

**INTERNAL REVENUE SERVICE**  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

February 03, 2004

Number: **200423015**  
Release Date: 6/4/04  
Index (UIL) No.: 475.08-00  
CASE-MIS No.: TAM-150717-03, CC:FIP:01

Taxpayers' Names:  
Taxpayers' Address:

Taxpayers' Identification Nos:  
Years Involved:  
Date of Conference:

LEGEND:

Taxpayer =  
Year 1 =  
Agent A =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =

ISSUE:

Did Taxpayer elect, under section 475(f) of the Internal Revenue Code, to change to the mark-to-market method of accounting beginning with the Year 1 tax year?

TAM-150717-03

CONCLUSION:

Taxpayer did not elect, under section 475(f), to change to the mark-to-market method of accounting beginning with the Year 1 tax year.

FACTS:

Taxpayer traded stocks and bonds for calendar year Year 1. Taxpayer asserts that beginning in Date 2 the trading activity was substantial enough to enable Taxpayer to qualify as a trader in securities. Taxpayer, intending to make an election under section 475(f), filed a Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service National Office on Date 3. A copy of the Form 3115 was mailed to Agent A, an Internal Revenue Agent, on Date 4. A copy of the Form 3115 also was attached to Taxpayer's Year 1 Individual Tax Return received by the Internal Revenue Service (the Service) on Date 5. A statement electing to use the mark-to-market method of accounting, beginning with the Year 1 tax year, was attached to the Form 3115. Taxpayer had been accounting for stocks and bonds using the cash method of accounting. The due date (without regard to extensions) of the original federal income tax return for the taxable year immediately preceding Year 1, was Date 1.<sup>1</sup>

LAW AND ANALYSIS:

Section 475(f) provides that a person who is engaged in a trade or business as a trader in securities may elect to change to the mark-to-market method of accounting for securities held in connection with such trade or business. The legislative history to section 475(f) states that the mark-to-market election will be made in the time and manner prescribed by the Secretary. H.R. Rep. No. 148, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 466 (1997), 1997-4 C.B. 444. Section 7805(d) provides that, except to the extent otherwise provided by the Code, any election under this title shall be made at such time and in such manner as the Secretary shall prescribe.

Based on the intent of the legislative history and under the authority granted by the Code, the Service published Rev. Proc. 99-17, 1999-1 C.B. 503 (section 6, a portion of the revenue procedure that is not relevant to answering the issue of this ruling, was superseded by Rev. Proc. 2002-9, 2002-1 C.B. 327). Rev. Proc. 99-17 provides the exclusive means of making an election under section 475(f), including when and how

---

<sup>1</sup> Section 301.9100-1 of the Procedure and Administration Regulations provides, in relevant part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election. Section 5.02(1) of Rev. Proc. 2004-1, 2004-1 I.R.B. 1, 10 provides that a request for an extension must be through a letter ruling request. Taxpayer previously requested such relief but withdrew the request when the Service proposed to rule adversely.

TAM-150717-03

the election is made. Section 5.03 of Rev. Proc. 99-17 provides the mandatory procedure for certain traders, including Taxpayer, to make an effective section 475(f) election. The election is made by filing a statement describing the election, the first taxable year for which the election is effective and the trade or business for which the election is made. This statement must be filed not later than the due date (without regard to extensions) of the original federal income tax return for the taxable year immediately preceding the election year, and the statement must be attached either to that return or, if applicable, to a request for an extension of time to file that return.

According to the information submitted, the due date of Taxpayer's federal income tax return for the taxable year immediately preceding the election year was Date 1. In accordance with Rev. Proc. 99-17, Taxpayer had until Date 1 to make the election for Year 1. However, Taxpayer did not file the election statement until Date 3. Because Taxpayer failed to file the election statement within the time period provided by Rev. Proc. 99-17, a mandatory prerequisite for making the election under section 475(f), and because the revenue procedure provides the exclusive means of making the election, Taxpayer has not made a timely election to use the mark-to-market method of accounting. Consequently, Taxpayer cannot change to the mark-to-market method of accounting for the Year 1 tax year but must continue to use the cash method.

**CAVEAT(S):**

For purposes of this ruling, Taxpayer is treated as qualifying as a trader in securities. However, we have neither considered nor determined if Taxpayer qualifies as a trader in securities, and therefore, no inference should be drawn from this ruling in determining if Taxpayer is a trader in securities.

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.