



February 7, 2021

Ms. Joanne Minsky
Acting Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

RE: Deferral of Live Event Advance Payments Affected by the Coronavirus Pandemic

Dear Ms. Minsky:

The American Institute of CPAs (AICPA) recognizes and appreciates the significant volume of guidance that Treasury and the IRS has issued and acknowledges that the government is continuing to work on numerous urgent matters related to the coronavirus pandemic (COVID-19). However, there are certain instances where taxpayers are unclear how to account for changes to their business operations due to COVID-19 under existing law. Specifically, we request additional guidance as it applies to prepayments received by taxpayers for live events, shows or other productions that were canceled or deferred due to COVID-19.

Overview

Section 451(c)(4)(A)¹ defines an advance payment as a payment received by a taxpayer if – (i) the full inclusion of the payment in the gross income of the taxpayer for the taxable year of receipt is a permissible method of accounting, without regard to this section; (ii) any portion of the payment is included in revenue by the taxpayer in an applicable financial statement (AFS) for a subsequent taxable year; and (iii) the payment is for the sale of goods, services, or other items identified by the Secretary of the Treasury (“Secretary”). The receipt of a payment for advance ticket sales, including season tickets and/or other ticket packages, to attend a live event, show, or other production constitutes the receipt of payment for services under Reg. § 1.451-8(a)(1)(i)(C)(1). Similarly, a payment for tickets, including season tickets, that also includes the license or use of a pre-assigned seat, space, or other facility within the venue (for example, a designated box) constitutes payment for an item identified by the Secretary in Reg. § 1.451-8(a)(1)(i)(C)(4), which includes payments for the occupancy or use of property if the occupancy or use is ancillary to the provision of services.

Section 451(c)(1) provides that an accrual method taxpayer that receives any advance payment during the taxable year should include the advance payment in gross income for the taxable year unless it elects a one-year deferral of advance payments available under section 451(c)(1)(B). Section 451(c)(1)(B) and Reg. § 1.451-8(c) provide that an accrual method taxpayer may elect a one-year deferral of advance payments. Under this methodology, a taxpayer recognizes any

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

portion of such advance payment in gross income in the taxable year of receipt to the extent the amount is also recognized into revenue on its AFS and includes the remaining portion in gross income in the succeeding taxable year (the Deferral Method). Regulation § 1.451-8(c)(4)(i)(B) provides that a taxpayer using the Deferral Method must include in gross income any advance payments not previously included in gross income in the taxable year in which the taxpayer's obligation for the advance payments is satisfied or otherwise ends.

Section 461(h) provides that the all-events test for determining whether an amount has been incurred during the taxable year is not met any earlier than when economic performance with respect to such item occurs. Regulation § 1.461-4(g)(3) provides that in the case of rebate, refund, or similar payment to another person, economic performance occurs as payment is made to the person to which the liability is owed. However, Reg. § 1.461-4(g)(3) further provides that to the extent a rebate or refund is made as a reduction in the price of goods or services to be provided by the taxpayer in the future, payment is deemed to occur as the taxpayer would otherwise be required to recognize income resulting from a disposition at an unreduced price.

Section 461(h)(3) provides an exception to the economic performance rules for items that are recurring in nature. In particular, section 461(h)(3) provides that an item shall be treated as incurred if the all-events test is met during such taxable year, economic performance with respect to such item occurs within the shorter of a reasonable period after the close of such taxable year or 8 ½ months after the close for the taxable year, such item is recurring in nature, and either the item is not a material item or accrual of the liability for that taxable year results in better matching of the liability with the income to which it relates. Regulation § 1.461-5 expands upon the recurring item exception and provides in Reg. § 1.461-5(b)(5)(ii) that the matching requirement is deemed satisfied in the case of rebates and refunds as described in Reg. § 1.461-4(g)(3).

Recommendations

The AICPA recommends that the IRS issue guidance clarifying the federal income tax treatment of customer advance payments associated with live events, shows or other productions that were canceled or deferred due to COVID-19. Specifically, we recommend that the IRS issue guidance as follows:

- Taxpayer includes advance payments in income under Reg. § 1.451-8(c)(4)(i)(B) when a future live event, show, or other production is canceled and the taxpayer's obligation in regard to the advance payment is satisfied by offering the customer the option of either receiving a refund or a credit to be applied against a subsequent prepayment of a future event;
- Taxpayer recognizes a deduction for the refund or credit due to the customer as the refund occurs or the credit is issued under Reg. § 1.461-4(g)(3) or, alternatively, the taxpayer recognizes a deduction when the refund liability satisfies the all-events test and the refund or credit otherwise satisfies the recurring item exception; and

- The choice by a customer to receive a credit, instead of a refund, to be applied to a ticket or access to a subsequent live event, show or other production constitutes the receipt of a new prepayment by the taxpayer subject to the advance payment rules in section 451(c) and the regulations thereunder, including the Deferral Method.

Analysis

During the pandemic, taxpayers offering live event or live productions to customers were often significantly affected by government actions and restrictions implemented originally during 2020 and continuing into 2021 and 2022. These necessary government actions and restrictions caused major disruptions to the live event operators and supporting businesses, as it often resulted in the cancelation or deferral of previously scheduled events. It is common for taxpayers in the live production and/or live event industries (e.g., professional sports teams, concerts venues, or theater productions) to receive advance payments from customers for advance ticket sales to attend events. These payments are especially significant for taxpayers receiving advance payments from season ticket sales or other forms of ticket packages. For affected taxpayers, there is currently a lack of clarity regarding when to recognize gross income from advance payments attributable to events that were canceled or significantly deferred due to COVID-19, how to account for refunds offered to customers during the pandemic, and how to account for the issuance of a credit to the customer in situations where the customer declines to receive a cash refund and instead requests applying the credit as a prepayment for a different event or production to take place at a later date.

Examples

The examples provided below are intended to illustrate common taxpayer fact patterns and the application of the AICPA's recommendations to such situations.

Example 1

A 6/30 FYE accrual method taxpayer sells season tickets to live shows and events. The season ticket package includes tickets to a number of live shows that typically run from August through April. Customers prepay for season tickets for the August 2020 through April 2021 (2020-2021) season during taxpayer's FYE 6/30/2020. For financial statement reporting, the taxpayer generally recognizes ticket sales revenue as the live shows and/or events take place. Due to COVID-19, the taxpayer decided prior to the end of the FYE 6/30/2020 to cancel the entire 2020-2021 season.

Before 6/30/2020, the taxpayer offered each customer the choice of receiving a cash refund of the total prepayment or applying the prepayment to purchase season tickets for the next subsequent season (scheduled to take place from August 2021 through April 2022). The taxpayer issued refunds and/or credits to customers beginning in FYE 6/30/2020 and continuing into the beginning of FYE 6/30/2021 with all refunds and/or credits issued to customers no later than 8.5 months after the end of FYE 6/30/2020. The taxpayer did not file its FYE 6/30/2020 until 8.5 months after the end of FYE 6/30/2020.

Under the taxpayer's normal business operations, the prepayments received during the FYE 6/30/2020 would be recognized during the FYE 6/30/2021 as the live shows and events take place. However, due to COVID-19, the taxpayer instead must recognize the customer prepayments from the 2020-2021 season ticket sales in income in FYE 6/30/2020 under Reg. § 1.451-8(c)(4)(i)(B) because it no longer has an obligation to perform. In addition, the taxpayer is entitled to a deduction in FYE 6/30/2020 for the refunds due to its customers, either in the form of a cash refund or a credit applicable to a subsequent season ticket purchase, stemming from its decision to cancel the 2020-2021 season. The taxpayer has a fixed obligation in FYE 6/30/2020 due to its decision during FYE 6/30/2020 to cancel the 2020-2021 season, the amount of which is determinable with reasonable accuracy (i.e., all prepayments for the 2020-2021 season). Economic performance of the refund liability generally occurs as the taxpayer issues refunds to customers or provides them with the credit to be applied to a subsequent purchase which occurred in FYE 6/30/2020 and FYE 6/30/2021. However, under the recurring item exception of section 461(h)(3), the refunds and/or credits issued to customers for the 2020-2021 season are deductible in FYE 6/30/2020 as the taxpayer satisfied the all-events test before year end, economic performance occurred within 8.5 months of year end, and the matching requirement is deemed satisfied for a refund liability.

The decision by a customer to receive and apply a credit to a subsequent purchase of 2021-2022 season tickets constitutes the receipt of a new prepayment by the taxpayer. The prepayment of 2021-2022 season tickets constitutes an advance payment under section 451(c) that is eligible for the Deferral Method. To the extent that a customer notified the taxpayer during FYE 6/30/2020 that it wanted to receive a credit instead of a refund, the taxpayer is deemed to have received the new prepayment during FYE 6/30/2020, which will be included in income no later than FYE 6/30/2021 under the Deferral Method.

Example 2

Assume the same facts as Example 1, except that the taxpayer makes the decision to cancel the 2020-2021 season in July 2020 and offers customers the cash refund (and an alternative to apply the purchase to the subsequent season's tickets) during the FYE 6/30/2021. Accordingly, all applicable customers notify the taxpayer during FYE 6/30/2021 regarding their decision to either receive a refund or a credit and all refunds and/or credits are issued to customers before the end of FYE 6/30/2021.

The taxpayer recognizes the customer prepayments from the 2020-2021 season ticket sales in income in FYE 6/30/2021 under Reg. § 1.451-8(c)(4)(i)(B) because it no longer has an obligation to perform once it cancels the 2020-2021 season in July 2020. In addition, the taxpayer is entitled to a deduction in FYE 6/30/2021 for the refunds due to its customers, either in the form of a cash refund or a credit applicable to a subsequent season ticket purchase, stemming from the decision to cancel the 2020-2021 season. The taxpayer has a fixed obligation in FYE 6/30/2021 due to its decision in July 2020 to cancel the 2020-2021 season, the amount of which is determinable with reasonable accuracy (i.e., all prepayments for the 2020-2021 season). Economic performance of the refund liability generally occurs as the taxpayer issues refunds to customers or provides them with the credit applicable to a subsequent purchase that occurred before the end of FYE 6/30/2021.

The decision by a customer to receive and apply a credit to a subsequent purchase of 2021-2022 season tickets constitutes the receipt of a new prepayment by the taxpayer during FYE 6/30/2021. The prepayment of 2021-2022 season tickets constitutes an advance payment under section 451(c) that is eligible for the Deferral Method. As the customers notified the taxpayer during FYE 6/30/2021 that they wanted to receive a credit instead of a refund, the taxpayer is deemed to have received the new prepayment during FYE 6/30/2021 that will be included in the taxpayer's income no later than FYE 6/30/2022 under the Deferral Method.

Example 3

Assume the same facts as Example 1, except that the original 2020-2021 season was canceled before the end of FYE 6/30/2020 and rescheduled to run from April 2021 through June 2021 during FYE 6/30/2021. Similarly, before 6/30/2020, customers were offered the choice of cash refunds of the total prepayment applying their prepayment to this new season (April 2021 through June 2021). For customers who chose to apply the prepayment to the new season, their payment was applied to the new season in June 2020. Cash refunds were made in June 2020.

The taxpayer recognizes the customer prepayments from the 2020-2021 season ticket sales in income in FYE 6/30/2020 under Reg. § 1.451-8(c)(4)(i)(B) because there is no longer an obligation to perform. In addition, the taxpayer is entitled to a deduction in FYE 6/30/2020 for the refunds due to its customers, either in the form of a cash refund or a credit applicable to a subsequent season ticket purchase, stemming from the decision to cancel the 2020-2021 season. The taxpayer has a fixed obligation in FYE 6/30/2020 due to the decision during FYE 6/30/2020 to cancel the 2020-2021 season, the amount of which is determinable with reasonable accuracy (i.e., all prepayments for the 2020-2021 season). Economic performance of the refund liability generally occurs as the taxpayer issues refunds to customers or provides them with the credit to be applied to a subsequent purchase that both occurred before the end of FYE 6/30/2020.

The decision by a customer before the end of FYE 6/30/2020 to receive and apply a credit to a subsequent purchase of the April 2021 – June 2021 season tickets constitutes the receipt of a new prepayment by the taxpayer. The prepayment of April 2021 through June 2021 season tickets constitutes an advance payment under section 451(c) that is eligible for the Deferral Method. The taxpayer is deemed to have received the new prepayment during FYE 6/30/2020 which will be included in the taxpayer's income no later than FYE 6/30/2021 under the Deferral Method.

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Ms. Joanne Minsky

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact David Strong, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (616) 752-4251, or david.strong@crowe.com; Elizabeth Young, Senior Manager — AICPA Tax Policy & Advocacy, at (202) 434-9247, or elizabeth.young@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA

Chair, AICPA Tax Executive Committee

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
The Honorable William Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel
Mr. Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
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