

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Change in accounting periods and in methods of accounting.

(Also Part I, §§ 446, 1281; 1.446-1.)

Rev. Proc. 2001-25

SECTION 1. PURPOSE

This revenue procedure modifies section 13.02 of the Appendix to Rev. Proc. 99-49, 1999-2 C.B. 725, 757, to allow any bank that uses the cash receipts and disbursements method of accounting (cash method) to change automatically its method of accounting for stated interest on short-term loans made in the ordinary course of business.

SECTION 2. BACKGROUND

.01 Rev. Proc. 99-49 provides the procedures by which a taxpayer may obtain automatic consent to change a method of accounting described in the Appendix to Rev. Proc. 99-49. Under section 13.02 of the Appendix to Rev. Proc. 99-49, a cash method bank in the Eighth Circuit can automatically change its method of

accounting for stated interest on short-term loans made in the ordinary course of business from an accrual method under § 1281 of the Internal Revenue Code to the cash receipts and disbursements method of accounting. In Security Bank Minnesota v. Commissioner, 994 F.2d 432 (8th Cir. 1993), aff'g 98 T.C. 33 (1992), the U.S. Circuit Court of Appeals for the Eighth Circuit held that § 1281 does not require a cash method bank to include in gross income stated interest on short-term loans made in the ordinary course of business as that interest accrues. Because the Internal Revenue Service was litigating the § 1281 issue in other circuits, section 13.02 of the Appendix was limited to cash method banks in the Eighth Circuit.

.02 In Security State Bank v. Commissioner, 214 F.3d 1254 (10th Cir. 2000), aff'g 111 T.C. 210 (1998), acq., 2001-5 I.R.B., and U.S. Bancorp v. Commissioner, T.C.M. 1998-381, the courts similarly held that § 1281 does not require a cash method bank to include in gross income stated interest on short-term loans made in the ordinary course of business as that interest accrues. In light of the decisions in Security Bank Minnesota, Security State Bank, and U.S. Bancorp, the Service will no longer litigate the § 1281 issue in the context of short-term loans made in the ordinary course of a cash method bank's business. Accordingly, section 13.02 of the Appendix to Rev. Proc. 99-49 is modified to apply to all cash method banks.

SECTION 3. APPLICATION

Section 13.02 of the Appendix to Rev. Proc. 99-49 is modified to read as follows:

.02 Stated interest on short-term loans of cash method banks.

(1) Description of change and scope.

(a) Applicability. This change applies to a bank that uses the cash receipts and disbursements method of accounting as its overall accounting method and that wants to change its method of accounting from accruing stated interest on short-term loans made in the ordinary course of business to using the cash method for that interest. For example, see Security State Bank v. Commissioner, 214 F.3d 1254 (10th Cir. 2000), aff'g 111 T.C. 210 (1998), acq., 2001-5 I.R.B., and Security Bank Minnesota v. Commissioner, 994 F.2d 432 (8th Cir. 1993), aff'g 98 T.C. 33 (1992), in which the courts held that § 1281 does not apply to short-term loans made by a cash method bank in the ordinary course of its business.

(b) Scope limitations inapplicable. A taxpayer that wants to make this change is not subject to the scope limitations in section 4.02 of this revenue procedure. However, if the taxpayer is under examination, before an appeals office, or before a federal court, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the

government, as appropriate.

(2) Change for prior taxable years. A taxpayer is permitted to make the change in accounting method described in section 13.02(1)(a) of this Appendix for any taxable year ending before December 31, 2000, provided the year is not barred by the statute of limitations, there is no closed taxable year after the year of change, and the taxpayer complies with the following requirements:

(a) the taxpayer must attach a completed Form 3115 to an amended return for the year of change, and must file, on or before December 31, 2001, that amended return and amended returns for all subsequent affected taxable years, if any; and

(b) the taxpayer must file a copy of the Form 3115 with the national office no later than when the original Form 3115 is filed with the amended return.

(3) Section 481(a) adjustment period. A taxpayer making this change must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99-49 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on February 20, 2001.

DRAFTING INFORMATION

The principal author of this revenue procedure is William E. Blanchard of the Office of the Associate Chief Counsel (Financial

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