

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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to: Gloria Sullivan, Executive Officer  
(Large Business & International)

from: Holly Porter, Associate Chief Counsel  
(Passthroughs & Special Industries)

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subject: Clarification of Revenue Procedure 2017-47; Safe Harbor for Inadvertent Normalization Violations

This Generic Legal Advice Memorandum (GLAM) responds to your request for assistance. This GLAM may not be used or cited as precedent.

ISSUE

What is the scope of the phrase “in a manner that totally reverses the effect of the Inconsistent Practice or Procedure” in section 3.01(3) of Revenue Procedure 2017-47, 2017-38 I.R.B. 233?

CONCLUSION

The phrase “in a manner that totally reverses the effect of the Inconsistent Practice or Procedure” in Revenue Procedure 2017-47 requires only that the taxpayer change its Inconsistent Practice or Procedure to a Consistent Practice or Procedure on a going forward basis. It does not require reversal of the prior financial effects of the Inconsistent Practice or Procedure, for example through retroactive ratemaking by the Taxpayer’s Regulator.

LAW AND ANALYSIS

On September 18, 2017, the Internal Revenue Service (Service) published the Safe Harbor for Inadvertent Normalization Violations, Revenue Procedure 2017-47. This

revenue procedure provides a safe harbor concerning inadvertent or unintentional uses of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Internal Revenue Code (Code), which require the use of the Normalization Rules.<sup>1</sup>

If a taxpayer complies with the procedural requirements of Revenue Procedure 2017-47, the Service will not assert that the taxpayer's inadvertent or unintentional use of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Code constitutes a violation of the Normalization Rules.

To satisfy the safe harbor provided by Revenue Procedure 2017-47, a taxpayer that has inadvertently or unintentionally failed to follow a practice or procedure that is consistent with the Normalization Rules in one or more years must, upon recognizing its failure to comply with the Normalization Rules, change its Inconsistent Practice or Procedure<sup>2</sup> to a Consistent Practice or Procedure<sup>3</sup> at the Next Available Opportunity<sup>4</sup> in a manner that totally reverses the effect of the Inconsistent Practice or Procedure. The revenue procedure also requires that the Taxpayer's Regulator<sup>5</sup> adopt or approve the change and that the taxpayer retain contemporaneous documentation that clearly demonstrates the effects of the Inconsistent Practice or Procedure and the change to a Consistent Practice or Procedure adopted or approved by the Taxpayer's Regulator.

We are issuing this GLAM in response to concerns expressed by interested taxpayers that the phrase "in a manner that totally reverses the effect of the Inconsistent Practice or Procedure" could be read to require retroactive ratemaking in order to take advantage of the safe harbor. This GLAM clarifies that the change from the Inconsistent Practice or Procedure to a Consistent Practice or Procedure need only apply going forward and does not contemplate taking into account any differences between the Inconsistent Practice or Procedure prior to the change and the Consistent Practice or Procedure after the change such as through requiring retroactive ratemaking by the Taxpayer's regulator.

Please call Jennifer Bernardini at (202) 317-6853 if you have any further questions.

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<sup>1</sup> As defined in section 4.04 of Rev. Proc. 2017-47.

<sup>2</sup> As defined in section 4.06 of Rev. Proc. 2017-47.

<sup>3</sup> As defined in section 4.05 of Rev. Proc. 2017-47.

<sup>4</sup> As defined in section 4.07 of Rev. Proc. 2017-47.

<sup>5</sup> As defined in section 4.01 of Rev. Proc. 2017-47.