

SUPPORTING STATEMENT  
(Revenue Procedure 97-43)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1.475(c)-1 of the Internal Revenue Regulations was filed with the Federal Register on December 23, 1996. This regulation, among other things, provides certain taxpayers with exemptions from the application of § 475(a) of the Internal Revenue Code which requires dealers in securities to apply mark-to-market accounting (MTM) to securities. 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). The regulation also permits taxpayers to waive application of these exemptions and thus be required to apply MTM to securities. However, Congress amended Section 475 in 1998, so that Section 1.475(c)-1(b) now has little practicable importance.

A taxpayer's waiving an exemption under § 1.475(c)-1 may require the taxpayer to change its accounting method to reflect the application of MTM to securities. Taxpayers that wish to change an accounting method must obtain the consent of the Commissioner. Section 446(e). Revenue Procedure 97-43 grants automatic consent to taxpayers to change their accounting method to apply MTM to securities if such change results from waiving an exemption under §1.475(c)-1 and the taxpayer provides certain information in order to obtain such consent.

Consent is granted to taxpayers that make the waivers at issue after October 31, 1997 if the taxpayer files with the federal income tax return used to make the election a completed Form 3115 with an attached statement reporting prior identifications of securities made pursuant to § 475(b)(2). An additional copy of these documents must simultaneously be sent to the national office of the Internal Revenue Service. Consent is granted to taxpayers who have already made the elections at issue or do so on or before October 31, 1997 provided the Form 3115 and attachment is attached to the taxpayer's next-filed tax return and sent to the national office by October 31, 1997.

2. USE OF DATA

The data will be used in conducting audits of taxpayers that elect to elect not to be governed by the exemption. It will also be used by the Service to determine how many and what kind of taxpayers are using the elections at issue.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency whenever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER ENTITIES

Not Applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTIONS ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not Applicable

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not Applicable

8. CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Revenue Procedure 97-43 was published in the Internal Revenue Bulletin on September 29, 1997 (1997-39 IRB 12). In addition, Revenue Ruling 97-39 was published in the Internal Revenue Bulletin on September 29, 1997 (1997-39 IRB 4).

We received no comments during the comment period in response to the Federal Register notice dated July 30, 2009 (74 FR 38087).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not Applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by section 6103 of the Internal Revenue Code.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not Applicable

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Revenue Ruling 97-39:

The collection of information in Holding 6 of the revenue ruling involves maintaining records on securities identified as exempt from MTM. This collection of information is contained in REG-209673-93, which 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.

Revenue Procedure 97-43:

The collections of information in sections 2.02, 2.03, and 2.04 of the revenue procedure involve informing the Service when a waiver of an exemption under §1.475(c)-1 is made. These collections of information are in REG-209673-93, which 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 collection of information in section 4.07(2) involves providing the Service with a statement describing the identifications, if any, made of securities exempt from MTM and the basis for such identifications. We estimate that **200 taxpayers** will make such submission annually. The estimated burden per respondent varies from .25 hours to 50 hours, depending on individual circumstances, with an estimated **average of 5 hours** for an estimated total annual burden of **1,000 hours**.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated July 30, 2009 (74 FR 38087), requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it would cause confusion by leading taxpayers to believe that the revenue procedure and revenue ruling sunset as of the expiration date. Taxpayers may not be aware that the Service may request renewal of the OMB approval and obtain a new expiration before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collection of information in this submission:

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 OMB number. Books and records relating to the 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 USC § 6103.

## OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.