

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*

(Also Part 1, §§ 162, 263, 446, 461, 481; 1.167(a)-3(b), 1.263(a)-4, 1.263(a)-5, 1.446-1, 1.461-4, 1.461-5, 1.481-1.)

Rev. Proc. 2005-17

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2005-9, 2005-2 I.R.B. 303, which provides procedures under which certain taxpayers may obtain automatic consent to change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, and 1.167(a)-3(b) of the Income Tax Regulations (the “final regulations”) for the taxpayer’s second taxable year ending on or after December 31, 2003. The modifications provided by this revenue procedure provide a waiver of the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432.

SECTION 2. BACKGROUND

.01 On January 5, 2004, the Service and Treasury Department published final regulations in the Federal Register (T.D. 9107, 2004-7 I.R.B. 447 [69 FR 436]) relating to the capitalization of intangible assets under § 263(a) of the Internal Revenue Code. Section 1.263(a)-4 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to acquire or create (or to facilitate the acquisition or creation of) intangibles. Section 1.263(a)-5 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions. Section 1.167(a)-3(b) provides a safe harbor useful life for certain intangible assets. The final regulations under §§ 1.263(a)-4 and 1.263(a)-5 are effective for amounts paid or incurred on or after December 31, 2003. The final regulations under § 1.167(a)-3(b) are effective for intangible assets created on or after December 31, 2003.

.02 Sections 1.263(a)–4(p) and 1.263(a)–5(n) provide that a taxpayer seeking to change to a method of accounting provided in the final regulations must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e). In addition, §§ 1.263(a)–4(p) and 1.263(a)–5(n) provide that, for the taxpayer’s first taxable year ending on or after December 31, 2003, the taxpayer is granted the consent of the Commissioner to change to a method of accounting provided in the final regulations, provided the taxpayer follows the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner’s automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9).

.03 Rev. Proc. 2004–23, 2004–16 I.R.B. 785, provides the exclusive administrative procedures under which a taxpayer may obtain automatic consent for the taxpayer’s first taxable year ending on or after December 31, 2003, to change to a method of accounting provided in the final regulations.

.04 Rev. Proc. 2005–9 provides procedures similar to those contained in Rev. Proc. 2004–23 under which a taxpayer may obtain automatic consent for the taxpayer’s second taxable year ending on or after December 31, 2003. Unlike Rev. Proc. 2004–23, Rev. Proc. 2005–9 does not waive the scope limitations contained in Rev. Proc. 2002–9, including the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9.

.05 Section 4.02(6) of Rev. Proc. 2002–9 provides, in part, that the automatic consent procedures of Rev. Proc. 2002–9 do not apply if the taxpayer, within the last five years (including the year of change), (a) has made a change in the same method of accounting (with or without obtaining the Commissioner’s consent), or (b) has applied to change the same method of accounting without effecting the change (whether, for example, the application to change was withdrawn, not perfected, not granted, or denied).

.06 Because Rev. Proc. 2005–9 does not waive the scope limitations contained in Rev. Proc. 2002–9, some taxpayers are ineligible to obtain automatic consent to make a change under Rev. Proc. 2005–9 for the second taxable year ending on or

after December 31, 2003, because, for example, the taxpayer withdrew a previous application to change within the preceding 5 years or because the taxpayer’s previous application was denied.

SECTION 3. CHANGES TO REV. PROC. 2005–9

.01 Section 3.02 of Rev. Proc. 2005–9 is modified to read as follows:

“.02 Rev. Proc. 2004–23 waives the scope limitations in section 4.02 of Rev. Proc. 2002–9. However, this revenue procedure waives only the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9. See section 5.04 of this revenue procedure.”

.02 Section 3.03 of Rev. Proc. 2005–9 is modified to read as follows:

“.03 Rev. Proc. 2004–23 does not require taxpayers to complete many of the lines in Part II of Form 3115. Because this revenue procedure does not waive all of the scope limitations of Rev. Proc. 2002–9, this revenue procedure requires taxpayers to complete more of the lines in Part II of Form 3115. See section 5.02(2)(d) of this revenue procedure.”

.03 Section 5.04 of Rev. Proc. 2005–9 is modified to read as follows:

“.04 *Prior Change.*

For purposes of this revenue procedure, the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9 does not apply. Therefore, for example, a taxpayer that, within the last five years (including the year of change), applied for a change in method of accounting and withdrew its request or had its request denied is not prohibited from obtaining automatic consent for the change under this revenue procedure, provided all other requirements of this revenue procedure are met.”

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005–9 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for a taxpayer’s second taxable year ending on or after December 31, 2003.

SECTION 6. CONTACT INFORMATION

For further information regarding this revenue procedure, call Grace Matuszeski of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–7900 (not a toll-free call).