Tax Accounting

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This month's column examines two revenue procedures issued by the IRS in March that address changes of accounting methods. In Revenue Procedure 2002-18,[1] the IRS has for the first time promulgated specific rules covering "involuntary" changes imposed by the IRS. Revenue Procedure 2002-19[2] makes some changes to existing procedures covering taxpayer's voluntary method changes. The new procedures and the IRS' reasoning are explained in the accompanying Announcement 2002-37.[3]

INVOLUNTARY CHANGES

Background: Code Sections 446(b) and (e)

Code Section 446(b) provides that "if the [accounting] method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income." The IRS must thus first determine that the taxpayer's present accounting method fails to clearly reflect income before imposing a change.[4] While that determination is reviewed under the deferential "abuse of discretion" standard, there must still be "an adequate basis in law for the Commissioner's conclusion."[5] A taxpayer that is currently on a proper method cannot be forced to change merely because the IRS likes another method better.[6] On the other hand, if the taxpayer's present method is improper, the IRS can select any permissible method it chooses,[7] although it is an abuse of the IRS' discretion to force the taxpayer to change from one improper method to another.[8]

Code Section 446(e) provides that, in general, "a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary." At least since the advent of the 1954 Code, there has been a general consensus that the taxpayer is not excused from this consent requirement merely because its current method of accounting is wrong.[9]

The IRS has a choice of remedies when a taxpayer attempts to change methods without permission. The IRS may choose to restore the taxpayer to its old method. The taxpayer may be put back on its old method even if that method was improper,[10] because the IRS is not exercising its authority under Code Section 446(b) but enforcing Code Section 446(e)'s requirement that the taxpayer seek consent to any change. It probably makes no difference if the statute of limitations has run on the year of the unauthorized change.[11] Alternatively, the IRS may accept the informal or irregular change, which will thereafter bind the taxpayer.[12] However, the IRS cannot thereafter object to the taxpayer's new method on the grounds that consent was not secured.[13] Of course, if the taxpayer's old method was improper, or later becomes so because of a change in law or facts, the IRS retains the option of substituting a proper one under Code Section 446(b).

Unauthorized Changes in Barred Years

One potentially contentious aspect of Revenue Procedure 2002-18 is its treatment of the consequences of unauthorized changes in barred years. As stated above, the IRS can ignore a past unauthorized change and restore the taxpayer's old method of accounting. The IRS, however, seems to be going one step further. Revenue Procedure 2002-18 states that the IRS "may require a taxpayer that has changed a method of accounting without the Commissioner's consent to change back to its former method…. The change back to the former method may be made in the taxable year the taxpayer changed without consent, or if that year is closed by the running of the period of limitations, in the earliest open year."[14] In context, the reference to a "change back" implies that a cumulative adjustment will be imposed. The National Office has explicitly taken this position in unpublished guidance. FSA 200102004[15] involved a taxpayer that had changed from an incorrect method to a correct method—and had reported the (taxpayer-favorable) cumulative adjustment in a barred year. The field service advice concluded that the taxpayer could be changed back to the old method, at least if the IRS had not been previously on notice, although it recommended against this course when no tax avoidance was involved. However, in CCA 200146056,[16] the National Office reiterated that the IRS could enforce a method change when the taxpayer changed methods without permission in a barred year, and that the absence of tax avoidance did not excuse taxpayers from seeking consent. The memorandum was clearly talking about a *change*, with a corresponding cumulative adjustment, and not merely

ignoring the taxpayer's earlier attempt to change methods.

Arguably, changing a taxpayer's method of accounting in these circumstances and imposing a cumulative adjustment is equivalent to first accepting the taxpayer's change of method for the now-barred year and then forcing the taxpayer to change *again*, which would seem to be beyond the IRS' authority under Code Section 446(e). The issue can best be illustrated by an example.

> Taxpayer A makes an unauthorized change from accrual to cash accounting in 1998. The IRS discovers the change in an audit of the taxable years 2000-02, after the statute of limitations for 1998 has run. The IRS may reject the change and compute the taxpayer's income for 2000 on an accrual basis. Alternatively, the IRS may accept the change and compute the taxpayer's income for 2000 on the cash basis. If Taxpayer A is ineligible to use the cash method, the IRS can still accept the change in 1998, treat A as having reported on the cash method for 1998 and 1999, and then invoke Code Section 446(b) to impose a change to an accrual method in 2000, with an appropriate cumulative adjustment. The question is whether, if A's use of the cash method is otherwise proper, the IRS can still enforce a change to an accrual method *in 2000* solely because A failed to seek consent for its attempted change in 1998.

The authorities allowing the IRS to restore the taxpayer's old method because of a failure to seek consent in past years do not clearly address this question. Many of them involve taxable years before cumulative adjustments became available for IRS-imposed method changes.[17] In others, cumulative adjustments were not at issue for other reasons.[18] Only one case cited in Revenue Procedure 2002-18, *Handy Andy TV and Appliances Co. v. Commissioner*,[19] involved a cumulative adjustment, and that case may be the exception that proves the rule. The taxpayer in *Handy Andy* had begun improperly accruing an estimated reserve some years prior. The Tax Court upheld the IRS' requirement that the taxpayer had to change back to its previous "proper" accrual method because no permission had been secured *and because the method to which the taxpayer had changed failed to clearly reflect income*. Code Section 446(b) thus would have authorized the IRS to impose a change to proper accrual accounting, and a corresponding cumulative adjustment, regardless of the consent requirement. *Handy Andy* thus says little about the limits of the IRS' powers under Code Section 446(e).

Procedures Governing Voluntary Method Changes

As discussed above, Code Section 446(e) requires that taxpayers wanting to change accounting methods secure the IRS' consent. The accompanying regulations require the taxpayer to agree to "the Commissioner's prescribed terms and conditions for effecting the change."[20] Since 1964, the IRS has issued successive revenue procedures, the latest being Revenue Procedure 97-27,[21] prescribing the "spread period" for the resulting cumulative adjustment and other standardized conditions.

Over time, the IRS also issued various revenue procedures granting "automatic consent" for certain common types of changes, as well as special procedures applicable for limited periods following court decisions or new legislation. Starting in 1997,[22] the IRS consolidated the outstanding guidance into a single procedure that sets forth the basic rules for changes subject to automatic consent, to be supplemented from time to time as new types of changes are included. The latest such procedure is Revenue Procedure 2002-9.[23]

The procedures covering voluntary method changes have generally permitted the cumulative adjustment imposed by Code Section 481 to be taken into account over several years. This spread period is now generally four years. A further benefit of a voluntary application for a method change is "audit protection"; that is, the IRS promises to not raise the issue for years preceding the year of the change.

Involuntary Changes and Notice 98-31

Until fairly recently, there was no public guidance explaining how "involuntary" changes imposed by the IRS were to be handled. Historically, such changes generally have been made in the earliest open year, although this choice is up to the IRS. The cumulative adjustment is imposed in full in the year of the change, subject only to a limited income averaging provision in Code Section 481(b). The courts have consistently held that taxpayers were not entitled to spread the cumulative adjustments over several taxable years as allowed under the voluntary change procedures if they failed to apply for a change in method under these procedures[24] or were ineligible to do so.[25]

In 1998, the IRS issued Notice 98-31,[26] which included a proposed revenue procedure addressing IRS-imposed accounting method changes. That procedure, with changes reflecting comments received in the interim, has now been issued as Revenue Procedure 2002-18.[27] The procedure is generally effective for examiner's reports issued and agreements executed on or after July 1, 2002, but the parties may agree to apply the new rules earlier.[28]

Scope of the Procedure

A change in accounting method is not confined to a change in the taxpayer's "overall" method, such as cash or accrual, and includes a change in treatment of specific types of income or outlays. The line between a mere "error" in timing and a change of accounting method is blurry. However,

an “accounting method” generally refers to a “pattern of consistent treatment” of a recurring item of income or deduction according to some articulable principle.[29] In practice, many routine disagreements about when particular income or deductions accrued or whether outlays are subject to capitalization are resolved without struggling to determine whether there has been a change in method of accounting, and if so, exactly how to define the affected “item.”

Commentators had complained that Notice 98-31’s reference to “timing issues” and generally expansive language in describing method changes might lead revenue agents and appeals officers to believe that they had to apply the change of method rules to all timing adjustments. Reflecting these concerns, the new procedure is drafted to apply to “accounting method issues” rather than timing issues. An accounting method issue is present “only if changing the taxpayer’s treatment… could constitute a change in method of accounting” under the Regulations.[30] The auditing agent must therefore first determine whether there is a potential change in method under conventional legal principles before the procedure applies.

Specific Notice of Method Changes

Revenue Procedure 2002-18 also requires that the IRS specifically notify the taxpayer in writing that a method change is being asserted or imposed. Absent such notice, the adjustment will not be treated as changing the taxpayer’s existing method of accounting or establishing a new method.[31] Whether a method change has occurred is important because if it has, the taxpayer must follow the method thereafter, unless and until permission is secured for (or the IRS imposes) a further change. On the other hand, the IRS cannot thereafter seek to impose another change unless it determines the *new* method fails to clearly reflect income.

The new notice requirement should minimize disputes about whether an adjustment that the IRS imposed or accepted in a past audit caused a change in method. In settling complex audits, the IRS has frequently been willing to agree that no change of method has occurred except as expressly provided, but the taxpayer has had to specifically request that this language be included in the settlement documents. The new procedure should make this practice unnecessary.

Changes Imposed on Examination

Once an accounting method issue has been identified, Revenue Procedure 2002-18 provides rules for resolving the issue (i) at the Examination level and (ii) by Appeals officers and counsel for the government in litigated cases.

Examination may resolve an accounting method issue only by proposing a change in method of accounting.[32] Ordinarily, the change is proposed for the earliest year under examination. However, the agent may defer the year of change if

1. The taxpayer’s books and records are inadequate to properly compute a cumulative adjustment under Code Section 481,
2. The issue does not have a “material effect” for earlier years, or
3. Years subsequent to the year of change are barred by the statute of limitations.

Examination also has limited authority to propose that the change be made on a “cut-off” basis (that is, that the new method be applied only to income items and outlays beginning with the year of change) if the taxpayer’s books and records are inadequate to compute a proper cumulative adjustment.

The options for reaching a resolution at the Examination stage are therefore limited, although the auditing agent’s power to determine whether a particular issue qualifies as an “accounting method issue” and the limited flexibility allowed in determining the year of change may leave some room for reaching an agreed adjustment in the revenue agent’s report.

Appeals and Litigated Cases

Unlike Examination, IRS Appeals has general authority to resolve contested issues on the basis of hazards of litigation in the interests of sound tax administration, as of course has government counsel in cases in litigation. Revenue Procedure 2002-18 describes specific methods for resolving accounting method issues at Appeals or in litigation. However, Announcement 2002-37 makes it clear that these guidelines do not limit Appeals’ or counsel’s general authority to negotiate settlements.

The procedure explains three basic ways for resolving accounting method issues. One of the options, obviously, is a change in method of accounting. The other two options, which the procedure calls an “alternative-timing resolution” and “time-value-of-money resolution,” do not involve a change in accounting method.

Changes in Method

Revenue Procedure 2002-18 requires that if the taxpayer’s method of accounting is changed, the new method must be selected “by properly applying the law to the facts.” In other words, an accounting method issue will not be compromised by the taxpayer’s adopting some custom-designed method of accounting that does not qualify as proper in its own right. This restriction is sensible. The IRS might otherwise later seek to impose a change, or the taxpayer demand permission to change, on the grounds that the compromise method failed to clearly reflect income. The Appeals officer or government counsel may, however, agree to defer the year of change within certain limitations, or to reduce or defer the cumulative adjustment.

An IRS-imposed change in method will normally be formalized in a closing agreement. The revenue procedure includes a model closing agreement in an appendix. If the IRS' resolution of the method change issue is not reflected in a closing agreement, because the taxpayer does not agree with the IRS' adjustments or for some other reason, then the taxpayer can contest the method change like any other issue in litigating the tax liability for the year of the change,[33] and the change will not become final until the refund statute runs for that year.[34]

Once a change in method has taken place, the taxpayer is bound to follow the new method in later years unless there is a later change in method. The revenue procedure states that taxpayers "should" file amended returns for post-change years for which returns have already been filed (hereafter "intervening years"). If amended returns are not filed, the taxpayer is considered to be using the new method for the intervening years (unless there has been another change in method) and the IRS can impose appropriate adjustments.

Revenue Procedure 2002-18 reaffirms the well-established principle that a change of method generally will not forestall the IRS from imposing a later change in method if the facts warrant.[35] However, if a closing agreement has been signed, the revenue procedure provides limited audit protection similar to that available under the rules governing voluntary changes.[36] The IRS will generally not impose a further change during the intervening years unless there is a change in facts or law.[37] The proposed revenue procedure accompanying Notice 98-31 had promised that legal developments (such as new legislation, regulations, or court opinions) would generally not be applied retroactively for this purpose,[38] but this language was omitted without explanation when the final procedure was issued.

Alternative Resolutions of Accounting Method Issues

Revenue Procedure 2002-18 outlines two specific ways in which Appeals or government counsel can resolve an accounting method issue on what the IRS refers to as a "non-accounting-method-change basis." These treatments are not exclusive, and Appeals or counsel may also resolve outstanding issues by "any other means deemed appropriate under the circumstances."[39] Except as expressly provided, these forms of settlement will not prevent the IRS from imposing a change in method in a later year.

Under an alternative-timing resolution, the parties simply enter into a closing agreement that prescribes when the disputed items shall be taken into account, without reference to the method of accounting rules. If a change in method is later imposed, amounts covered by the closing agreement will be excluded in computing the cumulative adjustment.

Under a time-value-of-money resolution, the parties compute a "time-value-of-money benefit" by computing interest on hypothetical over- and underpayments that would result from the IRS' proposed method. That benefit is then multiplied by a hazards-of-litigation factor to obtain a "specified amount" payable to the IRS. The specified amount is not itself deductible, but taxpayers entitled to deduct deficiency interest can use after-tax interest rates in the computation, providing a roughly equivalent benefit. The specified amount is manually assessed and treated as a "miscellaneous amount" collected.

If a change of methods is later imposed, an appropriate portion of the specified amount will be treated as a prepayment of interest on account of the resulting underpayment. Announcement 2002-37 conceded that the potential complexity of this computation might discourage the parties from applying the TVM method when a subsequent method change was likely.[40]

Despite such unavoidable shortcomings, the alternative approaches in Revenue Procedure 2002-18 are helpful. They will probably encourage Appeals resolutions that do not involve formal changes in accounting methods, clarify the basic operating rules, and provide both parties with a model to work from. The availability of a tax-like miscellaneous payment adds further flexibility in crafting settlements. As the procedure makes clear, variants on the prescribed methods remain possible. One hybrid approach that the author has seen applied in several cases involves discounting a stream of projected *adjustments* back to a single adjustment that is imposed in one of the audit years, coupled with a closing agreement prohibiting later adjustments for the years covered by the computation.

VOLUNTARY CHANGES

Revenue Procedure 2002-19 makes certain modifications to both Revenue Procedure 97-27, the general procedure governing applications for method changes, and Revenue Procedure 2002-9, the automatic consent procedure. The most significant changes involve

1. How cumulative adjustments that reduce taxable income (negative adjustments) are taken into account; and
2. Applications for method changes involving issues that have already been raised by the IRS.

Negative Cumulative Adjustments

The earliest revenue procedures concerning voluntary changes required negative cumulative adjustments, like positive ones, to be spread over several years, which prompted some litigation. The consensus is that it would be an abuse of discretion for the IRS to refuse a prospective change from an improper method, even though the tax-

payer can only raise the issue if the requested consent has been denied.[41] Taxpayers—and courts—reasoned that it was likewise an abuse of discretion for the IRS to impose "unreasonable" conditions upon such a change. Two district courts held that the IRS could not condition its consent upon taxpayers' deferring a negative adjustment that Code Section 481 provides shall be taken in the year of change.[42]

In 1984, the IRS began permitting negative adjustments from changing "clearly improper" methods to be reported in the year of change,[43] largely forestalling further litigation. The IRS has essentially unlimited discretion to refuse permission to change from a proper method.[44] Theoretically, a dispute might have arisen if a taxpayer argued it was entitled to an immediate deduction because a method the IRS refused to classify as clearly improper nonetheless failed to clearly reflect income. However, this proposition would have been hard to establish, and taxpayers seeking to challenge the IRS' refusal to consent to a change face procedural difficulties as well.[45]

In 1997, the IRS generally abandoned different treatment for clearly improper methods and adopted a four-year spread period for most cumulative adjustments, making potential disputes more likely. However, Revenue Procedure 2002-19 now allows negative adjustments under both the "regular" and automatic consent procedures to be taken in full in the year of the change. This new policy should largely eliminate further litigation concerning spread periods, except perhaps in the rare case where the taxpayer wants to take a *positive* adjustment in full in the year of the change.

Issues Raised by the IRS

The other major change made by Revenue Procedure 2002-19 concerns method changes involving issues already raised by the IRS. Previously, a taxpayer could not file an application that involved an issue that was either

1. "Under consideration" or placed in suspense in an ongoing examination, unless the IRS District Director granted permission; or
2. Under consideration in a pending case before IRS Appeals or a federal court.

Revenue Procedure 2002-19 modifies the existing procedures to provide that taxpayers may apply for and be granted permission to make such changes, but will not be granted audit protection for prior years.

Taxpayers that file applications to change methods while proceedings are pending generally should file protective refund claims. For example, if a taxpayer under audit for its taxable years 1998 through 2000 applies to change methods in 2002, the resulting cumulative adjustment will ordinarily be reportable in 2002 through 2005. If the earlier proceeding is resolved by imposing a change of methods in one of the earlier years, or in some other fashion that affects calculation of the cumulative adjustment, the taxpayer may be entitled to refunds.

LOOSE ENDS

Notice 98-31 listed various possible guidance projects relating to accounting method issues raised on audit. Announcement 2002-37 provided a progress report and specifically requested comments on

1. Delegating limited settlement authority to the IRS Examination function to resolve accounting method issues to reduce the flow of such issues to Appeals; and
2. The possible extension of the Accelerated Issue Resolution (AIR) program,[46] which is currently limited to taxpayers in the Coordinated Examination Program, so as to allow all taxpayers a means to negotiate a single comprehensive settlement covering all returns filed to date.

Such initiatives may have considerable practical impact on how accounting method issues are resolved under the new procedures.

1. 2002-13 I.R.B. 678.

2. 2002-13 I.R.B. 696.

3. 2002-13 I.R.B. 703.

4. *See, e.g.,* Asphalt Products Co. v. Commissioner, 796 F.2d 843, 847-48 (6th Cir. 1986); Van Pickerill & Sons, Inc. v. United States, 445 F.2d 918, 921 (7th Cir. 1971).

5. *See* RCA Corp. v. United States, 664 F.2d 881 (2d Cir. 1981), *cert. denied*, 457 U.S. 1133 (1982).

6. *See, e.g.,* Capitol Federal Savings & Loan Ass'n v. Commissioner, 96 T.C. 204, 210 (1991) (citing cases); Gen. Couns. Mem. 35742 (March 22, 1974).

7. *E.g.,* All-Steel Equipment, Inc. v. Commissioner, 54 T.C. 1749, 1761 (1970), *aff'd on this issue, rev'd and rem'd on another*, 467 F.2d 1184 (7th Cir. 1972); Photo-Sonics, Inc. v. Commissioner, 42 T.C. 926, 933-34 (1964), *aff'd*, 357 F.2d 656 (9th Cir. 1966); *see also, e.g.,* Mulholland v. United States, 28 Fed. Cl. 320, 335-36 (1993), *aff'd without published opinion*, 22 F.3d 1105 (Fed. Cir. 1994) (*memorandum opinion*, 73 A.F.T.R.2d 94-1693).

8. *E.g.,* Harden v. Commissioner, 223 F.2d 418, 421 (10th Cir. 1955); *see also, e.g.,* Bay State Gas Co. v. Commissioner, 689 F.2d 1, 3 n.6 (1st Cir. 1982); Loftin & Woodard v. United States, 577 F.2d 1206, 1229 (5th Cir. 1978); Prabel v. Commissioner, 91 T.C. 1101, 1112 (1988), *aff'd on another issue*, 882 F.2d 820 (3d Cir. 1989).

9. *E.g.,* Reg. § 1.446-1(e)(2)(i); Witte v. Commissioner, 513 F.2d 391 (D.C. Cir. 1975); American Can Co. v. Commissioner, 317 F.2d 604 (2d Cir. 1963); Commissioner v. O. Liquidating Corp., 292 F.2d 225 (3d Cir. 1961); Diebold, Inc. v. United States, 16 Cl. Ct. 193, 201, *aff'd*, 891 F.2d 1579 (Fed. Cir. 1989), *cert. denied*, 498 U.S. 823 (1990) (collecting cases); First National Bank of Gainesville v. Commissioner, 88 T.C. 1069, 1085 (1987) (same); *see also, e.g.,* United States v. Kleifgen, 557 F.2d 1293, 1297 n.9 (9th Cir. 1977).

10. *See, e.g.,* American Can Co. v. Commissioner, 317 F.2d 604, 606 (2d Cir. 1963), *cert. denied*, 375 U.S. 993 (1964); Commissioner v. O. Liquidating Corp., 292 F.2d 225 (3d Cir.), *cert. denied*, 368 U.S. 898 (1961).

11. *See, e.g.,* Ed Smithback Plumbing v. United States, 76-1 U.S.T.C. ¶ 9139 at 83,143-44 (Ct. Cl. Tr. Div. 1975), *adopted in unpublished opinion.*, 538 F.2d 347 (Ct. Cl. 1976) (memorandum opinion at 76-1 U.S.T.C. ¶ 9373); *cf.* Textile Apron Co. v. Commissioner, 21 T.C. 147 (1953) (failure to properly elect LIFO); Daktronics, Inc. v. Commissioner, 61 T.C.M. (CCH) 1896 (1991) (unauthorized § 174 election).

12. *E.g.,* Fowler Bros. & Cox, Inc. v. Commissioner, 138 F.2d 774, 775-76 (6th Cir. 1943); Barber v. Commissioner, 64 T.C. 314 (1975); SoRelle v. Commissioner, 22 T.C. 459, 481-82 (1954); *see also* Rev. Rul. 90-38, 1990-1 C.B. 57, 58.

13. *See, e.g.,* S. Rossin & Sons v. Commissioner, 113 F.2d 652 (2d Cir. 1940); Tampa Tribune Publishing Co. v. Commissioner, 57-1 U.S.T.C. ¶ 9421 (S.D. Fl. 1957).

14. Rev. Proc. 2002-18, § 2.06, 2002-13 I.R.B. at 682.

15. Aug. 14, 2000.

16. Aug. 28, 2001.

17. *E.g.,* American Can, O. Liquidating, Textile Apron.

18. *E.g.,* Smithback Plumbing (method change issue involved a related party, not the taxpayer); Daktronics (§ 174 change evidently made under "cutoff" method).

19. 47 T.C.M. 478 (1983). The other cases cited were O. Liquidating, Daktronics, and Wright Contracting Co. v. Commissioner, 316 F.2d 249 (5th Cir.), *cert. denied*, 375 U.S. 879 (1963) (where the attempted change was for the years at issue). Rev. Proc. 2002-18, § 2.06.

20 Reg. § 1.446-1(e)(3)(i).

21. 1997-1 C.B. 680.

22. *See* Revenue Procedure 97-37, 1997-2 C.B. 455.

23. 2002-3 I.R.B. 327.

24. *E.g.,* Fred H. McGrath & Son, Inc. v. United States, 549 F. Supp. 491, 494 (S.D.N.Y. 1982); Mulholland v. United States, 28 Fed. Cl. 320, 340-45 (1993), *aff'd without published opinion*, 22 F.3d 1105 (Fed. Cir. 1994) (*memorandum opinion at* 73 A.F.T.R.2d 94-1693); Gustafson v. Commissioner, 55 T.C.M. (CCH) 250, 252 (1988).

25. *E.g.,* Capitol Federal Savings & Loan Ass'n v. Commissioner, 96 T.C. 204, 225-26 (1991).

26. 1998-1 C.B. 1165.

27. 2002-13 I.R.B. 678.

28. Rev. Proc. 2002-18, § 11, 2002-13 I.R.B. at 691.

29. *See generally* Reg. § 1.446-1(e)(2)(ii)-(iii).

30. Rev. Proc. 2002-18, § 3.02, 2002-13 I.R.B. at 682.

31. Rev. Proc. 2002-18, §§ 7, 9, 2002-13 I.R.B. at 685, 688.

32. Rev. Proc. 2002-18, § 5.02, 2002-13 I.R.B. at 683.

33. *But cf.* Ihnen v. United States, 272 F.3d 577 (8th Cir. 2001); Stair v. United States, 516 F.2d 560 (2d Cir. 1975) (Appeals settlement may have preclusive effect if statute of limitations has run on the government).

34. Rev. Proc. 2002-18, § 7.02(1), 2002-13 I.R.B. at 685.

35. Rev. Proc. 2002-18, § 7.04(2), 2002-13 I.R.B. at 685.

36. Rev. Proc. 97-27, § 10, 1997-1 C.B. at 690.

37. Rev. Proc. 2002-18, § 7.04(3), 2002-13 I.R.B. at 685.

38. Notice 98-31, Prop. Rev. Proc. § 7.04(3)(b) (last sentence), 1998-1 C.B. at 1172.

39. Rev. Proc. 2002-18, § 6.02, 2002-13 I.R.B. at 683.

40. *See* Announcement 2002-37, 2002-13 I.R.B. at 703.

41. *See* Diebold, Inc. v. United States, 16 Cl. Ct. 193, 211-12, *aff'd*, 891 F.2d 1579 (Fed. Cir. 1989), *cert. denied*, 498 U.S. 823 (1990); Irvine v. United States, 212 F. Supp. 937, 939 (D. Wyo. 1963); Wright Contracting Co. v. Commissioner, 36 T.C. 620, 636 (1961), *aff'd*, 316 F.2d 249 (5th Cir. 1963), *cert. denied*, 375 U.S. 879 (1964); *see also* similar language in SoRelle v. Commissioner, 22 T.C. 459, 468-69 (1954), although the taxpayer in SoRelle had not applied for permission and the court's holding was probably really that the taxpayer's "correction" did not amount to a change in method.

42. Security Benefit Life Insurance Co. v. United States, 517 F. Supp. 740 (D. Kan. 1981), *aff'd on other issues*, 726 F.2d 1491 (10th Cir. 1984); National Bank of Fort Benning v. United States, 79-2 U.S.T.C. ¶ 9627 (M.D. Ga. 1979).

43. Rev. Proc. 92-20 § 5.03(b), 6.03(b)(ii), 1992-1 C.B. at 692, 694; Rev. Proc. 84-74, § 5.06(c), 1984-2 C.B. 736, 742.

44. *See, e.g.,* United States v. Catto, 384 U.S. 102, 112 & n.20 (1966) (approving IRS' practice of refusing to allow certain changes from accrual to cash method); Gen. Couns. Mem. 38852 (May 14, 1982), *revoked*, Gen. Couns. Mem. 38912 (Oct. 20, 1982).

45. *See generally, e.g.,* Capitol Federal Savings & Loan Ass'n v. Commissioner, 96 T.C. 204, 211-12 (1991); Skidmore, Owings & Merrill v. United States, 85-2 U.S.T.C. ¶ 9780 (N.D. Ill. 1985).

46. *See* Rev. Proc. 94-67, 1994-2 C.B. 800.

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