

Rev. Proc. 91-51

SECTION 1. PURPOSE

This revenue procedure tells taxpayers how to obtain consent to change their method of accounting for certain sales of mortgage loans (mortgages) from a method that does not comply with section 1286 of the Internal Revenue Code and Rev. Rul. 91-46, page 5, this Bulletin, to a method that does so comply.

SEC. 2. BACKGROUND

.01 In Rev. Rul. 91-46, a taxpayer sold mortgages and at the same time entered into a contract to service the mortgages for amounts received from interest payments collected on the mortgages. The ruling holds that the mortgages are "stripped bonds" within the meaning of section 1286(e)(2) of the Code if the contract entitles the taxpayer to receive amounts that exceed reasonable compensation for the services to be performed under the contract. The ruling also holds that the taxpayer's rights to receive amounts under the contract are "stripped coupons" within the meaning of section 1286(e)(3) to the extent that they are rights to receive mortgage interest other than as reasonable compensation for services.

.02 Taxpayers currently reporting gain or loss on sales of mortgages in a manner inconsistent with Rev. Rul. 91-46 are required to change their method of accounting, under section 446 of the Code and the regulations thereunder, to a method consistent with Rev. Rul. 91-46 and section 1286.

.03 Section 446(e) of the Code provides generally that a taxpayer must secure the consent of the Secretary in order to change a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(i) of the Income Tax Regulations states that, except as otherwise provided, a taxpayer must obtain this consent by filing Form 3115 (Application for Change in Accounting Method) within 180 days after the beginning of the tax year for which the proposed change is to be made. Section 1.446-1(e)(3)(ii) authorizes administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit taxpayers to obtain consent to change their method of accounting in accordance with section 446(e).

SEC. 3. SCOPE

.01 Except as provided in subsection .02, this revenue procedure applies to taxpayers changing their method of accounting for transactions in which the taxpayer sells mortgages and at the same time enters into contracts to service the mortgages in consideration for amounts received from interest payments. The revenue procedure applies only to taxpayers changing from a method that is inconsistent with the holding of Rev. Rul. 91-46 to a method consistent with that holding.

.02 This revenue procedure does not apply to a taxpayer if, at the time Form 3115 is filed, the taxpayer is before an examining agent, an appeals office, or any federal court for any tax year, and the method of accounting for sales of mortgages under circumstances described in section 3.01 is an issue that has been raised. If the issue has not been raised before August 8, 1991, then

for the period beginning on that date and ending on the due date of the federal income tax return for the first tax year ending on or after that date, the issue will not be considered to have been raised for this purpose earlier than the later of (i) November 6, 1991, or (ii) 90 days after the taxpayer becomes a taxpayer before an examining agent.

SEC. 4. APPLICATION

.01 Consent to automatic change. In accordance with section 1.446-1(e)(3)(ii) of the regulations, the Commissioner hereby waives the 180-day rule. Further, if a taxpayer's change in method of accounting for sales of mortgages is an automatic change under section 7.02(3) of this revenue procedure, then in accordance with regulations section 1.446-1(e)(2)(i), the Commissioner hereby grants consent to the taxpayer to change its method of accounting for sales of mortgages from a method that is inconsistent with the holding of Rev. Rul. 91-46 to a method consistent with that holding, provided the taxpayer satisfies the provisions and conditions of this revenue procedure.

.02 Cut-off basis. If granted by this revenue procedure, consent to change a taxpayer's method of accounting covers mortgages sold on or after the first day of the tax year (year of change) prescribed in section 5, section 6, or section 7.01 of this revenue procedure. The method of accounting for mortgages sold before that first day is not to be changed. Because this change is to be implemented on a "cut-off" basis, there is no adjustment under section 481(a) of the Code.

.03 Estimated taxes. Required installments of estimated taxes that are due on or before September 22, 1991, may be computed as if the taxpayer's old method of accounting were used for the entire taxable year. A required installment due after September 22, 1991, must be computed using the new method of accounting to which this revenue procedure gives consent, and the first such installment must be increased by the excess, if any, of the sum of the prior required installments determined using the new method of accounting, over the sum of the prior required installments, if any, determined under the preceding sentence.

.04 Exclusive procedure to obtain consent. A change of method described in section 3 of this revenue procedure may not be requested under the procedures set forth in Rev. Proc. 84-74, 1984-2 C.B. 736. Changes of method by taxpayers described in section 3.02 will be subject to such terms and conditions as the Service considers appropriate. Those terms and conditions will be no more favorable than those provided in this revenue procedure.

.05 Protection for years prior to the year of change. If a taxpayer files a Form 3115 that is within the scope of this revenue procedure, an examining agent may not propose that the taxpayer change the same method of accounting for a year that is prior to the year of change provided by this revenue procedure. If the taxpayer, however, does not implement a change in method of accounting pursuant to the terms and conditions of this revenue procedure, or if the taxpayer withdraws its request, an examining agent may propose that the taxpayer change the same method of accounting for any open year.

SEC. 5. YEAR OF CHANGE: FORMS 3115 FILED ON OR BEFORE THE DUE DATE OF THE FEDERAL INCOME TAX RETURN FOR THE FIRST TAX YEAR ENDING ON OR AFTER AUGUST 8, 1991

.01 Scope. This section 5 determines the year of change for Forms 3115 filed on or before the

due date (with regard to extensions) of the federal income tax return for the first tax year ending on or after August 8, 1991. Section 6 of this revenue procedure determines the year of change in all other circumstances.

.02 General rule. Except as provided in section 5.03 (concerning taxpayers before an examining agent) or 5.04 (concerning taxpayers before an appeals office or in federal court), the year of change is the first tax year ending on or after August 8, 1991. (See section 8.02(1) of this revenue procedure concerning the manner of filing Form 3115.)

.03 Taxpayer before an examining agent. In the case of a taxpayer that is before an examining agent on the date Form 3115 is filed and that is not excluded by section 3.02 (concerning taxpayers for which the method of accounting for sales of mortgages is a raised issue) --

(1) The year of change is the first tax year ending on or after August 8, 1991, if Form 3115 is filed on or before the later of (i) November 6, 1991, or (ii) 90 days after the taxpayer becomes a taxpayer before an examining agent. (See section 8.02(2) of this revenue procedure concerning the manner of filing Form 3115).

(2) The year of change is the earliest year before an examining agent if Form 3115 is filed after this 90-day window. (See section 8.02(3) of this revenue procedure concerning the manner of filing Form 3115).

.04 Taxpayer before an appeals office or in federal court. If a taxpayer is before an appeals office or in federal court and is not excluded by section 3.02 (concerning taxpayers for which the method of accounting for sales of mortgages is a raised issue at the time Form 3115 is filed), the year of change is determined under section 5.02 or 5.03, as appropriate, provided the taxpayer first obtains statements that there is no objection to the year of change so determined. For each tax year before an appeals office, a statement from the appeals officer is required; and, for each tax year before a federal court, a statement from counsel for the government is required. Ordinarily there will be no objection to the year of change determined under this revenue procedure. These statements must be attached to the original of the Form 3115 described in section 8 below. (See section 8.03 of this revenue procedure concerning the manner of filing Form 3115).

SEC. 6. YEAR OF CHANGE: ALL OTHER CIRCUMSTANCES

.01 Scope. This section determines the year of change for all Forms 3115 filed after the due date (with regard to extensions) of the federal income tax return for the first tax year ending on or after August 8, 1991.

.02 General rule. Except as provided in section 6.03 (concerning taxpayers before an examining agent) or 6.04 (concerning taxpayers before an appeals office or in federal court), the year of change is the earliest tax year such that, when the Form 3115 is filed, the due date (with regard to extensions) of the taxpayer's federal income tax return has not yet passed. (See section 8.03 of this revenue procedure concerning the manner of filing Form 3115.)

.03 Taxpayer before an examining agent. In the case of a taxpayer that is before an examining agent on the date Form 3115 is filed and that is not excluded by section 3.02 (concerning taxpayers for which the method of accounting for sales of mortgages is a raised issue) --

(1) The year of change is the most recent year before an examining agent if Form 3115 is filed within 90 days of the date the taxpayer becomes a taxpayer before an examining agent. (See section 8.02(3) of this revenue procedure concerning the manner of filing Form 3115).

(2) The year of change is the earliest year before an examining agent if Form 3115 is filed after this 90-day window. (See section 8.02(3) of this revenue procedure concerning the manner of filing Form 3115.)

.04 Taxpayer before an appeals office or in federal court. If a taxpayer is before an appeals office or in federal court and is not excluded by section 3.02 (concerning taxpayers for which the method of accounting for sales of mortgages is a raised issue at the time Form 3115 is filed), the year of change is determined under section 6.02 or 6.03, as appropriate, provided the taxpayer first obtains statements that there is no objection to the year of change so determined. For each tax year before an appeals office, a statement from the appeals officer is required; and, for each tax year before a federal court, a statement from counsel for the government is required. Ordinarily there will be no objection to the year of change determined under this revenue procedure. These statements must be attached to the original of the Form 3115 described in section 8 below. (See section 8.03 of this revenue procedure concerning the manner of filing Form 3115.)

SEC. 7. SPECIAL RULE AND DEFINITIONS

.01 Subsequent closed years. Notwithstanding the provisions of section 5 and section 6 of this revenue procedure, if the year of change prescribed by section 5 or section 6 precedes a tax year (closed year) for which the statute of limitations under section 6501 has expired, then the year of change is the earliest year that does not precede a closed year. Whether a year is a closed year is determined as of the date the taxpayer files Form 3115 in compliance with section 8 of this revenue procedure.

.02 Definitions. For purposes of this revenue procedure, the following definitions apply:

(1) Before an examining agent. A taxpayer is before an examining agent for a tax year from the time the taxpayer is contacted in any manner by a representative of the Service to schedule an examination of the taxpayer's federal income tax return(s), until the expiration of the period during which the taxpayer must respond to the thirty-day letter that accompanies the examination report.

(2) Automatic change. A change in method of accounting pursuant to this revenue procedure is an automatic revenue procedure is an automatic change if the year of change is determined under section 5.02, 5.03, or 6.03.

SEC. 8. REQUIREMENT TO FILE FORM 3115

.01 Requirement to file Form 3115. A taxpayer requesting a change in method of accounting pursuant to this revenue procedure must complete and file a current Form 3115.

.02 Manner of filing Form 3115: automatic change. The manner of filing Form 3115 in the case of an automatic change is determined as follows:

(1) If the year of change is determined under section 5.02 of this revenue procedure, the original Form 3115 must be attached to the taxpayer's timely filed (determined with regard to extensions) federal income tax return for the year of change.

(2) If the year of change is determined under section 5.03(1), the taxpayer must deliver the original Form 3115 to the district director for the district with jurisdiction over the most recent tax year before an examining agent. A taxpayer that has so delivered Form 3115 must, at

the time the original Form 3115 is delivered, (i) deliver a copy of the original Form 3115 to the principal examining agent or team coordinator examining the return for the most recent tax year before any examining agent; (ii) deliver a copy of the Form 3115 to the district director for any other district that is examining one of the taxpayer's tax years; and (iii) file a copy of the Form 3115 with the National Office of the Internal Revenue Service, CC:IT&A:8, 1111 Constitution Ave., N.W., Washington, D.C. 20224. In addition, the taxpayer must attach a copy of the Form 3115 to the timely filed federal income tax return for the year of change, and that return must reflect the change.

(3) If the year of change is determined under sections 5.03(2) or 6.03 (concerning taxpayers before an examining agent for the year of change), the taxpayer must deliver the original Form 3115 to the district director for the district with jurisdiction over the year of change. A taxpayer that has so delivered Form 3115 must, at the time the original Form 3115 is delivered, (i) deliver a copy of the original Form 3115 to the principal examining agent or team coordinator examining the return for the year of change; (ii) deliver a copy of the Form 3115 to the district director for any other district that is examining one of the taxpayer's tax years; and (iii) file a copy of the Form 3115 with the National Office of the Internal Revenue Service, CC:IT&A:8, 1111 Constitution Ave., N.W., Washington, D.C. 20224.

.03 Manner of filing Form 3115: all other changes. In the case of a change other than an automatic change, the original Form 3115 must be filed with the National Office of the Internal Revenue Service, CC:IT&A:8, 1111 Constitution Ave., N.W., Washington, D.C. 20224.

SEC. 9. OTHER PROCEDURAL MATTERS

.01 The taxpayer must include all information required on the Form 3115. (Since the change is to be implemented on a cut-off basis, there is no section 481(a) adjustment.) No user fee is required for an automatic change.

.02 In order to assist in the processing of these changes in method of accounting and to ensure proper handling, reference to this revenue procedure should be made a part of the Form 3115 by either typing or legibly printing the following statement at the top of page 1 of Form 3115: "FILED UNDER REV. PROC. 91-51."

.03 The signature of, or on behalf of, the taxpayer requesting the change in method of accounting must appear in the space provided for it on the Form 3115. For example, an officer must sign on behalf of a corporation. See the signature requirements set forth in the General Instructions attached to a current Form 3115 for those who are authorized to sign. If an agent is authorized to represent the taxpayer before the Service, to receive the original or copy of correspondence concerning the request, or to perform any additional act(s) regarding the application on behalf of the taxpayer, a power of attorney reflecting the authorization(s) must be attached to the application. A taxpayer's representative without a power of attorney to represent the taxpayer will not be given any information about the application for change in accounting method.

.04 If the taxpayer is a member of an affiliated group that has elected to file a consolidated federal income tax return, a Form 3115 submitted on behalf of the taxpayer must be signed by a duly authorized officer of the common parent. See section 1.1502-77 of the regulations.

SEC. 10. EFFECTIVE DATE

This revenue procedure is effective August 8, 1991. Any taxpayer within the scope of section 3 that already filed a timely Form 3115 before the effective date of this revenue procedure must use the provisions of this revenue procedure, and not the provisions of Rev. Proc. 84-74, and will be so notified.