

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 179D, 1.179D, 381, 1.381(c)(4)-1, 1.381(c)(5)-1, 446, 1.446-1)

Rev. Proc. 2012-39

SECTION 1. PURPOSE

This revenue procedure clarifies and modifies (i) Rev. Proc. 2011-14, 2011-1 C.B. 330; and (ii) Rev. Proc. 97-27, 1997-1 C.B. 680, as amplified and modified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072, as clarified and modified by Rev. Proc. 2009-39, 2009-2 C.B. 371, and as clarified and modified by Rev. Proc. 2011-14. It modifies certain rules applicable to a taxpayer that engages in a corporate reorganization or tax-free liquidation described in § 381(a) of the Internal Revenue Code that occurs on or after August 31, 2011. It also modifies section 3.09 of the APPENDIX of Rev. Proc. 2011-14 regarding a change to the method of accounting described in Rev. Proc. 2011-43, 2011-2 C.B. 326, for taxpayers in the business of transporting, delivering, or selling electricity. Finally, it clarifies and modifies section 8.04 of the APPENDIX of Rev. Proc. 2011-14 regarding a change in method of

accounting for amounts paid or incurred for the installation of energy efficient commercial building property under § 179D.

SECTION 2. BACKGROUND

.01 Rev. Proc. 97-27 provides the general procedures for a taxpayer to obtain non-automatic consent from the Commissioner of Internal Revenue (Commissioner) to change a method of accounting under § 446(e).

.02 Rev. Proc. 2011-14, issued in January 2011, provides the procedures for a taxpayer to obtain automatic consent from the Commissioner for a change in method of accounting that is described in the APPENDIX of Rev. Proc. 2011-14. A taxpayer complying with all the applicable provisions of Rev. Proc. 2011-14 obtains the consent of the Commissioner to change its method of accounting under § 446(e).

.03 Section 4.02 of Rev. Proc. 2011-14 describes seven scope limitations that preclude a taxpayer from obtaining automatic consent to change a method of accounting under Rev. Proc. 2011-14. Except to the extent the scope limitations are waived for a particular change in the APPENDIX of Rev. Proc. 2011-14, these scope limitations apply even when the change in method of accounting is described in the APPENDIX of Rev. Proc. 2011-14. Two of these scope limitations preclude a taxpayer from using the automatic consent procedures in Rev. Proc. 2011-14 to change its method of accounting for a taxable year (year of change) in which (i) it engages in a transaction to which § 381(a) applies (§ 381(a) transaction), or (ii) it ceases to engage in the trade or business to which the change in method of accounting relates or terminates its existence. See

sections 4.02(4) and (5) of Rev. Proc. 2011-14. A taxpayer that is precluded from using the automatic consent procedures in Rev. Proc. 2011-14 to change its method of accounting may request permission to change the method of accounting using the provisions of Rev. Proc. 97-27 if the taxpayer is within the scope of Rev. Proc. 97-27. See section 4.03 of Rev. Proc. 2011-14.

.04 Section 6.03 of Rev. Proc. 2011-14 and section 6.01 of Rev. Proc. 97-27 provide the rules for when a taxpayer under examination may use the automatic change procedures in Rev. Proc. 2011-14 or the non-automatic change procedures in Rev. Proc. 97-27, respectively, to request consent to change a method of accounting.

.05 On August 1, 2011, the Treasury Department and the Internal Revenue Service (Service) issued final regulations under §§ 381(c)(4) and 381(c)(5) in TD 9534, 76 Fed. Reg. 45673 (2011). These regulations provide guidance regarding the method of accounting or combination of methods of accounting an acquiring corporation must use following a distribution or transfer to which § 381(a) and § 381(c)(4) or § 381(c)(5) apply and how to implement any associated change in method of accounting. These regulations permit any party to a § 381(a) transaction to request permission from the Commissioner under § 446(e) to change a method of accounting for the taxable year in which the transaction occurs or is expected to occur. However, the regulations state that, for the taxable year that includes the date of the § 381(a) transaction, the Commissioner will not grant permission to change a method of accounting for any separate and distinct trade or business of either party if the acquiring

corporation will not operate that trade or business as a separate and distinct trade or business after the date of the § 381(a) transaction, unless the requested method is the method that the acquiring corporation must use for the transferred or distributed items of that trade or business after the date of distribution or transfer. See §§ 1.381(c)(4)-1(a)(5) and 1.381(c)(5)-1(a)(5). Sections 1.381(c)(4)-1(d)(2) and 1.381(c)(5)-1(d)(2) provide the procedures for requesting permission under § 446(e) to change a method of accounting for a year of change in which a § 381(a) transaction occurs or is expected to occur. Those procedures state, in part, that the scope limitation relating to the final year of a trade or business will not apply to a taxpayer that changes its method of accounting in the final year of a trade or business that is terminated as the result of a § 381(a) transaction. The regulations issued under §§ 1.381(c)(4) and 1.381(c)(5) in TD 9534 apply to corporate reorganizations or tax-free liquidations described in § 381(a) that occur on or after August 31, 2011.

.06 The Service has decided to waive the scope limitation in Rev. Proc. 2011-14 that precludes a taxpayer from making an automatic accounting method change for a taxable year in which the taxpayer engages in a § 381(a) transaction. This revenue procedure modifies section 4.02(4) of Rev. Proc. 2011-14 to permit taxpayers to make otherwise qualifying automatic accounting method changes in the year of the § 381(a) transaction. This revenue procedure also modifies both Rev. Proc. 2011-14 and Rev. Proc. 97-27 to waive the scope limitation that precludes taxpayers who are under examination from seeking

consent to change to an accounting method other than the principal or carryover method.

.07 Section 3.09 of the APPENDIX of Rev. Proc. 2011-14 allows taxpayers in the business of transporting, delivering, or selling electricity to change their method of accounting to the safe harbor method of accounting described in Rev. Proc. 2011-43. The scope limitations of section 4.02 of Rev. Proc. 2011-14 do not apply to an electric transmission or distribution company that changes to the method of accounting provided in Rev. Proc. 2011-43 for its first or second taxable year ending after December 30, 2010.

.08 The Service is aware that many electric transmission or distribution companies have not had time to change their method of accounting to the safe harbor method of accounting described in Rev. Proc. 2011-43. Accordingly, this revenue procedure modifies section 3.09 of the APPENDIX of Rev. Proc. 2011-14 to extend the waiver of scope limitations to the third taxable year ending after December 30, 2010.

.09 Section 179D(a) allows a deduction to a taxpayer for part or all of the cost of energy efficient commercial building property that the taxpayer places in service in a taxable year. The amount of the deduction may not exceed the excess (if any) of (i) the product of \$1.80 and the square footage of the building, over (ii) the aggregate amount of the § 179D deductions allowed with respect to the building for all prior taxable years. If the energy efficient commercial building property is installed on or in property owned by a Federal, State, or local government or political subdivision thereof, § 179D permits the owner to allocate

this deduction to the designer of the commercial building property. In Notice 2008-40, the Service provided procedures for owners of government buildings to allocate the § 179D deduction to the designer.

.10 Section 8.04 of the APPENDIX of Rev. Proc. 2011-14 allows taxpayers to change their method of accounting to deduct under § 179D amounts paid or incurred for the installation of energy efficient commercial building property, as defined in § 179D(c)(1). Section 8.04(4) of the APPENDIX requires a taxpayer making this change to attach a certification to demonstrate the energy efficient commercial building property has achieved the reduction in energy and power costs necessary to qualify for the § 179D deduction. The additional filing requirement also contains a provision that, in the case of a government-owned building for which a designer has been allocated a deduction under § 179D, the designer becomes the taxpayer for purposes of the deduction and must attach a certification and an allocation from the owner of the building to the designer.

.11 Some taxpayers have interpreted section 8.04(4) of the APPENDIX of Rev. Proc. 2011-14 to mean that designers may file a Form 3115 for a change in method of accounting and make a § 481(a) adjustment for a § 179D deduction allocated to the designer. However, a designer who takes a § 179D deduction is making a permanent change in its income because, unlike the owner of the property, the designer is not otherwise entitled to deduct the amount of the § 179D deduction by another method, for example, through depreciation. Taxpayers may not use a change in method of accounting to make a permanent change in income. Accordingly, this revenue procedure clarifies and modifies

section 8.04 of the APPENDIX of Rev. Proc. 2011-14 to make clear that designers may not use the automatic change in method of accounting provisions of Rev. Proc. 2011-14 for § 179D deductions that are allocated to them.

Designers allocated a § 179D deduction for commercial building property placed in service in a prior taxable year may file an amended return for the taxable year in which the property was placed in service (if that taxable year is open) to claim such § 179D deduction. This revenue procedure also modifies the filing requirements in section 8.04 of the APPENDIX for the duplicate copy of the Form 3115.

SECTION 3. CHANGE IN METHOD OF ACCOUNTING

.01 Modification of Rev. Proc. 2011-14.

(1) Modification of sections 4.02(1), (4) and (5). Sections 4.02(1), 4.02(4) and 4.02(5) of Rev. Proc. 2011-14 are modified to read as follows:

(1) Under examination. If, on the date the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) would otherwise file a copy of the application with the national office, or if applicable, with the Ogden office, (see section 6.02(3) of this revenue procedure), the taxpayer is under examination (see section 3.08 of this revenue procedure), except as provided in sections 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), 6.03(6) (issue pending or change to use other than the principal or carryover method), 6.04 (issue under consideration by an appeals office), and 6.05 (issue under consideration by a federal court) of this revenue procedure.

(4) Section 381(a) transaction. Except as otherwise provided in this section 4.02(4), if the taxpayer engages in a transaction to which § 381(a) applies (§ 381(a) transaction) within the proposed taxable year of change (determined without regard to any potential closing of the year under § 381(b)(1)). All references to the regulations in sections 4.02(4)(a)(i) and 4.02(4)(a)(ii) refer to the regulations under §§ 381(c)(4) and 381(c)(5) that were in effect prior to August 31, 2011, the effective date of TD 9534. All references to the regulations in section 4.02(4)(b) refer to the regulations under §§ 381(c)(4) and 381(c)(5) that are in effect as of August 31, 2011.

(a) Section 381(a) transaction occurring before August 31, 2011.

(i) No differences in methods. An acquiring corporation in a § 381(a) transaction that occurred before August 31, 2011, may change its method of accounting pursuant to this revenue procedure if the acquiring corporation would be permitted to continue to use its prior method of accounting under the rules of §§ 1.381(c)(4)-1(b)(1) and (3)(i) (taking into account the third sentence of § 1.381(c)(4)-1(b)(4) relating to no prior method established by a party to the transaction) or §§ 1.381(c)(5)-1(b)(1) and (3)(i) (taking into account the second sentence of § 1.381(c)(5)-1(b)(4)(i) relating to no prior inventory method established by a party to the transaction) because all of the parties to the transaction used the same method of accounting on the date of distribution or transfer. The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)-1(b) or

§ 1.381(c)(5)-1(b), and thus §§ 1.381(c)(4)-1(b)(3)(ii) and (c) and §§ 1.381(c)(5)-1(b)(3)(ii) and (c) will not apply.

(ii) Separate trades or businesses. An acquiring corporation in a § 381(a) transaction that occurred before August 31, 2011, may change pursuant to this revenue procedure a method of accounting used by a trade or business operated by such corporation if the trade or business would be permitted to continue to use its prior method of accounting under the rules of § 1.381(c)(4)-1(b)(2) or § 1.381(c)(5)-1(b)(2). The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)-1(b) or § 1.381(c)(5)-1(b), and, thus §§ 1.381(c)(4)-1(b)(3) and (c) and §§ 1.381(c)(5)-1(b)(3) and (c) will not apply.

(b) Section 381(a) transactions occurring on or after August 31, 2011. Any party to a § 381(a) transaction that occurs on or after August 31, 2011, may change its method of accounting for the taxable year in which the § 381(a) transaction occurs pursuant to this revenue procedure if the taxpayer is requesting a change in method of accounting described in § 1.381(c)(4)-1(a)(4) or (5) or § 1.381(c)(5)-1(a)(4) or (5).

(5) Final year of trade or business. Except as otherwise provided in this section 4.02(5), if, in the proposed year of change, a taxpayer requesting a change in method of accounting ceases to engage in the trade or business to which the change in method of accounting relates, as described in section 5.04(3)(c) of this revenue procedure, or terminates its existence. For purposes of

this section 4.02(5), a taxpayer is treated as ceasing to engage in the trade or business or terminating its existence without regard to whether the taxpayer's change in method of accounting request would result in either a positive or negative § 481(a) adjustment or be made on a cut-off basis.

This section 4.02(5) does not apply to a taxpayer that changes its method of accounting in the final year of its trade or business that is terminated as the result of a transaction to which § 381(a) applies that occurs on or after August 31, 2011.

(2) Modification of sections 6.03(1) and 6.03(6). Sections 6.03(1) and 6.03(6) of Rev. Proc. 2011-14 are modified to read as follows:

(1) In general. Except as otherwise provided in the APPENDIX of this revenue procedure (see, for example, section 2.01 of the APPENDIX of this revenue procedure), a taxpayer that is under examination (as provided in section 3.08 of this revenue procedure) may file an application to change a method of accounting under this revenue procedure only if the taxpayer is within the provisions of section 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), 6.03(6) (issue pending or change to use other than the principal or carryover method), 6.04 (issue under consideration by an appeals office), or 6.05 (issue under consideration by a federal court) of this revenue procedure. A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that files an application beyond the time periods provided in the 90-day window and 120-day window is not eligible for the automatic extension of time and will

not be granted an extension of time under § 301.9100, except in unusual and compelling circumstances.

(6) Issue pending or change to use other than the principal or carryover method.

(a) Issue pending. A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 7 of this revenue procedure do not apply to a taxpayer changing its method of accounting pursuant to this section 6.03(6)(a). For purposes of this section 6.03(6)(a), an issue is pending for a taxable year under examination if the Service has given the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, any controlling domestic shareholder of a CFC or 10/50 corporation) written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. This notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined. See section 6.02(3)(c) of this revenue procedure for more information regarding the requirement to file a copy of the application with the examining agent.

(b) Change to use other than the principal or carryover method. Any party to a transaction to which § 381(a) applies that is under examination with respect to any income tax issue may request to change to a method of accounting described in § 1.381(c)(4)-1(a)(4) or (5) or § 1.381(c)(5)-1(a)(4) or (5) (as in effect as of August 31, 2011) and the APPENDIX of this revenue procedure for the taxable year (year of change) in which the § 381(a) transaction occurs or is expected to occur. However, if, on the date the party (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) files a copy of the application, the method of accounting to be changed is an issue under consideration (see section 3.09(1) of this revenue procedure) or an issue the examining agent(s) has placed in suspense, the audit protection provisions of section 7 of this revenue procedure do not apply to the party's change in method of accounting requested pursuant to this section 6.03(6)(b). See section 6.02(3)(c) of this revenue procedure for more information regarding the requirement to file a copy of the application with the examining agent.

(3) Change to section 3.09 of the APPENDIX, Method of Accounting under Rev. Proc. 2011-43 for taxpayers in the business of transporting, delivering, or selling electricity. Section 3.09(2) of the APPENDIX of Rev. Proc. 2011-14 is modified to read as follows:

(2) Waiver of scope limitations. The scope limitations in section 4.02 of this revenue procedure do not apply to an electric transmission or distribution company that changes to the method of accounting provided in Rev. Proc. 2011-43 for its first, second, or third taxable year ending after December 30, 2010.

(4) Change to section 8.04 of the APPENDIX, Elective expensing provisions (§ 179D). Section 8.04 of the APPENDIX of Rev. Proc. 2011-14 is clarified and modified to read as follows:

.04 Deduction for Energy Efficient Commercial Buildings (§ 179D).

(1) Description of change. This change applies to taxpayers that want to change their method of accounting to deduct under § 179D amounts paid or incurred for the installation of energy efficient commercial building property as defined in § 179D(c)(1). The deduction for energy efficient commercial building property is subject to the limits of § 179D(b) and must be claimed in the taxable year in which the property is placed in service. The basis of the energy efficient commercial building property is reduced by the amount of the § 179D deduction taken and the remaining basis of the energy efficient commercial building property is depreciated over its recovery period.

(2) Applicability. This change applies to taxpayers that place in service property for which a deduction is allowed under § 179D(a).

(3) Inapplicability. This change does not apply to a designer to whom the owner of a government building allocates the § 179D deduction.

(4) Manner of making change. A taxpayer making this change must attach to its Form 3115 a statement with a detailed description of the tax treatment of the property under the taxpayer's present and proposed methods of accounting.

(5) Certification requirement. In addition to the statement required by section 8.04(4) of the APPENDIX of this revenue procedure (Rev. Proc. 2011-

14), a taxpayer making this change must attach a certification as required by section 4 of Notice 2006-52, 2006-1 C.B. 1175, or section 5 of Notice 2008-40, 2008-14 I.R.B. 725, to demonstrate the energy efficient commercial building property has achieved the reduction in energy and power costs or in lighting power density necessary to qualify for the § 179D deduction.

(6) Ogden copy of Form 3115 required in lieu of national office copy. A taxpayer changing its method of accounting under section 8.04 of this APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT (Ogden copy), in lieu of filing the national office copy, no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. See section 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(7) No ruling on qualification. The consent granted under this revenue procedure for this change is not a determination by the Commissioner that the taxpayer qualifies for a deduction under section 179D. The director will ascertain whether the taxpayer qualifies for a deduction under section 179D (including a review of the required certifications).

(8) Designated automatic accounting method change number. The designated automatic accounting method change number for a change in method of accounting under section 8.04 of this APPENDIX is “152.” See section 6.02(4) of this revenue procedure.

(9) Contact information. For further information regarding a change under this section, contact Jennifer Bernardini at 202-622-3110 (not a toll-free call).

.02 Modification of Rev. Proc. 97-27. Sections 6.01(1) and 6.01(5) of Rev. Proc. 97-27 are modified to read as follows:

(1) In general. A taxpayer that is under examination may not file a Form 3115 to request a change in accounting method under this revenue procedure, except as provided in sections 6.01(2) (90-day window), 6.01(3) (120-day window), 6.01(4) (director consent), and 6.01(5) (issue pending or change to use other than the principal or carryover method). A taxpayer that files a Form 3115 beyond the time periods provided in the 90-day window and 120-day window will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances.

(5) Issue pending or change to use other than the principal or carryover method.

(a) Issue pending. A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 9.01 of this revenue procedure do not apply to a taxpayer changing its method of accounting pursuant to this section 6.01(5)(a). For purposes of this section 6.01(5)(a), an issue is pending for a taxable year under examination if the Service has given the taxpayer (or if section 3.02 of Rev. Proc. 2009-39 applies, any controlling domestic shareholder of a CFC or 10/50 corporation) written

notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. This notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined. The taxpayer requesting to change a method of accounting under this section 6.01(5)(a) must provide a copy of the Form 3115 to the examining agent(s) at the same time it files the original Form 3115 with the national office.

(b) Change to use other than the principal or carryover method.

Any party to a transaction to which § 381(a) applies that is under examination with respect to any income tax issue may request to change to a method of accounting described in § 1.381(c)(4)-1(a)(4) or (5) or § 1.381(c)(5)-1(a)(4) or (5) (as in effect as of August 31, 2011) for the taxable year (year of change) in which the § 381(a) transaction occurs or is expected to occur. However, if, on the date the party (or if section 3.02 of Rev. Proc. 2009-39 applies, the designated shareholder) files the Form 3115, the method of accounting to be changed is an issue under consideration (see section 3.08 of this revenue procedure) or an issue the examining agent(s) has placed in suspense, the audit protection provisions of section 9.01 of this revenue procedure do not apply to the party's request to change its method of accounting pursuant to this section 6.01(5)(b). The party requesting to change a method of accounting under this section 6.01(5)(b) must provide a copy of the Form 3115 to

the examining agent(s) at the same time it files the original Form 3115 with the national office.

SECTION 4. LIMITATION OF CHANGE IN METHOD OF ACCOUNTING

This revenue procedure does not modify, amend, or in any other way alter, any change to the principal method to which § 1.381(c)(4)-1(d)(1) or 1.381(c)(5)-1(d)(1) applies.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011-14 is clarified and modified. Rev. Proc. 97-27 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for Forms 3115 filed on or after **[INSERT DATE THIS REVENUE PROCEDURE IS RELEASED TO THE TAX SERVICES]**. Further, a taxpayer that, on or after August 31, 2011, engaged in a transaction to which § 381(a) applies within the proposed year of change may choose to apply sections 3.01(1), 3.01(2) and 3.02 of this revenue procedure (modifying sections 4.02(1), 4.02(4), 4.02(5), 6.03(1), and 6.03(6) of Rev. Proc. 2011-14 and sections 6.01(1) and 6.01(5) of Rev. Proc. 97-27) to a Form 3115 filed prior to, and pending with the national office on, **[INSERT DATE THIS REVENUE PROCEDURE IS RELEASED TO THE TAX SERVICES]**.

DRAFTING INFORMATION

The principal author of this revenue procedure is Cheryl Oseekey, of the Office of Associate Chief Counsel (Income Tax and Accounting). For further

information regarding this revenue procedure, contact Ms. Oseekey on (202) 622-4970 (not a toll-free call).