

## Rev. Proc. 97-43

### SEC. 1. PURPOSE

This revenue procedure tells taxpayers how to request consent to change methods of accounting to comply with elections out of certain exemptions from dealer status for purposes of § 475 of the Internal Revenue Code. See § 1.475(c)-1(a)(3) of the Income Tax Regulations (concerning taxpayers buying securities from or selling securities to members of the same consolidated group); § 1.475(c)-1(b) (concerning sellers of nonfinancial goods and services); and § 1.475(c)-1(c) (concerning taxpayers that engage in no more than negligible sales of securities).

### SEC. 2. BACKGROUND

.01 Under § 475(a), dealers in securities must use a mark-to-market accounting method for securities other than certain securities timely identified as exempt under § 475(b)(2). Section 475(c)(1) defines dealer in securities for purposes of § 475.

.02 One component of the definition of dealer in securities in § 475(c)(1) is entering into transactions in securities with customers. Members of the same consolidated group are ordinarily not each other's customers for purposes of § 475(c)(1). Section 1.475(c)-1(a)(3)(ii). A consolidated group may, however, elect to treat its members as potential customers of one another for purposes of § 475(c)(1) (the intragroup-customer election). Unless the Commissioner otherwise prescribes, the election is made by filing a specified statement with a timely filed consolidated federal income tax return. Section 1.475(c)-1(a)(3)(iii)(B).

.03 A taxpayer is ordinarily exempt from treatment as a dealer in securities if the taxpayer would not be a dealer in securities but for its purchases and sales of debt instruments that are customer paper as defined in § 1.475(c)-1(b)(2) with respect to the taxpayer or another member of its consolidated group (the customer paper exemption). Section 1.475(c)-1(b)(1). Taxpayers may elect not to

be governed by the customer paper exemption. Section 1.475(c)-1(b)(4). Unless the Commissioner otherwise prescribes, the election generally is made by filing a specified statement with a timely filed federal income tax return (or, in limited cases, an amended return). Section 1.475(c)-1(b)(4)(i); see also Rev. Rul. 97-39, page 4, this Bulletin, Holding 13.

.04 A taxpayer's purchases of securities from customers do not make the taxpayer a dealer in securities if the taxpayer engages in no more than negligible sales of securities as defined in § 1.475(c)-1(c)(2) (the negligible sales exemption). Section 1.475(c)-1(c)(1)(i). Taxpayers may elect not to be governed by the negligible sales exemption. This is done on a timely filed original federal income tax return (or, in limited cases, on an amended return). Section 1.475(c)-1(c)(1)(ii); see also Rev. Rul. 97-39, Holding 12.

.05 In general, making one of these elections results in the taxpayer being required to change its method of accounting to reflect the application of § 475(a). But see Rev. Rul. 97-39, Holding 17 (discussing circumstances in which more than one election must be made for § 475(a) to apply). A taxpayer must obtain the consent of the Commissioner to change an accounting method. Section 446(e).

.06 A taxpayer that accounts for securities under § 475(a) may change that method only with the consent of the Commissioner. Section 446(e). See Rev. Rul. 97-39, Holding 20; see also Rev. Proc. 97-27, 1997-21 I.R.B. 10, or its successor on how to request consent to change.

### SEC. 3. SCOPE

This revenue procedure applies to taxpayers required to change methods of accounting as a result of elections under § 1.475(c)-1(a)(3)(iii), -1(b)(4), or -1(c)(1)(ii) (including taxpayers that made those elections prior to September 10, 1997).

### SEC. 4. PROCEDURE

.01 If a taxpayer elects to be governed by the intragroup-customer election and the election results in the taxpayer being required to change its method of accounting, then the taxpayer must attach both

the statement described in § 1.475(c)-1(a)(3)(iii)(B) and the additional documents required by section 4.07 of this revenue procedure to the taxpayer's timely filed original federal income tax return for the first year subject to the election. If that return is filed on or before October 31, 1997, however, the additional documents may be filed at a later date in accordance with section 4.04. In addition, a copy of those documents must be filed as required by section 4.05 and, if applicable, section 4.06.

.02 If a taxpayer elects not to be governed by the customer paper exemption and the election results in the taxpayer being required to change its method of accounting, then the taxpayer must attach both the statement described in § 1.475(c)-1(b)(4)(i) and the additional documents required by section 4.07 of this revenue procedure to a timely filed federal income tax return or to an amended return, as appropriate under § 1.475(c)-1(b)(4)(i)(A) or (B) or Holding 13 of Rev. Rul. 97-39. If that return is filed on or before October 31, 1997, however, the additional documents may be filed at a later date in accordance with section 4.04. In addition, a copy of those documents must be filed as required by section 4.05 and, if applicable, section 4.06.

.03 If a taxpayer elects not to be governed by the negligible sales exemption and the election results in the taxpayer being required to change its method of accounting, then the taxpayer must attach the documents required by section 4.07 of this revenue procedure to the timely filed original federal income tax return described in § 1.475(c)-1(c)(1)(ii) or the amended return described in Rev. Rul. 97-39, Holding 12 (discussing when the election not to be governed by the negligible sales exemption may be made by filing an amended return). If that return is filed on or before October 31, 1997, however, the additional documents may be filed at a later date in accordance with section 4.04. In addition, a copy of those documents must be filed as required by section 4.05 and, if applicable, section 4.06.

.04 A taxpayer that files the return described in section 4.01, 4.02, or 4.03 of this revenue procedure on or before October 31, 1997, need not attach the docu-

ments required by section 4.07 to that return if the taxpayer instead attaches these documents to the first federal income tax return or amended return filed by the taxpayer after October 31, 1997, that is for a taxable year subject to the election.

.05 The taxpayer must file a copy of the documents required by section 4.07 of this revenue procedure with the Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, P.O. Box 7604, Benjamin Franklin Station, Washington, DC 20044 (or, in the case of a designated private delivery service: Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, 1111 Constitution Avenue, NW, Washington, DC 20224). This filing must occur on or before the later of October 31, 1997, and the time the taxpayer files the return described in section 4.01, 4.02, or 4.03. The documents must contain the name and telephone number of the examining agent, appeals office, or counsel of record for the government, if any, described in section 4.06.

.06 If a taxpayer files an amended return on which the taxpayer elects not to be governed by the customer paper exemption or the negligible sales exemption and, at the time of filing, the taxable year to which the amended return applies or any subsequent taxable year is before the Service or before a federal court, then the taxpayer must provide a copy of the documents required by section 4.07 of this revenue procedure to the persons provided below.

(1) If a taxable year in question is before the Service, a copy of the documents required by section 4.07 of this revenue procedure must be provided to the taxpayer's examining agent or, instead, if the taxable year has been assigned to an appeals office, to such appeals office. The taxpayer must provide the copy by the later of October 31, 1997, and the day that is 30 days after the date the taxable year in question first came before the Service. For purposes of this section, a taxable year shall be considered before the Service from the time the taxpayer (or any member of a consolidated group of which taxpayer was a member during the taxable year) has been contacted in any manner by a representative of the Service for the purpose of scheduling any type of examination of its federal income tax return for that year until the receipt of a no-change letter for that year, the execution of a

waiver of restrictions on assessment and collection of deficiency in tax and acceptance of overassessment, the expiration of the period for filing a petition with the Tax Court for that year, or the filing of a petition with the Tax Court.

(2) If a taxable year in question is before a federal court, a copy of the documents required by section 4.07 of this revenue procedure must be provided to counsel of record for the government. The taxpayer must provide the copy by the later of October 31, 1997, and the day which is 30 days after the date the taxable year in question first came before a federal court. For purposes of this section, a taxable year will be considered before a federal court if the treatment of any item (whether or not involving a method of accounting) for such taxable year would be considered before a federal court for the purpose of Rev. Proc. 97-27, 1997-21 I.R.B. 10, section 3.08(3).

.07 The taxpayer must properly complete and execute a Form 3115. A legend must be typed on the top of the first page of the Form 3115 that identifies the applicable parts of section 4 of this revenue procedure (other than section 4.04 and section 4.07). The legend should read substantially as follows: "Filed under section[s] 4.\*\* [and 4.\*\*] of Rev. Proc. 97-43."

(1) Form 3115 requires an explanation of the legal basis of the proposed change in method of accounting. That explanation must state specifically which election(s) the taxpayer made under § 1.475(c)-1. *See also* Rev. Rul. 97-39, Holding 17 (discussing the need for multiple elections).

(2) The taxpayer must attach to the Form 3115 a statement describing all identifications, if any, that are or were effective for the purposes of § 475(b)(2) of securities acquired prior to the date of executing the Form 3115 (or the date of filing if filed more than 30 days after executing). For identifications that are not subject to Holding 15 of Rev. Rul. 97-39, the statement must describe the procedures or systems used to make each identification, the date on which the identifications were made, and the content and location of the identifications in the taxpayer's books and records. *See* Rev. Rul. 97-39, Holding 14 (discussing when an identification under § 475(b)(2) is timely made). If the tax-

payer holds, or held, transition securities, which are subject to identification under Holding 15 of Rev. Rul. 97-39, the statement must describe the basis for concluding that the securities were or were not described in § 475(b)(1)(A), (B), or (C), including the date, content, and location of documents in the taxpayer's books and records that support such conclusions. If there were no identifications, or if none of the taxpayer's securities were transition securities, then the statement should convey this information.

## SEC. 5. CONSENT

.01 If a taxpayer described in section 3 of this revenue procedure complies with the requirements set forth in section 4, then the Commissioner hereby grants consent for the taxpayer to change its method of accounting for securities to reflect the application of § 475(a).

.02 Pending further guidance, in the case of any taxpayer granted automatic consent to change an accounting method by this revenue procedure, § 475(a) applies only to changes in value of securities occurring after the start of the year of change, and any built-in gain or loss as of the beginning of the year of change must be taken into account under rules similar to § 1.475(a)-3(b)(2).

## SEC. 6. EFFECTIVE DATE

This revenue procedure is effective September 10, 1997, the date this revenue procedure was made available to the public.

## SEC. 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1558.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 2.02, 2.03, 2.04, and 4.07(2). This information is required by the Service in order to facilitate monitoring taxpayers changing ac-

counting methods resulting from making the elections provided by § 1.475(c)–1(a)(3)(iii), –1(b)(4), or –1(c)(1)(ii). The information collected will be used if a taxpayer making the change is audited. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The collection of information contained in sections 2.02, 2.03, and 2.04 were reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1496.

The estimated total annual reporting

burden described in section 4.07(2) is 100,000 hours.

The estimated annual burden per respondent varies from .25 hours to 50 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 20,000.

The estimated annual frequency of responses is once in the existence of each respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Kenneth P. Christman of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Mr. Christman at 202-622-3950 (not a toll-free call).

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