

Notice of Proposed Rulemaking and Notice of Public Hearing

Administration Simplification of Section 481(a) Adjustment Periods in Various Regulations

REG-142605-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking and Notice of Public Hearing.

SUMMARY: This document contains proposed amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: Written or electronic comments must be received by July 11, 2003. Re-

quests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 13, 2003, at 10 a.m. must be received by July 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-142605-02), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044.

Submissions of comments may also be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to: CC:PA:RU (REG-142605-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet direct to the IRS Internet site at <http://www.irs.gov/reg.s>. The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christian Wood, 202-622-4930. Concerning the hearing, contact Sonya Cruse, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 263A and 448. These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448.

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale.

Section 448(a) generally prohibits the use of the cash receipts and disbursements method of accounting by C corporations, partnerships with a C corporation partner, and tax shelters. Section 448(b), however, provides exceptions to this general rule in the case of farming businesses, qualified

personal service corporations, and entities with gross receipts of not more than \$5,000,000.

Section 446(e) generally provides that a taxpayer that changes the method of accounting on the basis of which it regularly computes its income in keeping its books must, before computing its taxable income under the new method, secure the consent of the Secretary.

Section 481(a) generally provides that a taxpayer must take into account those adjustments that are determined to be necessary solely by reason of a change in method of accounting in order to prevent amounts from being duplicated or omitted. Section 481(c) and §§1.446-1(e)(3)(ii) and 1.481-4 provide that the adjustment required by section 481(a) shall be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer.

Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432), provides procedures under which taxpayers may apply for the advance consent of the Commissioner to change a method of accounting. Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and amplified by Rev. Proc. 2002-19, amplified, clarified, and modified by Rev. Proc. 2002-54, and modified and clarified by Announcement 2002-17, 2002-1 C.B. 561), provides procedures under which taxpayers may apply for automatic consent of the Commissioner to change a method of accounting. Under both revenue procedures, as modified, adjustments under section 481(a) are taken into account entirely in the year of change (in the case of a net negative adjustment) and over 4 taxable years (in the case of a net positive adjustment), subject to certain exceptions.

Explanation of Provisions

Regulations under sections 263A and 448 currently provide rules for certain changes in method of accounting under those sections, including the number of taxable years over which an adjustment required under section 481(a) to effect the change is to be taken into account. The adjustment periods provided in the regulations may differ from the general 4-year (net positive adjustment) and 1 year (net negative adjustment) adjustment period rule provided

in Rev. Proc. 97-27 and Rev. Proc. 2002-9, as modified. In certain cases, the difference creates a disincentive for certain taxpayers to change their method of accounting in the taxable year required by the regulations under section 263A or 448, as applicable.

The IRS and Treasury Department believe it is appropriate to amend the regulations under sections 263A and 448 to provide that the section 481(a) adjustment period for accounting method changes under those regulations be determined under the applicable administrative procedures issued by the Commissioner (namely, Rev. Proc. 97-27 and Rev. Proc. 2002-9, as modified, or successors). As a result of the amendment, the section 481(a) adjustment period for these changes generally will be 4 years for a net positive adjustment and 1 year for a net negative adjustment, unless otherwise provided in the regulations (see *e.g.*, §1.448-(g)(2)(ii) and (g)(3)(iii) (providing rules for extended or accelerated adjustment periods in certain cases)) or the applicable revenue procedure (see *e.g.*, section 7.03 of Rev. Proc. 97-27 and section 5.04(3) of Rev. Proc. 2002-9 (providing rules for accelerated adjustment periods in certain cases)). The IRS and Treasury Department believe that amending the regulations in this manner will eliminate the disincentive that currently exists and provide flexibility in the event that any future changes are made to the general section 481(a) adjustment periods.

The IRS and Treasury Department further believe it is appropriate to remove the special adjustment period rule for cooperatives in §1.448-1(g)(3)(ii), thus directing cooperatives to the rules in Rev. Proc. 97-27 or Rev. Proc. 2002-9, as modified, or successors. Currently, Rev. Proc. 97-27 (section 7.03(2)) and Rev. Proc. 2002-9 (section 5.04(3)(b)) provide that the section 481(a) adjustment period in the case of a cooperative (within the meaning of section 1381(a)) generally is 1 year, whether the net adjustment is positive or negative. The IRS and Treasury Department continue to believe that a 1 year adjustment period is appropriate in the case of accounting method changes by cooperatives. See Rev. Rul. 79-45, 1979-1 C.B. 284.

The IRS and Treasury Department contemplate issuing separate guidance on accounting method changes under section 381. Comments are requested on issues to be ad-

dressed in such guidance, including (1) whether the section 481(a) adjustment should be taken into account by the acquired corporation immediately prior to the transaction or the acquiring corporation immediately after the transaction; (2) whether the general section 481(a) adjustment periods of Rev. Proc. 97-27 and Rev. Proc. 2002-9, as modified, or successors, should apply to accounting method changes under section 381; (3) the method for computing the section 481(a) adjustment; (4) whether accounting method changes under section 381 should be requested by filing a Form 3115 or by requesting a private letter ruling; and (5) any other procedural or technical issues (e.g., filing deadlines, audit protection).

Proposed Effective Date

The proposed regulations are applicable to taxable years ending on or after the date these regulations are published as final regulations. However, taxpayers may rely on the proposed regulations for taxable years ending on or after May 12, 2003, by filing a Form 3115, *Application for Change of Accounting Method*, in the time and manner provided in the regulations (in the case of a change in method of accounting under section 448) or applicable administrative procedure (in the case of a change in method of accounting under section 263A) for such a taxable year that reflects a section 481(a) adjustment period that is consistent with the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and because this proposed rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration

will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 13, 2003, beginning at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 11, 2003.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Christian T. Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 — INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. In §1.263A-7, paragraph (b)(2)(ii) is revised to read as follows:

§1.263A-7 Changing a method of accounting under section 263A.

* * * * *

(b) * * *

(2) * * *

(ii) Adjustment required by section 481(a). In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The taxpayer must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under §1.446-1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (e.g., Revenue Procedures 97-27 and 2002-9, or successors). This paragraph is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on this paragraph for taxable years ending on or after May 12, 2003, by filing, under the applicable administrative procedure, a Form 3115, *Application for Change in Accounting Method*, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with this paragraph.

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Par. 3. Section 1.448-1 is amended as follows:

1. Paragraph (g)(2)(i) is revised.
2. Paragraphs (g)(3)(i) and (ii), and (g)(6) are removed.
3. Paragraphs (g)(3)(iii) and (iv) are renumbered as (g)(3)(i) and (ii), respectively.
4. Paragraph (i)(1) is revised.
5. Paragraph (i)(5) is added.

The revisions and addition read as follows:

§1.448-1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(2) * * *

(i) In general. Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under section 1.446-1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (*e.g.*, Revenue Procedures 97-27 and 2002-9, or successors), provided the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

* * * * *

(i) * * *

(1) In general. Except as provided in paragraphs (i)(2), (3), (4), and (5) of this section, this section applies to any taxable year beginning after December 31, 1986.

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(5) *Effective date.* Paragraph (g)(2)(i) of this section is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on paragraph (g)(2)(i) of this

section for taxable years ending on or after May 12, 2003, by filing, in the time and manner otherwise provided in this section, a Form 3115, *Application for Change in Accounting Method*, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with paragraph (g)(2)(i).

David A. Mader,
*Assistant Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on May 9, 2003, 8:45 a.m., and published in the issue of the Federal Register for May 12, 2003, 68 F.R. 25310)