Part III. Administrative, Procedural, and Miscellaneous

Election to Include in Gross Income Gain on Assets Held on January 1, 2001

Notice 2002–58

This notice informs taxpayers that the election under § 311(e) of the Taxpayer Relief Act of 1997 (TRA 97), 1997–4 (Vol. 1) C.B. 1, 49–50 (as amended by § 314(c) of P.L. 106–554 and § 414 of P.L. 107–147), to treat certain assets held on January 1, 2001, as having been sold and then reacquired on that date is properly made by following the instructions for Form 4797, *Sales of Business Property*, or Schedule D, *Capital Gains and Losses*, for Form 1040, 1120, 1120S, 1065, or 1041. Under appropriate circumstances, the Internal Revenue Service will grant requests to make a late election under § 311(e) of TRA 97 and this notice under § 301.9100–1 through 301.9100–3 of the Procedure and Administration Regulations.

Under § 1(h)(1) of the Internal Revenue Code, gain resulting from the sale or exchange of most capital assets is taxed at a capital gains rate of 20 percent (10 percent for gain otherwise taxed at an ordinary rate of 15 percent or less). Section 1(h)(2)(B) provides that the 20-percent capital gains rate is reduced to 18 percent for qualified 5-year gain resulting from the sale or exchange of property with a holding period beginning after December 31, 2000. Qualified 5-year gain is defined generally by § 1(h)(9) as "the aggregate long-term capital gain from property held for more than 5 years."

Section 311(e) of TRA 97 allows a noncorporate taxpayer holding a capital asset on January 1, 2001, to elect to treat that asset as having been both sold and reacquired on that date for an amount equal to its fair market value (a § 311(e) election). If a taxpayer makes a § 311(e) election, the holding period for the elected asset begins after December 31, 2000. This makes the asset eligible for the 18-percent rate if it is later sold after having been held by the taxpayer for more than 5 years from the date of the deemed sale and reacquisition.

A taxpayer makes a § 311(e) election by following the instructions for the appropriate Schedule D or Form 4797. Under these instructions, the taxpayer must report the resulting gain in gross income on the tax return for the tax year that includes the date of the deemed sale and attach a statement to the return stating that the election is being made under § 311(e) of TRA 97 and listing the assets for which the election is being made. The tax return on which the gain is reported must be filed by its due date, including extensions.

Pursuant to § 301.9100–2, taxpayers who timely filed their tax returns without making the § 311(e) election for one or more eligible assets may still make the election by filing an amended return within 6 months of the due date of the original return, excluding extensions. One of the following statements must be written at the top of the amended return: "Election Under Section 311 of the Taxpayer Relief Act of 1997" or "FILED PURSUANT TO § 301.9100–2."

If a taxpayer (i) did not timely file an original return on which a § 311(e) election could have been made, as described above, or (ii) failed to make a § 311(e) election with respect to one or more eligible assets on a timely-filed original return and failed to make the § 311(e) election on an amended return filed within 6 months of the due date of that original return, then the taxpayer may apply for relief under § 301.9100–3, in accordance with the provisions of Rev. Proc. 2002–1, 2002–1 I.R.B. 1 (or any successor).

Drafting Information

The principal author of this notice is Amy Pfalzgraf of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Pfalzgraf at (202) 622–4950 (not a toll-free call).

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26 CFR 601.204: Changes in accounting periods and methods of accounting.
(Also Part 1, §§ 263A, 446, 481; 1.263A–1, 1.263A–2, 1.263A–3, 1.446–1, 1.481–1, 1.481–4.)

Rev. Proc. 2002–54

SECTION 1. PURPOSE

.01 This revenue procedure amplifies and clarifies Rev. Proc. 2002–19, 2002–13 I.R.B. 696, relating to changes in method of accounting under § 446 of the Internal Revenue Code. Rev. Proc. 2002–19 modifies Rev. Proc. 97–27, 1997–1 C.B. 680, and Rev. Proc. 2002–9, 2002–3 I.R.B. 327, (as modified and clarified by Announcement 2002–17, 2002–8 I.R.B. 561), in part to reduce the § 481(a) adjustment period for net negative § 481(a) adjustments for a change from 4 years to 1 year, applicable generally to taxable years ending on or after December 31, 2001. Since the issuance of Rev. Proc. 2002–19 on March 14, 2002, certain questions have arisen about the application of the new 1-year § 481(a) adjustment period to pending or recently approved applications for changes in method of accounting under Rev. Proc. 97–27 and to applications filed under Rev. Proc. 2002–9.

.02 This revenue procedure also clarifies and modifies Rev. Proc. 2002–9, as modified and clarified by Announcement 2002–17. Since the issuance of Rev. Proc. 2002–9 on January 7, 2002, the Internal Revenue Service has received several comments regarding sections 4.01 and 4.02 of the Appendix of Rev. Proc. 2002–9. Some comments requested that certain provisions of these sections be clarified; other comments suggested that the sections be modified to include additional accounting method changes. After consideration of these comments, the Service is revising sections 4.01(1) through (4) and 4.02 of the Appendix of Rev. Proc. 2002–9 to clarify the scope of these provisions and to add certain accounting method changes.

In addition, this revenue procedure clarifies the intended operation of the transition rules contained in section 13.02 of Rev. Proc. 2002–9.

SECTION 2. CERTAIN PENDING APPLICATIONS UNDER REV. PROC. 97–27

.01 *Rollover of Year of Change*. The Service has determined that it is appropriate to allow taxpayers with applications or ruling requests ("applications") filed under Rev. Proc. 97–27 for a year of change ending before December 31, 2001, and pending with the national office on March 14, 2002, to modify the application (or, if the ruling letter has been issued since March 14, 2002, to request a new ruling letter) to

defer the year of change to the first taxable year ending on or after December 31, 2001, in order to take advantage of the 1-year § 481(a) adjustment period. To do so, the taxpayer must notify the national office, prior to the later of December 13, 2002, or the issuance of the letter ruling granting or denying the requested change, of its intent to defer the year of change. The taxpayer must submit any additional information requested by the national office.

.02 *Modifications to Pending Applications.* Section 4.04(2) of Rev. Proc. 2002–19 provides in part that the national office will require taxpayers with method change applications under Rev. Proc. 97–27 for a year of change ending on or after December 31, 2001, that are pending with the national office on March 14, 2002, to make "appropriate modifications" to the application to comply with the provisions of Rev. Proc. 2002–19 (namely, the 1-year § 481(a) adjustment period). The national office will notify taxpayers if and when such adjustments are required. Absent such notification, no further submissions are required.

SECTION 3. CERTAIN RECENTLY ISSUED CONSENT AGREEMENTS

.01 *In General.* If a taxpayer has received a consent agreement for a change in method of accounting for a year of change ending on or after December 31, 2001, and the agreement does not reflect a 1-year § 481(a) adjustment period for a net negative § 481(a) adjustment for the change, the taxpayer may elect to apply the 1-year § 481(a) adjustment period of Rev. Proc. 2002–19 by complying with the requirements of this section. If a taxpayer does not want to apply the 1-year § 481(a) adjustment period, or does not comply with the requirements of this section, then the adjustment period reflected in the consent agreement will apply.

.02 *Signed and Returned Consent Agreements.* If the taxpayer has signed and returned the consent agreement, the taxpayer must write "Election to Apply 1-Year Adjustment Period" at the top of the first page of a copy of the consent agreement and attach the copy to either its timely filed original federal income tax return or an amended federal income tax return, which should reflect the 1-year adjustment period.

.03 *Unsigned Consent Agreements.* If the taxpayer has not yet signed and returned the consent agreement, the taxpayer should contact the national office to request the issuance of a consent agreement that reflects a 1-year § 481(a) adjustment period for its net negative § 481(a) adjustment for the change.

SECTION 4. CERTAIN APPLICATIONS FILED UNDER PREDECESSORS OF REV. PROC. 2002–9

An original application and/or a copy of an application to change a method of accounting under Rev. Proc. 99–49, 1999–2 C.B. 725, *superseded* by Rev. Proc. 2002–9, or any other predecessor of Rev. Proc. 2002–9, for a taxable year ending on or after December 31, 2001 will be treated as an application and/or copy filed under Rev. Proc. 2002–9 for purposes of the transition rules set forth in section 4.04(1) of Rev. Proc. 2002–19.

SECTION 5. ADDITIONAL TIME TO REQUEST A 4-YEAR § 481(a) ADJUSTMENT PERIOD FOR AUTOMATIC CONSENT.

The Service has determined that it is appropriate to allow taxpayers filing applications to change a method of accounting under Rev. Proc. 2002–9 (or any predecessor) additional time to request the application of a 4-year § 481(a) adjustment period for net negative § 481(a) adjustments for taxable years ending on or after December 31, 2001, and on or before April 30, 2002. Accordingly, taxpayers that qualify for, and comply with, the provisions of this section may request the application of the 4-year adjustment period for net negative § 481(a) adjustments for taxable years to which the 1-year § 481(a) adjustment period would otherwise be applicable under Rev. Proc. 2002–19.

A taxpayer requesting consent to change its method of accounting under Rev. Proc. 2002–9 (or any predecessor) for a taxable year ending on or after December 31, 2001, and on or before April 30, 2002, that desires a 4-year § 481(a) adjustment period for a net negative § 481(a) adjustment for the change may request such adjustment period by preparing an application (or amended application) in duplicate under Rev. Proc. 2002–9 that clearly indicates that the taxpayer elects the application of the 4-year § 481(a) adjustment period under this section 5.

The original and copy of the application must be filed in accordance with the timely duplicate filing requirements of section 6.02(3) of Rev. Proc. 2002–9.

The original of an amended application must be attached to an original return (or if an original return has already been filed, to an amended return), which should reflect the 4-year adjustment period. An amended return must be filed on or before December 13, 2002. The copy of an amended application must be labeled "Substitute Application under Rev. Proc. 2002–54," and must be filed with the national office no later than when the original return (or, if applicable, the amended return) is filed.

SECTION 6. UNIFORM CAPITALIZATION (UNICAP) CHANGES UNDER REV. PROC. 2002–9

.01 This section 6 modifies sections 4.01(1) through 4.01(4) and 4.02 of the Appendix of Rev. Proc. 2002–9, as modified and clarified by Announcement 2002–17. The entire text of these provisions are set forth as a convenience. However, changes to the existing text of these provisions are limited to sections 4.01(1)(a)(vi), 4.01(1)(b), 4.01(1)(c), the heading of 4.02, 4.02(1), and 4.02(2).

.02 Sections 4.01(1) through 4.01(4) of the Appendix of Rev. Proc. 2002–9 are modified to read as follows:

".01 *Certain uniform capitalization (UNICAP) methods used by small resellers, formerly small resellers, and reseller-producers.*

"(1) *Description of change and scope.*

"(a) *Applicability.* This change applies to:

"(i) a small reseller of personal property changing from a permissible UNICAP method to a permissible non-UNICAP inventory capitalization method in any taxable year that it qualifies as a small reseller;

"(ii) a formerly small reseller changing from a permissible non-UNICAP inventory capitalization method to a permissible UNICAP method in the first taxable year that it does not qualify as a small reseller;

"(iii) a reseller-producer changing from a permissible UNICAP method for both its production and resale activities to a permissible simplified resale method de-

scribed in § 1.263A–3(d)(3) in any taxable year that it qualifies to use a simplified resale method for both its production and resale activities under § 1.263A–3(a)(4) (resellers with *de minimis* production activities);

"(iv) a reseller-producer changing from a permissible simplified resale method described in § 1.263A–3(d)(3) for both its production and resale activities to a permissible UNICAP method for both its production and resale activities in the first taxable year that it does not qualify to use a simplified resale method for both its production and resale activities under § 1.263A–3(a)(4);

"(v) a reseller that wants to change its permissible UNICAP method to include a special reseller cost allocation rule; or

"(vi) a reseller changing to a UNICAP method (or methods) specifically described in the regulations (and making any attendant changes in the identification of costs subject to § 263A and including any special reseller cost allocation rules) in any taxable year, other than the first taxable year, that it does not qualify as a small reseller. However, this does not include a change for purposes of recharacterizing "section 471 costs" as "additional § 263A costs" (or vice versa) under the simplified resale method.

"(b) *Scope limitations inapplicable*. A taxpayer that wants to make a change described in sections 4.01(1)(a)(i) through 4.01(1)(a)(v) of this APPENDIX is not subject to the scope limitations in section 4.02 of this revenue procedure.

"(c) *Inapplicability.* This change does not apply to a taxpayer making an historic absorption ratio election under §§ 1.263A–2(b)(4) or 1.263A–3(d)(4), or to a taxpayer that wants to revoke an election to use the historic absorption ratio with the simplified resale method (see § 1.263A–3(d)(4)(iii)(B)), including a taxpayer using the simplified resale method with an historic absorption ratio changing to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio.

"(2) *Definitions.*

"(a) "Reseller" means a taxpayer that acquires real or personal property described in § 1221(1) for resale.

"(b) "Small reseller" means a reseller whose average annual gross receipts for the three immediately preceding taxable years (or fewer, if the taxpayer has not been in existence during the three preceding taxable years) do not exceed $10,000,000. *See* § 263A(b)(2)(B).

"(c) "Formerly small reseller" means a reseller that no longer qualifies as a small reseller.

"(d) "Producer" means a taxpayer that produces real or tangible personal property.

"(e) "Reseller-producer" means a taxpayer that is both a producer and a reseller.

"(f) "Permissible UNICAP method" means a method of capitalizing costs that is permissible under § 263A.

"(g) "UNICAP method specifically described in the regulations" includes the simplified service cost method using a labor-based allocation ratio (§ 1.263A–1(h)) and the simplified resale method without an historic absorption ratio election (§ 1.263A–3(d)), but does not include any other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

"(h) "Special reseller cost allocation rule" means the 90–10 *de minimis* rule to allocate a mixed service department's costs to property acquired for resale (§ 1.263A–1(g)(4)(ii)), the 1/3 – 2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A–3(c)(3)(ii)(A)), and the 90–10 *de minimis* rule to allocate a dual-function storage facility's costs to property acquired for resale (§ 1.263A–3(c)(5)(iii)(C)).

"(i) "Permissible non-UNICAP inventory capitalization method" means a method of capitalizing inventory costs that is permissible under § 471.

"(3) *Section 481(a) adjustment.* Beginning with the year of change, a taxpayer changing its method of accounting for costs pursuant to sections 4.01(1)(a)(i), 4.01(1)(a)(iii), or 4.01(1)(a)(iv) of this APPENDIX generally must take any applicable net positive § 481(a) adjustment into account ratably over the same number of taxable years, not to exceed four, that the taxpayer used its former method of accounting. A taxpayer changing its method of accounting for costs pursuant to sections 4.01(1)(a)(ii), 4.01(1)(a)(v) or 4.01(1)(a)(vi) of this APPENDIX generally must take any applicable net positive § 481(a) adjustment into account ratably over four taxable years. See section 5.04(3) of this revenue procedure for exceptions to this general rule.

"(4) *Multiple changes*. Taxpayers making both this change and another change in method of accounting in the same year of change must comply with the ordering rules of § 1.263A–7(b)(2)."

.03 Section 4.02 of the Appendix of Rev. Proc. 2002–9 is modified to read as follows:

".02 *Certain uniform capitalization (UNICAP) methods used by producers and reseller-producers.*

"(1) *Applicability.* This change applies to a producer (as defined in section 4.01(2)(d) of the APPENDIX of this revenue procedure) or a reseller-producer (as defined in section 4.01(2)(e) of the APPENDIX of this revenue procedure) that wants to change to a UNICAP method (or methods) specifically described in the regulations and includes any changes in the identification of costs subject to § 263A made in connection therewith. However, this does not include a change for purposes of recharacterizing "section 471 costs" as "additional § 263A costs" (or vice versa) under the simplified production method.

"(2) *Inapplicability.* This change does not apply to a producer or reseller-producer that wants to revoke an election to use the historic absorption ratio with the simplified production method (*see* § 1.263A–2(b)(4)(iii)(B)), including a taxpayer using the simplified production method with an historic absorption ratio changing to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio.

"(3) *Definition.* A "UNICAP method specifically described in the regulations" includes the 90–10 *de minimis* rule to allocate a mixed service department's costs to production or resale activities (§ 1.263A–1(g)(4)(ii)), the 1/3 – 2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A–3(c)(3)(ii)(A)), the 90 – 10 *de minimis* rule to allocate a dual-function storage facility's costs to property acquired for resale (§ 1.263A–3(c)(5)(iii)(C)), the specific identification method (§ 1.263A–1(f)(2)), the burden rate method (§ 1.263A–1(f)(3)), the standard cost method (§ 1.263A–1(f)(3)), the direct reallocation method (§ 1.263A–1(g)(4)(iii)(A)), the step-allocation method (§ 1.263A–1(g)(4)(iii)(B)), the simplified service-cost method (with either a labor-

based allocation ratio or a production cost allocation ratio) (§ 1.263A–1(h)), and the simplified production method without the historic absorption ratio election (§ 1.263A–2(b)), but does not include any other reasonable allocation method within the meaning of § 1.263A–1(f)(4).

"(4) *Multiple changes.* Taxpayers making both this change and another change in method of accounting in the same year of change must comply with the ordering rules of § 1.263A–7(b)(2)."

SECTION 7. TRANSITION RULES OF REV. PROC. 2002–9.

Section 13.02 of Rev. Proc. 2002–9 provides that if a taxpayer filed an application with the national office for change in method of accounting described in the APPENDIX of Rev. Proc. 2002–9 for a year of change for which Rev. Proc. 2002–9 is effective, and the application is pending with the national office on January 7, 2002, the taxpayer may instead make the change under Rev. Proc. 2002–9, provided that the taxpayer notifies the national office of its intent to do so prior to the later of February 15, 2002, or the issuance of the letter ruling granting or denying consent to the change. If such a taxpayer chooses to make the change under Rev. Proc. 2002–9, section 13.02 requires the taxpayer to make any appropriate modifications to the application to comply with the applicable provisions of Rev. Proc. 2002–9. In some cases, the national office retains the application, and the taxpayer makes the necessary modifications by submitting supplementary representations to the national office. In other cases, the national office returns the application to the taxpayer, and the taxpayer makes the necessary modifications to the application before resubmitting it to the national office.

Applications that are retained by the national office are considered to be converted to applications under Rev. Proc. 2002–9 if the taxpayer submits the necessary supplementary representations to the national office within 30 days of the Service's first request for such representations. Applications that are returned to the taxpayer for necessary modifications are considered to be converted to applications under Rev. Proc. 2002–9 if the taxpayer resubmits to the national office the application with the appropriate modifications within 30 days after the Service returns the application to the taxpayer. Whether the national office retains or returns the application, the date on which the taxpayer originally filed the application with the national office is treated as the date on which the application under Rev. Proc. 2002–9 is filed with the national office for purposes of that revenue procedure. Taxpayers using the transition rule are reminded to attach a copy of the modified application to their federal income tax return for the year of change. See section 6.02(3) of Rev. Proc. 2002–9.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is amplified, clarified and modified. Rev. Proc. 2002–19 is amplified and clarified.

EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2001.

FURTHER INFORMATION

For further information regarding this revenue procedure, contact Grant D. Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–4970 (not a toll-free call).

Audit Guidance for External Auditors of Qualified Intermediaries

Rev. Proc. 2002–55

SECTION 1. PURPOSE AND SCOPE

This Revenue Procedure contains final Audit Guidance for an external auditor engaged by a qualified intermediary (QI) to verify the QI's compliance with the withholding agreement entered into with the Internal Revenue Service (IRS) pursuant to Rev. Proc. 2000–12, 2000–1 C.B. 387 and Treasury Regulation § 1.1441–1(e)(5) (QI Agreement). Under its QI Agreement, the QI generally must report annually certain aggregate information concerning the beneficial owners of U.S. source payments and make any necessary tax payments to the IRS. In lieu of an IRS audit, the QI may engage an external auditor to conduct an audit to determine whether it is complying with the withholding and reporting obligations covered by the QI Agreement. The external auditor must conduct its audit in accordance with the procedures described in section 10 of the QI Agreement. This Revenue Procedure is intended to assist the external auditor in understanding and applying those procedures. This Revenue Procedure does not amend, modify, or interpret the QI Agreement.

SECTION 2. BACKGROUND

.01 *Comments on Proposed Guidance.* The IRS issued proposed audit procedures for external auditors in Notice 2001–66, 2001–44 I.R.B. 396. Because the IRS and Treasury recognize that the audit process must be implemented in a manner that maintains the cooperative nature and effectiveness of the QI system, the IRS engaged in a lengthy dialogue with the financial community following the issuance of Notice 2001–66 to consider ways to implement the audit procedures so as to minimize cost to the QI while preserving the compliance goals of the withholding regulations.

.02 *IRS Response to Five Areas of Concern.* The majority of the comments on Notice 2001–66 reflected concerns about cost in the context of one or more of the following areas: availability of waivers, scope of audit coverage, statistical sampling, projection of underwithholding over the QI's account population based on the statistical sample, and use of an internal audit. The following is a brief overview of the modifications reflected in the attached Audit Guidance in response to these comments. A more complete discussion is set forth in Section 4 of this Revenue Procedure.

(i) *Waivers.*

The financial community commented that the criteria for obtaining a waiver from an external audit were too stringent. In response, the following changes have been made:

- The monetary threshold in Waiver One has been increased in the attached Audit Guidelines from $250,000 to $1,000,000 and is based on reportable amounts.
- Waiver Two (which in Notice 2001–66 was based on number of accounts) now is based on whether the QI received between $1,000,000 and $4,000,000 in reportable amounts.
- With respect to the reconciliation of Forms 1042–S and 1099 issued to and by the QI, which are required to re-