

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 446; 472; 1.446-1; 1.472-1; 1.472-8)

Rev. Proc. 2008-23

SECTION 1. PURPOSE

This revenue procedure provides an alternative dollar-value last-in, first-out (LIFO) pooling method, the Vehicle-Pool Method, for retail dealers and wholesale distributors (collectively, “resellers”) of cars and light-duty trucks. This revenue procedure also provides the exclusive procedures for obtaining automatic consent to change to the Vehicle-Pool Method. In addition, this revenue procedure modifies Rev. Proc. 97-36, 1997-2 C.B. 450, and Rev. Proc. 2001-23, 2001-1 C.B. 784, as modified by Announcement 2004-16, 2004-1 C.B. 668, to provide the permissible method of pooling for crossover vehicles for resellers of cars and light-duty trucks that do not use the Vehicle-Pool Method.

SECTION 2. BACKGROUND

.01 Section 472(a) of the Internal Revenue Code provides generally that a taxpayer may use the LIFO method of inventorying goods if, among other requirements,

the change to, and use of, the method is in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of the method may clearly reflect income.

.02 Section 1.472-8(a) of the Income Tax Regulations provides that any taxpayer may elect to determine the cost of its LIFO inventories under the dollar-value LIFO method of accounting, provided such method is used consistently and clearly reflects income in accordance with the rules of § 1.472-8.

.03 Section 1.472-8(b)(1) requires manufacturers and processors to establish one pool for each natural business unit unless the taxpayer elects under § 1.472-8(b)(3) to establish multiple pools. In addition, § 1.472-8(b)(1) requires that where the manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, any pooling of the LIFO inventory of such purchased goods for the wholesaling or retailing operations shall be determined in accordance with the rules of § 1.472-8(c) (concerning pools of resellers).

.04 Section 1.472-8(c)(1) requires, in relevant part, a reseller to establish dollar-value pools based on major lines, types, or classes of goods.

.05 Section 1.472-8(g)(1) provides that any change in method of pooling authorized by § 1.472-8 and used in computing the taxpayer's LIFO inventories under the dollar-value LIFO method shall be treated as a change in method of accounting. Any method of pooling that is authorized by § 1.472-8 shall be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is

granted by the Commissioner as provided in § 1.446-1(e). If the taxpayer changes from one method of pooling to another method of pooling, the ending LIFO inventory for the taxable year preceding the year of change shall be restated under the new method of pooling.

.06 Section 1.472-8(g)(2)(i) provides, in relevant part, that a taxpayer who has been using the dollar-value LIFO method and who is permitted or required to change its method of pooling shall combine or separate the LIFO value of its inventory for the base year and each yearly layer of increment in order to conform to the new pool or pools. The combination or separation of the LIFO value of the taxpayer's inventory for the base year and each yearly layer of increment shall be made in accordance with the appropriate method in § 1.472-8(g)(2), unless the use of a different method is approved by the Commissioner. Section 1.472-8(g)(2)(ii) provides rules that a taxpayer must apply when separating a pool. Sections 1.472-8(g)(2)(iii) and (iv) provide alternative rules that a taxpayer must apply when combining pools. These sections also contain examples showing the application of the rules for taxpayers that use double-extension LIFO.

.07 A taxpayer generally may obtain automatic consent under § 446(e) and § 1.446-1(e)(2)(i) to change to a method of accounting listed in the APPENDIX of Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and as amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432.

.08 Under the "Alternative LIFO Method" provided in Rev. Proc. 97-36 and listed

in section 10.03 of the APPENDIX of Rev. Proc. 2002-9, a retail dealer of new cars or new trucks ("automobile dealer") must establish one pool for all new cars and a separate pool for all new light-duty trucks (two-pools rule). For this purpose, "light-duty truck" means a truck with a gross vehicle weight that does not exceed 14,000 pounds. These light-duty trucks sometimes are referred to as "class 1," "class 2," and "class 3" trucks.

.09 Under the "Used Vehicle Alternative LIFO Method" provided in Rev. Proc. 2001-23, 2001-1 C.B. 784, as modified by Announcement 2004-16, 2004-1 C.B. 668, and listed in section 10.04 of the APPENDIX of Rev. Proc. 2002-9, a reseller of used cars or used light-duty trucks ("used vehicle dealer") must establish one pool for all used cars and a separate pool for all used light-duty trucks (two-pools rule). Again, "light-duty truck" means a truck with a gross vehicle weight that does not exceed 14,000 pounds (*i.e.*, class 1, class 2, or class 3 truck). Furthermore, "used car" and "used light-duty truck" mean previously titled vehicles, excluding demonstrator vehicles. A taxpayer may choose to assign a used sport-utility vehicle ("SUV") or a used "hybrid" vehicle (*e.g.*, van and minivan) to either its used car pool or its used light-duty truck pool. Once the taxpayer has assigned one used SUV or one used hybrid vehicle to a pool, the taxpayer must assign all used SUVs and all used hybrid vehicles to that same pool in subsequent years.

.10 The two-pools rule found in both Rev. Proc. 97-36 and Rev. Proc. 2001-23 is based on the opinions in *Fox Chevrolet, Inc. Maryland v. Commissioner*, 76 T.C. 708 (1981), *acq.*, 1984-2 C.B. 1, in which tax years from 1972 through 1974 were at issue,

and *Richardson Investments, Inc., and Subsidiaries v. Commissioner*, 76 T.C. 736 (1981), in which tax years 1971, 1972, and 1974 were at issue. After acknowledging the similarities of cars and trucks, the court in *Fox Chevrolet* focused on their differences in deciding that cars and trucks do not constitute a single class of goods under § 1.472-8(c)(1). First, the court noted that cars and trucks appeal to different types of purchasers. “The market for [cars] is comprised in the main of persons among the general public who desire to acquire a means of transporting themselves between locations, usually within their community and occasionally on extended outings to more distant locales. Trucks, on the other hand, are more often bought for business use. They are used principally for transporting property.” 76 T.C. at 725. Second, the court observed that the nature of the operation of trucks is quite different from that of cars. “Due to their size, weight, and in some instances mechanical complexity, greater experience or training is occasionally required to operate trucks designed to haul property. Furthermore, the evidence in this case reveals that trucks are a more expensive investment than is the average [car]. The registration and other legal requirements for the operation of trucks also tend to be much more stringent than those for [cars].” 76 T.C. at 725. Finally, the court rejected the argument that light-duty trucks are acquired by the same class of consumers and are used interchangeably for the same purposes as cars. “While economy and light-duty trucks are certainly closer to automobiles than are heavy-duty trucks, and it is always difficult to draw a fine line, we believe that smaller trucks have more in common with other types of trucks than they do with [cars]. In any event, if light-duty trucks are a hybrid, they are far from fully

interchangeable with [cars]. The line is difficult to draw, but is more appropriately drawn between trucks and cars than between different classes of trucks.” 76 T.C. at 726. In *Richardson Investments*, the Tax Court, citing *Fox Chevrolet* as controlling authority, rejected a Ford dealer’s argument that it may assign cars and trucks to a single “transportation” pool. Noting that this taxpayer did not include used vehicles and recreational vehicles in the same pool, the court also noted that Ford Motor Company’s advertising campaign distinguished between the commercial nature of Ford trucks (“built tough”) and the personal nature of Ford Granadas (“look and ride like a Mercedes”).

.11 The Treasury Department and the Internal Revenue Service recognize that the distinctions between cars and light-duty trucks have diminished significantly since *Fox Chevrolet* and *Richardson Investments* were decided. For example, during the 1970s, most cars were purchased to transport people for personal purposes, and most trucks were purchased to transport property for business purposes. Today, however, manufacturers advertise that their light-duty trucks offer the ride, handling, and amenities of cars plus the additional seating and cargo capacity that larger families need to transport themselves and their personal-use property. Furthermore, people do not need a special operator’s license to drive light-duty trucks on highways. Moreover, the distinctions between cars and light-duty trucks that existed during the 1970s have been reduced significantly by the creation of “crossover” vehicles, which share some characteristics of both cars and light-duty trucks (e.g., SUVs, minivans, and similar vehicles, formerly denoted as “hybrid”). Because of these changes, sales of light-duty trucks have greatly increased relative to sales of cars. Also, today federal regulators

treat cars and light-duty trucks with greater similarity in regulations promulgated under both the Energy Policy and Conservation Act of 1975 (49 U.S.C. 32902), which sets fuel economy standards, and the Clean Air Act (42 U.S.C. 7521), which sets emissions standards.

SECTION 3. SCOPE

Any reseller of cars or light-duty trucks that is subject to the dollar-value LIFO pooling rules of § 1.472-8(c)(1), Rev. Proc. 97-36, or Rev. Proc. 2001-23 may use the Vehicle-Pool Method, as described section 4.01(1) of this revenue procedure. Also, any reseller of cars or light duty trucks that has crossover vehicles and that uses the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 must use the method of pooling for crossover vehicles under Rev. Proc. 97-36 or Rev. Proc. 2001-23, as described in section 4.02(1) of this revenue procedure if the reseller does not choose to use the Vehicle-Pool Method described in section 4.01(1) of this revenue procedure.

SECTION 4. APPLICATION

.01 Vehicle-Pool Method.

(1) Description. Under the Vehicle-Pool Method, a reseller with new vehicles (*i.e.*, new cars, new light-duty trucks, and new crossover vehicles, including SUVs, vans, minivans, and other similar vehicles) may establish a New Vehicle pool for all new vehicles. In addition, under this method, a reseller with used vehicles (*i.e.*, used cars, used light-duty trucks, and used crossover vehicles, including SUVs, vans, minivans, and other similar vehicles) may establish a Used Vehicle pool for all used

vehicles. No pool established under this revenue procedure may include a vehicle with a gross vehicle weight that exceeds 14,000 pounds.

(2) Change to the Vehicle-Pool Method.

(a) Pursuant to section 6.01 of Rev. Proc. 2002-9 (or successor), a reseller within the scope of this revenue procedure and Rev. Proc. 2002-9, as modified by this revenue procedure, is granted the Commissioner's consent to change to the Vehicle-Pool Method described in section 4.01(1) of this revenue procedure, provided the reseller follows the provisions of Rev. Proc. 2002-9, with the following modifications:

(i) The scope limitation in section 4.02(6) of Rev. Proc. 2002-9 does not apply for the reseller's first taxable year ending on or after December 31, 2007; and

(ii) The designated automatic accounting method change number for a change in method of accounting to the Vehicle-Pool Method made pursuant to this revenue procedure is "112." A reseller also concurrently changing to the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 should file a single Form 3115, *Application for Change in Accounting Method*, for both changes and enter both designated numbers on its Form 3115. For example, a reseller concurrently changing to the Alternative LIFO Method and the Vehicle-Pool Method should enter both "58 and 112" on its Form 3115.

(b) A reseller that changes its pooling method under this revenue procedure must make the change on a cut-off basis (see section 2.06 of Rev. Proc. 2002-9) and must comply with § 1.472-8(g). Instead of using the earliest taxable year

for which the reseller adopted the LIFO method for any items in a pool, the reseller must use the year of change as the base year when determining the LIFO value of that pool for the year of change and subsequent taxable years (*i.e.*, the cumulative index at the beginning of the year of change will be 1.00). The reseller must restate the base-year cost of all layers of increment in a pool at the beginning of the year of change in terms of new base-year cost. For an example of establishing a new base year, see § 1.472-8(e)(3)(iv)(B)(1)(ii).

.02 Method of Pooling for Crossover Vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23.

(1) Description. A reseller of cars and light duty trucks that uses the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 and that maintains separate new car and new truck pools or separate used car and used truck pools, or both, (in lieu of the Vehicle Pool Method described in section 4.01(1) of this revenue procedure) must assign new crossover vehicles to either the new car pool or the new truck pool, whichever is more reasonable under all the facts and circumstances, and must assign used crossover vehicles to either the used car pool or the used truck pool, whichever is more reasonable under all the facts and circumstances.

(2) Change to the method of pooling for crossover vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23. A reseller within the scope of this revenue procedure that wants to change to the method of pooling for crossover vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23, as provided in section 4.02(1) of this revenue procedure, must use the provisions of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified by Rev. Proc. 2007-67, 2007-48 I.R.B 1072.

SECTION 5. AUDIT PROTECTION

A reseller's use of the Vehicle-Pool Method in accordance with section 4.01(1) of this revenue procedure on a federal income tax return filed before March 7, 2008, will not be raised as an issue by the Service. In addition, if a reseller's use of the Vehicle-Pool Method in accordance with section 4.01(1) of this revenue procedure on a federal income tax return filed before March 7, 2008, is an issue under consideration in an examination, in an appeals office, or before the Tax Court, the issue will not be further pursued by the Service. However, the audit protection granted by this section 5 extends only to the question of whether the reseller has established the appropriate number of pools under § 1.472-8(c)(1). Thus, this section 5 does not prohibit the Service from raising or pursuing other inventory-related issues in an examination, in an appeals office, and before the Tax Court.

SECTION 6. EFFECT ON OTHER DOCUMENTS

.01. Changes to Rev. Proc. 97-36.

(1) Rev. Proc. 97-36 is modified to permit an automobile dealer to establish a New Vehicle pool for inventories of new cars, new crossover vehicles, and new light-duty trucks.

(2) Rev. Proc. 97-36 is modified to require an automobile dealer that maintains separate new car and new truck pools under section 4.02(1) of Rev. Proc. 97-36 to assign new crossover vehicles to either the new car pool or the new truck pool, whichever is more reasonable under all the facts and circumstances.

.02. Changes to Rev. Proc. 2001-23.

(1) Rev. Proc. 2001-23 is modified to permit a used vehicle dealer to establish a Used Vehicle pool for inventories of used cars, used crossover vehicles, and used light-duty trucks.

(2) Section 4.02(3) of Rev. Proc. 2001-23 is modified to require a used vehicle dealer that maintains separate used car and used truck pools to assign used crossover vehicles to either the used car pool or the used truck pool, whichever is more reasonable under all the facts and circumstances.

SECTION 7. EFFECTIVE DATE

In general, this revenue procedure is effective for taxable years ending on or after December 31, 2007. However, sections 4.02, 6.01(2) and 6.02(2) of this revenue procedure are effective for taxable years ending on or after March 7, 2008.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure contact Leo F. Nolan II at (202) 622-4970 (not a toll free call).