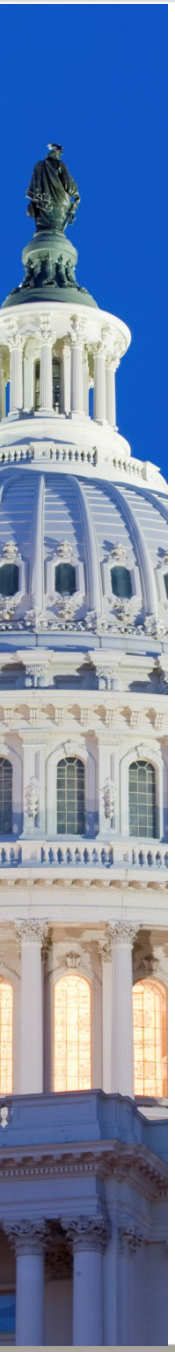
Resolution at Appeals

- Under an Alternative-Timing Resolution, the taxpayer treats certain items arising during the year before Appeals (or prior to and during) differently than under its method, but otherwise continues to use its method.
  - For example, the taxpayer may agree to capitalize certain costs incurred during the year before Appeals, but otherwise continue to deduct such costs.



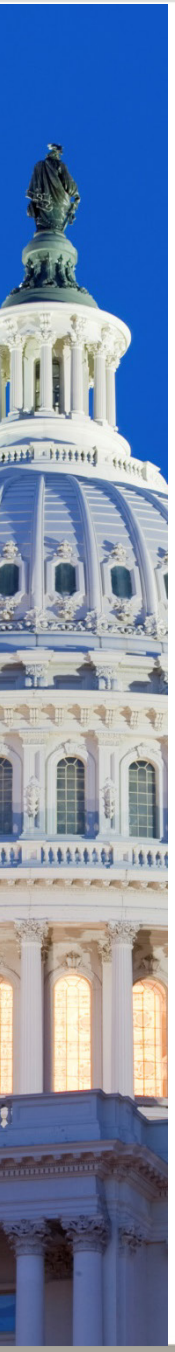
Resolution at Appeals

- Under a Time-Value-Of-Money Resolution, the taxpayer pays a "specified amount" that approximates the benefit the taxpayer receives under its method compared to the method proposed by Exam, reduced to reflect hazards of litigation.
- The taxpayer continues to use its method.



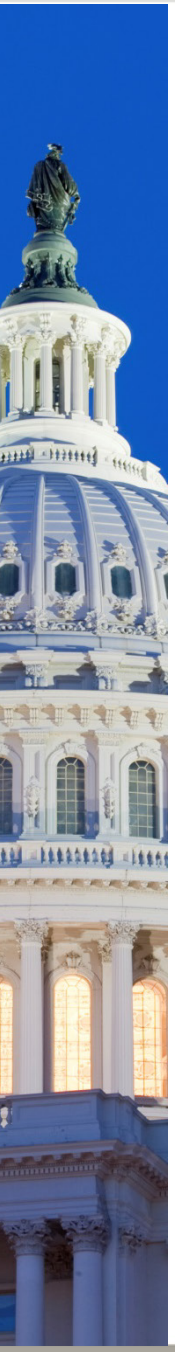
Resolution at Appeals

- For example, the benefit a taxpayer receives from deducting a cost currently rather than amortizing it over some number of years can be quantified and then reduced by some percentage to reflect the hazards of litigation.

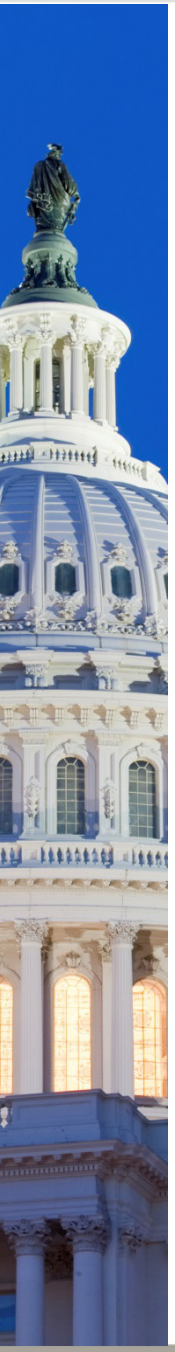


Resolution at Appeals

- If Appeals resolves the accounting method issue other than by changing the taxpayer's method, Appeals must enter into a closing agreement with the taxpayer.

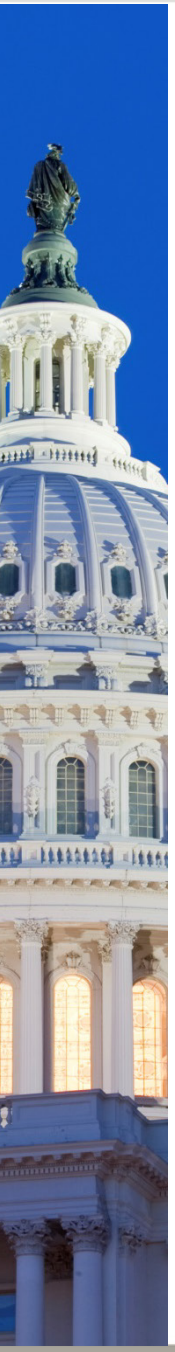


Section 199 – Domestic Production Activities Deduction

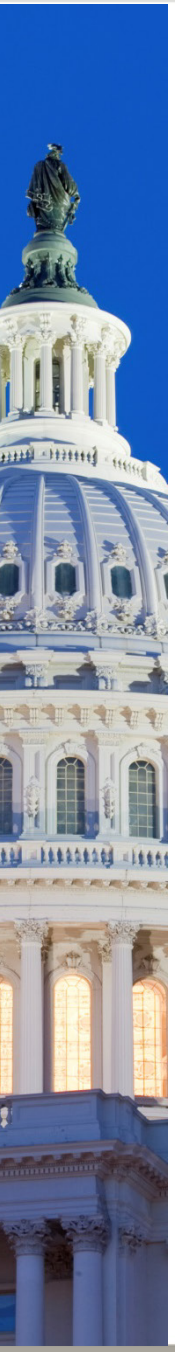


Overview

- Section 199 is an incentive provision relating to certain domestic manufacturing and production activities
- The deduction provides a permanent tax benefit (federal and states), increases cash flow and enhances shareholder value
- The deduction currently equal to 9% (or 6% for certain oil and gas) of the lesser of:
  - The qualified production activities income (QPAI)
  - Taxable income (determined without regard to Section 199)
- Section 199 limits the deduction to 50% of DPGR-related W-2 wages

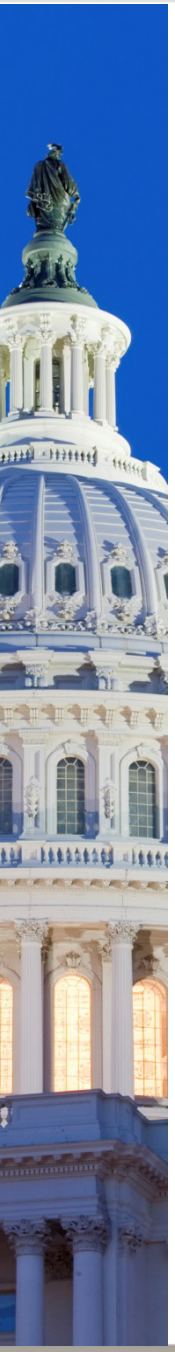


"... and then you smile and say... all together now... 'that's not deductible'."



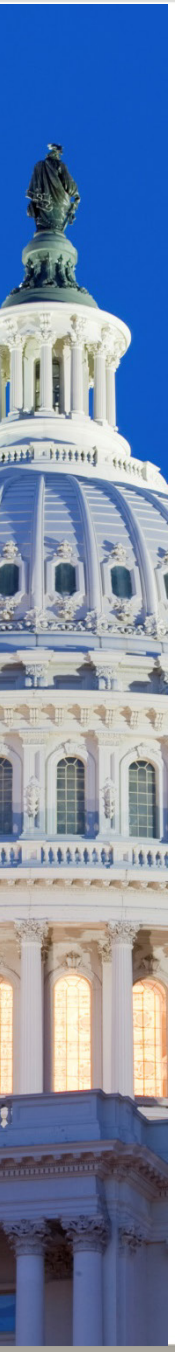
Section 199 Controversy

- Contract manufactures – benefits and burdens test
- Manufacture, Production, Grow, or Extract (MPGE) Activities
- Exam/Appeals



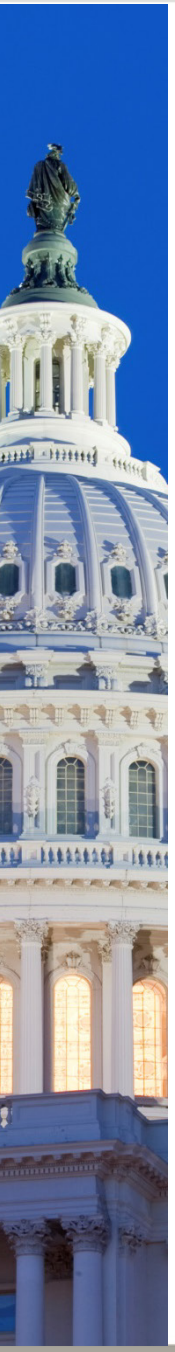
Section 199 Benefits and Burdens

- Under final regulations, taxpayer with "benefits and burdens of ownership" over the qualifying MPGE activity may claim the section 199 deduction
  - facts and circumstances test
- Only the taxpayer with benefits and burdens is entitled to the deduction



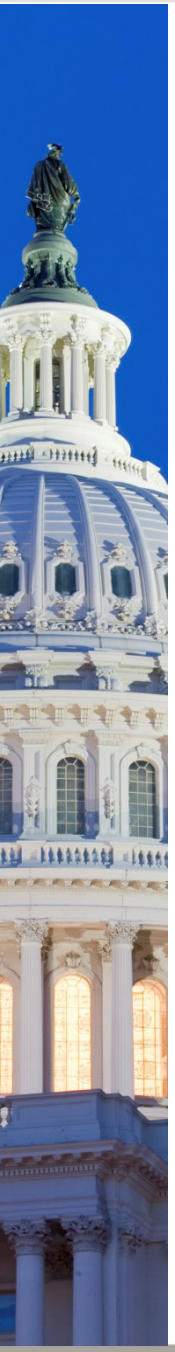
Section 199 Benefits and Burdens

- *ADVO, Inc. v. Commissioner*, 141 T.C. 298 (2013).
- *Limited Brands* – TC Petition filed August 2010 & settled
- *Hibu Group (USA), Inc. (f/k/a Yellow Book Inc.) v. Commissioner* (Tax Court)
- *Bare Escentuals* – TC Petition filed December 2015
- *AT&T Advertising, L.P., YP Advertising & Publishing, LLC v. United States* (Court of Federal Claims)



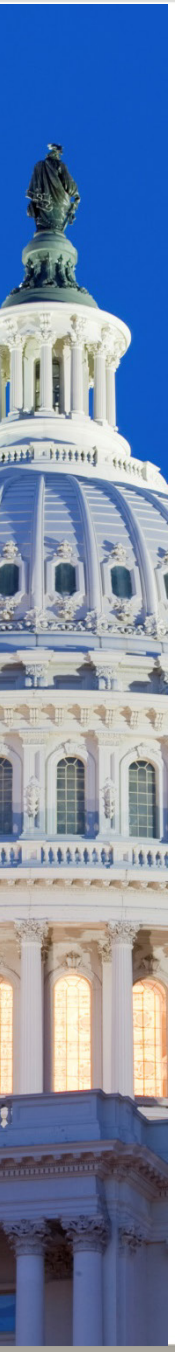
Section 199 Benefits and Burdens

- ADVO nine factor analysis:
  - Which party has legal title
  - How do the parties treat the transaction
  - Which party has equity interest
  - Whether there is a present obligation to deliver a deed
  - Who has the right of possession and control
  - Who pays property taxes after the transaction
  - Who has risk of loss or damage
  - Who has profit from the sale of the property
  - Whether the taxpayer actively and extensively participated in the management and operations of production



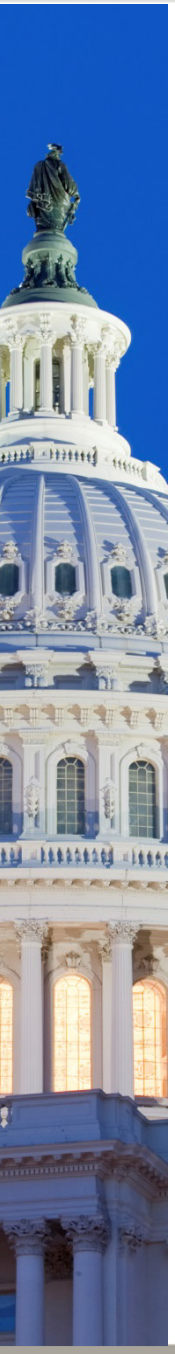
Section 199 Benefits and Burdens

- Proposed regulations remove the benefits and burdens rule, instead awarding the 199 deduction to the entity actually performing the qualifying MPGE activity



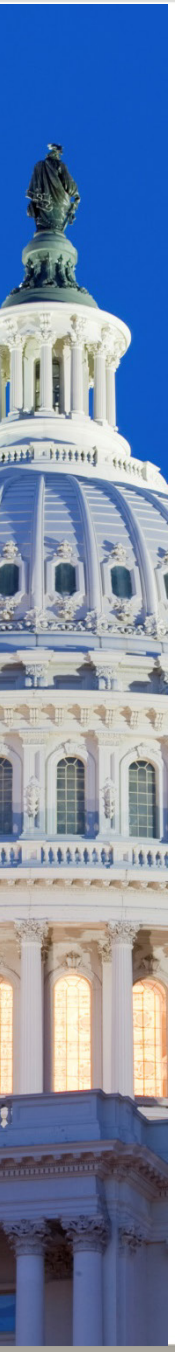
Section 199 Benefits and Burdens

- Potential revision to §199(d)(10) — relating to contract manufacturing.
- New Section 199(d)(10) to provide that in contract manufacturing situations, any party to the arrangement that makes a substantial contribution through the activities of its U.S. employees to the manufacture of qualifying production property shall be entitled to claim the deduction



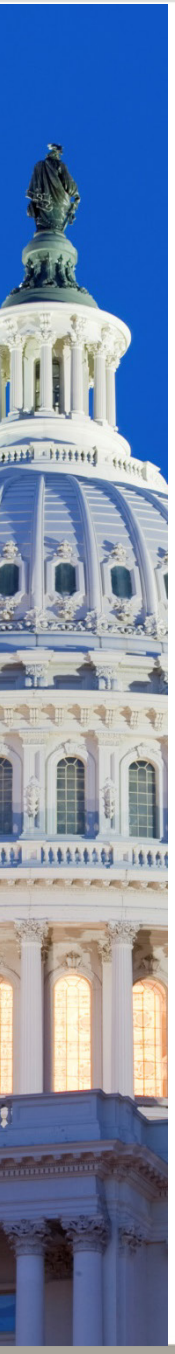
Section 199 Non-qualifying MPGE

- Activities relating to packaging, repackaging, labeling or minor assembly of QPP does not qualify as MPGE when performed on a standalone basis
- *Precision Dose, Inc. v. United States* (Dist. Ct. Ill., 2015).
  - Taxpayer's activities constituted MPGE rather than packaging, repackaging, labeling, minor assembly
    - Based on *Dean* (gift baskets)
    - *See also* CCA 201246030 (blister packs)



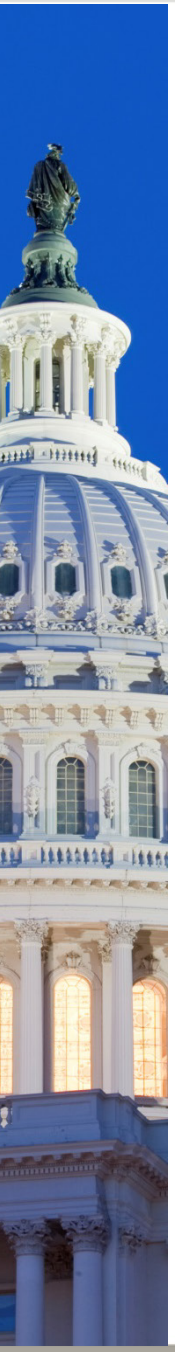
Section 199 non-qualifying MPGE

- Proposed Regulations add as non-qualifying:
  - Testing activities (without other related MPGE activities)
  - Gift baskets example – Direct challenge to *Dean*
- Proposed regulation: Definition criteria
  - whether an activity is a single process that does not transform an article into a materially different QPP; and
  - whether an end user reasonably could engage in the same assembly activity of the taxpayer



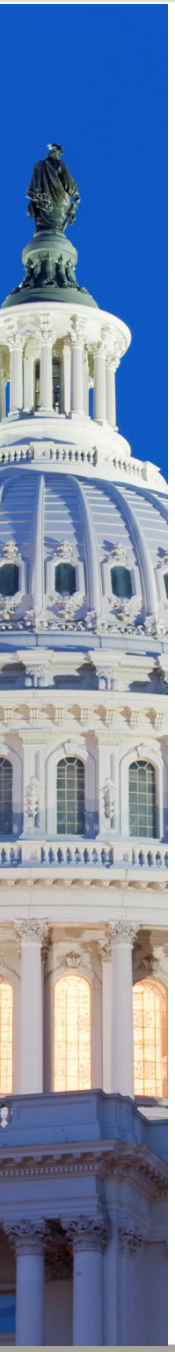
Section 199 non-qualifying MPGE

- 2015 LB&I Directive (LB&I-04-0315-001) taking the position that MPGE also excludes:
  - Cutting blank keys to a customer's specification
  - Mixing base paint and a paint coloring agent
  - Applying garnishment to cake that is not baked where sold
  - Applying gas to agricultural products to slow or expedite fruit ripening
  - Storing agricultural products in a controlled environment to extend shelf life
  - Maintaining plants and seedlings



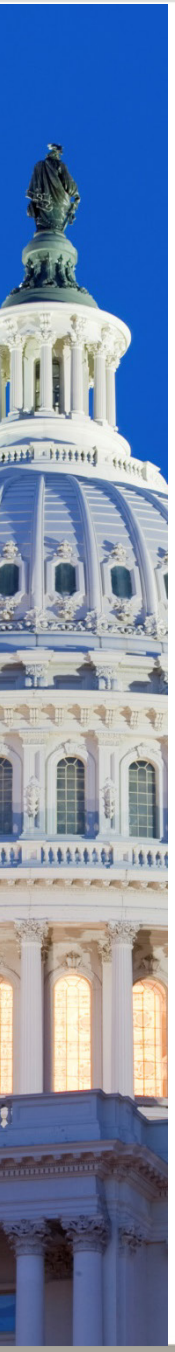
Section 199 Proposed Regulations Other Changes

- Construction Rules
  - Limitation on qualifying general contractor activities
  - Modification of "substantial renovation" to align with tangible property regulations
- Oil & Gas
  - Special definition of oil-related QPAI
- Long-Term Contract Method
  - Rules for allocable contract costs under the percentage of completion method or the completed contract method
- Allocation of COGS between DPGR and non-DPGR

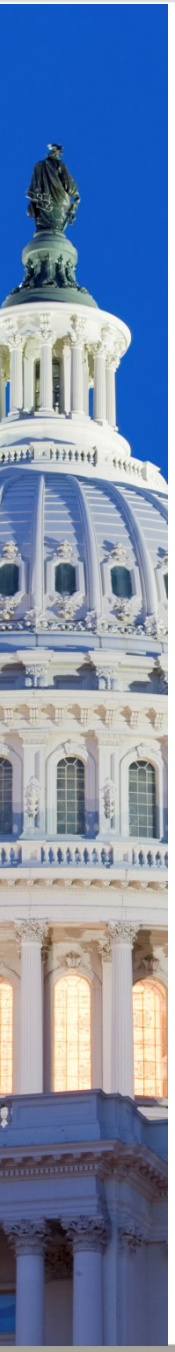


Section 199 Proposed Regulations Other Changes

- Qualified Film
  - W-2 wages and qualified film – Definitions revised
  - Clarify impact of distribution method, attribution rules for pass-through entities, determining DPGR from promotional films and safe harbor for live or delayed television programs
- Hedging Transactions
- Agricultural and horticultural cooperatives



Tangible Property and Repair Regulations



Tangible property and repair regulations

- History
- Application
- Safe Harbors
- Controversy?

Fast Track and IRS Appeals Developments

David J. Fischer

Neville Jiang

"Now let's talk about that loophole you've claimed!"

IRS Procedure Overview

- IRS Audit
  - If unagreed: Revenue Agent's Report (30-Day Letter)
- IRS Appeals
  - If unagreed: Statutory Notice of Deficiency (90-Day Letter)
- Litigation
  - Tax Court
  - U.S. District Court
  - U.S. Court of Federal Claims
- Appeals
  - U.S. Circuit Courts of Appeals
  - U.S. Supreme Court

"Mission" of IRS Exam

- Identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case IRM § 4.10.7.1(1).
- May resolve disputed issues of fact, but bound by IRS positions in Treasury Regulations, rulings, and acquiescence or non-acquiescence in court cases
- Not supposed to consider the hazards of litigation in settling cases

Alternative Dispute Resolution Programs

Pre-Filing Programs	Audit Programs	Appeals Programs	International Programs
Compliance Assurance Process	Technical Advice Memoranda	Early Referral	Advance Pricing Agreements
Pre-Filing Agreement Program	Fast Track Settlement	Rapid Appeals Process	Competent Authority
Private Letter Rulings	Delegation Orders 4-24 and 4-25 (Appeals settlements, coordinated issues)	Post-Appeals Mediation	Simultaneous Examination Program
Industry Issue Resolution Program	Accelerated Issue Resolution		Simultaneous Appeals/Competent Authority

Alternatives on Conclusion of Exam

Once receive a Notice of Proposed Adjustments:

- Request Fast Track
- Request 30-Day Letter and proceed to IRS Appeals
- Request Competent Authority assistance
- Request Notice of Deficiency and Proceed to Litigation
  - Tax Court without payment
  - Pay tax, claim refund, and file suit for refund in Federal District Court or Court of Federal Claims
- Concede the issue

Fast Track Settlement (Rev. Proc. 2003-40)

- Mediation (by Appeals officer acting as mediator) between taxpayer and Exam
  - Provides settlement authority to Exam, including "hazard" settlements
- Designed for resolution within 120 days
  - Taxpayer and IRS must have decision-maker present
- Either party may request on receipt of Notice of Proposed Adjustments (NOPA)
  - IRM directs Exam to suggest
  - Both parties must agree

Fast Track Settlement

- Can withdraw at any time
- Can still go to IRS Appeals (or litigation)
  - Post-Appeals Mediation not permitted
- Timing: After NOPA and before 30-day letter
- Taxpayer presents position in Fast Track Memorandum

Early Referral (Rev. Proc. 99-28)

- Referral of fully developed issues to Appeals prior to issuance of 30-day letter
  - NOPA issued on one issue, but other issues still under development
- Designed to permit faster disposition of case than if entire case was referred to Appeals
- Used for 13 cases in 2012, 10 cases in 2013

IRS Appeals

- Designed as "independent" settlement forum
- "Mission" of IRS Appeals: To settle cases

  To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer, and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service

  – Consider "hazards of litigation"
  – Do not consider costs of litigation (no nuisance settlements)

IRS Appeals

- Taxpayer may select by submitting formal written "Protest"
  - Exam team will review and prepare written "rebuttal" to Protest
  - Pre-submission conference with IRS exam and IRS Appeals
- Appeals conference follows pre-submission conference (usually same day)
  - Normal procedure is to exclude Exam (ex parte rules apply)

Post-Appeals Mediation

- Rev. Proc. 2009-44; Rev. Proc. 2014-63
- Non-binding mediation process following unsuccessful efforts at Appeals settlement
  - Designed to be used where limited issues remain unresolved
- Available to all LB&I taxpayers
  - Unavailable if Fast Track used at Exam
- Appeals Officer as mediator, taxpayer may use non-IRS co-mediator at taxpayer expense

Fast Track

- Requires IRS approval
- No "hot" interest
- Fast?
  - Single meeting
  - Lower administrative costs
- Decision maker: IRS Exam
- *Ex parte* not applicable
- Two bites: Fast Track Settlement + Appeals

Appeals

- No IRS approval required
- Hot interest
- Less Fast
  - Multiple meetings
  - Higher administrative costs
- Decision maker: Appeals
- *Ex parte* rules apply
- Two bites: Appeals + Post-Appeals Mediation

Fast Track

- May submit new facts
- Educate Exam about legal arguments, may respond
- Exam may raise new issues

Appeals

- No New Facts
- Exam locked-in and no new legal arguments
- Not raise new issues

Fast Track / Post Appeals Mediation

Program	2012	2013
Fast Track Settlement – SB/SE	64	165
Fast Track Settlement – LB&I	124	105
Fast Track Settlement – TE/GE	6	11

Program	2012	2013
Post-Appeals Mediation (non-collection)	71	88
Post-Appeals Mediation (OIC/TFRP)	23	11

IRS Appeals Trends

- Appeals Judicial Approach and Culture Project
  - Policy not to consider new facts impacting Exam strategy
- Centralization of decision-making at Appeals
  - Issue Specialists are controlling more cases
- *Ex parte* rules eroding
  - Rapid Appeals Process
  - Involve exam in the Appeals presentation

Appeals Judicial Approach and Culture Project (AJAC)

- Two major themes:
  - Appeals will not consider **new facts** not presented to Exam
  - Appeals will not raise **new issues** not considered by Exam
    - See IRM 8.6.1.6 (New Issues and Reopening Old Issues); Appeals Policy Statements 8-2 and 8-3 (IRM 1.2.17)

New Issues at Appeals

- Appeals will not raise new issues not considered by Exam
- Appeals will not reopen previously agreed issues
- Taxpayer can raise new issues or new theories
  - Appeals can consider (without developing new facts)
  - Appeals to request review and comment from Exam
  - 210 days required on statute of limitations to consult Exam

New Facts at Appeals

- Appeals will not engage in fact-finding
  - Appeals will not consider new facts not presented to Exam
  - Factual issues that are not properly developed are returned to Exam (with view of hazards)
  - Appeals expected to announce procedures for new facts in Docketed cases shortly (Fall 2016)
- New information or evidence means
  - Not shared with Exam
  - In view of Appeals Office, merits additional analysis or investigative action
  - New information provided after NOPA or with Protest may extend Exam (possible additional IDRs)

Acknowledgment of Facts (AOF)

- IRS is required to prepare a statement of facts on Form 886-A as part of its consideration of each issue
- IRS is also expected to issue a pro-forma IDR to seek to obtain a written AOF from the taxpayer and to incorporate any additional facts in the write-up
- AOF IDR aimed at ensuring that Appeals is not considering new facts
  - Taxpayers should ensure that all relevant evidence is presented to Exam before the case is closed

Impact of AJAC on Exam Strategy

- No new issues places premium on allowing Exam to present case without comment from taxpayer
  - Unintended result
- No new facts requires taxpayer to present all facts as part of examination process
  - Protest is end of Exam, so should present facts in Protest
  - If need expert, must present opinion to Exam before Appeals

Impact of AJAC Fast Track v Appeals

- If facts undeveloped, Fast Track permits presentation of facts before Appeals
- If law undeveloped, Fast Track will disclose legal position to Exam and permit response
  - No new legal issues can be big advantage

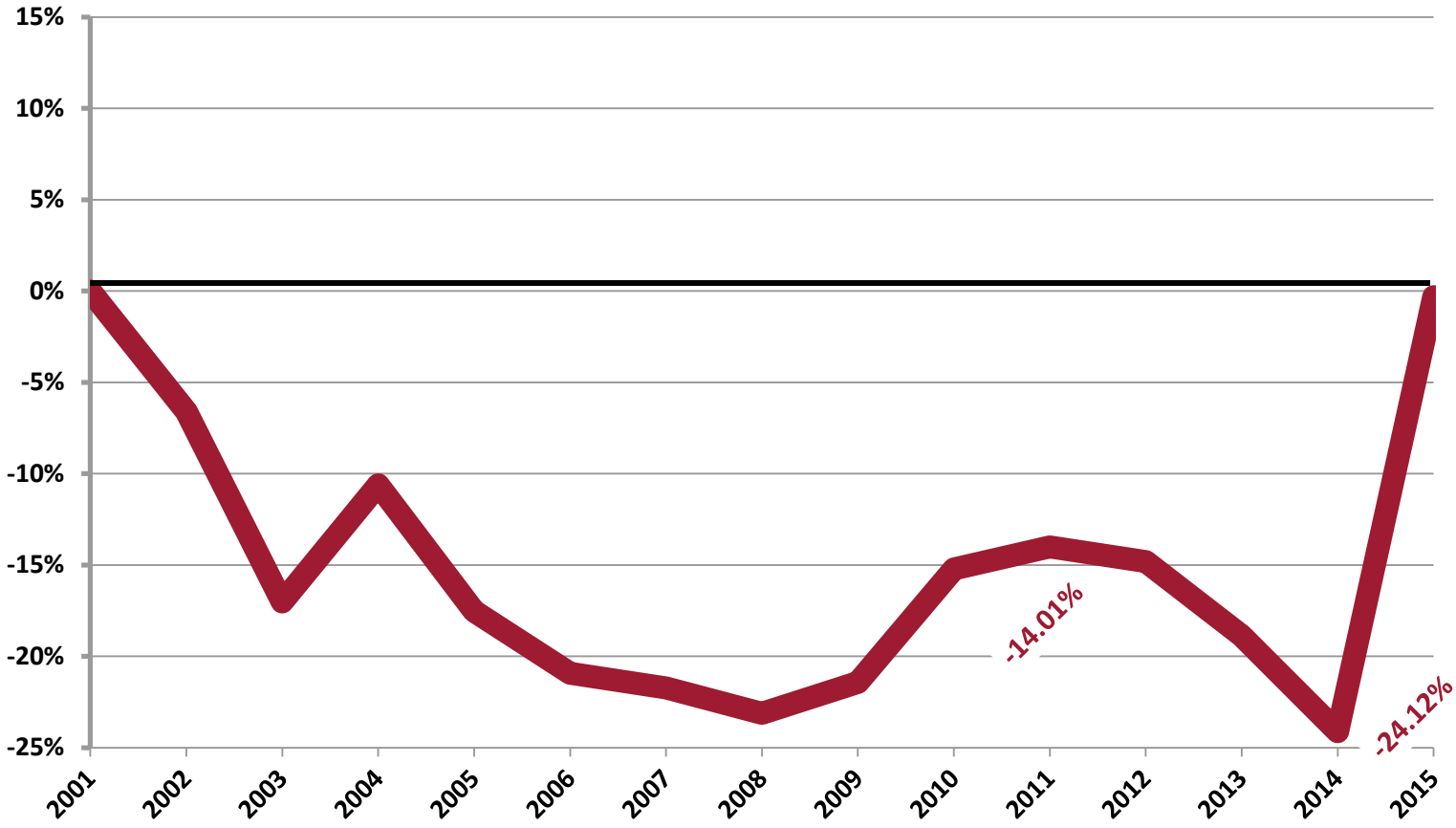
Centralization of Decision-Making

Centralization of Decision Making

- Appeals reducing or eliminating Appeals Team Case Leaders (ATCL)
  - ATCL's have independent settlement authority
  - Other Appeals Officers require supervisor approval
- Appeals issue focus results in Appeals Technical Specialists on issue-by-issue basis
  - Appeals claims increases consistency
  - Our experience is that interfering with settlement

Appeals Officers

Changes in Workforce 2001-2015



Appeals Officers

999 in 2001
758 in 2014
996 in 2015

Source: IRS Data Book Table 30.

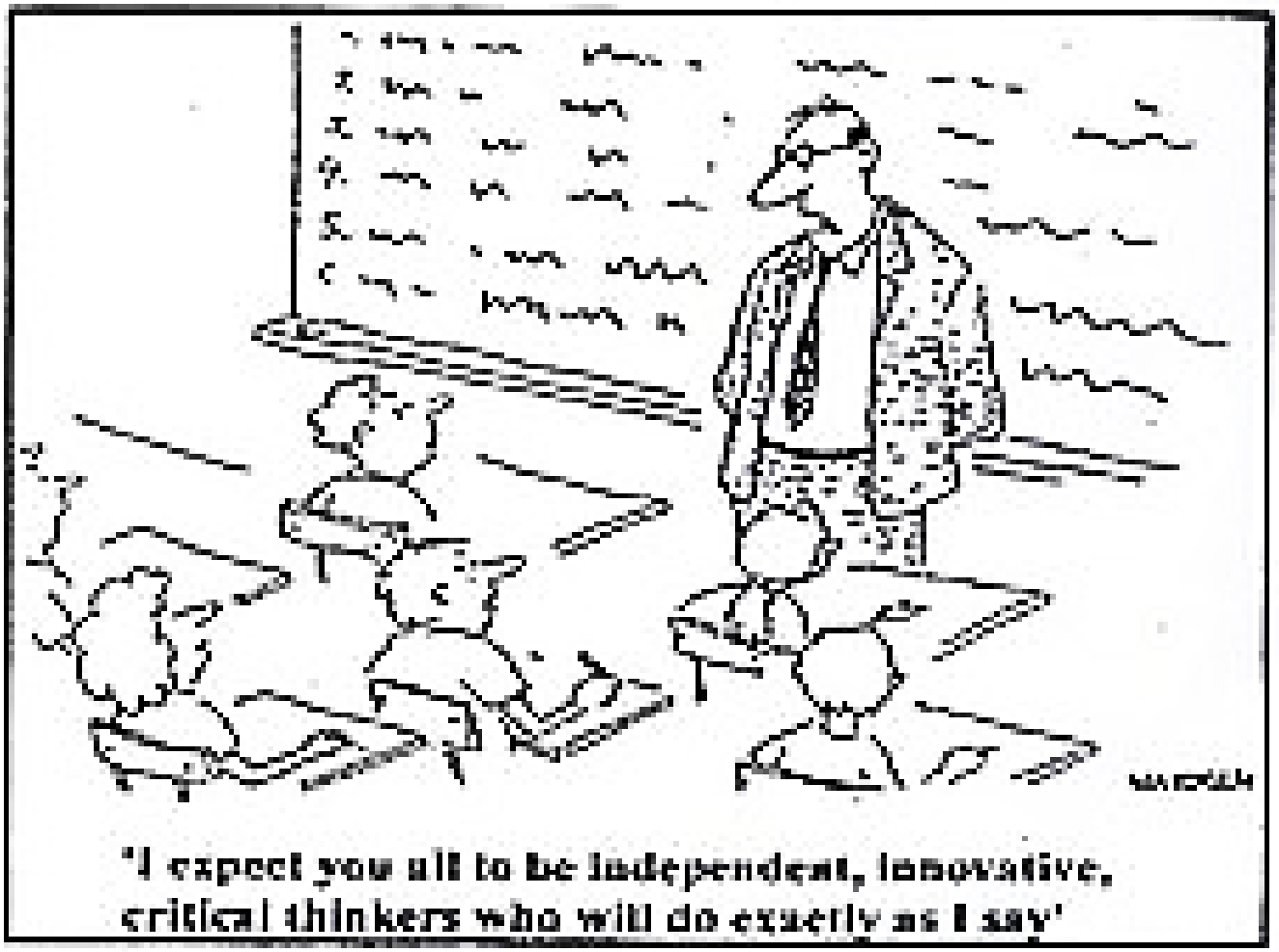
IRS Appeals Organization

- IRS Appeals currently working on reorganization
- Appeals currently organized geographically, and with specialty operations separated
- New organization to divide between Exam and Collections functions
- Announcement expected Fall 2016

Impact of Centralization on Fast Track v Appeals

- Who is decision-maker at Fast Track for issue that is part of campaign?
- Rise of Technical Specialists leads to less favorable results at Appeals
- Unclear, but Appeals advantage appears to be eroding

Appeals Independence



Prohibition on *Ex parte* Communications

- Adopted as required by the Restructuring and Reform Act of 1998 (with the Taxpayer Bill of Rights) to assure Appeals independence
- Appeals may not communicate with IRS personnel in other functions (i.e. Exam) without the taxpayer (or representative) being provided the opportunity to participate in the communication
- Appeals may discuss case with Exam in presence of taxpayer
  - Rev. Proc. 2012-18, *superceding* Rev. Proc. 2000-43; IRM § 8.1.10

Rapid Appeals Process (IRM 8.26.11)

- Appeals program similar to Fast Track Settlement, but Appeals, rather than Exam in FTS, has settlement authority
- Mediation (by Appeals officer acting as mediator) between taxpayer and Exam
- Exam remains part of Appeals process, ex parte waived

Exam Participation in Appeals

- Appeals Officers may request to extend Pre-Submission conference, include Exam in discussion of case for extended period
  - Technically not Rapid Appeals Process
  - Can request that Exam be excluded
- Difficult for taxpayer to object

Impact on Fast Track v Appeals

- Erosion of *Ex Parte* rules eliminates some of the advantage of Appeals
  - Still changing decision-maker
- Fast Track and Appeals become more similar
- Ultimate impact still to be determined

Teleconference Developments

- Appeals is attempting to encourage teleconferences and may restrict face-to-face meetings
- New IRM provisions provide default rule will be teleconference or video conference IRM § 8.6.1
- Taxpayers may request in person conference, Appeals team manager must agree
  - Complex, fact intensive cases, or will numerous participants will receive in person conferences

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When Is a Favorable Tax Ruling Impermissible State Aid Under EU Law?

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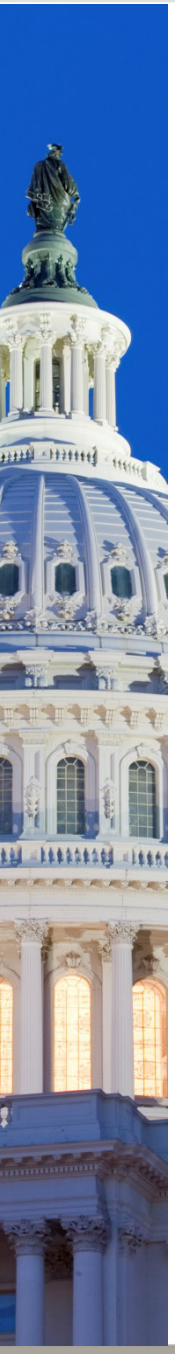
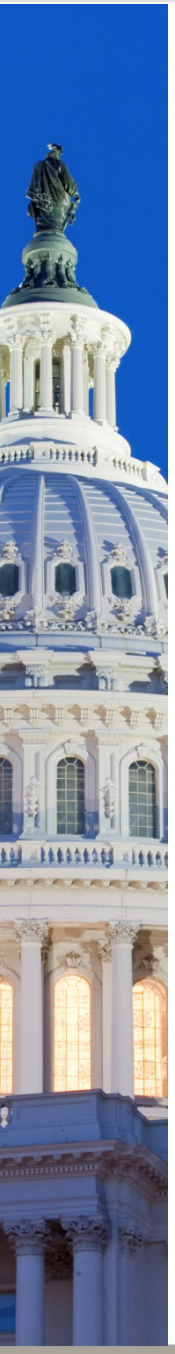
September 2016



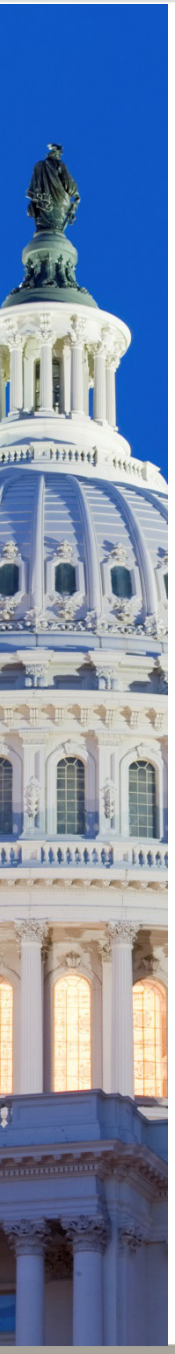
State aid docket

- The European Commission has recently opened at least 8 **in-depth investigations on State aid tax issues**:
  - Two cases against Luxembourg (Fiat Finance and Trade; Amazon); in Fiat, the European Commission has issued a final decision that the arrangements (ruling re calculation of taxable profits) constitute State aid; Fiat is on appeal to the EU General Court. The Amazon case (deduction for royalty paid to affiliate) is awaiting a final decision by the EC.
  - One case against Ireland (Apple) (ruling that profits are attributable to "head office"); recently, the EC has issued a final decision that the arrangement constitute State aid; appeal expected.
  - One case against The Netherlands (Starbucks) (ruling re royalty and price for green coffee beans); the European Commission has issued a final decision that the arrangements constitute State aid; case on appeal to the EU General Court.
  - Two cases against Belgium and France regarding corporate tax exemptions related to ports.
  - One case against Belgium for "excess profits" rulings; the EU has issued a final decision that the arrangements constitute State aid; case on appeal to the EU General Court
  - One case against Luxembourg (rulings issued to GDF Suez (Engie) that allegedly allow dual treatment as debt and equity)



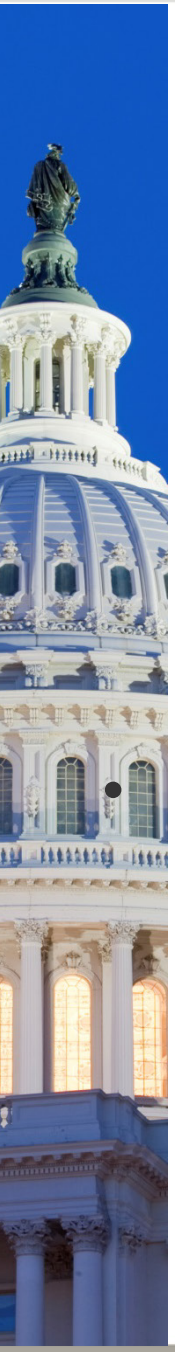
The Problem of the Favorable Tax Ruling

- While presumably an application of the law to the taxpayer's particular facts, a favorable tax ruling
  - Can eliminate legal or factual uncertainty
  - Can characterize facts in a favorable way
  - Can apply the law to the facts in a favorable way
  - Can announce a legal principle that previously had no support



Under US tax principles

- A favorable private letter ruling or the equivalent is nonprecedential.
- In other words, no other taxpayer can rely on it.
- In some circumstances, a competitor may be able to obtain a similar ruling under IBM v. United States, 343 F.2d 914 (Ct. Cl. 1965). (The IRS has nonacquiesced.)
- Note that, in the state and local arena, tax competition is not constrained by the Commerce Clause, after DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006) (based on standing doctrine).



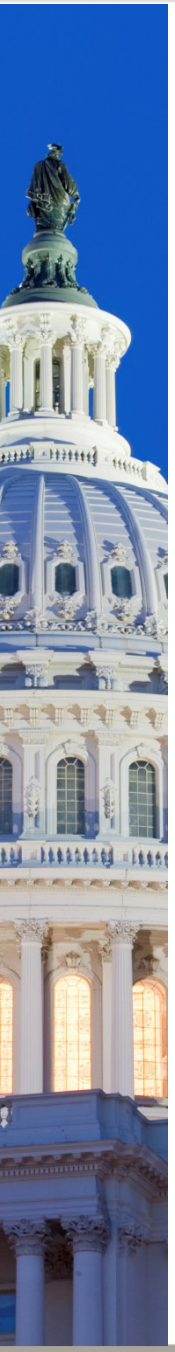
Under EU law

EU law prohibits:

- An advantage in any form whatsoever conferred on a selective basis by public authorities
- That distorts or threatens to distort competition and has a negative effect on trade between EU Member States
- Subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid

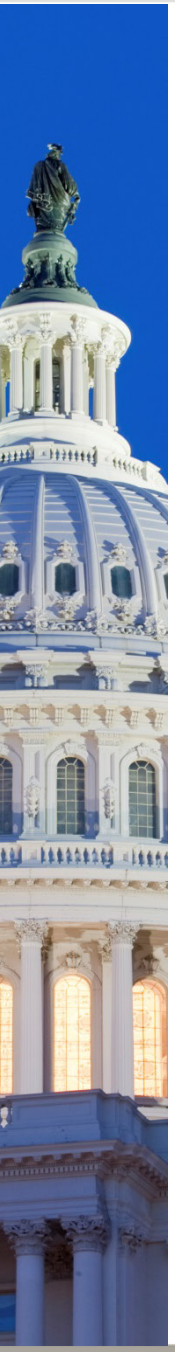
• Rationale: prevent EU Member States from interfering in the economy by granting **distortive aid**, in any form, to companies operating in the EU market. The subsidy need not benefit local businesses at the expense of nonlocal businesses.

EU State aid law is part of EU Competition Law



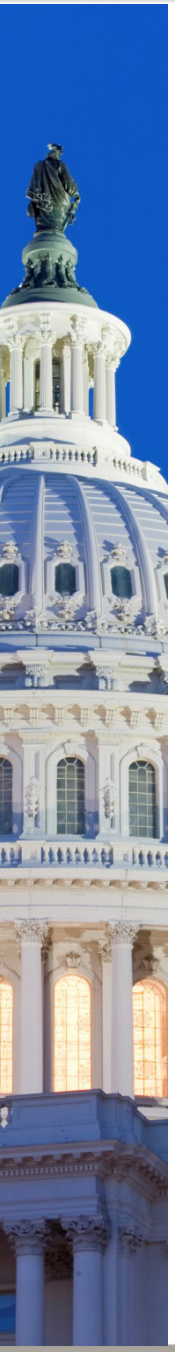
The State aid prohibition must also address tax measures

- "The role of EU state aid control is to ensure Member States do not give selected companies a better tax treatment than others, via tax rulings or otherwise." From EC press release re Apple case (August 30, 2016).
- If that were not the case, a Member State could obviously provide a subsidy to a favored company through the tax system.



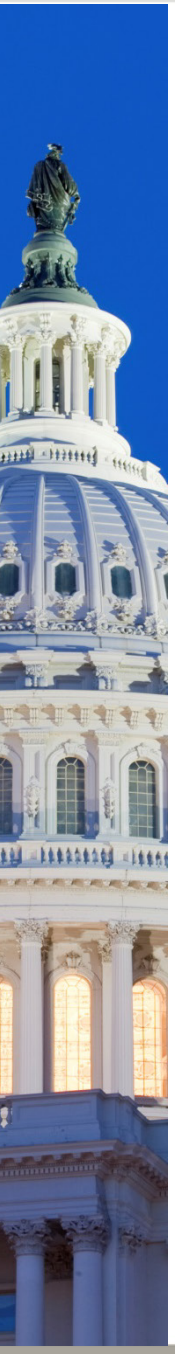
Article 107(1) TFEU: a state measure is considered to be **incompatible** with the internal market when the following four conditions are met:

- the measure **is imputable to the State** (i.e. enacted by the State itself or an agency) and **financed through State resources**;
- the measure confers an economic **advantage** to the company or group of companies to which it is directed;
- the advantage is **selective**, that is, only available to that specific company or group of companies to which it is directed; and
- the measure distorts or threatens to **distort competition** and has a **negative effect on trade** between EU Member States.



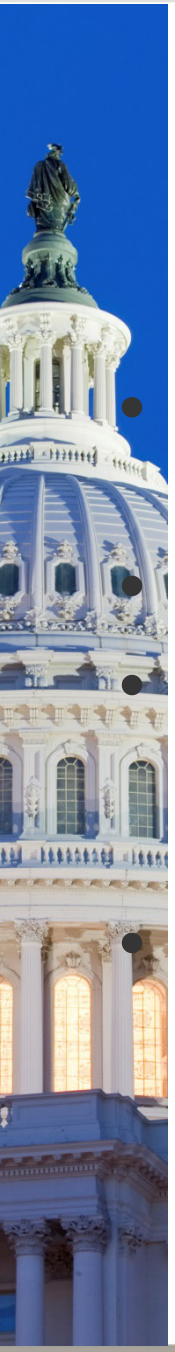
Selectivity is a requirement

- Members States presumably can compete with each other by lowering generally applicable tax rates.
- In Ireland, the corporate tax rate for trading income is 12.5%.
- Because selectivity arguments are harder to make for generally applicable legislation, the EU has focused on tax rulings.



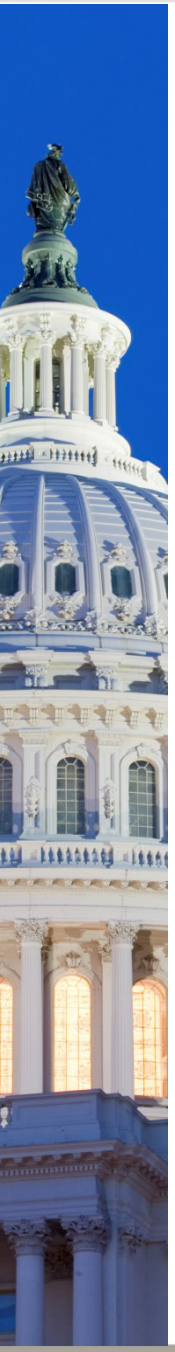
Key questions

- What is the baseline? Is it the tax law of the Member State or does EU law play a role?
- Does it matter that other taxpayers could have gotten a similar ruling?
- Does it matter that such rulings were "available" only to multinationals?



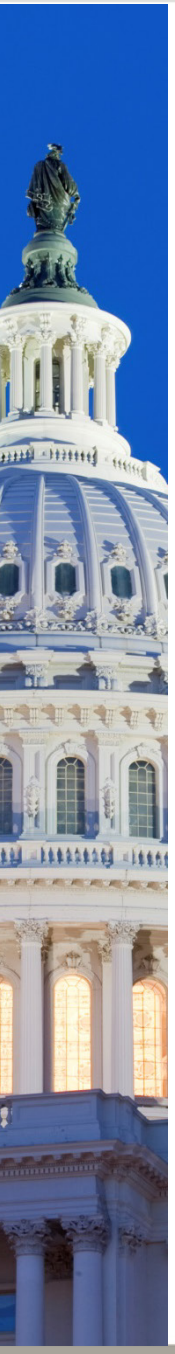
Consequences if a Member State's tax ruling is found to be impermissible State aid

- The Member State is required to collect the back taxes with interest, notwithstanding its tax law.
- The look-back period is ten years
- In many cases, the taxpayer will seek a foreign tax credit in the United States. If there is a credit, the real aggrieved party is the U.S. Treasury.
- Will Treasury allow the credit for such large amounts? Or will Treasury look for reasons why the credit does not apply.



Policy and Politics

- Growing interest of **other EU Institutions**, most notably the European Parliament and the Council of the European Union, as part of broader discussions on tax policy
  - Political action
  - Legislative measures
- Possible changes to EU taxation law to limit the Member States' ability to grant tax rulings on transfer pricing
- While the State aid cases are raised under competition law, the effect is to change EU tax policy. Arguably, tax policy can more effectively be set by tax professionals.



Policy and Politics

- Interesting to note that many of the in-depth investigations target large US companies
- The US Treasury Department this summer released a white paper that is highly critical of these State aid cases (The European Commission's Recent State Aid Investigations of Transfer Pricing Rulings (August 24, 2016))
- Among other criticisms, Treasury objected to the retroactive application of what it perceived to be a new EU tax policy
- So there is a strong political aspect to these cases