

November 2, 1998

**ADVANCE COPY OF INTERNAL REVENUE BULLETIN ITEM**

Attached is an advance copy of Notice 98-55, inviting public comment on issues raised by the new “qualified offer rule” under recently amended Code Section 7430.

This notice will appear in Internal Revenue Bulletin 1998-46, dated November 16, 1998.

You may release this Notice immediately.

Communications Division

## **Part III. Administrative, Procedural, and Miscellaneous**

### **Awards of Costs and Certain Fees in Tax Litigation**

Notice 98-55

Section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, amended § 7430 of the Internal Revenue Code to add a “qualified offer rule” that treats certain taxpayers as prevailing parties when the United States has rejected their offer to settle their tax controversy. Treatment as a prevailing party is a necessary element for a taxpayer to receive an award of reasonable administrative and litigation costs in connection with an administrative or court proceeding. The Service and the Treasury Department intend to publish guidance to address several issues raised by the new qualified offer rule and invite public comment on these issues.

#### **BACKGROUND**

Under § 7430, as amended, a taxpayer qualifying as a prevailing party under this new qualified offer rule may be eligible to receive an award for reasonable administrative and litigation costs in connection with an administrative or court proceeding, even when the position of the United States is reasonable and even though the taxpayer does not substantially prevail in the tax controversy. To qualify as a prevailing party under this new rule, a taxpayer must meet the net worth requirements and make a “qualified offer” during the “qualified offer period.” If the Service rejects the taxpayer’s last qualified offer made during the qualified offer period, and the tax liability of the taxpayer (as determined by a court judgment) is less than the tax liability would have been had the last qualified offer been accepted, the taxpayer qualifies as a prevailing party under § 7430. A “qualified offer” is a written offer that is made by the taxpayer to the United States during the qualified offer period, specifies the amount of the taxpayer’s tax liability (determined without regard to interest), is designated a qualified offer when made, and remains open until the earliest of: (1) the date the offer is rejected, (2) the date the trial begins, or (3) 90 days from the date of the offer. The “qualified offer period,” during which a qualified offer may be made, begins on the date the 30-day letter is mailed by the Service to the taxpayer and ends on the date which is 30 days before the date the case is first set for trial.

#### **ISSUES FOR COMMENT**

The Service and Treasury invite public comments on the following issues (and any others) raised by the new qualified offer rule:

### Comparison of Liability:

In multiple issue tax cases, partial settlements involving discrete issues often occur throughout both the administrative and court proceedings. Depending upon when a qualified offer is made, issues involved in the proceeding at the time of the offer may not be part of the court's adjudication but may still be part of the judgment entered by the court. If settlement occurs before the court proceeding is commenced, those issues would not be part of the judgment. The Service and Treasury are interested in receiving comments on how the settlement of issues at the various stages of the proceedings should be taken into account in comparing the taxpayer's liability under the judgment with that under the qualified offer.

(1) In comparing a taxpayer's tax liability under a qualified offer with the taxpayer's tax liability under a court judgment, should the comparison be limited to court-determined issues or should settled issues also be taken into account?

(2) If settled issues are included in the comparison, should issues settled before the court proceeding is commenced be included in the comparison?

### Content of Offer:

If it is determined that settled issues are not to be taken into account, in whole or in part, a meaningful comparison will only be possible if the qualified offer is specific enough to carve out those issues from the comparison. On the other hand, if all settled issues are to be included in the comparison, a lump-sum offer could be compared with the liability under the judgment as modified to take into account the settled issues not included in the judgment. The Service and Treasury are interested in receiving comments on how the qualified offer rule should be applied in such multiple issue cases.

(1) May a qualified offer be in the form of a lump-sum amount when the case involves multiple tax issues (one or more of which may be settled while others may be determined by the court)?

(2) How much specificity should a qualified offer be required to contain when the case involves multiple tax issues (one or more of which may be settled while others may be determined by the court)?

### Timing of Offer:

In the U.S. Tax Court, the court places cases on a trial calendar that lists the cases to be heard by the court during the designated trial session. Notices informing the parties that their respective cases are set for trial during the designated trial

session are usually sent by the court five or six months prior to the beginning of the trial session. Not infrequently, cases are continued, stricken or otherwise removed from the calendar on which they were originally set for trial and placed on another trial calendar relating to a different trial session. At the start of each trial session, all cases appearing on the trial calendar that have not been previously disposed of will be called by the court. Thereafter, the court announces the dates and times that the cases will be tried during the trial session. Thus, the actual trial date is often unknown until after the calendar call. Depending on how the phrase "first set for trial" is interpreted with respect to a Tax Court case, the length of the period during which a qualified offer may be made may vary significantly. The Service and Treasury are interested in receiving comments on whether the settlement process is better promoted by interpreting the phrase "first set for trial" to provide a longer qualified offer period or by interpreting that phrase to provide a shorter qualified offer period.

(1) When should a U.S. Tax Court case be considered "first set for trial": (a) on the date of the calendar call for the first trial session during which the case is originally set for trial; (b) on the date the case is actually called for trial; or (c) on some other date?

(2) When should a U.S. district court, U.S. bankruptcy court, or Court of Federal Claims case be considered "first set for trial"?

(3) What effect, if any, should a continuance have on when a case is considered "first set for trial"?

#### ADDRESS FOR COMMENTS

Written comments on the new qualified offer rule issues should be submitted by November 30, 1998, should reference Notice 98-55, and may be submitted by mail to:

Internal Revenue Service  
Attn: CC:DOM:CORP:T:R (DOM:FS:IT&A) Room 5226  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

or may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (DOM:FS:IT&A) at the Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Alternatively, comments may be submitted electronically via:

[http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html)

(the Service's Internet site).

#### DRAFTING INFORMATION

The principal authors of this notice are Tom Moffitt and Henry Schneiderman of the Office of the Assistant Chief Counsel (Field Service). For further information regarding this notice, please contact Mr. Moffitt at (202) 622-7900 or Mr. Schneiderman at (202) 622-7820 (not toll-free calls).