Is Form 3115 Required Under the New Tangible Property Regulations?

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While meeting with CPA firms in recent months one of the biggest topics of conversation is the implementation of the new IRS Tangible Property Regulations. As everyone now knows these regulations are effective for tax years that started after 12/31/2013. This means the first year affected by these new regulations is the 2014 tax year.

Some of the biggest questions to come out of these discussions include, "Do I need to file a 3115, and are CPAs negligent if they choose to not file a 3115?" These are not easy questions to answer and they require detailed conversations, some of which will be very taxpayer specific.

The first question that needs to be answered is how far out of compliance is the taxpayer. It is easy to convince a taxpayer with a $100,000 481a adjustment that a 3115 is necessary. However, what about a client with a zero dollar or minimal adjustment? Is this taxpayer to be treated the same as one that has a large adjustment? The answer, according to the letter of the law, states that even if the taxpayer has a zero dollar 481a adjustment, a change will still be required to file these regulations on a prospective basis.

This has been recognized by the AICPA and other organizations. On October 8, 2014 the AICPA issued an open letter to the IRS. The letter requests an increase to the de minimis safe harbor as well as a reprieve in the requirements to file a 3115 for certain taxpayers. The letter also requests that businesses be able to "comply prospectively, with the option of filing Form 3115," stating that this would result in "reduced administrative burdens and compliance costs." This recognizes that there is a significant cost associated with complying with these regulations even on a prospective basis.

Many preparers have discussed not filing the 3115's for taxpayers that have no retroactive changes being made. The thought being that there is little to no net effect on the taxpayer's return. However, not filing the 3115 may affect the taxpayer's ability to implement the provisions in the future. Many of the changes listed in the Revenue Procedures are prospective changes only. This indicates that the IRS expects taxpayers to make these changes to be in compliance and to use these accounting methods moving forward. Furthermore, the preparer must be aware of potential penalties if the taxpayer is not in full compliance with the regulations.

That being said, it is yet to be seen how the IRS will focus their attention when reviewing these issues under audit. Will the agents spend their time looking at large 481a adjustments to ensure the taxpayers made these adjustments correctly, or will they look at taxpayers with no 3115's to ensure they are in compliance? These are questions that we do not fully know the answer to just yet.

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