
26 CFR 1.472-2: Requirements incident to adoption and use of LIFO inventory method.
(Also Part I, § 472; § 1.472-1.)

Rev. Proc. 97-44

SECTION 1. PURPOSE

This revenue procedure provides relief for automobile dealers that elected the last-in, first-out (LIFO) inventory method and violated the LIFO conformity requirement of § 472(c) or (e)(2) of the Internal Revenue Code by providing, for credit purposes, an income statement prepared in a format required by the franchisor or on a pre-printed form supplied by the franchisor (an automobile manufacturer), covering any taxable year ended on or before October 14, 1997, that fails to reflect the LIFO inventory method. *See, e.g.,* Rev. Rul. 97-42, 1997-41 I.R.B. (*Situation 3*). Automobile dealers that comply with this revenue procedure will not be required to change from the LIFO inventory method to another inventory method as a result of such LIFO conformity violation.

SECTION 2. BACKGROUND

.01 Section 472(a) authorizes a taxpayer to use the LIFO inventory method in accordance with regulations prescribed by the Secretary.

.02 Section 472(c) provides that a taxpayer may not elect to use the LIFO inventory method unless it establishes to the satisfaction of the Commissioner that it used no method other than the LIFO method in inventorying goods to ascertain the income, profit, or loss of the first taxable year for which the LIFO method is to

be used, for the purpose of a report or statement covering that taxable year to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.

.03 Section 472(e) provides that a taxpayer electing to use the LIFO inventory method must continue to use the LIFO inventory method unless the taxpayer: (1) obtains the consent of the Commissioner to change to a different method; or (2) is required by the Commissioner to change to a different method because the taxpayer has used some inventory method other than LIFO to ascertain the income, profit, or loss of any subsequent taxable year in a report or statement covering that taxable year (a) to shareholders, partners, other proprietors, or beneficiaries, or (b) for credit purposes.

.04 Section 1.472-2(e)(1) of the Income Tax Regulations provides that a taxpayer electing to use the LIFO inventory method must establish to the satisfaction of the Commissioner that the taxpayer, in ascertaining the income, profit, or loss of the taxable year for which the LIFO inventory method is first used, or for any subsequent taxable year, for credit purposes or for purposes of reports to shareholders, partners, other proprietors, or beneficiaries, has not used any inventory method other than LIFO.

.05 Rev. Rul. 97-42 holds that a franchised automobile dealer that elected the LIFO inventory method violates the LIFO conformity requirement by providing to a credit subsidiary of its franchisor (an automobile manufacturer) an income statement covering a taxable year that fails to reflect the LIFO inventory method in the computation of net income.

.06 Rev. Proc. 79-23, 1979-1 C.B. 564, provides that a violation of the LIFO conformity requirement warrants termination of a taxpayer's LIFO election.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer engaged in the purchase, sale, and service of automobiles or light-duty trucks that violated the LIFO conformity requirement by providing, for credit purposes, an income statement prepared in a format required by the franchisor or on a pre-printed form supplied by the franchisor (an automobile manufacturer), covering any taxable year ended on or before October 14, 1997, that fails to reflect the

LIFO inventory method in the computation of net income, regardless of whether the taxpayer is currently under examination, before an appeals office, or before a federal court. For this purpose, the term "taxpayer" has the same meaning as the term "person" defined in § 7701(a)(1) (rather than the meaning of the term "taxpayer" defined in § 7701(a)(14)). The term "taxpayer" includes a corporation that is included in an affiliated group of corporations as defined in § 1504.

SECTION 4. RELIEF

.01 A taxpayer within the scope of this revenue procedure that satisfies all the requirements for relief set forth herein is hereby granted the following relief: the district director will not terminate the LIFO election of the taxpayer because of a LIFO conformity violation described in section 3 of this revenue procedure.

.02 The relief granted under this revenue procedure extends only to LIFO conformity violations described in section 3 of this revenue procedure that occurred on or before October 14, 1997. Accordingly, the district director may, upon examination, terminate a taxpayer's LIFO election for:

(1) other LIFO conformity violations, including those described in section 3 of this revenue procedure that occur after October 14, 1997; or

(2) any other action that may warrant termination of a taxpayer's LIFO election.

.03 The district director may, upon examination, verify the accuracy of the taxpayer's settlement amount calculation and otherwise determine whether the taxpayer has fully satisfied the requirements of this revenue procedure. The district director may terminate a taxpayer's LIFO election for any violation year ended within the look-back period if the taxpayer failed to fully satisfy the requirements of this revenue procedure.

.04 Nothing in this revenue procedure will prohibit the district director from making adjustments to a taxpayer's LIFO inventory method of accounting.

SECTION 5. REQUIREMENTS FOR RELIEF

.01 A taxpayer within the scope of this revenue procedure for which any violation year ended within the look-back pe-

riod is entitled to relief only if the taxpayer: (1) pays the settlement amount at the time and in the manner set forth in section 5.03 of this revenue procedure; (2) submits the accompanying memorandum at the time and in the manner set forth in sections 5.03 and 5.04 of this revenue procedure; and (3) satisfies the additional requirements set forth in section 7 of this revenue procedure. A taxpayer within the scope of this revenue procedure that does not have a violation year that ends in the look-back period is automatically granted relief and is not required to satisfy any of the requirements of this revenue procedure.

.02 *Settlement Amount.* (1) *In general.* A taxpayer applying for relief under this revenue procedure must pay a "settlement amount," which is intended to approximate the after-tax, time value of money benefit that the taxpayer will derive from continuing to use the LIFO inventory method for a period of years. The settlement amount is not treated as interest under § 163(a) and may not be capitalized or deducted under any provision of the Code. Moreover, the settlement amount is not refundable or creditable against any federal tax liability of the taxpayer.

(2) *Calculating the settlement amount.* The settlement amount equals 4.7% of the difference between the LIFO carrying value and the non-LIFO carrying value (for example, the value using the actual invoice cost or the first-in, first-out method) of the taxpayer's inventory (the "LIFO reserve") on the last day of the taxpayer's last taxable year ended on or before October 14, 1997. For this purpose, the taxpayer's inventory includes only inventory related to the purchase, sale, and service of automobiles and light-duty trucks. A taxpayer determines the LIFO reserve on the last day of its last taxable year ended on or before October 14, 1997, using the method of accounting that it used on its original federal income tax return for that taxable year.

.03 *Time and Manner of Payment.* (1) *In general.* The settlement amount must be paid in three equal installments. Except as provided in section 5.03(2) or (3) of this revenue procedure, the first installment and the memorandum described in section 5.04 of this revenue procedure, are due on or before May 31, 1998. The remaining installments and memoranda are due on or

before January 31 of the two succeeding calendar years. Payments, together with the original memorandum, must be sent to the Internal Revenue Service, Cincinnati Service Center, 201 W. River Center Blvd., Stop 31, Unit 21, Covington, KY 41019. A copy of each memorandum must be sent to the national office addressed to the Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, P.O. Box 7604, Benjamin Franklin Station, Washington, DC 20044 (or, in the case of a private delivery service: Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, 1111 Constitution Avenue, NW, Washington, DC 20224).

(2) *Taxpayers under examination, before appeals, or before a federal court.* If any federal income tax return of a taxpayer is under examination, before an appeals office, or before a federal court on October 14, 1997, the first installment of the settlement amount and the memorandum described in section 5.04 of this revenue procedure are due on or before December 1, 1997. For this purpose, the terms "under examination," "before an appeals office," and "before a federal court" have the same meaning as provided in Rev. Proc. 97-27, 1997-21 I.R.B. 10. The taxpayer must notify the examining agent(s), appeals officer, or the counsel for the government, whichever is applicable, in writing on or before December 15, 1997, that it has applied for relief under this revenue procedure. Evidence that the first installment has been paid and a copy of the memorandum described in section 5.04 of this revenue procedure must be provided as part of this written notification.

(3) *Option to pay settlement amount in one installment.* A taxpayer may elect to pay the entire settlement amount in one installment. If a taxpayer makes this election, the entire settlement amount and the original memorandum described in section 5.04 of this revenue procedure are due on or before May 31, 1998, or, if any federal income tax return of the taxpayer is under examination, before an appeals office, or before a federal court, on or before December 1, 1997. In addition, if applicable, the written notification required in section 5.03(2) of this revenue procedure must be satisfied. A copy of the memorandum must be sent to the national office as required by section 5.03(1) of this revenue procedure.

.04 *Accompanying Memorandum.* Each installment payment must be accompanied by a memorandum providing the following information:

(1) the taxpayer's name, address, and EIN number;

(2) the amount of the taxpayer's LIFO reserve calculated under section 5.02(2) of this revenue procedure;

(3) the total settlement amount calculated under section 5.02(2) of this revenue procedure;

(4) the amount of the installment being paid;

(5) a statement identifying the payment as the first, second, or third installment (or a statement that the taxpayer elects to pay the entire settlement amount in a single installment); and

(6) a statement that the taxpayer agrees to all of the terms of this revenue procedure.

Each memorandum must be signed under penalties of perjury by an individual with authority to bind the taxpayer in such matters. The following language must be either typed or legibly printed at the top of the first page of each memorandum: "PAYMENT OF SETTLEMENT AMOUNT UNDER REV. PROC. 97-44."

SECTION 6. DEFINITIONS

.01 *Violation year.* A violation year is any taxable year for which a taxpayer violated the LIFO conformity requirement under the facts described in section 3 of this revenue procedure. However, solely for purposes of this revenue procedure, a taxable year will not be treated as a violation year if it ended on or before October 14, 1997, and the taxpayer replaced the twelfth monthly income statement for that year with a "thirteenth period income statement" that:

(1) covered the same period as the twelfth monthly income statement;

(2) reflected the LIFO inventory method; and

(3) was provided, before the first monthly income statement of the following year, to each creditor that received the twelfth monthly income statement.

.02 *Look-back period.* For purposes of this revenue procedure, the "look-back period" consists of the taxpayer's six most recent taxable years ended on or before October 14, 1997.

SECTION 7. ADDITIONAL TERMS OF RELIEF

.01 A taxpayer that fails to pay each installment of the settlement amount timely, or to submit the memorandum timely, has not satisfied the requirements of this revenue procedure. Accordingly, the relief provided under section 4 of this revenue procedure is not available.

.02 A taxpayer that ceases to engage in the trade or business of purchase, sale, and service of automobiles or light-duty trucks or terminates its existence must pay the remaining balance of the settlement amount within 45 days of the cessation or termination. A taxpayer is treated as ceasing to engage in a trade or business if the operations of the trade or business cease, or substantially all the assets of the trade or business are transferred to another taxpayer in a taxable or non-taxable transfer. For this purpose, "substantially all" has the same meaning as in section 3.01 of Rev. Proc. 77-37, 1977-2 C.B. 568. No acceleration of the settlement amount is required under this section 7.02 when a C corporation elects to be treated as an S corporation, or an S corporation terminates its S election and is then treated as a C corporation. However, acceleration of the settlement amount is required if a sole proprietor incorporates and immediately elects to be treated as an S corporation.

.03 A taxpayer that makes one or more payments under this revenue procedure may not change from the LIFO inventory method pursuant to Rev. Proc. 97-37, 1997-33 I.R.B. 18, for a taxable year beginning before the date that the entire settlement amount is paid in accordance with this revenue procedure. A taxpayer requesting to change from the LIFO method for a taxable year beginning before the date that the entire settlement amount is paid, must file a Form 3115 in accordance with Rev. Proc. 97-27. The Commissioner will not grant consent to change from the LIFO method unless the taxpayer agrees to accelerate any remaining payments of the settlement amount.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-37 is modified.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545-1559.

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 5 of this revenue procedure. This information is required to ensure that the settlement amount required to be paid under this revenue procedure is accurately computed and timely paid. The likely respondents are businesses engaged in the retail sale of new automobiles.

The estimated total annual reporting burden is 100,000 hours.

The estimated annual burden per respondent will vary from 10 hours to 30 hours, depending on individual circumstances, with an estimated average of 20 hours. The estimated number of respondents is 5,000.

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 return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffery G. Mitchell of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Mitchell on (202) 622-4970 (not a toll-free call).