

**MEMO# 31182**

April 24, 2018

## **Draft Letter on Amended Section 451(b) -- Comments Requested**

[31182]

April 24, 2018 TO: Management Company Tax Subcommittee  
Tax Committee RE: Draft Letter on Amended Section 451(b) -- Comments Requested

Attached for your review is a draft letter to the Treasury Department and the Internal Revenue Service (IRS) regarding the amendments to section 451(b) that were enacted as part of the 2017 tax legislation.<sup>[1]</sup> The new rule generally requires taxpayers to include certain items into income for tax purposes no later than when they are included in revenue for financial accounting purposes.

New section 451(b)(1) states in general terms that the “all events test” is met with respect to an item of gross income for an accrual method taxpayer no later than when the taxpayer takes it into account as revenue for financial accounting purposes on an “applicable financial statement.” New section 451(b)(2) then states that the general rule in (b)(1) does not apply to the extent the Internal Revenue Code specifies a special rule of accounting, other than a rule in Part V of Subchapter P (sections 1271 to 1288). These changes were intended to overturn case law and IRS guidance that permits taxpayers to treat credit card and other fees as original issue discount (OID) for tax purposes, even though such items are treated as fees for book purposes.

It is unclear, however, how these changes affect the accrual of market discount and OID on debt held by regulated investment companies (RICs) and other taxpayers. Although we believe the changes were meant to be quite limited, there is concern that, absent clarification, section 451(b) effectively would override the long-standing statutory and regulatory provisions on the accrual of market discount and OID. In some cases, the timing differences may be significant; in others, the differences may be minor and far outweighed by the compliance burden that RICs would bear.

The Institute thus urges the Treasury Department and the Internal Revenue Service (IRS) to clarify the application of the amendments to section 451(b). Specifically, we ask the government to issue guidance confirming that amended section 451(b): (1) does not apply to market discount; and (2) does not apply to OID outside the context of items that are treated as something other than discount (such as fees) under Generally Accepted Accounting Principles (GAAP).

Please provide any comments on the draft letter to me ([kgibian@gmail.com](mailto:kgibian@gmail.com)) or

202-371-5432) **no later than the close of business on Tuesday, May 1, 2018.**

Karen Lau Gibian  
Associate General Counsel

[Attachment](#)

**endnotes**

[1] See Institute Memorandum No. 30991, dated December 21, 2017, which can be found here: [https://www.ici.org/my\\_ici/memorandum/memo30991](https://www.ici.org/my_ici/memorandum/memo30991).

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