DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8554]

RIN 1545–AS96

Clear Reflection of Income in the Case of Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to accounting for business hedging transactions. Elsewhere in the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing final regulations to clarify the character of gain or loss recognized from the sale or exchange of property that is part of a business hedge. The final regulations in this document are needed to provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is taken into account for tax purposes.

DATES: These regulations are effective July 18, 1994.

For dates of applicability of these regulations, see § 1.446–4(g).

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (attn: CC:DOM:FI&P). Telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1412. The estimated annual burden per respondent or recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 20, 1993, the Service published in the Federal Register (58 FR 54077) a notice of proposed rulemaking (FI–54–93) relating to accounting for business hedging transactions. The notice also contained proposed amendments to regulations under sections 446 (relating to accounting for notional principal contracts) and 461 (relating to general rules on the taxable year of deduction).

On January 19, 1994, the Service held a public hearing on the proposed regulations. In addition, the Service received a number of written comments on the proposed regulations. The proposed regulations, with certain modifications and changes, are adopted as final regulations. The changes, and several of the suggestions that were not adopted, are discussed below.

Explanation of Provisions

Under the final regulations, a hedging transaction defined in § 1.1221–2(b) must be accounted for under the rules of § 1.446–4. This requirement applies regardless of whether the character of the gain or loss on the hedging transaction is determined under § 1.1221–2. Thus, for example, certain section 988 transactions that are described in § 1.1221–2(b) are accounted for under the rules of this section.

The regulations require taxpayers to clearly reflect income by reasonably matching the timing of the income, deduction, gain, or loss from a hedging transaction with the timing of income, deduction, gain, or loss from the hedged item or items. The regulations generally provide significant flexibility to taxpayers in determining the appropriate method of accounting for their different hedging transactions.

Some commentators suggested that any hedge accounting method employed by a taxpayer for financial statement purposes should be treated as satisfying the matching requirement. Because the financial accounting standards for hedges are in a state of development, however, the final regulations do not expressly sanction the use of financial accounting methods. Nevertheless, the Service and Treasury expect that the hedge accounting methods employed by most taxpayers for financial accounting purposes will satisfy the clear reflection standard in the final regulations.

The final regulations require taxpayers to maintain books and records containing a description of the accounting method used for each type of hedging transaction in sufficient detail to demonstrate how the clear reflection standard is met. For each hedging transaction, in addition to the identification required by the regulations under section 1221, the final regulations require whatever more specific identification is necessary to verify the application of the method of accounting used by the taxpayer for that transaction.

Various commentators requested that the regulations provide specific examples or other guidance on the type of additional information the Service expects taxpayers to provide. Because the identification that is needed depends upon the method of accounting being used and the types of items or risk being hedged, however, specific rules cannot be provided. For example, taxpayers using a mark-and-spread method of accounting for aggregate hedges will identify the spread period in their books and records, but taxpayers using other methods will not.

The proposed regulations provided no specific guidance on the appropriate method of accounting for global hedges and other hedges of aggregate risk. The preamble, however, solicited comments on this issue. Many commentators suggested that the regulations should provide for an aggregate hedge account, in which both the hedging transactions and the hedged items would be accounted for under a particular method. Methods suggested included a periodic mark-to-market method modeled on the mixed straddle accounts of section 1092(b) and realization-based methods with loss-deferral or loss-limitation provisions.

Because these regulations concern only accounting for hedging transactions, the Service and Treasury are concerned about expanding the regulations to allow mark-to-market accounting for hedged items in an aggregate hedge account. Many taxpayers are not currently using mark-to-market accounting, and general changes to their methods of accounting for hedged items would create issues that are beyond the scope of the regulations. Realization-based methods of accounting for aggregate hedge accounts would only be appropriate if coupled with loss-deferral or loss-limitation provisions, and the Service and Treasury are concerned about their authority to impose these restrictions. Accordingly, the regulations do not adopt the suggestion that an aggregate hedge account should be permitted.

The final regulations restate the general matching rule for hedges of aggregate risk and require taxpayers to match the timing of income, deduction, gain, or loss from the hedging transaction to the timing of the aggregate income, deduction, gain, or loss from the items being hedged. The regulations further provide that the "mark-and-spread" method currently employed by many taxpayers to account for hedges of aggregate risk for financial accounting purposes may provide an appropriate and reasonable match. Under the mark-and-spread method described in the regulations, the taxpayer periodically marks the hedging transactions to market and takes the gain or loss into account over the period for which the hedge is intended to reduce exposure to risk. Similar spreading applies to realized income, deduction, gain, and loss. Under this method, the period over which the hedging transaction is intended to reduce risk (and thus the period over which the gains and losses are taken into account) may change over time, depending upon a taxpayer's particular hedging strategies. The period used, however, must be reasonable and consistent with those strategies. It is anticipated that the identification and recordkeeping required by §§ 1.446–4(d) and 1.1221–2(e) will support the reasonableness of a taxpayer's spread period.

The mark-and-spread method is not the only method that clearly reflects income for hedges of aggregate risk. The final regulations also state that, if a taxpayer hedges its aggregate risk with a notional principal contract, taking into account gains and losses in accordance with § 1.446–3 of the regulations may clearly reflect income. Other methods of accounting also may be appropriate. Like the proposed regulations, the final regulations allow flexibility in attaining the reasonable matching required by the general rule.

The proposed regulations contained several provisions applicable to inventory hedging transactions. The general rule in the proposed regulations was that gains and losses on hedges of inventory purchases may be taken into account at the same time they would be taken into account if they were elements of inventory cost. Similarly, gains and losses on hedges of sales of inventory may be taken into account at the same time they would be if they were elements of gross sales proceeds.

In response to comments, the final regulations clarify the general rule for inventory hedges and extend it to hedges of aggregate inventory risk. A hedge of an aggregate risk cannot be associated with particular purchase or sales transactions. Accordingly, the final regulations provide that taxpayers may account for hedges of purchases under the mark-and-spread method, with the modification that the gain or loss spread to particular periods is taken into account in the same period it would have been if it had been an increase or decrease to inventory cost incurred in the particular period. Similarly, a taxpayer may account for hedges of sales of inventory under a mark-and-spread approach, with the gain or loss that is spread to a particular period taken into account in the same period it would have been if it had been an increase or decrease to gross sales proceeds.

The final regulations clarify certain simplified methods of accounting for inventory hedges that were provided in the proposed regulations. First, the proposed regulations provided a special rule allowing taxpayers to take hedging gains and losses into account when realized, if the hedging transactions are closed when the hedged inventory items are sold and units are included in inventory at cost. Because the general rule has been clarified to encompass this approach, this provision is not separately stated in the final regulations.

Second, the final regulations continue the simplified method of taking into account gains and losses on hedges of both purchases and sales as though those gains and losses were elements of inventory cost. The regulations make it clear that it is realized gains and losses that are so taken into account. The regulations also continue to prohibit the use of this method by LIFO taxpayers. The Service and Treasury believe that significant distortions of income might result if gains and losses on *sales* hedges became buried in inventory cost layers.

Finally, the simplified method of marking to market inventory hedging transactions is clarified to allow the mark-to-market gain or loss to be taken into account immediately, instead of being treated as an element of cost or gross proceeds. The final regulations continue the proposed prohibition on the use of this method by LIFO taxpayers and by taxpayers employing a lower-of-cost-or-market method of accounting for inventory. Moreover, this method may be used only if items are held in inventory for short periods of time.

The final regulations clarify when the built-in gain or loss on the hedging transaction is taken into account where a taxpayer disposes of the hedged item but does not dispose of the hedging transaction. In this situation, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. This matching may be met by marking to market the hedge on the date of disposition of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, the taxpayer may match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. However, if the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is still in place after that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For these purposes, a reasonable period is generally seven days.

The final regulations provide rules of accounting for recycled hedges (positions that previously hedged one item but that the taxpayer has re-identified as hedging another). The new rules are similar to those of the proposed regulations for treatment of hedges after disposition of the hedged asset or liability. A taxpayer recycling a hedge of a particular hedged item to serve as a hedge of another item must match the built-in gain or loss on the hedge at the time of the recycling to the income, deduction, gain, or loss on the original hedged item. Income, deduction, gain, or loss on the hedge after the recycling must be matched to the income, deduction, gain, or loss on the new hedged item, items, or aggregate risk. This matching may be accomplished by marking the hedge to market at the time of the recycling.

The preamble to the proposed regulations invited comments on the appropriate accounting for anticipatory hedges where the anticipated transaction is not consummated. Most commentators suggested that gains or losses be taken into account when realized. Others suggested that any gain or loss realized on the hedging transaction be taken into account at the same time it would have been taken into account if the anticipated transaction had been consummated and the timing of the gain or loss on the hedge had been matched with the timing of the gain or loss on the hedged item. Still others suggested an arbitrary spread period.

The first suggestion was adopted. The regulations provide that, if an anticipated transaction is not consummated, any income, deduction, gain, or loss on the hedging transaction is taken into account when realized. The regulations provide that a transaction is consummated upon the occurrence, within a reasonable time period, of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk. The Service will view the "similar transaction" parameters broadly to prevent taxpayers from realizing hedging gains and losses selectively by abandoning a planned transaction and substituting a similar transaction.

Finally, the regulations grant consent for taxpayers to change their methods of accounting for hedging transactions. The change must be made for transactions entered into on or after October 1, 1994, and must be made for the taxable year containing that date. The change is made on a cut-off basis. Therefore, no items of income or deduction are omitted or duplicated, and no adjustment under section 481 is allowed or permitted. Because the consent does not extend to changes for a subsequent tax year, consent for such a change must be requested according to the procedures established under § 1.446-1(e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446-3 is amended as follows:

1. The first sentence of paragraph (h)(2) is revised.

2. The second sentence of the introductory language of paragraph (h)(5) is revised.

3. The revisions read as follows:

§ 1.446-3 Notional principal contracts.

* * * * *

(h) * * *

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (for example, in section 453, section 1092, or § 1.446-4), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. * * *

* * * * *

(5) * * * The contracts in the examples are not hedging transactions as defined in § 1.1221-2(b), and all of the examples assume that no loss-deferral rules apply.

* * * * *

Par. 3. Section 1.446-4 is added to read as follows:

§ 1.446-4 Hedging transactions.

(a) *In general.* Except as provided in this paragraph (a), a hedging transaction as defined in § 1.1221-2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221-2) must be accounted for under the rules of this section. To the extent that provisions of any other regulations governing the timing of income, deductions, gain, or loss are inconsistent with the rules of this section, the rules of this section control.

(1) *Trades or businesses excepted.* A taxpayer is not required to account for hedging transactions under the rules of this section for any trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471-6 is used for inventory valuations if, for all prior taxable years ending on or after September 30, 1993, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met that test if the taxpayer were a corporation or partnership). A taxpayer not required to use the rules of this section may nonetheless use a method of accounting that is consistent with these rules.

(2) *Coordination with other sections.* This section does not apply to—

(i) Any position to which section 475(a) applies;

(ii) Any section 988 hedging transaction if the transaction is integrated under § 1.988-5 or if other regulations issued under section 988(d) (or an advance ruling described in 1.988-5(e)) govern when gain or loss from the transaction is taken into account; or

(iii) The determination of the issuer's yield on an issue of tax-exempt bonds for purposes of the arbitrage restrictions to which § 1.148-4(h) applies.

(b) *Clear reflection of income.* The method of accounting used by a taxpayer for a hedging transaction must clearly reflect income. To clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item or items being hedged. Taking gains and losses into account in the period in which they are realized may clearly reflect income in the case of certain hedging transactions. For example, where a hedge and the item being hedged are disposed of in the same taxable year, taking realized gain or loss into account on both items in that taxable year may clearly reflect income. In the case of many hedging transactions, however, taking gains and losses into account as they are realized does not result in the matching required by this section.

(c) *Choice of method and consistency.* For any given type of hedging transaction, there may be more than one method of accounting that satisfies the clear reflection requirement of paragraph (b) of this section. A taxpayer is generally permitted to adopt a method of accounting for a particular type of hedging transaction that clearly reflects the taxpayer's income from that type of transaction. See paragraph (e) of this section for requirements and limitations on the taxpayer's choice of method. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and can only be changed with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(d) *Recordkeeping requirements*—(1) *In general.* The books and records maintained by a taxpayer must contain a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221-2(e), the books and records maintained by a taxpayer must contain whatever more specific identification with respect to a transaction is necessary to verify the application of the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The additional identification must be made at the time specified in § 1.1221-2(e)(2) and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions in which character of gain or loss is not determined under § 1.1221-2.* A section 988 transaction, as defined in section 988(c)(1), or a qualified fund, as defined in section 988(c)(1)(E)(iii), is subject to the identification and recordkeeping requirements of § 1.1221-2(e). See § 1.1221-2(a)(4)(i).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must clearly reflect income by meeting the matching requirement of paragraph (b) of this section.

(1) *Hedges of aggregate risk*—(i) *In general.* The method of accounting used for hedges of aggregate risk must comply with the matching requirements of paragraph (b) of this section. Even though a taxpayer may not be able to associate the hedging transaction with any particular item being hedged, the timing of income, deduction, gain, or loss from the hedging transaction must be matched with the timing of the aggregate income, deduction, gain, or loss from the items being hedged. For example, if a notional principal contract hedges a taxpayer's aggregate risk, taking into account income, deduction, gain, or loss under the provisions of § 1.446-3 may clearly reflect income. See paragraph (e)(5) of this section.

(ii) *Mark-and-spread method.* The following method may be appropriate for taking into account income, deduction, gain, or loss from hedges of aggregate risk:

(A) The hedging transactions are marked to market at regular intervals for which the taxpayer has the necessary data, but no less frequently than quarterly; and

(B) The income, deduction, gain, or loss attributable to the realization or periodic marking to market of hedging transactions is taken into account over the period for which the hedging transactions are intended to reduce risk. Although the period over which the hedging transactions are intended to reduce risk may change, the period must be reasonable and consistent with the taxpayer's hedging policies and strategies.

(2) *Hedges of items marked to market.* In the case of a transaction that hedges an item that is marked to market under the taxpayer's method of accounting, marking the hedge to market clearly reflects income.

(3) *Hedges of inventory*—(i) *In general.* If a hedging transaction hedges purchases of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of the cost of inventory. Similarly, if a hedging transaction hedges sales of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of sales proceeds. If a hedge is associated with a particular purchase or sales transaction, the gain or loss on the hedge may be taken into account when it would be taken into account if it were an element of cost incurred in, or sales proceeds from, that transaction. As with hedges of aggregate risk, however, a taxpayer may not be able to associate hedges of inventory purchases or sales with particular purchase or sales transactions. In order to match the timing of income, deduction, gain, or loss from the hedge with the timing of aggregate income, deduction, gain, or loss from the hedged purchases or sales, it may be appropriate for a taxpayer to account for its hedging transactions in the manner described in paragraph (e)(1)(ii) of this section, except that the gain or loss that is spread to each period is taken into account when it would be if it were an element of cost incurred (purchase hedges), or an element of proceeds from sales made (sales hedges), during that period.

(ii) *Alternative methods for certain inventory hedges.* In lieu of the method described in paragraph (e)(3)(i) of this section, other simpler, less precise methods may be used in appropriate cases where the clear reflection requirement of paragraph (b) of this section is satisfied. For example:

(A) Taking into account realized gains and losses on both hedges of inventory purchases and hedges of inventory sales when they would be taken into account if the gains and losses were elements of inventory cost in the period realized may clearly reflect income in some situations, but does not clearly reflect income for a taxpayer that uses the last-in, first-out method of accounting for the inventory; and

(B) Marking hedging transactions to market with resulting gain or loss taken into account immediately may clearly reflect income even though the inventory that is being hedged is not marked to market, but only if the inventory is not accounted for under either the last-in, first-out method or the lower-of-cost-or-market method and only if items are held in inventory for short periods of time.

(4) *Hedges of debt instruments.* Gain or loss from a transaction that hedges a debt instrument issued or to be issued by a taxpayer, or a debt instrument held or to be held by a taxpayer, must be accounted for by reference to the terms of the debt instrument and the period or periods to which the hedge relates. A hedge of an instrument that provides for interest to be paid at a fixed rate or a qualified floating rate, for example, generally is accounted for using constant yield principles. Thus, assuming that a fixed rate or qualified floating rate instrument remains outstanding, hedging gain or loss is taken into account in the same periods in which it would be taken into account if it adjusted the yield of the instrument over the term to which the hedge relates. For example, gain or loss realized on a transaction that hedged an anticipated fixed rate borrowing for its entire term is accounted for, solely for purposes of this section, as if it decreased or increased the issue price of the debt instrument.

(5) *Notional principal contracts.* The rules of § 1.446-3 govern the timing of income and deductions with respect to a notional principal contract unless, because the notional principal contract is part of a hedging transaction, the application of those rules would not result in the matching that is needed to satisfy the clear reflection requirement of paragraph (b) and, as applicable, (e)(4) of this section. For example, if a notional principal contract hedges a debt instrument, the method of accounting for periodic payments described in § 1.446-3(e) and the methods of accounting for nonperiodic

payments described in § 1.446–3(f)(2)(iii) and (v) generally clearly reflect the taxpayer's income. The methods described in § 1.446–3(f)(2)(ii) and (iv), however, generally do not clearly reflect the taxpayer's income in that situation.

(6) *Disposition of hedged asset or liability.* If a taxpayer hedges an item and disposes of, or terminates its interest in, the item but does not dispose of or terminate the hedging transaction, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. To meet this requirement, the taxpayer may mark the hedge to market on the date it disposes of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, however, it may be appropriate to match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is not actually disposed of within that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For purposes of this paragraph (e)(6), a reasonable period is generally 7 days.

(7) *Recycled hedges.* If a taxpayer enters into a hedging transaction by recycling a hedge of a particular hedged item to serve as a hedge of a different item, as described in § 1.1221–2(c)(2), the taxpayer must match the built-in gain or loss at the time of the recycling to the gain or loss on the original hedged item, items, or aggregate risk. Income, deduction, gain, or loss attributable to the period after the recycling must be matched to the new hedged item, items, or aggregate risk under the principles of paragraph (b) of this section.

(8) *Unfulfilled anticipatory transactions*—(i) *In general.* If a taxpayer enters into a hedging transaction to reduce risk with respect to an anticipated asset acquisition, debt issuance, or obligation, and the anticipated transaction is not consummated, any income, deduction, gain, or loss from the hedging transaction is taken into account when realized.

(ii) *Consummation of anticipated transaction.* A taxpayer consummates a transaction for purposes of paragraph (e)(8)(i) of this section upon the occurrence (within a reasonable interval around the expected time of the anticipated transaction) of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk.

(9) *Hedging by members of a consolidated group.* [Reserved.]

(f) *Type or character of income and deduction.* The rules of this section govern the timing of income, deduction, gain, or loss on hedging transactions but do not affect the type or character of income, deduction, gain, or loss produced by the transaction. Thus, for example, the rules of paragraph (e)(3) of this section do not affect the computation of cost of goods sold or sales proceeds for a taxpayer that hedges inventory purchases or sales. Similarly, the rules of paragraph (e)(4) of this section do not increase or decrease the interest income or expense of a taxpayer that hedges a debt instrument or a liability.

(g) *Effective date.* This section applies to hedging transactions entered into on or after October 1, 1994.

(h) *Consent to change methods of accounting.* The Commissioner grants consent for a taxpayer to change its methods of accounting for transactions that are entered into on or after October 1, 1994, and that are described in paragraph (a) of this section. This consent is granted only for changes for the taxable year containing October 1, 1994. The taxpayer must describe its new methods of accounting in a statement that is included in its Federal income tax return for that taxable year.

Par. 4. In § 1.461–1, paragraph (a)(2)(iii)(B) is revised to read as follows:

§ 1.461–1 General rules for taxable year of deduction.

(a) * * *

(2) * * *

(iii) * * *

(B) If the liability of a taxpayer is subject to section 170 (charitable contributions), section 192 (black lung benefit trusts), section 194A (employer liability trusts), section 468 (mining and solid waste disposal reclamation and closing costs), or section 468A (certain nuclear decommissioning costs), the liability is taken into account as determined under that section and not under section 461 or the regulations thereunder. For special rules relating to certain loss deductions, see sections 165(e), 165(i), and 165(l), relating to theft losses, disaster losses, and losses from certain deposits in qualified financial institutions.

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PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	*
1.446–4(d)	1545–1412
* * * * *	*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Samuel Y. Sessions,
Acting Assistant Secretary of Treasury.

[FR Doc. 94–16866 Filed 7–13–94; 9:10 am]

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