

Advocacy Urges The Department of the Treasury and Internal Revenue Service to Comply with the Regulatory Flexibility Act

On January 3, 2006 the Office of Advocacy (Advocacy) sent a comment letter to the Department of Treasury and Internal Revenue Service (Treasury and IRS) in response to their notice of proposed rulemaking, *Income Attributable to Domestic Production Activity* (70 Fed. Reg. 67220 November 4, 2005). Advocacy encouraged Treasury and IRS to provide additional information supporting their certification that the proposed rule would not have a significant economic impact on a substantial number of small entities. In addition, Advocacy encouraged Treasury and IRS to expand the number of taxpayers that can use the simplified and small business methods of calculating qualified production activities income (QPAI). A copy of Advocacy's letter can be accessed at: <http://www.sba.gov/advo/laws/comments/>.

- On October 22, 2004, the President signed into law the American Jobs Creation Act which included a tax deduction for certain domestic production activities. The deduction is available for tax years beginning after December 31, 2004. The deduction is equal to 3 percent of the lesser of taxable income derived from QPAI or taxable income. In 2010 when the deduction is fully phased in it will increase to 9 percent.
- To take advantage of these provisions businesses must comply with complicated computation methods and additional record keeping requirements. The deduction was meant to be a benefit to businesses for conducting domestic activities. However, the procedures imposed by Treasury and IRS' interpretation of the statute will be burdensome to small entities.
- Treasury and IRS have provided for a simplified and small business method for computing QPAI. These methods are only available to a limited number of small entities. Advocacy encourages Treasury and IRS to make these methods available to a greater number of taxpayers.
- The Treasury and IRS have certified that the proposed regulations will not have a significant economic effect on a substantial number of small entities. To support this certification Treasury and IRS stated only that cooperatives will be minimally affected. Advocacy has suggested that the Treasury and IRS either publish additional information in the *Federal Register* supporting the Regulatory Flexibility Act (RFA) certification or complete an Initial Regulatory Flexibility Analysis pursuant to the RFA.

For more information, visit Advocacy's Webpage at <http://www.sba.gov/advo>, or contact assistant chief counsel Candace B. Ewell by phone at (202) 401-9787 or by e-mail at candace.ewell@sba.gov.