UNITED STATES TAX COURT
WASHINGTON, DC 20217

THE CANNON CORPORATION AND SUBSIDIARIES,	)	
Petitioner(s),	)	
v.	)	Docket No. 12466-16.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case was on the Court's June 12, 2018 trial calendar for Buffalo, New York. The Court granted partial summary judgment to the Commissioner on the key issue of Cannon's entitlement to claim in its 2011 tax year deductions that it earned in 2007 through 2011.

On July 17, 2018 Cannon moved for reconsideration of the Court's order granting partial summary judgment. Cannon's fundamental problem in winning with this motion is the same as its problem in fighting the Commissioner's original motion: Both the Code and the confusing IRS Notice provide that Cannon can take the I.R.C. § 179D deduction that its clients transferred to it only in the year that the property generating that deduction was placed in service. On this point there is no difference between § 179D(a) of the Code (giving "as a deduction an amount equal to the cost of energy efficient commercial building property *placed in service during the taxable year*" (emphasis added)) and Notice 2008-40, § 3.01 (the "deduction will be allowed to the designer *for the taxable year that includes the date on which the property is placed in service*" (emphasis added)). There's no inconsistency between the Code and the Notice to be mined for a way around the resulting statute-of-limitations bar on deductions that Cannon should have claimed on its 2007 return.

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But Cannon argues that there's still more for us to reconsider. In our order granting the Commissioner partial summary judgment, we recognized that a building owner who takes depreciation deductions for energy-efficient commercial building property might be making a change in accounting method when it starts taking § 179D deductions. Cannon insists that it and the building owner are one and the same because § 179D(d)(4) says that it "shall be treated as the taxpayer for purposes of this section," and so it must be changing its accounting method when it takes a § 179D deduction. We dealt with this argument when we granted the Commissioner partial summary judgment:

> Cannon does argue that, because Notice 2008-40 requires a building owner to reduce his basis in property when a designer takes a § 179D deduction for that property, there is no permanent distortion in aggregate lifetime taxable income. This argument misses the point. The timing question under § 481(a) asks only about distortions in one taxpayer's income -- here, Cannon's. Otherwise, the test would be of little use: Any deduction associated with another party recognizing income -- e.g., an employer's salary deduction -- would then be considered one that involves timing because there is no permanent distortion in aggregate lifetime taxable income of the employer *and* the employee.

I.R.C. § 179D(d)(4) says that designers who are allocated deductions are "treated as the taxpayer *for purposes of this section*" (emphasis added). We agree with Cannon that it is supposed to be treated like the building owner for purposes of § 179D, able to take an allocated § 179D deduction in the taxable year energy-efficient property is placed in service. *See* I.R.C. § 179D(a). But we don't agree that it must be treated as indistinguishable from the building owner for purposes of *all sections* of the Code -- and not for purposes of § 481.

It is therefore

ORDERED that petitioner's July 17, 2018 motion for reconsideration is denied. It is also

ORDERED that on or before September 13, 2018 the parties file a joint status report on their progress in settling any other issues in the case so as to enable a final decision to be entered.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
July 30, 2018