

MEMO# 21872

October 23, 2007

IRS Requests Comments Regarding Changes to the Process for Obtaining Consent to Change a Method of Accounting

[21872]

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TO: TAX COMMITTEE No. 45-07 RE: IRS REQUESTS COMMENTS REGARDING CHANGES TO THE PROCESS FOR OBTAINING CONSENT TO CHANGE A METHOD OF ACCOUNTING

The Internal Revenue Service has issued Notice 2007-88 [\[1\]](#) requesting comments regarding a proposal to change the process by which taxpayers obtain consent to change a method of accounting for federal income tax purposes. The proposal described in the Notice is one possible approach, and the IRS is interested in considering others. Any changes to the process will not become effective until the IRS considers public comments and suggestions received in response to this Notice and publishes guidance announcing such changes. The IRS is considering whether to modify the accounting method change process by replacing the existing “automatic consent” process and “nonautomatic consent” process with a system under which a taxpayer requests “standard consent,” “specific consent,” or “letter ruling consent.”

Standard Consent Process

The proposed standard consent process would operate in a manner similar to the existing automatic consent process, and the IRS anticipates that the majority of accounting method change requests would be made through the standard consent process. A change made

under this process would be made under the published terms and conditions applicable to the standard consent process. No letter ruling would be issued by the IRS, nor would a user fee be charged.

All changes in method of accounting that are specifically identified in Rev. Proc 2002-9 (or any successor) or other automatic consent guidance would be eligible for consent under this process. Taxpayers changing to one of these specifically identified methods of accounting ordinarily would receive audit and ruling protection.

The standard consent process also would be available for changes that are not identified in Rev. Proc. 2002-9 (or any successor) or other automatic consent guidance. Except for changes required to be made under the proposed specific consent process (described below), a taxpayer that timely files Form 3115 and complies with the procedures governing the standard consent process would have the IRS's consent to change to any permissible method of accounting for the requested year of change. For these types of changes, however, the taxpayer would receive audit protection only for years prior to the requested year of change and would not receive ruling protection.

Under the standard consent process, taxpayers would file Form 3115 with their returns for the requested year of change. The IRS is considering, however, an alternative under which taxpayers would be required to file Form 3115 for changes to methods of accounting not specifically identified in Rev. Proc. 2002-9 (or any successor) or other automatic consent guidance, by the last day of the ninth month of the requested taxable year of change. This would provide the IRS time to consider the request before the taxpayer files its return for the requested taxable year of change.

Under the proposal, the IRS would screen accounting method change requests for completeness and for compliance with the procedures governing the standard consent process. Requests that are not substantially complete would be denied consent, and the taxpayer would be notified that the consent was not granted. Unlike the procedures contained in Rev. Proc. 2002-9, the IRS does not intend to permit taxpayers to perfect requests that are not substantially complete prior to denying consent. A taxpayer who submits a form that is not substantially complete would not receive consent to change its method of accounting in the proposed year of change.

The IRS also would review Forms 3115 filed under the standard consent process to determine whether the new accounting method is permissible. The IRS would correspond with the taxpayer to resolve the matter in cases where the IRS questions the propriety of the new method and might require the taxpayer to provide additional information about the change. If the IRS tentatively determines that the new method of accounting is impermissible, it would notify the taxpayer of such determination and offer the taxpayer a conference.

Under the existing accounting method change process, the IRS provides audit protection for changes in method of accounting only if the request for a change is granted. The IRS is considering whether it would be appropriate to provide audit protection even in cases where consent is not granted; the IRS believes that doing so might encourage taxpayers to seek consent to change from improper methods of accounting.

Specific Consent Process

The proposed specific consent process would be available for only two types of accounting method changes: (1) Accounting method changes specifically identified in published guidance as required to be made under the specific consent process; and (2) Changes that otherwise qualify under the standard consent process, but for which the taxpayer seeks different terms and conditions or a waiver of certain scope limitations that apply to the standard consent process. A user fee would apply to a change requiring specific consent.

Under this proposal, the IRS would publish guidance that lists specific accounting method changes that must be made using the specific consent process. In general, the process for requesting specific consent would be similar to the existing advance consent process described in Rev. Proc. 97-27. A taxpayer would file a Form 3115 and await a ruling from the IRS granting consent to the change. If a taxpayer's consent request were granted, the taxpayer would receive audit protection and ruling protection.

Taxpayers also could use the specific consent process for any change that otherwise qualifies for the standard consent process, but for which the taxpayer seeks terms or conditions different from those that apply to standard consent requests, or if the taxpayer seeks a waiver of certain scope limitations. The IRS does not intend to change its current policy concerning the circumstances in which it will approve a request for modified terms and conditions; the IRS typically agrees to a taxpayer's request for different terms and conditions only in rare circumstances. If the IRS agrees to the modified terms and conditions or the waiver of scope limitations, any consent would be granted under the standard consent process, generally with audit protection and without ruling protection.

For both types of specific consent requests, taxpayers would be required to file Form 3115 by the last day of the ninth month of the requested taxable year of change, without the possibility of relief for late requests under section 301.9100 of the Regulations on Procedure and Administration.

Letter Ruling Consent Process

Taxpayers seeking a change in accounting method other than a change that is specifically identified in Rev. Proc. 2002-9 (or any successor) or other automatic consent guidance may request a letter ruling under Rev. Proc. 2007-1 (or any successor). The IRS would apply Rev. Proc. 2007-1 (or any successor) and Rev. Proc. 2007-3 (or any successor) in determining whether to rule on a request filed under the letter ruling consent process.

Under this proposal, a taxpayer seeking letter ruling consent would submit a fully developed request, and that request would be subject to the same standard of factual and legal development as a request for a letter ruling generally. Under this proposal, a letter ruling request would include, among other information, a complete statement of facts, copies of documents pertinent to the transaction, statements of supporting and contrary authorities, examples of the application of the new method to the taxpayer's transaction, and a completed Form 3115 as an attachment to the letter ruling request.

Requests made under this letter ruling consent process would be subject to the generally applicable user fee imposed on letter ruling requests. Taxpayers would be required to submit the letter ruling consent request by the last day of the ninth month of the requested taxable year of change, without the possibility of relief for late requests under section 301.9100 of the Regulations on Procedure and Administration.

If the IRS rules favorably on the letter ruling request, it also would grant the taxpayer consent under section 446(e) to change its method of accounting for the item that is the subject of the letter ruling request, and audit protection and ruling protection would apply.

Pilot Program

The IRS intends to implement any changes to the accounting method change process on a pilot basis before making permanent changes to this process. The IRS expects to open the pilot program to all taxpayers making an accounting method change within a specified pilot period. This Notice does not establish a pilot program; the IRS will consider public comments received in response to this notice before establishing a pilot program. Until such time, taxpayers must continue to follow the existing procedures for obtaining consent to change an accounting period.

The IRS has requested comments on the proposal contained in the Notice and any other suggestions for modifying and improving the accounting method change process. The due date for comments is January 18, 2008. Please provide any comments regarding this

Notice to the undersigned at kgibian@ici.org or 202/371-5432 no later than the close of business on Friday, December 28, 2007.

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endnotes

[1] The Notice can be found on the IRS's website at <http://www.irs.gov/pub/irs-drop/n-07-88.pdf>.

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