

Congress “didn’t mean all corporations,” just C corps. Many taxpayers have since been setting up single-member limited liability companies to potentially make an S corp election by the March 15 deadline, Untracht said. Congress or the IRS almost certainly won’t be able to resolve this issue by then, so taxpayers will have to proceed without a definitive answer, he added.

Monte A. Jackel of Akin Gump Strauss Hauer & Feld LLP raised the issue with S corps last November, before the provision was signed into law, and warned that these kinds of fixes shouldn’t be left to technical corrections or regulations.

White House National Economic Council Director Gary Cohn recently said he wished Congress had gone further and eliminated the ability of investment fund managers to treat carried interest income as a capital gain, rather than as ordinary income. He said carried interest was an issue of particular concern to the president. ■

## JCT Official Doesn’t Think Book-Tax Conformity Rule Is Unclear

by Stephanie Cumings

A provision in the new tax law requiring income to be recognized no later than when it is booked is confounding some practitioners, but a Joint Committee on Taxation official doesn’t think it’s so ambiguous.

Viva Hammer, legislation counsel for the JCT, said January 23 that she was surprised by the confusion surrounding the provision in the Tax Cuts and Jobs Act (P.L. 115-97) and didn’t think the statutory language was “that uncertain.”

“It’s interesting that you’re so mystified by it because it’s been around for a very long time,” Hammer told attendees of an event hosted by the New York State Society of CPAs in New York. She explained that it was a provision in a 2014 tax reform proposal from former House Ways and Means Committee Chair Dave Camp, adding that the provision didn’t elicit much reaction back then.

*‘It’s interesting that you’re so mystified by it because it’s been around for a very long time,’ Hammer said.*

Some practitioners have expressed concern that the new provision could have a broad application, and disputed Hammer’s comparison to the 2014 bill, contending that the Camp provision was narrower in scope. Hammer told the audience that it is “good to know” practitioners want to take the position that the new section 451(b) is limited to market discount and related issues.

During the session, Hammer solicited suggestions from the audience on issues that should be addressed by technical corrections or the JCT’s impending bluebook. She said the JCT plans to write up a bluebook on the Tax Cuts and Jobs Act, but admitted that it is unlikely “to be within the next few months.” The JCT generally prepares a bluebook at the end of each Congress that explains newly enacted tax legislation.

Attendees cited confusion among practitioners around the phrase “special method of accounting” in the book-tax conformity rule. The general rule of

section 451(b) doesn't apply to "any item of gross income for which the taxpayer uses a special method of accounting," but a broader definition of "special method of accounting" could severely narrow the provision's scope. Hammer questioned whether the scope was intended to be so limited, given the revenue estimate. The JCT estimated (JCX-67-17) that the general provision would raise \$8.1 billion over 10 years, and separately scored it at \$4.5 billion as it relates to original issue discount and similar items.

Audience members suggested clarification on other issues, such as whether the carried interest provision should apply to S corporations. Hammer said questions related to the aggregation method under the carried interest provision would be better left to regulations rather than technical corrections.

Practitioners raised questions about the new section 163(j) limitation on business interest, excess business losses and net operating losses under section 461(l), and the sale of partnership interests as effectively connected income. Hammer pledged to present these issues to the JCT for consideration.

Hammer discussed how the new base erosion and antiabuse tax includes a definition of a "derivative," which she said is the first time derivative has been defined by the code. She said it's likely the definition will be used again in future legislation. ■

## Tax Accounting Rules Restrict Utilities' Ability to Reduce Rates

by Nathan J. Richman

Special tax accounting rules for public utilities will impose speed limits on how fast they can lower customers' rates to account for some of the benefits from the new tax law.

Since the Tax Cuts and Jobs Act (P.L. 115-97) cut the corporate tax rate from 35 percent to 21 percent, a growing number of state regulators have called for public utilities to pass the tax benefits along to customers in the form of lower utility bills.

However, there are two sets of rules specific to public utilities, called normalization, that restrict how and when the utilities may pass some tax benefits along to customers. The regular normalization rules are found in sections 50(d) and 168(i)(9). The tax bill contains an additional transition normalization rule.

Under the regular normalization rules, a regulated public utility must reconcile the tax and regulatory effects of accelerated depreciation or the section 46 investment tax credit using an account for deferred taxes that can be repaid as the difference between the faster tax depreciation and slower financial accounting depreciation fades over time. Failure to follow a normalization method of accounting results in a loss of the tax benefits.

The transition normalization rule requires that the change in the value of those deferred tax accounts — because those accounts reflect tax benefits taken at the old, higher corporate tax rate — be averaged over the book life of the relevant asset. If a taxpayer reduces the tax reserve too fast, the excess results in a direct tax increase on top of any penalty for a violation of the regular normalization rules.

***Yankee said the normalization rules do not stop depreciation tax benefits from flowing through to utilities' customers.***

Dave Yankee of Deloitte Tax LLP said the normalization rules do not stop depreciation tax benefits from flowing through to utilities' customers. "Instead, they provide a speed limit