

(iii) If the taxpayer's federal income tax return for the second taxable year ending after March 9, 2002, was filed on or before September 4, 2003, with an amended federal income tax return (or a qualified amended return) on or before December 31, 2003, for the second taxable year ending after March 9, 2002, and include the statement "Filed Pursuant to §1.448-2T(h)(1)(iii)" at the top of the amended federal income tax return (or qualified amended return).

(2) *Pending Form 3115*. If a taxpayer filed a Form 3115 under the applicable administrative procedures with the national office to make a change in its method of accounting under section 448(d)(5), as amended, for a year of change for which this regulation is effective and the application or ruling request is pending with the national office on September 4, 2003, the taxpayer must notify the national office in writing prior to November 3, 2003, if the taxpayer wants to withdraw its Form 3115 under such administrative procedures. If the taxpayer notifies the national office within the time provided in this paragraph (h)(2), the taxpayer's Form 3115, and any user fee that was submitted with the Form 3115, will be returned to the taxpayer. A taxpayer whose Form 3115 is returned under this paragraph (h)(2) may file a new Form 3115 under the provisions prescribed in paragraphs (g) and (h) of this section. If the taxpayer does not notify the national office within the time provided in this paragraph (h)(2), the national office will continue to process the taxpayer's Form 3115 in accordance with the administrative procedures under which it was originally filed.

(i) [Reserved]

(j) *Audit protection*. If a taxpayer uses one of the nonaccrual-experience methods of accounting described in paragraphs (e)(3) (actual experience method), (e) (4) (modified Black Motor method), or (e)(5) (modified six-year moving average method) of this section to determine its amount excluded from gross income under section 448(d)(5), as amended, the taxpayer's use of that method will not be raised as an issue by the IRS in a taxable year that ends before September 4, 2003. If the taxpayer uses one of the nonaccrual-experience methods of accounting described

in paragraphs (e)(3), (e)(4), or (e)(5) of this section, and its use of such method is an issue under consideration in examination (as defined in paragraph (g)(3)(ii) of this section), in appeals, or before the U.S. Tax Court in a taxable year that ends before September 4, 2003, that issue will not be further pursued by the IRS.

(k) *Effective date*. This section is applicable for taxable years ending after March 9, 2002. The applicability of this section expires on or before September 5, 2006.

[T.D. 9090, 68 FR 52500, Sept. 4, 2003; 68 FR 62516, Nov. 5, 2003, as amended at 68 FR 66708, Nov. 28, 2003]

TAXABLE YEAR FOR WHICH ITEMS OF
GROSS INCOME INCLUDED

§ 1.451-1 General rule for taxable year of inclusion.

(a) *General rule*. Gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting. Under an accrual method of accounting, income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Therefore, under such a method of accounting if, in the case of compensation for services, no determination can be made as to the right to such compensation or the amount thereof until the services are completed, the amount of compensation is ordinarily income for the taxable year in which the determination can be made. Under the cash receipts and disbursements method of accounting, such an amount is includible in gross income when actually or constructively received. Where an amount of income is properly accrued on the basis of a reasonable estimate and the exact amount is subsequently determined, the difference, if any, shall be taken into account for the taxable year in which such determination is made. To the extent that income is attributable to the recovery of bad debts for accounts charged off in prior years, it is

includible in the year of recovery in accordance with the taxpayer's method of accounting, regardless of the date when the amounts were charged off. For treatment of bad debts and bad debt recoveries, see sections 166 and 111 and the regulations thereunder. For rules relating to the treatment of amounts received in crop shares, see section 61 and the regulations thereunder. For the year in which a partner must include his distributive share of partnership income, see section 706(a) and paragraph (a) of §1.706-1. If a taxpayer ascertains that an item should have been included in gross income in a prior taxable year, he should, if within the period of limitation, file an amended return and pay any additional tax due. Similarly, if a taxpayer ascertains that an item was improperly included in gross income in a prior taxable year, he should, if within the period of limitation, file claim for credit or refund of any overpayment of tax arising therefrom.

(b) *Special rule in case of death.* (1) A taxpayer's taxable year ends on the date of his death. See section 443(a)(2) and paragraph (a)(2) of §1.443-1. In computing taxable income for such year, there shall be included only amounts properly includible under the method of accounting used by the taxpayer. However, if the taxpayer used an accrual method of accounting, amounts accrued only by reason of his death shall not be included in computing taxable income for such year. If the taxpayer uses no regular accounting method, only amounts actually or constructively received during such year shall be included. (For rules relating to the inclusion of partnership income in the return of a decedent partner, see subchapter K, chapter 1 of the Code, and the regulations thereunder.)

(2) If the decedent owned an installment obligation the income from which was taxable to him under section 453, no income is required to be reported in the return of the decedent by reason of the transmission at death of such obligation. See section 453(d)(3). For the treatment of installment obligations acquired by the decedent's estate or by any person by bequest, devise, or inheritance from the decedent,

see section 691(a)(4) and the regulations thereunder.

(c) *Special rule for employee tips.* Tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) shall be included in gross income of the employee for the taxable year in which the written statement is furnished the employer. For provisions relating to the reporting of tips by an employee to his employer, see section 6053 and §31.6053-1 of this chapter (Employment Tax Regulations).

(d) *Special rule for ratable inclusion of original issue discount.* For ratable inclusion of original issue discount in respect of certain corporate obligations issued after May 27, 1969, see section 1232(a)(3).

(e) *Special rule for inclusion of qualified tax refund effected by allocation.* For rules relating to the inclusion in income of an amount paid by a taxpayer in respect of his liability for a qualified State individual income tax and allocated or reallocated in such a manner as to apply it toward the taxpayer's liability for the Federal income tax, see paragraph (f)(1) of §301.6361-1 of this chapter (Regulations on Procedure and Administration).

(f) *Timing of income from notional principal contracts.* For the timing of income with respect to notional principal contracts, see §1.446-3.

(g) *Timing of income from section 467 rental agreements.* For the timing of income with respect to section 467 rental agreements, see section 467 and the regulations thereunder.

[T.D. 6500, 25 FR 11709, Nov. 26, 1960, as amended by T.D. 7001, 34 FR 997, Jan. 23, 1969; T.D. 7154, 36 FR 24996, Dec. 28, 1971; 43 FR 59357, Dec. 20, 1978; T.D. 8491, 58 FR 53135, Oct. 14, 1993; T.D. 8820, 64 FR 26851, May 18, 1999]

§ 1.451-2 Constructive receipt of income.

(a) *General rule.* Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it