

the New York Liberty Zone. Qualified project costs also include the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with the property) located outside the New York Liberty Zone but within The City of New York, New York, if the property is part of a project that consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings. Liberty Bonds may not be used to finance movable fixtures or equipment.

Section 1400L(d)(5) contains the following modifications to the general rule that Liberty Bonds are treated as exempt facility bonds: (1) Liberty Bonds are not subject to the private activity bond volume cap under section 146; (2) the 15-percent rehabilitation requirement in section 147(d) that applies to the acquisition of certain existing property is increased to 50-percent for Liberty Bonds; (3) Liberty Bonds are eligible for the two-year construction exception to the rebate requirement under section 148(f)(4)(C); (4) repayments of principal on financing provided by Liberty Bonds are subject to certain special rules; and (5) section 57(a)(5), which treats interest on specified private activity bonds as an item of tax preference for purposes of computing the alternative minimum tax, does not apply to Liberty Bonds.

QUESTIONS AND ANSWERS

Set forth below are questions and answers with regard to section 1400L(d).

Q-1. What types of costs are qualified project costs under section 1400L(d)(4)?

A-1. Section 1400L(d)(1) provides that Liberty Bonds are treated as exempt facility bonds. Accordingly, qualified project costs are costs that (a) are chargeable to the capital account of a facility described in section 1400L(d)(4), or (b) would be so chargeable either with a proper election by a taxpayer (for example, under section 266) or but for a proper election by a taxpayer to deduct the costs. Qualified project costs also include costs of functionally related and subordinate property within the meaning of § 1.103-8(a)(3) of the Income Tax Regulations.

Q-2. Does § 1.142-4 apply to Liberty Bonds?

A-2. Yes. Section 1.142-4 applies to exempt facility bonds. Section 1.142-4 con-

tains certain requirements that generally are designed to ensure that exempt facility bonds are not issued to finance working capital expenditures. For example, § 1.142-4(b) provides that, if an expenditure for a facility is paid before the issue date of the bonds to provide that facility, the facility is an exempt facility only if the expenditure meets the requirements of § 1.150-2 (relating to reimbursement allocations).

Q-3. How does § 1.150-2 apply to Liberty Bonds?

A-3. Section 1.150-2 applies to Liberty Bonds in the same manner as exempt facility bonds, except that all issuers of Liberty Bonds are treated as having adopted an official intent (as defined in § 1.150-2(c)) that satisfies the requirements of § 1.150-2(e) with respect to expenditures paid after September 11, 2001, and before June 23, 2003. For expenditures paid on or after June 23, 2003, any official intent must be adopted not later than 60 days after payment of the expenditures. *See* § 1.150-2(d)(1).

Q-4. Do Liberty Bonds issued before January 1, 2005, to currently refund outstanding Liberty Bonds count against the \$8 billion volume limitation on Liberty Bonds?

A-4. Liberty Bonds issued before January 1, 2005, to currently refund outstanding Liberty Bonds do not count against the \$8 billion volume limitation to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the bonds being refunded.

Q-5. May Liberty Bonds be issued after December 31, 2004, to refund outstanding Liberty Bonds?

A-5. Liberty Bonds may be issued after December 31, 2004, to refund outstanding Liberty Bonds originally issued before January 1, 2005, to the extent (a) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds, and (b) the refunding is not an advance refunding.

Q-6. May Liberty Bonds be issued by entities that are acting on behalf of the State of New York or any political subdivision thereof?

A-6. Liberty Bonds may be issued on behalf of the State of New York or any political subdivision thereof if the issuance satisfies the requirements for determining whether a bond issued on behalf of a State or political subdivision constitutes an ob-

ligation of that State or political subdivision for purposes of section 103.

FURTHER INFORMATION

For further information regarding this notice, contact Michael P. Brewer at (202) 622-3980 (not a toll-free call).

26 CFR 1.472-8: Dollar value method of pricing LIFO inventories.

(Also Part I, §§ 446; 1.446-1.)

Rev. Proc. 2003-45

SECTION 1. PURPOSE

For certain accounting method changes within the inventory price index computation (IPIC) method of accounting for last-in, first-out (LIFO) inventories, this revenue procedure waives the 5-year prior change scope limitation in section 4.02(6) of Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432.

SECTION 2. BACKGROUND

.01 The regulations under § 472 of the Internal Revenue Code provide special, elective pooling rules for LIFO inventory items accounted for under the IPIC method. *See* §§ 1.472-8(b)(4) (manufacturers and processors) and 1.472-8(c)(2) (wholesalers, retailers, jobbers and distributors) of the Income Tax Regulations. The special IPIC pooling rules provide two optional 5 percent rules for pooling miscellaneous items. Any change in pooling required or permitted as a result of one of these 5 percent rules is a change in method of accounting. The taxpayer must secure the consent of the Commissioner pursuant to § 446(e) and § 1.446-1(e) before combining or separating IPIC pools, and must combine or separate IPIC pools in accordance with the requirements of the applicable regulations. §§ 1.472-8(b)(4), 1.472-8(c)(2).

.02 A taxpayer using the IPIC method of accounting for a trade or business computes the inventory price index (IPI) for a pool using an appropriate price index for an appropriate month. § 1.472-8(e)(3)(iii)(B)(1). A taxpayer not using the

retail method may elect to use a representative appropriate month (representative month). The election to use a representative month is a method of accounting, and the month elected must be used for the taxable year of the election and all subsequent taxable years, unless the electing taxpayer obtains the Commissioner's consent under §§ 446(e) and 1.446-1(e) to change or revoke its election. § 1.472-8(e)(3)(iii)(B)(3).

.03 Rev. Proc. 2002-9 applies to a taxpayer requesting the Commissioner's consent to change to a method of accounting described in the APPENDIX of that revenue procedure. Rev. Proc. 2002-9, section 4.01. Changes in method of accounting to: (1) combine or separate IPIC pools as a result of the application of a 5 percent pooling rule described in § 1.472-8(b)(4) or 1.472-8(c)(2); and (2) change the representative month when the change in representative month is necessitated by a change in taxable year, are described in sections 10.07(1)(d) and 10.07(1)(f), respectively, of the APPENDIX of Rev. Proc. 2002-9.

.04 Rev. Proc. 2002-9 is the exclusive procedure for a taxpayer within its scope to obtain the consent of the Commissioner under §§ 446(e) and 1.446-1(e). Rev. Proc. 2002-9, section 4.01. Section 4.02 of Rev. Proc. 2002-9 sets forth certain scope limitations for the revenue procedure. The 5-year prior change scope limitation set forth in section 4.02(6) of Rev. Proc. 2002-9 provides that the automatic consent procedures of that revenue procedure may not be used if the taxpayer, within the last 5 taxable years (including the year of change) has made a change in the same method of accounting (with or without obtaining the Commissioner's consent) or has applied to change the same method of accounting without effecting the change.

SECTION 3. CHANGES RELATED TO 5 PERCENT RULES FOR IPIC POOLING

Every third year, taxpayers using the IPIC method for LIFO inventories are required to redetermine whether their IPIC pooling complies with the applicable 5 percent rules and to make any pooling changes that are necessary to achieve compliance. §§ 1.472-8(b)(4); 1.472-8(c)(2). As a result, taxpayers using the IPIC pooling method may be required to change their

pooling as frequently as every three years. The Service believes that the 5-year prior change scope limitation in section 4.02(6) of Rev. Proc. 2002-9 should not apply to prevent taxpayers from using the automatic consent procedures of Rev. Proc. 2002-9 to obtain the consent of the Commissioner to make the periodic pooling changes required to comply with the 5 percent rules under §§ 1.472-8(b)(4) and 1.472-8(c)(2). Accordingly, the 5-year prior change scope limitation in section 4.02(6) does not apply to a change described in section 10.07(1)(d) of the APPENDIX of Rev. Proc. 2002-9.

SECTION 4. CHANGES OF REPRESENTATIVE MONTH FOR IPI CALCULATIONS

A taxpayer generally is required to change its representative month if the taxpayer changes its taxable year. A taxpayer may change its taxable year voluntarily or, in certain cases, may be required to change its taxable year under the Code or regulations. The Service believes that the 5-year prior change scope limitation in section 4.02(6) of Rev. Proc. 2002-9 should not apply to prevent taxpayers from using the automatic consent procedures of Rev. Proc. 2002-9 to obtain the consent of the Commissioner to change their representative month as necessitated by a change in taxable year. Accordingly, the 5-year prior change scope limitation in section 4.02(6) of Rev. Proc. 2002-9 does not apply to a change described in section 10.07(1)(f) of the APPENDIX of Rev. Proc. 2002-9 if the change in representative month is necessitated by a change in the taxpayer's taxable year.

SECTION 5. EFFECTIVE DATE

.01 Except as otherwise provided in section 5.02 of this revenue procedure, this revenue procedure is effective for taxable years ending on or after December 31, 2002.

.02 If a taxpayer filed an application or ruling request with the national office under Rev. Proc. 97-27, 1997-1 C.B. 680, modified and amplified by Rev. Proc. 2002-19, to make a change in method of accounting described in sections 3 or 4 of this revenue procedure for a year of change for which this revenue procedure is effective (see section 5.01 of this revenue procedure), and the application or ruling re-

quest is pending with the national office on June 18, 2003, the national office will process the application or ruling request under the procedures of Rev. Proc. 97-27, unless prior to the later of September 17, 2003, or the issuance of the letter ruling granting or denying consent to the change, the taxpayer notifies the national office that it wants to make the method change under Rev. Proc. 2002-9. If the taxpayer timely notifies the national office that it wants to make the method change under Rev. Proc. 2002-9, the national office may require the taxpayer to make any appropriate modifications to the application or ruling request to comply with the applicable provisions of this revenue procedure and Rev. Proc. 2002-9. The national office will notify the taxpayer if and when such adjustments are required. In addition, any user fee that was submitted with the application or ruling request will be returned to the taxpayer.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified to include in section 10.07 of the APPENDIX thereof the scope limitation waivers provided in this revenue procedure.

DRAFTING INFORMATION

The principal author of this revenue procedure is Grant Anderson of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Anderson at (202) 622-4930 (not a toll-free call).