



Revenue Procedure 2001-24

Rev. Proc. 2001-24; 2001-1 C.B. 788; 2001 IRB LEXIS 50; 2001-10 I.R.B. 788

March 5, 2001

[*1]

APPLICABLE SECTIONS:

26 CFR 601.204: Changes in accounting periods and in methods of accounting. (Also Part 1, §§ 446, 451, 481; 1.446-1, 1.451-1, 1.481-1, 1.481-4.)

TEXT:**SECTION 1. PURPOSE**

This revenue procedure provides the procedures by which an insurance company ("Company") may obtain automatic consent to change its method of accounting for cash advances on commissions ("cash advances") paid to its agents from deducting a cash advance in the taxable year paid to the agent to deducting a cash advance in the taxable year earned by the agent ("earned cash advance"). This revenue procedure applies only to cash advances that qualify as loans under this revenue procedure.

SECTION 2. BACKGROUND

.01 *Change in method of accounting defined.* Section 1.446-1 (e) (2) (ii) (a) of the Income Tax Regulations provides that a change in method of accounting includes a change in the overall plan of accounting for gross income or deductions, or a change in the treatment of any material item. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of the item as a deduction.

.02 *Securing permission to make a method change.* Sections 446 (e) and 1.446-1 (e) state that, except as [*2] otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1 (e) (3) (i) requires that, in order to obtain the Commissioner's consent to change a method of accounting, a taxpayer must file a Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer wants to make the proposed change. *Rev. Proc. 99-49, 1999-2 C.B. 725* provides the procedures by which taxpayers may obtain automatic consent to change certain specified methods of accounting by the filing of a Form 3115 within the time specified for the filing of a tax return for the year of change.

.03 *Terms and conditions of a method change.* Section 1.446-1 (e) (3) (ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting in accordance with §446 (e). The terms and conditions the Commissioner may prescribe include the year of change, whether the change is to be made with a §481 (a) adjustment or on a cut-off basis, and the §481 (a) [*3] adjustment period.

SECTION 3. SCOPE

This revenue procedure applies to cash advances paid by the Company to an agent if (and only if) all four of the following conditions are met: (1) the agreement between the Company and the agent states that the cash advance is a "loan"; (2) the Company charges adequate interest on the cash advance during the period it is outstanding; (3) the agent is personally liable for the repayment of the cash advance and payment of any accrued but unpaid interest (that is, the

Company's source of repayment is not limited to the agent's earned cash advances); and (4) the Company treats the cash advance as a loan for all federal tax purposes including employment tax purposes.

SECTION 4. CHANGE IN ACCOUNTING METHOD

.01 *In general.* Any change in a Company's method of accounting pursuant to this revenue procedure is a change in method of accounting to which the provisions of §§446 and 481 and the regulations thereunder apply.

.02 *Automatic change for taxpayers within the scope of this revenue procedure.* A Company changing its method of accounting for cash advances meeting the requirements of Section 3 for the first or second taxable year beginning after December 31, 1999 [*4] ("year of change") pursuant to the provisions of this revenue procedure must follow the automatic change in accounting method provisions of *Rev. Proc. 99-49* (or its successor) with the following modifications:

- (1) To both copies of its Form 3115, the Company must attach a statement that complies with the provisions of Section 4.03 of this revenue procedure.
- (2) The scope limitations in section 4.02 of *Rev. Proc. 99-49* do not apply. However, if the Company is under examination, before an appeals office, or before a federal court regarding any income tax issue, the Company must provide a copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the Form 3115 with the National Office.
- (3) This change is effected on a "cutoff" basis in the year of change, as specified in section 2.06 of *Rev. Proc. 99-49*. Thus; a §481 (a) adjustment is neither required nor permitted. If the Company previously changed its method of accounting for cash advances from "loans" to "earned cash advances" and that change resulted in a §481 (a) adjustment that has not been fully included in the Company's taxable income, the Company [*5] must include the remaining §481 (a) adjustment in taxable income in the year of change. Similarly, if the Company previously changed its method of accounting for cash advances from "loans" to "earned cash advances" and that change resulted in a §481 (a) adjustment that has not been fully included in the agent's reported income, the Company must include the remaining §481 (a) adjustment on the agent's applicable Form 1099-MISC, Miscellaneous Income, or Form W-2, Wage and Tax Statement, for the year of change.

.03 *Statement.* The statement referred to in section 4.02 of this revenue procedure should be identified at the top as follows: "CHANGE IN METHOD OF ACCOUNTING UNDER REV. PROC. 2001-24" The statement must include:

- (1) a paragraph stating that the Company is changing its method of accounting for cash advances that meet the requirements of section 3 of this *Rev. Proc. 2001-24*, effective for the year of change and all subsequent tax years, from deducting the cash advances in the taxable year paid to an agent to deducting the cash advances in the taxable year earned by the agent.
- (2) a paragraph stating that for the year of change and all subsequent years, the Company will treat cash advances [*6] as earned cash advances when the Company incurs a liability to the agent arising from the underlying transaction (e.g., when the Company receives a premium payment from the policy holder who purchased the policy from the agent).
- (3) a paragraph stating that for the year of change and all subsequent years, the Company will treat earned cash advances as wages subject to federal employment taxes in the case of an employee agent or as com-

pensation in the case of an independent contractor agent. For this purpose, earned cash advances do not include commissions retained by the Company to recoup cash advances (or interest thereon) that were reported by the Company as earned by the agent in a prior calendar year under the Company's former method of accounting for cash advances.

- (4) a paragraph stating that the Company agrees to all the terms and conditions of this *Rev. Proc. 2001-24* and *Rev. Proc. 99-49*.
- (5) the signature by, or on behalf of, the Company making the election by an individual with the authority to bind the Company in these matters; Thus, an officer must sign on behalf of a corporation, a general partner must sign on behalf of a state law partnership, a member-manager must sign on [*7] behalf of a limited liability company, a trustee must sign on behalf of a trust, and an individual must sign on behalf of a sole proprietorship. If the Company is a member of a consolidated group, the statement submitted on behalf of the Company must be signed by a duly authorized officer of the common parent. See section 6.02 (4) of *Rev. Proc. 99-49*.

.04 *Consent*. Pursuant to §1.446-1 (e) (2) (i), the consent of the Commissioner is hereby granted to any Company within the scope of this revenue procedure to change its method of accounting for cash advances, provided the Company complies with all the applicable provisions of this revenue procedure and, to the extent applicable, *Rev. Proc. 99-49*. Further, agents of a Company changing its method of accounting pursuant to this revenue procedure are granted consent to change their method of accounting to report cash advances meeting the requirements of Section 3 in the year earned rather than in the year paid, so long as their change in method of accounting is consistent with the Company's reporting. No separate filing is required by an agent.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99-49 is modified and amplified to include this automatic [*8] change in section 5 A of the APPENDIX.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 1999.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been 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 1545-1736.

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 control number.

The collection of information in this revenue procedure is in section 4. This information is required to notify the IRS that the Company is changing its method of accounting for cash advances that meet the requirements of section 3 of this *Rev. Proc. 2001-24* under the required terms and conditions. This information will be used to update the IRS's records. The collection of information is required to obtain or retain benefits. The likely respondents are business or other for-profit institutions and small businesses or organizations.

The estimated total annual reporting burden is 1,318 hours.

The [*9] estimated annual burden per respondent is 15 minutes.

The estimated number of respondents 5,270.

The estimated annual frequency of responses is once.

Books or records relating to a 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 U.S.C. 6103*.

DRAFTING INFORMATION

The principal author of this revenue procedure is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Nolan at (202) 622-4960 (not a toll-free call).

