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Issue Contents

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TCJA 2017 Provides Temporary UNICAP Relief to Producers of Aged Spirits

by Robert P. Achenbach, Jr.*

The Tax Cut and Jobs Act of 2017 (TCJA 2017)[1] excludes the aging period from the production period for aged wine, aged beer and aged distilled spirits for human consumption.[2] The exclusion is available only as to imposition of the Uniform Capitalization (UNICAP) rules as to interest costs allocable to such products and incurred after December 31, 2017 and before January 1, 2020.[3] Note that the majority of TCJA 2017 provisions are either permanent or effective from January 2018 through December 31, 2026.

Thus, during the limited effective dates of the new provision, the production period of aged wine, beer and distilled spirit products may be short enough to exclude these products from required application of the UNICAP rules as to interest costs incurred in 2018 and 2019 and allocable to the production of the aged wine, aged beer, and aged distilled spirit products. Remember that the TCJA 2017 also places some new limits on the deduction of business interest expenses.[4]

The UNICAP Rules in General

The I.R.C. § 263A uniform capitalization (UNICAP) rules require capitalization of the direct costs and a portion of indirect costs, including interest expenses, incurred or paid to produce certain real property or tangible personal property.[5] Note that I.R.C. § 263A(d)(3) allows farmers to elect out of the uniform capitalization rules, except for (1) corporations and partnerships required to use accrual accounting, (2) farming syndicates, (3) tax shelters, (4) taxpayers planting, cultivating, maintaining or developing pistachio trees, and (5) some citrus producers.[6]

Capitalized costs required by the UNICAP rules to be added to the basis of inventory (i.e., not currently deducted) may be recovered through depreciation (including bonus depreciation), amortization, cost of goods sold, or an adjustment to basis.

UNICAP Exceptions

I.R.C. § 263A provides a number of exceptions to the general capitalization

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* Publisher and editor of the Agricultural Law Press.

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requirements, including an exception for taxpayers (corporations, partnerships and individuals, but not tax shelters) that acquire property for resale and have $25 million or less of average annual gross receipts for the preceding three taxable years.[7]

Indirect Interest Expenses

Indirect interest expenses are subject to the UNICAP rules only as to property produced or acquired and which is:

- real property with a class life of at least 20 years,
- property with a production period of more than two years, or
- property with a production period of more than one year and a cost exceeding $1 million.[8]

The "production period" is the period beginning on the date production of the property begins and ending on the date on which the property is ready to be placed in service or held for sale.[9]

Production Period for Aged Wine, Beer and Distilled Spirits

Prior to January 1, 2018, and after December 31, 2019, the production period of wine, beer and distilled spirits includes the aging period of the products prior to release for sale.[10] Thus, although unaged wine, beer and distilled spirits rarely take more than one year to produce, aging the wine, beer or spirits can increase the production period of the spirits beyond the two-year production period and subject the spirits to the UNICAP rules as to interest costs. The new TCJA 2017 rule enables such producers to currently deduct the interest costs attributable to the production of the aged spirits if paid or accrued between December 31, 2017 and January 1, 2020. The temporary tax savings should be economically beneficial to aged spirit producers and, one can hope, be passed on as lower costs to taxpayers who enjoy aged wine, beer and distilled spirits.

ENDNOTES

1 Pub. L. No 115-97, § 13801, ___ Stat. ___ (2017).

2 The legislation does not apply to spirits that are unfit for use for beverage purposes.

3 Pub. L. No 115-97, § 13801, ___ Stat. ___ (2017).

4 TCJA 2017, Pub. L. No. 115-97, § 13301, ___ Stat. ___ (2017).

5 See Harl, *Agricultural Law*, § 28.08 (2018).

6 See Harl, *Agricultural Law*, § 28.08[2][b][vi] (2018) and Harl, *Farm Income Tax Manual*, § 3.19[2] (2018) for discussion of this election for farmers.

7 I.R.C. §§ 263A(i), 448(c).

8 I.R.C. § 263A( ).

9 I.R.C. § 263A(f)(4)(B).

10 See Treas. Reg. § 1.263A-12(d)(1). See also TAM 9327007 (Mar. 31, 1993) (producers of wine must include the time that wine ages in bottles as part of production period, which concludes when wine vintage released to distribution chain).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

A Message from the Publisher

As announced in the last issue of the *Digest*, Dr. Harl is retiring from most writing activities, including articles for the *Digest*. However, I have offered to Neil the opportunity to publish articles in the *Digest* whenever he wants. His long and vast experience in agricultural law is too valuable to cut off.

My intention is to continue the general format of the *Digest* with a longer, lead article on an important recent case, legislation, ruling or regulation. The majority of articles each year will involve federal tax law, with intermittent articles covering non-tax agricultural law developments.

The article in this issue above is sure to be just the first of a good number of articles on the Tax Cut and Jobs Act of 2017. Since 1989, the *Digest* has covered the developments of the Tax Reform Act of 1986 over more than three decades of new laws, regulations, rulings and cases as taxpayers and practitioners worked out the details of that major legislation. The TCJA 2017 similarly promises to provide many years of developments, resulting from the relatively hasty, partisan and secretive drafting and passing of the TCJA 2017. The TCJA 2017 is not supported by the traditional extensive legislative history from committee hearings and legislative debate that generally accompanies major tax legislation and practitioners will, therefore, likely depend upon IRS and judicial interpretations to bring clarity to the legislation. Equally problematic, however, as noted in the article above, may be the limited duration of many of the act's provisions, requiring taxpayers and practitioners to make careful economic and tax planning to ensure the maximum benefit from the provisions as well as to avoid the dangers of unexpected termination of particular provisions. During the effective dates of the limited duration of many of the TCJA 2017 provisions, practitioners will need to keep in mind the pre-TCJA rules for when they again rise like a Phoenix and once again become effective.

—Robert P. Achenbach, Jr.