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David N. Allen
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Dear Faculty Inventor,

We have become aware of an IRS Technical Advice Memorandum (TAM) that may have a significant impact on income tax reporting for royalty payments received by faculty inventors. Previously most people have treated royalty payments as supplemental income and been taxed at their ordinary income rates which are generally higher than capital gains tax rates. This TAM indicates that faculty generated royalty income may be eligible for capital gains treatment. Specifically:

“In a technical advice memorandum (TAM 200249002), the IRS National Office held that a state university faculty member who created an invention within the scope of his employment at the university and, pursuant to the university's patent policies, transferred all of his rights in the invention to the university was entitled to capital gains treatment under section 1235 on royalties he received from the university. In the technical advice memorandum, the IRS addressed the issues of (i) whether the payments should be treated as royalties or as additional compensation, (ii) whether the faculty member had any inherent ownership rights in the patent to transfer to the university, and (iii) whether the transfer to the university met the "all substantial rights" test of section 1235.”

The full text of TAM 200249002 is attached for your reference. We are providing this TAM for your information. We recommend that you discuss the details with your tax advisor.

Sincerely,

David Allen