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May 14, 2018

Courier's Desk
Commissioner Internal Revenue Service
Attn: CC:PA:LPD:PR
1111 Constitution Avenue, NW
Washington, D.C. 20224

**Re: Comments with Respect to Notice 2018-35
Tax Treatment of Advance Payments under New Sections 451(b) and (c)**

Dear Sir:

On April 12, 2018, the Internal Revenue Service ("IRS") issued Notice 2018-35 ("the Notice"), which provides interim guidance with respect to the tax treatment of advance payments under newly-enacted sections 451(b) and (c) of the Internal Revenue Code ("Code"). In the Notice, the IRS announced that until further guidance is issued, taxpayers may rely on the provisions in Rev. Proc. 2004-34, 2004-1 C.B. 991, with respect to the tax treatment of advance payments. However, the IRS also requested comments from taxpayers on a number of issues relating to the scope and substance of the rules in Rev. Proc. 2004-34 that may be affected by the provisions in sections 451(b) and (c) of the Code.

We appreciate the opportunity to provide comments in response to the Notice. We are writing to you on behalf of the International Cemetery, Cremation and Funeral Association ("ICCFA"). Founded in 1887, ICCFA is a voluntary Code section 501(c)(6) nonprofit trade association with over 7500 members, including non-profit, for-profit, religious and municipal cemeteries, funeral homes, crematories, monument builders, and third party retailers. ICCFA's activities include tracking federal and state legislation affecting the death care industry and promoting education through its publications, and by holding seminars, conferences, annual conventions and trade shows. ICCFA also takes an active role in advancing the public interest on funeral industry issues. ICCFA promotes consumer choice, the pre-arrangement of funeral and burial decisions, and open competition among providers of death care services.

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The subject of ICCFA's comments relates to the potential impact of sections 451(b) and (c) on the tax treatment of proceeds from the sale of burial plots on a pre-need basis. ICCFA's comments will address the following subjects:

1. Potential application of section 451(c) to the treatment of the revenue component of pre-need sales of burial plots where progress payments are received prior to transfer of burial plot to customer.
2. Potential impact of section 451(c) on a taxpayer's basis in the burial plot in the situation in item 1., above.
3. Potential impact of section 451(b) on gross income recognized from burial plot sales where the taxpayer recognizes the entire sales price in gross income for financial reporting purposes prior to transfer of burial plot to customer.

Prior to presenting ICCFA's substantive comments, the following background is provided.

1. Factual Background

One of the items that taxpayers in the cemetery and funeral industry typically sell to customers is a burial plot in a cemetery owned by the taxpayer. Burial plots are sold in two different situations, referred to as "at-need" and "pre-need."

In an "at-need" sale of a burial plot, a member of the decedent's family or a representative of the decedent's estate contracts with the taxpayer to purchase a burial plot in a cemetery owned by the taxpayer. The burial plot in this situation is needed immediately, hence the term "at-need." In an at-need sale, the terms of the sales contract typically provide that the purchaser is required to pay the entire sales price immediately, and title to the burial plot is then transferred to the decedent or the decedent's estate. The title to the burial plot is not technically a fee interest in the underlying land, but instead is in the nature of a perpetual easement right in the burial plot. In these circumstances, because title to and possession of the burial plot pass immediately to the purchaser, state law does not require the use of a trust to hold the proceeds of the sale and insure delivery of possession of the burial plot.

In contrast, taxpayers in the cemetery and funeral industry also sell burial plots to customers on a pre-need basis. In a pre-need sale of a burial plot, a customer contracts with the taxpayer to purchase a burial plot before the plot is needed. The terms of sale in the case of a pre-need sale typically provide that the purchaser is required to make a down payment of a small portion of the sales price and agree to pay the balance of the sales price over a period of several years. Both title to the burial plot (in the form of a perpetual easement) and possession of the plot remain with the taxpayer until the sales price of the burial plot is paid in full. This is true even if the purchaser dies and the sales contract goes "at need" before the sales price is fully paid. In those circumstances, the purchaser is not entitled to be buried in the burial plot unless the decedent's estate pays the unpaid balance of the sales price of the plot.

In some states, all or a portion of the sales proceeds collected by the taxpayer are required to be transferred to, and held by, a trust to protect the purchaser until the sales price is paid in full and title to the burial plot is transferred to the purchaser. Accordingly, a pre-need sale of a burial plot would not normally be treated as a completed sale for tax purposes until the entire sales price is paid by the purchaser. No issues related to sections 451(b) and (c) are posed with respect to any portion of the sales price that is held in trust. However, both sections come into play when sales proceeds are either retained by, or distributed to, the taxpayer/seller.

The situation in the cemetery and funeral industry differs from the typical installment sale where there is an installment sale of a fee interest in real property. In that case, if the purchaser provides a note for the unpaid balance of the sales price, it would be fairly unusual for the purchaser of the property to be denied possession and enjoyment of the property simply because there is an unpaid balance of the sales price, even though the purchaser's title to the property is conditional until the entire sales price is paid. For example, in a case where the seller extends the purchaser of real property a purchase money mortgage for a portion of the sales price of the property, the purchaser does not obtain unconditional title to the property until the mortgage is satisfied.

Nevertheless, in these circumstances, the sale of the property is generally regarded as complete for tax purposes at the time the sale closes and possession of the property is transferred to the purchaser. Accordingly, this type of transaction is treated in a similar manner for tax purposes as in the case of an at-need sale of a burial plot, thus avoiding any issues under sections 451(b) and (c).

However, there are limited situations in which real property is sold under what is referred to as a "bond-for-deed" arrangement, where installment payments are made, but the seller retains both title to and possession of the real property until the entire sales price is paid. That type of transaction poses many of the same type of issues as a pre-need sale of burial plots. However, ICCFA's interests and comments are limited to pre-need sales of burial plots.

2. Potential application of section 451(c) to the treatment of the revenue component of pre-need sales of burial plots where progress payments are received prior to the transfer of a burial plot to customer.

A. Background

As presently drafted, Rev. Proc. 2004-34 covers only certain types of prepayments. One of the areas in Notice 2018-35 where comments are requested is whether section 451(c) should be applicable to other types of prepayments that are not presently covered by Rev. Proc. 2004-34.

One type of prepayment that is not expressly covered by Rev. Proc. 2004-34 is progress payments with respect to the sale of an interest in real property. Similarly, while Treas. Reg. § 1.451-5 covers advance payments with respect to the sale of goods, it is doubtful that the scope of

the term “goods” in either Rev. Proc. 2004-34 or Treas. Reg. § 1.451-5 encompasses advance payments with respect to the sale of an interest in real property.

Sales of burial plots are treated as a sale of real property because the right to occupy a burial space constitutes an easement to the owner of the burial right that extends in perpetuity. For tax purposes, a right in real property that extends for longer than 20 years is treated as an interest in the underlying real property. Accordingly, since a burial plot is in the nature of an interest in real property, advance payments with respect to the sale of burial plots do not appear to be eligible for tax deferral under the prior rules governing advance payments. Moreover, the same conclusion would be applicable to the sale of a fee interest in real property.

Heretofore, the exclusion from eligibility for deferral with respect to advance payments in connection with pre-need sales of burial plots was of no consequence to the cemetery and funeral industry because, prior to the issuance of FASB ASC Topic 606 (“Topic 606”), prior to the enactment of sections 451(b) and 451(c), the industry followed financial accounting guidelines that permitted a company selling real property, including a developer of cemetery plots, to recognize as revenue for financial reporting purposes the entire amount of the sales price of a burial plot, offset by the cost of the plot, at the time the purchaser paid at least ten percent of the sales price of the plot, if the burial plot was complete and available for interment. Accordingly, even if advance payments for the sale of real property had been eligible for deferral under the IRS’s prior pronouncements, a pre-need sale of a cemetery plot would not have qualified for tax deferral by reason of the cemetery’s inability to satisfy the financial conformity requirement contained in either Rev. Proc. 2004-34 or Treas. Reg. § 1.451-5.

However, the issuance of Topic 606 may have changed the financial accounting landscape for many companies with respect to reporting revenue from pre-need sales of burial plots. It is our understanding that under Topic 606, accountants for cemetery and funeral companies may be taking varying positions on when, for financial reporting purposes, revenue is required to be recognized on pre-need sales of burial plots.

Some companies may report the revenue upon the execution of the contract, particularly where there is a significant down payment. Other companies may follow prior guidelines and wait until a certain percentage of the sales price is collected, at which point the entire sales price is reported as gross income, offset by the cost of the plot. Finally, still other companies may defer revenue recognition until the entire sales price is paid by the customer. In most of these situations, the seller of the burial plots would be able to satisfy the financial conformity requirement contained in Rev. Proc. 2004-34 (as well as in Treas. Reg. § 1.451-5) prior to the completed sale of the burial plot, if progress payments on the sale of interests in real property were eligible for deferral.

B. Proposed broadening of the scope of deferral

Accordingly, in light of the foregoing change in financial reporting of revenue from pre-need sales of burial plots, an accrual-basis taxpayer engaged in pre-need sales of burial plots on a deferred payment basis should be entitled to tax deferral of the progress payments. Towards this end, we respectfully request that the categories of advance payments eligible for deferral under section 451(c) be broadened to encompass advance payments with respect to the sale of an interest in real property, such as, for example, a burial plot.

Taxpayers in the cemetery and funeral industry are presently eligible for the deferral of advance payments under Rev. Proc. 2004-34 or Treas. Reg. § 1.451-5, to the extent the taxpayers engage in pre-need sales of cemetery and/or funeral services (such as the pre-need sale of a funeral or the opening and closing of a grave site) or the pre-need sale of cemetery merchandise (such as a pre-need sale of a liner for the cemetery plot or a memorial head stone). In these other types of transactions, any advance payments would be eligible for deferral for tax purposes if the financial conformity requirement is satisfied.

There is no policy justification for treating advance payments with respect to the sale of burial plots differently from advance payments with respect to the sale of cemetery and/or funeral services or the sale of cemetery merchandise simply because an interest in real property is not an inventoriable good. Accordingly, we propose that the scope of the deferral rules under new section 451(c) encompass prepayments for the sale of interests in real property, including burial plots, to the extent the prepayments would otherwise qualify for deferral under the rules contained in section 451(c).

In evaluating this proposal, one question that might be posed is why advance payments with respect to the sale of an interest in real property were not already covered by Rev. Proc. 2004-34 or Treas. Reg. § 1.451-5. The reason these types of advance payments were excluded from the administrative guidance with respect to advance payments has a confusing history.

At the time that Rev. Proc. 70-21 and Treas. Reg. § 1.451-5 were being developed at the Treasury and IRS, a companion regulations project was opened by the Legislative & Regulations Division of the IRS (LR-1866 – Accounting for Advance Payments for Casual Sales and Real Estate Sales), which would have provided comparable deferral treatment for advance payments with respect to casual sales of personal property by a non-dealer and with respect to the sale of an interest in real property. The reason a separate project was opened to deal with these types of advance payments was that there was some uncertainty within the Treasury and IRS whether these types of advance payments were subject to the recent holdings in the Supreme Court trilogy and in *Hagen Advertising Displays, Inc., v. Commissioner*, 407 F.2d 1105 (6th Cir. 1969), that advance payments were taxable upon receipt based on the claim of right doctrine. This uncertainty stemmed from the fact that advance payments with respect to transactions involving non-dealers in personal property and interests in real property are subject to the revenue recognition rules of section 1001, rather than the rules in section 451, which apply to transactions involving advance payments for inventoriable goods or advance payments for services.

After working on the project for a few years, the Treasury concluded that the project was not needed because a review of the case law in this area supported the conclusion that advance payments with respect to the sale of non-inventoriable property, including interests in real property, were regarded as non-taxable deposits by the seller and were deferred from taxation until the sale of the property was completed and title to and possession of the property passed to the purchaser. See, e.g., Rev. Rul. 69-93, 1969-1 C.B. 139, *superseding* A.R.R. 13, 2 C.B. 78. As a result, the Treasury determined that advance payment deferral rules with respect to interests in real property were not needed, and the Treasury and IRS closed the regulations project.

Moreover, a few years after the decision to close the regulations project, in G.C.M. 36957 (Dec. 20, 1976), the IRS considered the issuance of a revenue ruling that would have reversed the holding in Rev. Rul. 69-93, and would have treated a seller of real estate as recognizing income on a down payment received in connection with a deferred payment sale of real property. However, the IRS Chief Counsel's Office ultimately rejected this proposed reversal of position and held that a payment made in connection with entering into the contract for the sale of real property was a non-taxable deposit.

Thus, the treatment of advance payments with respect to interests in real property was not excluded from the deferral rules in Rev. Procs. 70-21 and 71-21 and Treas. Reg. § 1.451-5 because the Treasury and IRS believed such payments should be currently taxable, but rather to the contrary, because the Treasury and IRS believed that these types of advance payments were properly excluded from the scope of the pronouncements because the pronouncements were based on the premise that in the absence of a deferral election by the taxpayer, the advance payments would have been taxable upon their receipt. The Treasury and IRS did not believe that prerequisite would have been satisfied in the case of advance payments with respect to the sale of an interest in real property, since the Treasury and IRS believed that under existing law these types of advance payments would not be taxable.

This issue surfaced again in the mid-1990s, when revenue agents examining taxpayers in the cemetery and funeral industry began to challenge taxpayers' treatment of the revenue from pre-need sales of cemetery plots. During this time frame, IRS agents began to contend that based on state contract and property law court decisions dating back to the turn of the twentieth century, a binding contract for the sale of real property might be treated for tax purposes as a completed sale of property at the time the contract was entered into, even though title to and possession of the property remained with the seller until the entire sales price was paid by the purchaser. The theory under the old case law was that since the seller had an enforceable right to payment of the unpaid balance with respect to the sale and could enforce specific performance of the contract, the sale of the property was complete before there was a closing of the sale.

This issue was resolved by the IRS in the case of the cemetery and funeral industry in two test cases for the industry. These test cases resulted in the issuance of two separate private letter rulings. In the first ruling, PLR 9533002, the IRS held that if a pre-need sales contract with respect to a burial plot expressly provided that the seller could enforce against the purchaser the payment

of any unpaid balance of the sales price and compel the purchaser to complete of the purchase of the burial plot, the sale would be treated as completed for tax purposes when the sales contract was entered into.

In that case, the taxpayer would be required to recognize the entire sales price for the burial plot as revenue without regard to the deferral of payment of any portion of the sales price, and the taxpayer would be entitled to offset its entire adjusted basis in the burial plot against the selling price, regardless of whether title to or possession of the plot passed to the purchaser at that point in time. However, this holding did not apply to any amounts retained in a valid trust established under state law.

It is noteworthy that the holding in this letter ruling did not alter the IRS's prior thinking about the treatment of advance payments with respect to the sale of an interest in real property. Instead, the holding in P.L.R. 9533002 was based on the premise that an enforceable right against the purchaser of the burial plot for the entire unpaid balance caused there to be a present sale of the burial plot. Thus, instead of these situations being regarded as involving advance payments, any deferred payments were viewed as in the nature of installment sale obligations.

In the second letter ruling, P.L.R. 199935060, the IRS addressed the treatment of a contract for the pre-need sale of a burial plot containing a contractual provision that if a customer defaulted on the contract and refused to pay any unpaid balance of the sales price of the burial plot, the taxpayer/seller was permitted to retain the prior payments as liquidated damages, but did not have the right to sue the purchaser for the unpaid balance of the sales price. In those circumstances, the IRS ruled that the taxpayer should not treat the sale of the burial plot as complete for tax purposes until the entire sales price was paid by the purchaser.

With respect to the treatment of the progress payments as advance payments eligible for deferral in this second ruling, the IRS concluded that the taxpayer was obligated to recognize the progress payments as revenue for tax purposes at the earlier of when the payments were received or when the payments from the purchaser were due and payable. The IRS did not address the taxpayer's eligibility for deferral of the advance payments for tax purposes because the entire sales price was recognized as revenue for financial reporting purposes at the time the contract was entered into. As noted above, this was the financial accounting approach that most cemetery and funeral companies followed prior to the issuance of Topic 606.

Accordingly, the cemetery and funeral industry never previously suggested to the Treasury and IRS that prepayments for the sale of a burial plot be made eligible for deferral under either Rev. Proc. 2004-34 or Treas. Reg. § 1.451-5. However, this issue is now controlled by section 451(c), and Congress authorized the Treasury to consider making deferral of advance payments available for types of prepayments other than those expressly covered in Rev. Proc. 2004-34. Based on this mandate, ICCFA submits that the scope of the types of advance payments that are eligible for deferral for tax purposes should be expanded to include advance payments earned from the sale of an interest in real property, including a burial plot.

3. Potential impact of section 451(c) on a taxpayer's basis in the burial plot in the situation in item 1., above.

As noted above, in the typical pre-need sale of a burial plot, the sales price is paid in installments over several years, possibly as long as five years. Since section 451(c) limits the period of deferral for advance payments to one taxable year beyond the end of the taxable year in which the advance payment is received, even if Rev. Proc. 2004-34 is broadened in scope for purposes of section 451(c) to include advance payments with respect to the sale of an interest in real property, it is likely that a taxpayer following that deferral method for advance payments from the sale of burial plots will be required to include any deferred progress payment in revenue for tax purposes prior to the taxable year in which title to and possession of the burial plot is transferred to the purchaser.

If progress payments with respect to the sale of a burial plot are required to be recognized as revenue for tax purposes prior to the transfer of title and possession of the plot to the purchaser pursuant to section 451(c), the question posed is whether the taxpayer would be entitled to an offset against the revenue for the taxpayer's adjusted basis in the burial plot. ICCFA submits that a taxpayer that is required to recognize progress payments with respect to the pre-need sale of burial plots as gross income for tax purposes should be entitled to claim the taxpayer's adjusted basis in each burial plot as an offset to, and to the extent of, the amount of the advance payments that are recognized as gross receipts.

ICCFA notes that this same issue could arise in the case of advance payments for the sale of inventorable goods. ICCFA also notes that legal arguments could be made for an offset to gross receipts of the amount of a taxpayer's adjusted basis in the inventorable goods. However, ICCFA will leave to others the formulation of that argument. However, regardless of how the IRS resolves that issue in the case of inventorable goods, there is an additional, very significant, reason why a taxpayer should be permitted to offset its adjusted basis in the burial plot against any revenue that is required to be recognized when the deferral period for the advance payments ends.

This reason derives from that fact that a sale of an interest in real property is covered by sections 1001 and 1016, in contrast to sales of inventorable goods, which are governed by sections 451 and 471. Much of the legal analysis that went into the various court decisions on prepaid income involved the claim of right doctrine, as well as the Congressional repeal of sections 452 and 462. In contrast, sales of real estate are governed by a different set of rules.

In this regard, Treas. Reg. § 1.1001-1(c)(1) provides:

Even though property is not sold, or otherwise disposed of, gain is realized if the sum of all amounts received which are required by section 1016 and other applicable provisions of Subtitle A of the Code to be applied against the basis of property exceeds such basis....

(Emphasis added.)

Treas. Reg. § 1.1016-2(a) provides:

The cost or other basis shall be properly adjusted for an expenditure, *receipt*, loss or other item, properly chargeable to capital account, including the cost of improvements and betterments made to the property.

(Emphasis added.) While the authorities that have interpreted the foregoing regulations provisions have generally involved condemnation cases and cases dealing with the treatment of fire and casualty insurance proceeds, nevertheless, these regulations clearly provide that if a taxpayer is required to include in gross income for tax purposes proceeds received with respect to an interest in real property that has not been sold, the taxpayer is entitled to recover its adjusted basis in the property before being subjected to tax on the proceeds received.

In fact, the IRS itself has adopted this same conclusion in situations where the IRS has sought to tax a taxpayer on progress payments received in advance of the sale of real property. In one of the earliest authorities dealing with the issue of when a sale of real estate is a completed transaction for tax purposes, A.R.R. 13, 2 C.B. 78 (1920), the IRS addressed the income tax treatment of a contract to sell real estate that was executed in 1917 and was accompanied by the receipt of a portion of the sales price by the taxpayer/seller.

The balance of the sales price was received in 1918, at which time title to and possession of the property was transferred to the purchaser. On these facts, the IRS held that a sale of the real property did not occur until either legal title to the property or the benefits and burdens of ownership of the property passed to the purchaser in 1918. Accordingly, the IRS held that the taxpayer was not required to include the entire sales price in gross income in 1917.

It is noteworthy that with respect to the treatment of the down payment made by the purchaser in 1917, the IRS held that the taxpayer/seller should treat the receipt of the down payment as a return of capital to the extent the down payment did not exceed the taxpayer's basis in the property. The IRS ruled that the down payment was taxable to the taxpayer only to the extent the down payment exceeded the taxpayer's adjusted basis in the property that would be sold.

This same approach was adopted in PLR 8009004, where a taxpayer sold subdivided, but undeveloped, lots to purchasers. The purchasers agreed to pay for the lots over a period of years. However, title to and possession of the lots did not pass to the purchasers until the entire sales price for the lot was paid. The taxpayer did not report any of the progress payments as income under the theory that the executory sales contracts were in fact in the nature of options.

The IRS rejected this reasoning and concluded that the progress payments could not be deferred until the entire sales price was paid by a purchaser. Nevertheless, the IRS ruled that the taxpayer was entitled to recover his basis in the property before recognizing any of the progress payments as gross income for tax purposes. As support for this holding, the IRS cited the provisions in Treas. Reg. §§ 1.1001-1(c)(1) and 1.1016-2(a) that are quoted above.

Accordingly, regardless of whether the IRS agrees that an offset be provided for a taxpayer's cost of goods sold if advance payments are required to be recognized as revenue for tax purposes prior to the completion and shipment to a purchaser of *inventoriable* goods, that treatment should be accorded to advance payments with respect to the sale of an interest in real property.

4. Potential impact of section 451(b)

As noted above, in most circumstances in which a taxpayer is engaged in the sale of burial plots on a pre-need basis, a completed sale of the burial plots will not be deemed to occur for tax purposes until the entire sales price is paid by the purchaser, and title to and possession of the burial plot is transferred to the purchaser. In contrast, as noted above, under Topic 606, a taxpayer may report a pre-need sale of a burial plot as a completed sale for financial reporting purposes prior to the transfer of title to and possession of the burial plot to the purchaser.

In that case, two issues arise. Is a taxpayer in that position required by reason of section 451(b) to recognize the entire sales price of the burial plot for tax purposes, even though a completed sale has not occurred for tax purposes. The second issue is whether, if in the foregoing situation a taxpayer is required to follow the same method of reporting revenue for tax and financial reporting purposes, the taxpayer would be entitled to an offset for its adjusted basis in the burial plot.

A. Is revenue required to be recognized under section 451(b)?

With respect to the first issue, a literal reading of the statutory language in section 451(b) suggests that if a taxpayer recognizes the entire sales price of a burial plot as revenue for financial reporting purposes, the taxpayer is also required to recognize that amount of revenue for tax purposes. However, that interpretation would result in the recognition of income in a situation where there has not been any type of realization in a tax sense because the taxpayer has not yet sold the burial plot for tax purposes.

In such a situation, ICCFA submits that section 451(b) should be interpreted in light of footnote 872 of the Conference Report with respect to the Tax Cut and Jobs Act of 2017. That footnote provides:

The provision does not revise the rules associated with when an item is realized for Federal income purposes and, accordingly, does not require the recognition of income in situations where the Federal income tax realization event has not yet occurred. For example,....the provision does not require the recognition of gain or loss from securities that are marked to market for financial reporting purposes if the gain or loss from such investments is not realized for Federal income tax purposes until such time that the taxpayer sells or otherwise disposes of the investment.

Conf. Rep. at page 275 n. 872.

Where a taxpayer selling burial plots on a pre-need basis has entered into an executory contract for the sale of a burial plot, but no realization event has occurred apart from any receipt of progress payments, ICCFA submits that footnote 872 should be interpreted as precluding the application of section 451(b). Entry into a contract to sell an interest in real property in the future is not a realization event for tax purposes. Accordingly, ICCFA submits that a taxpayer selling burial plots on a pre-need basis should not be required to include any portion of the sales price in excess of any progress payments received by a taxpayer as revenue for tax purposes under section 451(b) merely because the sales price has been reported as revenue income in a taxpayer's financial statements.

B. Treatment of basis offset.

To the extent the foregoing argument is rejected and the IRS requires revenue recognition under section 451(b) prior to the taxable year in which the burial plot is deemed sold for tax purposes, ICCFA submits for the reasons noted in a preceding section of these comments that a taxpayer should be entitled to offset its adjusted basis in the burial plot against any revenue inclusion under section 451(b). First, the statutory wording in section 451(b) supports this conclusion.

Section 451(b) provides a financial conformity test with respect to the reporting of gross income at an earlier date than would normally occur for tax purposes. However, the terminology used in the financial conformity test in section 451(b) refers to the application of the all-events test with respect to an item of gross income. In the case of a sale of property, gross income means revenue minus the cost of the property that is sold.

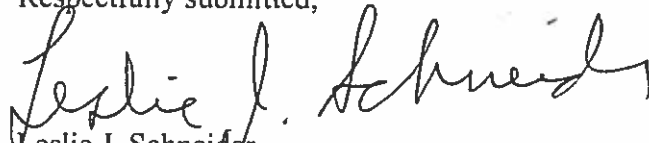
Moreover, any taxpayer recognizing for financial reporting purposes the entire sales price with respect to a pre-need sale of a burial plot prior to the transfer of title to and possession of the burial plot to the purchaser would offset against such revenue reported for financial reporting purposes the taxpayer's adjusted basis in the burial plot. Accordingly, section 451(b) should be applied with reference to the amount of gross income reported in the taxpayer's financial statements, rather than be limited to the treatment of the item as gross receipts or gross revenue.

Second, for the reasons explained above, ICCFA submits that a taxpayer required to include progress payments in gross income for tax purposes prior to the transfer of title to and possession of a burial plot to a purchaser is entitled to reduce the advance payments inclusion in income by the taxpayer's adjusted basis in the burial plot. If that is the appropriate tax treatment for a taxpayer that receives progress payments and is subject to taxation under section 451(c), then surely that same tax result ought to apply in the case of the application of section 451(b).

Accordingly, if apart from the receipt of any progress payments, revenue is required to be reported by a taxpayer engaged in pre-need sales of burial plots prior to the time the burial plots are sold, the taxpayer should be entitled to an offset against the revenue for the taxpayer's adjusted basis in the burial plot.

ICCGA appreciates the opportunity to comment on Notice 20180=-35. If you have any questions or would like to discuss any of the points raised in these comments, please feel free to contact the undersigned at (202) 393-7600.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leslie J. Schneider".

Leslie J. Schneider
Ivins, Phillips & Barker
Tax Counsel for ICCFA

cc: Robert Fells, ICCFA