Internal Revenue Service

Number: **202623008**
Release Date: 6/5/2026

Index Number: 475.08-00, 9100.00-00, 9100.10-01

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B03
PLR-116840-22

Date:
March 02, 2026

LEGEND:

Taxpayer	=
Products	=
Executive	=
Executive's Spouse	=
Other Shareholders	=
Tax Director	=
Accounting Firm A	=
Tax Advisor	=
Tax Partner	=
Accounting Firm B	=

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Month 1 =

Month 2 =

Year 1 =

Year 2 =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This letter responds to a request for a private letter ruling that Taxpayer filed with the Internal Revenue Service ("the Service") on Date 11. Taxpayer requests an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 475(f)(1) of the Internal Revenue Code ("the Code") to use the mark-to-market method of accounting, effective for the Year 2 taxable year.

FACTS

Taxpayer, a State C corporation, is a manufacturer and distributor of Products that are sold worldwide. The majority of the shares of Taxpayer, a percent, are owned by Executive and Executive's Spouse. The remaining b percent of shares are owned by Other Shareholders. Executive is the controlling shareholder of Taxpayer. As Chief Executive Officer and President of Taxpayer, Executive exercises operational control over Taxpayer.

Beginning on Date 1, Executive began conducting securities trading activities on behalf of Taxpayer. Taxpayer had a cash balance of approximately $c at that time, and Executive used approximately $d, which was e percent of that cash balance, for securities trading. Executive had experience trading securities in his personal accounts and sought to achieve a higher rate of return for Taxpayer than would otherwise be achieved with passive deposits.

Tax Director was hired as Taxpayer's internal head of tax matters during Month 1. Tax Director did not have experience in tax planning and compliance issues relating to high frequency securities trading. Tax Director relied on tax planning advice from Accounting Firm A, which had historically provided financial audit and tax advisory services to Taxpayer. On Date 2, Tax Director met with Tax Advisor, a certified public accountant and a tax partner with Accounting Firm A who has more than e years of experience in providing tax services to companies in the technology, consumer products, and retail industries. They discussed Taxpayer's overall tax service needs, including addressing the tax issues raised by Taxpayer's securities trading activities. A follow-up discussion between Tax Director and Tax Advisor took place on Date 3, specifically to discuss Taxpayer's securities trading activities and tax planning opportunities relating to the securities trading activities. Tax Director communicated to Tax Advisor information relating to the frequency and volume of the securities trading activities being undertaken by Executive on behalf of Taxpayer. At that time, neither

Executive nor Tax Director were aware that an eligible securities trader could make an election under § 475(f)(1) to use the mark-to-market method of accounting, and Tax Advisor did not mention the possibility of making that election.

From Date 1 until Year 2, Taxpayer achieved gains from securities trading activities, which increased in volume over time. However, after that period, during Month 2, Taxpayer began losing substantial sums of money from its securities trading activities. From Date 4 until Date 7, taking into account both its realized and its unrealized gains and losses, Taxpayer would have had sizeable net trading losses. From Date 7 to Date 9, Taxpayer continued to actively trade stock and option positions in several public companies, resulting at times in the application of the wash sales rules described in § 1091(a). A significant portion of Taxpayer's losses from securities trading activities occurred after the due date for making a timely § 475(f)(1) election for the Year 2 taxable year.

Tax Director communicated the existence of Taxpayer's sizeable losses to Tax Advisor on multiple occasions, including in an email sent on Date 6, in which Tax Director inquired about the possibility of carrying back to the Year 1 taxable year the capital losses that were being incurred during the Year 2 taxable year. Although Tax Advisor provided a detailed response to Tax Director on the same day regarding § 165(i), Tax Advisor did not mention the possibility of making a timely § 475(f)(1) election.[1]

Taxpayer asserts that it was not advised of the availability of making a § 475(f)(1) election until Date 8, during the year following the Year 2 taxable year. This advice came from Tax Partner, a certified public accountant and a senior tax partner at Accounting Firm B who provided occasional tax advice to Taxpayer, primarily on international tax matters. After receiving this advice, Taxpayer engaged Accounting Firm B to seek relief under § 301.9100-3 to make a late § 475(f)(1) election. However, the request for a private letter ruling was not filed with the Service by Accounting Firm B on behalf of Taxpayer until Date 11, more than f months after Taxpayer received the advice from Tax Partner and g months after the due date for making a timely § 475(f)(1) election for the Year 2 taxable year.

Taxpayer claims that, beginning in early Year 2, the COVID-19 global pandemic (the "Pandemic") hindered and inhibited Taxpayer's Tax Director not only from effectively conferring internally with colleagues, but also from properly communicating externally with Tax Advisor and other tax professionals. Taxpayer asserts that the Pandemic and its effects, which resulted in stay-at-home orders mandated by the governor of State, significantly affected Taxpayer's business operations. Taxpayer maintains that the Pandemic brought Taxpayer's internal and external in-person

[1] Based on the information supplied by Taxpayer, whether Taxpayer's trading activities during the Year 2 taxable year were sufficiently regular, frequent, and continuous for Taxpayer to have been considered engaged in the trade or business of being a trader in securities for purposes of § 475(f)(1) may be an issue.

meetings and interactions to a halt, caused Taxpayer to struggle to perform even its most basic business processes, and effectively stopped outside communication by Taxpayer's internal tax department.

Taxpayer represents that it became aware of the existence of a § 475(f)(1) election on Date 8. After learning of the availability of a § 475(f)(1) election, Taxpayer realized that it would have been beneficial for it to have made a § 475(f)(1) election effective for the Year 2 taxable year. Taxpayer represents that, as a "protective" measure, Taxpayer made a timely § 475(f)(1) election for its taxable year that ended Date 12, the first taxable year for which Taxpayer could have made a timely § 475(f)(1) election after Taxpayer learned of the availability of a § 475(f)(1) election. This "protective" election was made on Date 10, before the due date for filing Taxpayer's unextended federal income tax return for the taxable year that ended Date 9.

LAW AND ANALYSIS

Taxpayer is not entitled to relief under § 301.9100-3 to make a late § 475(f)(1) election because Taxpayer did not act reasonably and in good faith and because granting relief would prejudice the interests of the Government.

Relief under § 301.9100-3 to make a late § 475(f)(1) election is denied

Section 475(f)(1) provides that a taxpayer engaged in a trade or business as a trader in securities may elect to apply the mark-to-market method of accounting to securities held in connection with such trade or business. Section 7805(d) provides that, except to the extent otherwise provided by the Code, any election shall be made at such time and in such manner as the Secretary shall prescribe.

When § 475(f) was enacted, Congress expressed its understanding that mark-to-market elections "will be made in the time and manner prescribed by the Secretary." H.R. Rep. No. 105-148 at 446 (1997). The Commissioner prescribed the time and manner for making these elections in Rev. Proc. 99-17, 1999-1 C.B. 503. Rev. Proc. 99-17 sets forth the exclusive procedures for a taxpayer who is a trader in securities to make an election under § 475(f)(1) to use the mark-to-market method of accounting. Under section 5.03 of that revenue procedure, a taxpayer must file an election statement not later than the due date (without regard to any extension) of the original federal income tax return for the taxable year immediately preceding the election year and must attach the statement either to that return or, if applicable, to a request for an extension of time to file that return. Section 5.04 of Rev. Proc. 99-17 sets forth the requirements for the statement. For a trader in securities, the statement must describe the election being made, the first taxable year for which the election is effective, and the trade or business for which the election is made. Section 4 of Rev. Proc. 99-17 provides that an election under § 475(f)(1) determines the method of accounting that an electing taxpayer is required to use for federal income tax purposes for securities subject to the election. Once a valid election is made, the taxpayer is required to use

the mark-to-market method of accounting under § 475 for securities subject to the election for the first taxable year for which the election is effective and continuing for all subsequent taxable years (unless the election is revoked with the consent of the Commissioner). Section 4 of Rev. Proc. 99-17 also provides that a taxpayer is on an impermissible method of accounting if the taxpayer fails to change the taxpayer's method of accounting to comply with the election.

A change to the mark-to-market method of accounting under § 475 is a change in method of accounting to which the provisions of §§ 446 and 481, and the Income Tax Regulations promulgated thereunder, including § 1.446-1(e)(3), apply. Rev. Proc. 2015-13, 2015-5 I.R.B. 419, sets forth the general procedures under § 446(e) for a taxpayer to obtain the consent of the Commissioner to change a method of accounting for federal income tax purposes, including the procedures to obtain the automatic consent of the Commissioner to change a method of accounting listed in Rev. Proc. 2019-43, 2019-48 I.R.B. 1107. Section 24.01 of Rev. Proc. 2019-43 includes in the List of Automatic Changes to which the automatic change procedures in Rev. Proc. 2015-13 apply a request for a trader in securities that has made a § 475(f)(1) election to change the trader's method of accounting for securities to use the mark-to-market method of accounting under § 475.[2] Section 24.01(4) of Rev. Proc. 2019-43 refers to section 5 of Rev. Proc. 99-17 for the requirements to make a § 475(f)(1) election.

Under section 7.02 of Rev. Proc. 2015-13, unless otherwise provided in a specific change listed in Rev. Proc. 2019-43, a taxpayer making a change in method of accounting must apply § 481(a) and take into account the amount of the § 481(a) adjustment in the manner provided in section 7.03 of Rev. Proc. 2015-13. Section 24.01 of Rev. Proc. 2019-43 does not contain an exception to the rule in section 7.02 of Rev. Proc. 2015-13. Accordingly, the change in method of accounting made because of a taxpayer's § 475(f)(1) election to use the mark-to-market method of accounting is made with a § 481(a) adjustment.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin). Section 301.9100-1(b) defines the term "election" to include a request to change an accounting method.

Section 301.9100-3 sets forth rules that the Commissioner must use to determine whether the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 for an automatic extension. Section 301.9100-2 applies only to certain regulatory elections, and an election under § 475(f)(1) does not meet the requirements of § 301.9100-2 for an automatic extension. Generally, a request for relief under § 301.9100-3 is granted when the taxpayer

[2] Rev. Proc. 2019-43 is the automatic method change revenue procedure that would have applied to Taxpayer's election, had the election been timely filed.

provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

Except as provided in § 301.9100-3(b)(3), § 301.9100-3(b)(1) provides rules for determining when a taxpayer is deemed to have acted reasonably and in good faith. Section 301.9100-3(b)(1)(v) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Section 301.9100-3(b)(3) provides rules as to when a taxpayer is deemed to have not acted reasonably and in good faith. Section 301.9100-3(b)(3)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c) provides that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Section 301.9100-3(c)(2)(ii) provides that the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested requires an adjustment under § 481(a) (or would require an adjustment under § 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made).

(a) Taxpayer did not act reasonably and in good faith

Section 301.9100-3(b)(3)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

To make a timely § 475(f)(1) election for the Year 2 taxable year, Taxpayer would have had to make the election by Date 7, the unextended due date for filing Taxpayer's federal income tax return for the Year 1 taxable year. However, Taxpayer's request for a late filing of a § 475(f)(1) election was not made until Date 11, which is f months after

Taxpayer was made aware of the availability of the § 475(f)(1) election. This late filing provided Taxpayer with the benefit of over g months of hindsight to review and consider the results of Taxpayer's securities trading activities as well as the financial results of Taxpayer's core business activities, the manufacture and distribution of Products, to determine whether Taxpayer would have benefited from having made the election. If Taxpayer had made a timely § 475(f)(1) election, Taxpayer would not have had the benefit of knowing either the results of its securities transactions or the financial results of the manufacture and distribution of Products until after the election's due date. Consequently, Taxpayer would not have been in a position to act on that knowledge.

Taxpayer alleges that no specific facts have changed since Date 7, the due date for making the § 475(f)(1) election, that would make the election advantageous for Taxpayer. Taxpayer asserts that it had already experienced significant net losses from its securities trading activities by Date 7. Thus, Taxpayer claims that making the § 475(f)(1) election was advantageous as of Date 7 and remained advantageous as of the time of the filing of Taxpayer's request for relief under § 301.9100-3. Taxpayer argues that it obtains no tax advantage from making a late § 475(f)(1) election, and therefore achieves no benefit from hindsight, because a corporation, unlike an individual, is taxed on capital gains at the same rate as ordinary income. Because there is no rate differential for a corporation, Taxpayer claims it would have been beneficial for Taxpayer to have made a § 475(f)(1) election at any point in time, and consequently, hindsight is not a factor in Taxpayer's request to make a late § 475(f)(1) election for the Year 2 taxable year. Taxpayer further claims that its failure to make a timely § 475(f)(1) election for the Year 2 taxable year is not the result of the implementation of a hindsight-driven tax strategy but rather stems from Taxpayer's ignorance of the availability of a § 475(f)(1) election because Taxpayer did not receive proper advice from Tax Advisor.

The Tax Court has consistently ruled that making a valid section 475(f) election requires compliance with the procedures specified in Rev. Proc. 99-17. *GWA LLC v. Commissioner*, T.C. Memo. 2025-34, at *94 (citing, for example, *Poppe v. Commissioner*, T.C. Memo. 2015-205; *Kantor v. Commissioner*, T.C. Memo. 2008-297). However, taxpayers on occasion have requested relief under § 301.9100-3 to make late elections under § 475(f)(1). Typically, a request made by a taxpayer under § 301.9100-3 seeking relief to make a late election under § 475(f)(1) requires a showing that the taxpayer did not benefit from hindsight. Several judicial decisions address the concept of hindsight in the context of a taxpayer's request under § 301.9100-3 seeking relief to make a late election under § 475(f)(1). *See Vines v. Commissioner*, 126 T.C. 279 (2006); *Knish v. Commissioner*, T.C. Memo 2006-268; and *Acar v. United States*, 98 A.F.T.R.2d 2006-6296 (N.D.Cal.2006), *aff'd*, 545 F.3d 727 (9th Cir. 2008).

In *Vines*, the court concluded that the taxpayer did not use hindsight within the meaning of § 301.9100-3(b)(3)(iii) because the taxpayer's late election was filed less than two months after the due date, taxpayer conducted no trading activities and incurred no further losses between the time he should have filed the § 475(f) election and the date he actually filed the election, and the taxpayer was not entitled to anything

more than that to which he would have been entitled had he timely made the election. By contrast, in *Acar* the court stated that, unlike the taxpayer in *Vines*, the taxpayer in *Acar* used hindsight in filing a late election because he missed the deadline for filing an election under § 475(f)(1) by three years and only chose to file the election to convert his capital losses into ordinary losses for purposes of claiming a tax refund. Similarly, in *Knish* the court found that the taxpayers used hindsight because they attempted to make a mark-to-market election 18 months late to convert capital losses into ordinary losses, while continuing their trading activity in the meantime. The court noted that such a scenario is "a classic example of a taxpayer seeking to use hindsight." *See also Kholi v. Commissioner*, T.C. Memo 2009-287 (determining that the taxpayers used hindsight in requesting relief because they elected the mark-to-market method 12 months after the election filing due date and claimed losses for events that occurred well after the due date).

Hindsight is an issue in Taxpayer's case because, despite the lack of a preferential tax rate, a corporation nevertheless realizes other significant income tax benefits as a result of making, or not making, a § 475(f)(1) election. A taxpayer with net unrealized gains for a taxable year would be incentivized to not make the election and continue deferring taxable income that it would otherwise realize if applying the mark-to-market method of accounting under § 475. If, instead, the taxpayer had net unrealized losses for that same taxable year, the taxpayer would be incentivized to make the § 475(f)(1) election. Marking to market its securities would allow the taxpayer to accelerate when it could take the losses into account for tax purposes. Any such losses would not be disallowed as wash sales under § 1091, and the taxpayer would be able to offset its ordinary operating income with its trading losses.

Unlike the taxpayer in the *Vines* case, Taxpayer continued its securities trading activities during the period between when the election was due and when the election was filed. Taxpayer was able to determine the effect of making a § 475(f)(1) election beginning with the Year 2 taxable year, fully knowing the results of its securities trading activities and the financial results of its core business for over g months following the due date for making the election. Only with the benefit of hindsight would Taxpayer be in a position to know if its securities trading activities had generated net unrealized losses during the Year 2 taxable year. Once in possession of this knowledge, Taxpayer would then be able to determine whether making a § 475(f)(1) election for the Year 2 taxable year would have been advantageous. Despite the benefits Taxpayer would have attained by making a timely § 475(f)(1) election, Taxpayer did not provide strong factual proof showing that its decision to seek relief to make a late election did not involve hindsight. Accordingly, under § 301.9100-3(b)(3)(iii), Taxpayer is deemed to have not acted reasonably and in good faith.

(b) Granting Relief Would Prejudice the Interests of the Government

Under § 301.9100-3(c)(2)(ii), the interests of the Government are deemed to be prejudiced, except in unusual and compelling circumstances, if the accounting method

regulatory election for which relief is requested requires an adjustment under § 481(a) (or would require an adjustment under § 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made).

Taxpayer has not shown that unusual and compelling circumstances prevented Taxpayer from timely making a § 475(f)(1) election. Executive began to conduct securities trading activities on behalf of Taxpayer on Date 1, significantly before the arrival of the Pandemic in the United States. Indeed, the stay-at-home order mandated by the governor of State was not issued until Date 5, over h months after Taxpayer's securities trading activities commenced.

Furthermore, the effects of the Pandemic slowly unfolded and evolved over the passage of many months. While the Pandemic did change in certain ways how business in the United States was conducted, Taxpayer has not shown that the Pandemic prevented or impeded Taxpayer's internal tax group from communicating with Taxpayer's external tax practitioners, including Tax Advisor. Furthermore, we note that during the Pandemic millions of Americans were able to conduct business using modern telecommunication technologies. The Pandemic did not prevent Tax Advisor or Taxpayer from doing tax research or performing an internet search on the tax consequences of securities trading.

Because a § 475(f)(1) election is an accounting method regulatory election that requires a § 481(a) adjustment, the interests of the Government are deemed to be prejudiced because Taxpayer has failed to show unusual and compelling circumstances to justify granting the requested relief.

CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has not satisfied the requirements to justify granting an extension of time under § 301.9100-3 to make an election under § 475(f)(1) to use the mark-to-market method of accounting, effective for the Year 2 taxable year. Specifically, Taxpayer has failed to demonstrate that Taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Accordingly, Taxpayer's request for an extension of time to make an election under § 475(f)(1) to use the mark-to-market method of accounting beginning in the Year 2 taxable year is denied.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the transactions described above. In particular, no opinion is expressed or implied as to whether Taxpayer's securities trading activities constitute those of a trader in securities eligible to make the election under § 475(f)(1) to use the mark-to-market method of accounting.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

_____

Jason D. Kristall
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: