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**CCC Loan Reporting Survives Change in Automatic Accounting Authority**

-by Neil E. Harl*

The change in early 2002 allowing taxpayers reporting Commodity Credit Corporation (CCC) loans as income to switch automatically to treating CCC loans as loans was a revolutionary change that has provided greater flexibility in terms of marketing decisions for program crops. That development has allowed farm taxpayers to shift freely from treating CCC loans as income to treating CCC loans as loans which, coupled with the statutory authority to allow taxpayers to elect to treat CCC loans as income, has allowed taxpayers to switch back and forth in their reporting of Commodity Credit Corporation loans. However, some have felt that the IRS requirement to send a copy of the Form 3115 directly to the Internal Revenue Service may have served as a subtle warning that the procedure was under some degree of scrutiny.

The issuance of updated procedures in late August, 2008, to take advantage of the automatic consent procedure has allayed those concerns, at least for the moment.**

**Importance of the automatic change procedure**

The shift in IRS authority in 2002, permitting back and forth elections, which was effective for taxable years ending on or after December 31, 2001, was based on a waiver of the “scope limitations” for utilizing the automatic consent procedure. The automatic consent procedure is generally inapplicable if the taxpayer –

- Is under examination by the Internal revenue Service or has an issue before an appeals office;
- Is affected by an IRS examination or an appeal before an appeals office;
- Has made the same change in method of accounting or applied for a change in the same method of accounting within the last five years; or
- Would be required to take the entire adjustment resulting from the change in method of accounting in the year of change because it is the final year of the taxpayer’s business.

However, Rev. Proc. 2002-9 and Rev. Proc. 2008-52 both waive those scope limitations for an I.R.C. § 77 election. That makes possible the shifting back and forth from treating CCC loans as income to treating CCC loans as loans and back to electing to treat CCC loans as income and so on.

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The latest guidance, in Rev. Proc. 2008-52, adds another twist – the automatic accounting change number. That number, under Section 2.01(4) of the Appendix to Rev. Proc. 2008-52, is “1.” The designated automatic accounting change number is to be typed or printed on the application discussed below.

**Reporting to IRS**

The latest guidance, Rev. Proc. 2008-52, continues the requirement that, to take advantage of the automatic consent to treat CCC loans as loans after treating CCC loans as income, a taxpayer must file Form 3115, Application for Change in Accounting Method. Since the change has automatic consent, Form 3115 is filed with the return for the year of the change (there is no user fee).

The original and accompanying statements explaining the completed lines of Form 3115 are to be filed with a timely filed (including extensions) income tax return for the year of change with a copy to –

Internal Revenue Service

ATTN: CC:ITA – Automatic Rulings Branch

P.O. Box 7604

Ben Franklin Station

Washington, D.C. 20044

**No limits on shifting back to treating CCC loans as income**

After utilizing the procedure to shift from treating CCC loans as income back to treating CCC loans as loans, there is no restriction on a taxpayer who uses the automatic consent procedure to later elect to treat CCC loans as income. A taxpayer who has been treating CCC loans as loans may shift back at any time to treating CCC loans as income. However, a Section 77 election, once made, applies to all loans that year. Moreover, the election to treat CCC loans as income applies to all commodities for that taxpayer. Actually, the election involves reporting as income the value of the crop held as collateral for the loan up to the amount of the loan, rather than reporting the loan itself as income. As the regulations state –

If a taxpayer elects or has elected... to include in his gross income of a loan from the Commodity Credit Corporation... then –

(1) No part of the amount realized by the Commodity Credit Corporation upon the sale or other disposition of the commodity pledged for such loan shall be recognized as income to the taxpayer, unless the taxpayer receives an amount in addition to that advanced.. as the loan.

**In conclusion**

The latest IRS guidance thus preserves the procedure, first announced in early 2002, to shift from treating CCC loans as income back to treating CCC loans as loans. The statutory authority to be able to elect at any time to treat CCC loans as loans to CCC loans as income has remained unchanged.

**FOOTNOTES**

1. I.R.C. § 77.


3. Id.


10. 2002-1 C.B. 327.


12. Id.

13. Id.


15. § 6.02(7), 2008-2 C.B. 587.


17. See I.R.C. § 77.

18. I.R.C. § 77(a).


20. Treas. Reg. § 1.77-1.