

Internal Revenue bulletin

Bulletin No. 1997-39
September 29, 1997

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 97-39, page 4.

Mark-to-market accounting method for dealers in securities. This ruling provides guidance to enable taxpayers to comply with the mark-to-market requirements of section 475 of the Code. Rev. Ruls. 94-7 and 93-76 clarified, modified, partially obsoleted, and superseded.

Rev. Rul. 97-40, page 8.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1997, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 6.5 percent.

Rev. Proc. 97-43, page 12.

Consent to change accounting method to comply with section 475 mark-to-market rules. Automatic consent to

change accounting methods is provided to certain taxpayers that become subject to section 475(a) of the Code. In order to receive automatic consent, the taxpayer must file a completed Form 3115, including a list of securities identified under section 475(b)(2), in the manner provided in this revenue procedure.

EXEMPT ORGANIZATIONS

Announcement 97-98, page 15.

A list is given of organizations now classified as private foundations.

ADMINISTRATIVE

Announcement 97-96, page 15.

The Service announces the number of medical savings accounts established as of June 30, 1997.

Finding Lists begin on page 18.



Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446-1: General rule for methods of accounting.

Questions and answers about the application of section 475 and the regulations thereunder. See Rev. Rul. 97-39, page 4.

26 CFR 1.446-1: General rule for methods of accounting.

What information must a taxpayer provide in order to obtain automatic consent to change accounting method when section 475(a) becomes applicable as a result of the taxpayer making an election (i) to treat transactions within a consolidated group as transactions with customers as provided by section 1.475(c)-1(a), or (ii) not to be governed by the exemptions from the status of a dealer in securities provided by section 1.475(c)-1(b) or -1(c)? See Rev. Proc. 97-43, page 12.

Section 475.—Mark-to-Market Accounting Method for Dealers in Securities

26 CFR 1.475(b)-2: Exemptions—identification requirements. (Also §§ 446, 475, 7805; 1.446-1, 1.475(c)-1, 301.7805-1.)

Mark-to-market accounting method for dealers in securities. This ruling provides guidance to enable taxpayers to comply with the mark-to-market requirements of section 475 of the Code. Rev. Ruls. 94-7 and 93-76 clarified, modified, partially obsoleted, and superseded.

Rev. Rul. 97-39

PURPOSE

This revenue ruling provides guidance under § 475 of the Internal Revenue Code to enable taxpayers to comply with the mark-to-market requirements of § 475. Rev. Rul. 93-76, 1993-2 C.B. 235 (which was previously modified by Rev. Rul. 94-7, 1994-1 C.B. 151), is clarified, modified, partially obsoleted, and superseded.

LAW

Section 475 of the Code was enacted on August 10, 1993, in the Omnibus Budget Reconciliation Act of 1993 (the “1993 Act”), section 13223, 1993-3 C.B. 1, 69. It requires mark-to-market accounting treatment for certain securities

held by a “dealer in securities” as defined in § 475(c)(1). This requirement is effective for all taxable years ending on or after December 31, 1993. Section 475 was amended on August 5, 1997, in the Taxpayer Relief Act of 1997 (the “1997 Act”), section 1001(b) (redesignating old § 475(e) as § 475(g) and adding new § 475(e) and (f) to allow dealers in commodities and traders in securities and commodities to elect mark-to-market accounting, effective for taxable years ending after August 5, 1997). This revenue ruling is limited to issues arising under the 1993 Act and does not address issues arising under the 1997 Act.

Section 475(a) sets forth two mark-to-market rules. First, any security that is inventory in the hands of a dealer must be included in inventory at its fair market value. Second, any security that is not inventory in the hands of a dealer and that is held at the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of that taxable year, and any gain or loss is required to be taken into account for that taxable year.

Section 475(b)(1) provides that the mark-to-market rules do not apply to: (1) any security held for investment; (2) any evidence of indebtedness that is acquired (including originated), or any obligation to acquire an evidence of indebtedness that is entered into, by a dealer in the ordinary course of its trade or business, but only if the evidence of indebtedness or obligation to acquire an evidence of indebtedness is not held for sale; (3) any security that is a hedge with respect to a security that is not subject to the mark-to-market rules; and (4) any security that is a hedge of a position, right to income, or liability that is not a security in the hands of the taxpayer. Under § 475(b)(2), a security must be clearly identified in the dealer’s records as being covered by one of the exceptions described in § 475(b)(1) before the close of the day on which the dealer acquired, originated, or entered into the security.

In addition to the identification requirements in § 475(b), § 475(c)(2)(F)(iii) requires a dealer in securities to identify a position that is not a security described in § 475(c)(2)(A)–(E), but that is treated as a

security because it is a hedge with respect to such a security.

ISSUES AND HOLDINGS

Issue 1: If a taxpayer is not otherwise a dealer in securities within the meaning of § 475(c)(1) but, nevertheless, timely identifies all of its securities as being covered by one of the exceptions in § 475(b)(1), does that “protective identification” cause the taxpayer to be treated as a dealer?

Holding 1: No. A taxpayer that is not a dealer in securities within the meaning of § 475(c)(1) does not become a dealer in securities or create an inference that it is a dealer in securities by making a protective identification of its securities.

Issue 2: Is a bank or an insurance company excepted from the mark-to-market rules on the grounds that it is, per se, not a dealer in securities within the meaning of § 475(c)(1)?

Holding 2: No. A bank or an insurance company is subject to the mark-to-market rules if its activities bring it within the definition of a dealer in securities in § 475(c)(1). For example, many banks are dealers because they regularly originate and sell loans. As another example, an insurance company that regularly makes and sells policyholder loans is a dealer for purposes of § 475.

Issue 3: If a taxpayer’s sole business consists of trading in securities (that is, the taxpayer does not purchase from, sell to, or otherwise enter into transactions with customers), is the taxpayer a dealer in securities within the meaning of § 475(c)?

Holding 3: No. A taxpayer whose sole business consists of trading in securities is not a dealer in securities within the meaning of § 475(c) because that taxpayer does not purchase from, sell to, or enter into transactions with, customers in the ordinary course of a trade or business.

Issue 4: Does the classification of a security under financial accounting principles, including FASB Statement No. 115 (Accounting for Certain Investments in Debt and Equity Securities), determine whether the security qualifies for one of the exceptions to the mark-to-market rules under § 475(b)(1)?

Holding 4: No. The classification of a security under financial accounting

principles is not dispositive of the treatment of the security for federal income tax purposes. For example, for purposes of § 475, a security may in certain cases qualify for the held-for-investment exception to the mark-to-market rules even though, under applicable financial accounting principles, the security is classified as available for sale.

Issue 5: Does an identification of a security as “held for investment” under § 1236 serve to identify that security as “held for investment” (within the meaning of § 475(b)(1)(A)) or as “not held for sale” (within the meaning of § 475(b)(1)(B))?

Holding 5: No. Taxpayers may choose not to identify under § 475(b)(2) some or all of the securities that they identify under § 1236(a)(1). (For a transitional rule applicable to securities held as of the close of the last taxable year ending before December 31, 1993, however, see § 1.475(b)-4(a) of the Income Tax Regulations.) Accordingly, even if a § 1236 identification has been made, an identification of a security or hedge is a valid identification for purposes of § 475(b)(2) only if it contains a specific reference to § 475; this specific reference, however, may be effected by any reasonable method. For instance, certain accounts may be identified in such a way that placing a security or hedge in the account identifies the security or hedge for purposes of both § 1236(a)(1) and § 475(b)(1)(A), (B), or (C). See Holding 6 below. See Holding 15 below for a transitional rule that requires less specificity for identification of securities held by certain taxpayers that were not dealers in securities under § 1.475(c)-1T (as contained in 26 CFR part 1 revised April 1, 1996).

Issue 6: Is a dealer in securities required to use a special procedure to comply with the identification requirements under § 475?

Holding 6: No. Unless the Commissioner otherwise prescribes, a dealer may comply with the identification requirements under § 475 using any reasonable method (see, for example, guidance concerning identification requirements under §§ 988(a)(1)(B), 1221, 1236(a)(1), and 1256(e)(2)(C)). The identification, however, must be made on, and retained as part of, the dealer’s books and records.

The dealer’s books and records must clearly indicate the specific security or hedge being identified, and the identification must clearly indicate that it is being made for purposes of § 475. Alternatively, the dealer may identify specific accounts as containing only securities or hedges that are covered by a particular exception, so that placing a security or hedge in the account identifies the security or hedge as being covered by that exception. Under § 1.475(b)-2(a), an identification need not distinguish between an exception under § 475(b)(1)(A) (concerning certain securities held for investment) and one under § 475(b)(1)(B) (concerning securities not held for sale). Exceptions under either of these provisions, however, must be distinguished from exceptions under § 475(b)(1)(C) (concerning securities held as hedges).

In addition, rather than identifying specific securities or accounts as being covered by an exception described in § 475(b)(1), a dealer may comply with the identification requirement under § 475(b) by clearly indicating the specific securities or accounts that are not covered by a particular exception (that is, indicating that they are covered by some other exception or that they are not exempt) and identifying all other securities or accounts as being covered by a particular exception.

For example, a dealer may place on its books and records a statement that, unless otherwise identified, all of its securities for which an identification is still timely (including securities yet to be acquired) are identified as exempt under either § 475(b)(1)(A) or (B). This statement is effective to identify under § 475(b)(1)(A) or (B) each security covered by its terms unless, before the expiration of the period during which the security may be timely identified, the dealer identifies it as not exempt or as exempt under § 475(b)(1)(C).

Analogously, under Rev. Rul. 64-160, 1964-1 (Part I) C.B. 306, modified by Rev. Rul. 76-489, 1976-2 C.B. 250, dealers can identify specified accounts as containing only securities held for investment for purposes of § 1236(a)(1). Accordingly, dealers can satisfy the identification requirements of § 475(b)(2) by unambiguously indicating that all of the securities in one or more of these ac-

counts are also described, for example, in § 475(b)(1)(A) or (B). Once such an identification of an account is made, placing a security in the account identifies the security not only as being “held for investment” for purposes of § 1236 but also as being described in the applicable subparagraph of § 475(b)(1).

Issue 7 in Rev. Rul. 93-76 concerned transitional identification issues for securities acquired, originated, or entered into between August 10, 1993, and October 31, 1993. As the transition period has now ended, Issue 7 is obsolete and is not reprinted in this revenue ruling.

Issue 8: If a dealer in securities originates or acquires an evidence of indebtedness in the ordinary course of a trade or business, are there any exceptions to the requirement that the dealer make an identification under § 475(b)(2) before the close of the day on which it originates or acquires the security?

Holding 8: Yes. Pending further guidance, if a financial institution (as defined in § 265(b)(5)) originates or acquires an evidence of indebtedness in the ordinary course of a trade or business, an identification of the evidence of indebtedness is timely if it is made in accordance with the dealer’s accounting practice, but no later than 30 calendar days after the date of origination, or acquisition, by the financial institution. The preceding sentence applies to any dealer in securities for evidences of indebtedness that are mortgage loans.

Also, pending further guidance, a dealer in securities that enters into commitments to acquire mortgage loans may identify those commitments as being held for investment if the dealer acquires the mortgage loans and holds the mortgages as investments. This identification of commitments to acquire mortgage loans must be made in accordance with the dealer’s accounting practice, but no later than 30 calendar days after the date of acquisition of the mortgage loans.

Issues 9, 10, and 11 discussed transitional issues concerning proper identification, computation of adjustments, and the period over which to spread any adjustments, for taxable years that included December 31, 1993. As the transition period has now passed, Issues 9, 10, and 11 are obsolete and are not reprinted in this revenue ruling.

Issue 12: May a taxpayer use an amended return to make an election under § 1.475(c)-1(c)(1)(ii) (which concerns taxpayers that purchase securities from customers but make no more than negligible sales of securities)?

Holding 12: For any taxable year for which an original federal income tax return is filed after October 31, 1997, an election under § 1.475(c)-1(c)(1)(ii) must be made on an original federal income tax return that is filed on or before the due date (including any extensions of time) for that return. For any taxable year for which an original federal income tax return was filed on or before October 31, 1997, an election under § 1.475(c)-1(c)(1)(ii) also may be made on an amended return filed not later than October 31, 1997. Not later than December 15, 1997, compliance with § 475 must be reflected on an original or amended return for every other taxable year which is subject to the election and the original return for which is due on or before October 31, 1997. Note that amended returns must be filed before the expiration of the statute of limitations on assessment under § 6501(a).

As is noted in Holding 17 below, a taxpayer subject to more than one exemption must affirmatively elect out of all applicable exemptions to be treated as a dealer in securities.

Issue 13: If a taxpayer wishes to use an amended return to make an election out of the customer paper exemption under § 1.475(c)-1(b)(4)(i)(B), by what date must the taxpayer file the amended return?

Holding 13: Section 1.475(c)-1(b)(4)(i)(B) provides a June 23, 1997, deadline to make the customer paper election on an amended return. Notice 97-37, 1997-27 I.R.B. 8, provides that additional guidance will extend that deadline. Accordingly, that deadline to file an amended return is extended to October 31, 1997. Not later than December 15, 1997, compliance with § 475 must be reflected on an original or amended return for every other taxable year which is subject to the election and the original return for which is due on or before October 31, 1997. Note that amended returns must be filed before the expiration of the statute of limitations on assessment under § 6501(a).

Issue 14: What is the general rule for identifying a security as exempted from mark-to-market accounting?

Holding 14: For a security to be exempt from mark-to-market accounting, the taxpayer must make an identification that is timely under § 475(b)(2), which generally requires a security to be identified before the close of the day on which it is acquired. For the only current exceptions to this rule, see Holding 8 above (identifications of securities by financial institutions and dealers in mortgages), § 1.475(b)-1(b)(4)(ii)(A) (identification of securities to which § 1.475(b)-1(b)(1) ceases to apply), and Holding 15 below (special identification rules for taxpayers not treated as dealers under § 1.475(c)-1T). For information about the required specificity of the identification, see Holding 5 above.

Issue 15: If a taxpayer makes an election out of either § 1.475(c)-1(b)(1) (customer paper exemption) or § 1.475(c)-1(c)(1) (negligible sales exemption) and the election has the effect of causing the taxpayer to be treated as a dealer in securities for a taxable year starting before the date the taxpayer filed the documentation effecting the election (date of the election), how does the taxpayer identify securities that were acquired before the date of the election?

Holding 15: A special identification regime applies to taxpayers that satisfy the following criteria:

First, the taxpayer is making an election out of the customer paper exemption, the negligible sales exemption, or both.

Second, the taxpayer was not treated as a dealer in securities under § 1.475(c)-1T (as contained in 26 CFR part 1 revised April 1, 1996).

The special identification regime applies only to securities ("transition securities") for which an identification would have been timely under the general rule (described in Holding 14 above) only if made on or before October 31, 1997. In applying the preceding sentence, a taxpayer may choose to substitute any earlier date that is on or after December 24, 1996. To make this substitution, the taxpayer must place in its books and records no later than October 31, 1997, an unambiguous statement that the taxpayer chooses to apply the general identification rule described in Holding 14 for all securities acquired on or after the specific date selected by the taxpayer.

Under the special identification regime, a transition security was properly identified as exempt for the purposes of § 475(b)(2) or (c)(2)(F)(iii) if the information that is

contained in the taxpayer's books and records and that was entered substantially contemporaneously with the date of acquisition of the transition security supports a conclusion that the transition security was described by § 475(b)(1)(A), (B), or (C). This rule applies even if the information in the books and records does not meet the specificity that Holding 5 generally requires for identification. The status of a transition security that was acquired before the first day of the taxable year for which the election is being made is determined by examining the books and records as of the last day of the preceding taxable year.

The taxpayer must, by October 31, 1997, place in its books and records a statement resolving ambiguities, if any, concerning which transition securities are properly identified within the meaning of the preceding paragraph. Any information that supports treating a transition security as being described in § 475(b)(2) or (c)(2)(F)(iii) must be applied consistently.

A taxpayer, in determining whether a transition security must be identified, must apply the following principles: if the transition security was identified under § 1.1221-2 or § 1256(e) and the item being hedged is described in § 475(b)(1)(C)(i) or (ii), the § 1.1221-2 or § 1256(e) identification constitutes an identification for purposes of § 475(b)(2); and, if the item being hedged was ordinary property, as defined in § 1.1221-2, and the taxpayer did not identify the transition security as a hedging transaction, the transition security cannot be identified under § 475(b)(1)(C).

If a taxpayer made a protective identification (as described in Issue 1 above) of a transition security, and subsequent to the protective identification the taxpayer makes an election that causes the taxpayer to be a dealer in securities for purposes of § 475, the protective identification is recognized and the taxpayer is subject to the general rules governing identifications for all transition securities that were eligible to be timely identified after the date that the taxpayer began making protective identifications. Thus, if a transition security was properly and timely identified as exempt from being marked to market and remains eligible for the exemption claimed, that transition security is not marked to market even though § 475 applies to the taxpayer. If a transition secu-

rity was properly and timely identified and thereafter ceases to be held for investment or as a hedge, see § 475(b)(3). If a transition security was not eligible to be identified as exempt, see § 475(d)(2).

Issue 16: If an issuer of an evidence of indebtedness has the right to prepay at any time without a penalty (for example, a revolving credit card balance), does that right preclude that indebtedness from having a fair market value that is greater than the face value of the obligation?

Holding 16: No. Securities must be marked to fair market value based on all the facts and circumstances. For example, in light of contractual interest rates and general payment history on customer obligations, the fair market value of a customer obligation may be greater than the face amount, even if the customer has the right to repay the debt at its face amount at any time.

Issue 17: If a taxpayer would meet the definition of a dealer in securities under § 475 but otherwise satisfies more than one exemption from dealer status, must the taxpayer elect out of all applicable exemptions to be a dealer in securities for the purpose of § 475?

Holding 17: Generally, a taxpayer must make an election out of all applicable exemptions in order to be treated as a dealer under § 475. A taxpayer subject to multiple exemptions from § 475 must file all the documentation required to elect out of each applicable exemption. Sometimes, the documentation required for one election satisfies all of the filing requirements for another election. For example, if a taxpayer is subject to both the customer paper exemption under § 1.475(c)-1(b) and the negligible sales exemption under § 1.475(c)-1(c), the taxpayer may make an election under § 1.475(c)-1(b)(4) that is effective as of January 1, 1993, and timely file an amended 1993 federal income tax return using mark-to-market accounting for securities. The amended 1993 return itself represents an election out of the negligible sales exemption.

Issue 18: How does a taxpayer that is in its first year of existence elect out of an exemption from dealer status under § 475?

Holding 18: If a taxpayer decides for its first year of existence to make an election out of the negligible sales exemption to account for securities on a mark-to-market basis, the taxpayer should attach to its orig-

inal return for that first year the following statement: “[Insert name and taxpayer identification number of the taxpayer] hereby elects not to be governed by § 1.475(c)-1(c)(1)(i) of the income tax regulations for the taxable year ending [describe the last day of the year] and for subsequent taxable years.” If a taxpayer decides for its first year of existence to make an election out of the customer paper exemption or to make the intragroup-customer election, the taxpayer must meet the requirements of § 1.475(c)-1.

Issue 19: Which changes of accounting method are covered by the consent provisions of § 13223(c)(2) of the 1993 Act?

Holding 19: Under § 13223(c)(2) of the 1993 Act, certain changes of accounting method are treated as made with the consent of the Commissioner. This treatment extends only to a change in method that was effected by a taxpayer who (1) became a dealer for the taxable year that includes December 31, 1993, merely by virtue of the passage of the 1993 Act, and (2) who accounted for securities as a dealer under § 475 on its original federal income tax return for that year. Consent for other changes of method to comply with § 475 must be obtained either on a taxpayer-by-taxpayer basis or as part of automatic consent contained in published guidance. See Rev. Proc. 97-43, page 12, this Bulletin.

Issue 20: If a taxpayer is accounting for securities by marking them to market under § 475(a), may the taxpayer, without the consent of the Commissioner, file a federal income tax return for a later taxable year that does not account for securities on a mark-to-market basis?

Holding 20: No. Once a taxpayer has used the § 475 mark-to-market method as its method of accounting for securities, the taxpayer may not change that method of accounting without obtaining the consent of the Commissioner. See § 446(e). Unless the Commissioner otherwise prescribes, to request consent the taxpayer must comply with the requirements of Rev. Proc. 97-27, 1997-21 I.R.B. 10. For example, if a taxpayer accounts for securities by marking them to market because the taxpayer made more than negligible sales of securities and in a later year makes only negligible sales of securities, the taxpayer must obtain the consent of the Commissioner to change its method of accounting for securities. If a taxpayer

made no more than negligible sales of securities but, pursuant to § 1.475(c)-1(c)(1)(ii), accounted for securities on a mark-to-market basis and the taxpayer makes no more than negligible sales of securities in a subsequent year, the taxpayer must obtain the consent of the Commissioner to change its method of accounting for securities. Especially in the latter example, consent for the change will be granted only in unusual circumstances.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 93-76 as modified by Rev. Rul. 94-7, is clarified, modified, partially obsolete, and superseded. Notice 97-37, 1997-27 I.R.B. 8, is obsolete.

PROSPECTIVE APPLICATION

Pursuant to § 7805(b), if an identification is made on or before June 30, 1997, and the identification complies with the requirements set forth in the third paragraph of Holding 6 of Rev. Rul. 93-76, the identification will not be treated as failing to satisfy the requirements of § 475(b)(2) solely on the grounds that it failed to identify the operative subparagraph of that provision.

PAPERWORK REDUCTION ACT

The collections of information contained in this revenue ruling 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 ruling are in sections 26 CFR 1.475(b)-2, 26 CFR 1.475(b)-4, and 26 CFR 1.475(c)-1. This information is required to facilitate the administration of § 475 of the Internal Revenue Code. This information will be used to facilitate audits of taxpayers that elect to not be governed by certain exemptions under § 475 of the Code. The collections of information are required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The recordkeeping burden described in Holding 6 was 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 recordkeeping burden described in Holding 15 is 450,000 hours.

The estimated annual burden per recordkeeper varies from 15 hours to 45 hours, depending on individual circumstances, with an estimated average of 22.5 hours. The estimated number of recordkeepers is 20,000.

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 authors of this revenue ruling are Pamela Lew and Robert B. Williams of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Ms. Lew at (202) 622-3950 or Mr. Williams at (202) 622-3960 (not toll-free calls)

26 CFR 1.475(c)-1: Exemptions—identification requirements.

Questions and answers about the application of section 475 and the regulations thereunder. See Rev. Rul. 97-39, page 4.

26 CFR 1.475(c)-1: Definitions—dealer in securities.

What information must a taxpayer provide in order to obtain automatic consent to change accounting method when section 475(a) becomes applicable as a result of the taxpayer making an election (i) to treat transactions within a consolidated group as transactions with customers as provided by section 1.475(c)-1(a), or (ii) not to be governed by the exemptions from the status of a dealer in securities provided by section 1.475(c)-1(b) or -1(c)? See Rev. Proc. 97-43, page 12.

Section 6621.— Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1997, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 6.5 percent.

Rev. Rul. 97-40

Section 6621 of the Internal Revenue Code establishes different rates for interest on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable rate. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of July 1997 is 6 percent. Accordingly, an overpayment rate of 8 percent and an underpayment rate of 9 percent are established for the calendar quarter beginning October 1, 1997. The overpayment rate for the portion of corporate overpayments exceeding \$10,000 for the calendar quarter beginning October 1, 1997, is 6.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 1997, is 11 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 6.5 percent, 8 percent, 9 percent, and 11 percent are published in Tables 18, 21, 23, and 27 of Rev. Proc. 95-17, 1995-1 C.B. 556, 572, 575, 577, and 581.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the accompanying tables.

DRAFTING INFORMATION

The principal author of this revenue ruling is Marcia Rachy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Rachy on (202) 622-4940 (not a toll-free call)

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995-1 C.B.
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987—PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE	PG	RATE	TABLE	PG
	1995-1 C.B.			1995-1 C.B.		
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621

TABLE OF INTEREST RATES — Continued
FROM JAN. 1, 1987—PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE	PG	RATE	TABLE	PG
	1995-1 C.B.			1995-1 C.B.		
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991—PRESENT

	RATE	TABLE	PG
	1995-1 C.B.		
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS — Continued

FROM JANUARY 1, 1991— PRESENT

	RATE	TABLE 1995-1 C.B.	PG
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	TABLE 1995-1 C.B.	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572

Section 7805.—Rules and Regulations

26 CFR 301.7805-1: Rules and regulations.

Questions and answers about the application of section 475 and the regulations thereunder. See Rev. Rul. 97-39, page 4.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*
(Also Part I, §§ 446, 475; 1.446-1, 1.475(c)-1.)

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).

Part IV. Items of General Interest

Medical Savings Accounts

Announcement 97-96

PURPOSE

Sections 220(i) and (j) of the Internal Revenue Code provide that if the number of medical savings accounts (MSAs) established as of June 30, 1997, exceeds 525,000, then October 1, 1997, is a "cut-off" date for the MSA pilot project. The Internal Revenue Service has determined that the applicable number of MSAs established as of June 30, 1997, is 17,145. Consequently, October 1, 1997 is not a "cut-off" date and 1997 is not a "cut-off" year for the MSA pilot project.

BACKGROUND

The Health Insurance Portability and Accountability Act of 1996 added section 220 to the Code to permit eligible individuals to establish MSAs under a pilot project effective January 1, 1997. The pilot project has a scheduled "cut-off" year of 2000, but may have an earlier "cut-off" year if the number of individuals who have established MSAs exceeds certain numerical limitations. See sections 220(i) and (j).

If a year is a "cut-off" year, section 220(i)(1) generally provides that no individual will be eligible for a deduction or exclusion for MSA contributions for any taxable year beginning after the "cut-off" year unless the individual (A) was an active MSA participant for any taxable year ending on or before the close of the "cut-off" year, or (B) first became an active MSA participant for a taxable year ending after the "cut-off" year by reason of coverage under a high deductible health plan of an MSA-participating employer.

Section 220(j)(1) provides that the numerical limitation for 1997 is exceeded if the number of MSAs established as of June 30, 1997, is more than 525,000. Under section 220(j)(3), in determining whether any calendar year is a "cut-off" year, the MSA of any previously uninsured individual is not taken into account. In addition, section 220(j)(4)(D) specifies that, to the extent practical, all MSAs established by an individual are aggregated and two married individuals opening sep-

arate MSAs are to be treated as having a single MSA for purposes of determining the number of MSAs.

Based on Forms 8851 filed by MSA trustees and custodians, it has been determined that 22,051 taxpayers have established MSAs as of June 30, 1997. Of this total, 3,670 taxpayers were reported as previously uninsured, and are therefore not taken into account in determining whether 1997 is a "cut-off" year. In addition, 1,236 taxpayers were reported as excludable from the count because their spouse also established an MSA. Accordingly, because the applicable number of MSAs established as of June 30, 1997, 17,145 (22,051 minus (3,670 plus 1,236)) is less than 525,000, 1997 is not a "cut-off" year for the MSA pilot project.

Questions regarding this announcement may be directed to Felix Zech in the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-4606 (not a toll free number).

Foundations Status of Certain Organizations

Announcement 97-98

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Asian-Amerasian Youth, Inc., Albany, NY
Association for Rescue at Sea Inc.,
Webster Groves, MO
Association of Friends of Passages, Inc.,
New York, NY

Association to Promote Intercultural Relations, Inc., Climax, MI
Athena Telematics Foundation, Inc.,
White Plains, NY
Avrohom Z. Shfronsky Torah Fund, Inc.,
Staten Island, NY
Bangladesh Cultural Exchange, Jamaica Estates, NY
Basic Housing Needs, Inc., New Canaan, CT
Believers of San Jose De Oasis, Inc.,
Bronx, NY
Big Green Apple Corp., New York, NY
Bill Weete Memorial Fund, Inc.,
Cambridge, MA
Bon Accord Theatre Company of New York, Inc., New York, NY
Boston Rugby Football Foundation, Inc.,
Newton, MA
Branch Brook Parent Teacher Association, Smithtown, NY
Brooklyn Community Correction Center Advisory Board, Inc., Brooklyn, NY
Brooklyn Shipbuilding Foundation, Inc.,
Brooklyn, NY
Burrus Residential Group Home,
Washington, CT
Business Enterprise Assistance of Connecticut, Inc., Bolton, CT
Causa-Peru, Inc., East Hartford, CT
Cambiata Chamber Players, Inc.,
Kingston, NY
Center for Advancement of International Relations through Broadcast, New City, NY
Center for Art and Earth, Inc.,
New York, NY
Chosen Children From Romania,
Barre, VT
Christian Clothing Drive, Inc.,
Merrick, NY
Circle of Children Charitable Foundation, Inc., Lexington, MA
Citizen Empowerment, Inc., Bennington, NH
Citizens Radiological Monitoring Network Pilgrim, Inc., Duxbury, MA
Citizens United for the Rehab of Errants Life Long Care, Inc., Jamaica Plain, MA
Clothe the Children Foundation, New York, NY
Clyde E. Wheeler Group, Mastic, NY
Coalition for Sustainable Agriculture, Castile, NY

Cobble Hill Foundation, Inc.,
Brooklyn, NY

Columbus Avenue Committee, Inc., New
York, NY

Columbus Outdoor Club, Columbus, OH

Communication for Development and
Change, Inc., New York, NY

Connecticut Environment Roundtable,
Inc., Hartford, CT

Cooley Center for Indian Unity, Inc.,
Providence, RI

Diversified Educational Resources, Inc.,
Northfield Falls, VT

Don Costa Scholarship Fund, Lowell, MA

Drop In Club of Danbury CT Inc.,
Danbury, CT

Drum—The Heartbeat of the Native
American Community, Inc.,
Chicchester, NH

Eastcor, Inc., Hampton Bays, NY

East End Seaport and Marine Foundation,
Inc., Greenport, NY

Eastern Cashmere Association,
Shoreham, VT

Eaton Fire Reserve Association,
Eaton, NH

Ebony Horsewomen, Inc., Hartford, CT

E Call, Inc., Boston, MA

Echo Evangelique De Boston, Inc.,
Mattapan, MA

Eclectic Theatre Co., Inc., New York, NY

Educational Partnership, New York, NY

Education Law Project, Inc.,
Willimantic, CT

Environment Technology Education
Center, Inc., Cambridge, MA

Essex Firefighters Association,
Essex, VT

European Child Care Day Care Center,
Inc., Brooklyn, NY

Everybuddy, Incorporated, Manchester
Center, VT

Family and Child Therapies, Inc., New
York, NY

Faran Club International, Inc.,
Jamaica, NY

Father Peter G. Young, Jr. Foundation,
Inc., Albany, NY

First Baptist Church Development
Corporation, Strafford, CT

First Responders Emergency Medical
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Lake, NY

Flag Acres Zoo, Inc., Hoosick Falls, NY

Flower City Down Syndrome Network,
Rochester, NY

Footnotes Corp., New York, NY

Force Athletic Club, Inc.,
Swampscott, MA

Foundation for International Environ-
mental Law & Development, Inc.,
New York, NY

Foundation for the Fiftieth Anniversary
of the United Nations, New York, NY

Franklin County Mens Education Net-
work, Inc., Greenfield, MA

Free Gift, Hudson, ME

French Cultural Heritage Society, Ltd.,
Brooklyn, NY

Friends of Fort Knox, Bucksport, ME

Friends of Frederick Douglass, Inc.,
Rochester, NY

Friends of Frederick E. Samuels
Foundations, Inc., New York, NY

Friends of Greenfield Public Schools,
Greenfield, MA

Friends of Kids Kreations, Inc.,
Monroe, CT

Friends of Ohel Moshe Institute, Inc.,
New York, NY

Friends of Salem Woods, Inc.,
Salem, MA

Hamilton Senior Center Foundation,
Hamilton, TX

National Black United Front Educational
Fund, Kansas City, MO

Pennsylvania Childrens Services, Inc.,
Harrisburg, PA

Public Lands Action Network, Silver
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Renewable Energy for African
Development, Inc., Arlington, VA

Saugus Business Education
Collaborative, Inc., Saugus, MA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

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¹ A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997-1 through 1997-26 will be found in Internal Revenue Bulletin 1997-27, dated July 7, 1997.

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