











operating loss that is attributable to a negative § 481(a) adjustment may be carried back to a taxable year prior to the year of change that is the subject of any pending or future criminal investigation or proceeding concerning (a) directly or indirectly, any issue relating to the taxpayer's federal tax liability, or (b) the possibility of false or fraudulent statements made by the taxpayer with respect to any issue relating to its federal tax liability.

(5) *Change treated as initiated by the taxpayer.* For purposes of § 481, an accounting method change filed under this revenue procedure, if granted, is a change in method of accounting initiated by the taxpayer.

## SECTION 6. PROCEDURES FOR TAXPAYERS UNDER EXAMINATION, BEFORE AN APPEALS OFFICE, OR BEFORE A FEDERAL COURT

### .01 *Taxpayer under examination.*

(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), and 6.01(4) (district director consent) of this revenue procedure. A taxpayer that files a Form 3115 beyond the time periods provided in the 90-day and 120-day windows will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances.

#### (2) *90-day window period.*

(a) A taxpayer may file a Form 3115 to request a change in accounting method during the first 90 days of any taxable year ("90-day window") if the taxpayer has been under examination for at least 12 consecutive months as of the first day of the taxable year. This 90-day window is not available if the method of accounting the taxpayer is requesting to change is an issue under consideration at the time the Form 3115 is filed or is an issue the examining agent(s) has placed in suspense at the time the Form 3115 is filed.

(b) A taxpayer requesting a change under this 90-day window 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. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s). The taxpayer must attach to the Form 3115 a

separate statement signed by the taxpayer certifying that, to the best of the taxpayer's knowledge, the same method of accounting is not an issue under consideration or an issue placed in suspense by the examining agent(s).

#### (3) *120-day window period.*

(a) A taxpayer may file a Form 3115 to request a change in accounting method during the 120-day period following the date an examination ends ("120-day window") regardless of whether a subsequent examination has commenced. This 120-day window is not available if the method of accounting the taxpayer is requesting to change is an issue under consideration at the time the Form 3115 is filed or is an issue the examining agent(s) has placed in suspense at the time the Form 3115 is filed.

(b) A taxpayer requesting a change under this 120-day window must provide a copy of the Form 3115 to the examining agent(s) for any examination that is in process at the same time it files the original Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s). The taxpayer must attach to the Form 3115 a separate statement signed by the taxpayer certifying that, to the best of the taxpayer's knowledge, the same method of accounting is not an issue under consideration or an issue placed in suspense by the examining agent(s).

#### (4) *Consent of district director.*

(a) A taxpayer under examination may request to change an accounting method under this revenue procedure if the district director consents to the filing of the request. The district director will consent to the filing of the Form 3115 unless, in the opinion of the district director, the method of accounting to be changed would ordinarily be included as an item of adjustment in the year(s) for which the taxpayer is under examination. For example, the district director will consent to the filing of a Form 3115 to change from a clearly permissible method of accounting. The district director will also consent to the filing of a Form 3115 to change from an impermissible method of accounting where the impermissible method was adopted subsequent to the years under examination. The question of whether the method of accounting from which the taxpayer is changing is permissible or was adopted subsequent to the years under examination may be referred to the national office as a request for

technical advice under the provisions of Rev. Proc. 97-2 (or any successor).

(b) A taxpayer requesting a change with the consent of the district director must attach to the Form 3115 a statement from the district director consenting to the taxpayer filing the Form 3115. The taxpayer must provide a copy of the Form 3115 to the district director at the same time it files the original of that form with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s).

.02 *Taxpayer before an appeals office.* A taxpayer that is before an appeals office with respect to any income tax issue may request a change in accounting method if the accounting method to be changed is not an issue under consideration by the appeals office. The taxpayer must attach to the Form 3115 a separate statement signed by the taxpayer certifying that, to the best of the taxpayer's knowledge, the same method of accounting is not an issue under consideration by the appeals office. The taxpayer must provide a copy of the Form 3115 to the appeals officer at the same time it files the original Form 3115 with the national office. The Form 3115 must contain the name and telephone number of the appeals officer.

.03 *Taxpayer before a federal court.* A taxpayer that is before a federal court with respect to any income tax issue may request a change in accounting method if the accounting method to be changed is not an issue under consideration by the federal court. The taxpayer must attach to the Form 3115 a separate statement signed by the taxpayer certifying that, to the best of the taxpayer's knowledge, the same method of accounting is not an issue under consideration by the federal court. The taxpayer must provide a copy of the Form 3115 to the counsel for the government at the same time it files the original Form 3115 with the national office. The Form 3115 must contain the name and telephone number of the counsel for the government.

.04 *Terms and conditions of change.* For a taxpayer under examination filing a Form 3115 during the 90-day or 120-day window, or with the consent of the district director, or for a taxpayer before an appeals office or a federal court, the terms and conditions are the same as those provided in section 5.02 of this revenue procedure for taxpayers not under examination.













