

with the provisions of the Act and the regulations thereunder.

(c) *Definitions.* For purposes of the Act and §§ 1.9002-1 to 1.9002-8, inclusive:

(1) *The Act.* The term *the Act* means the Dealer Reserve Income Adjustment Act of 1960 (74 Stat. 124).

(2) *Dealer reserve income.* The term *dealer reserve income* means:

(i) That part of the consideration derived by any person from the sale or other disposition of customers' sales contracts, notes, and other evidences of indebtedness (or derived from customers' finance charges connected with such sales or other dispositions) which is:

(a) Attributable to the sale by such person to such customers, in the ordinary course of his trade or business, of real property or tangible personal property, and

(b) Held in a reserve account, by the financial institution to which such person disposed of such evidences of indebtedness, for the purpose of securing obligations of such person or of such customers, or both; and

(ii) That part of the consideration:

(a) Derived by any person from a sale described in subdivision (i)(a) of this subparagraph in respect of which part or all of the purchase price of the property sold is provided by a financial institution to or for the customer to whom such property is sold, or

(b) Derived by such person from finance charges connected with the financing of such sale, which is held in a reserve account by such financial institution for the purpose of securing obligations of such person or of such customer, or both. Thus, the term includes amounts held in a reserve account by a financial institution in transactions in which the customer becomes obligated to the institution as well as such amounts so held by a financial institution in transactions in which the taxpayer is the obligee on the contract, note, or other evidence of indebtedness. For purposes of the definition of the term "dealer reserve income" it is immaterial whether or not the taxpayer guarantees the customer's obligation in excess of the reserve retained by the financial institution. The term does not include the consideration derived from transactions relating to the sale

of intangible property such as stocks, bonds, copyrights, patents, etc. Further, the term does not include consideration derived by the taxpayer from transactions relating to the sale of property by a person not the taxpayer or to casual sales of property not in the ordinary course of the taxpayer's trade or business.

(3) *Financial institution.* The term *financial institution* means any person regularly engaged in the business of acquiring evidences of indebtedness of the kind described in section 5(a)(1) of the Act, or of financing sales of the kind described in section 5(a)(2) of the Act, or both. It thus includes banking institutions, finance companies, building and loan associations, and other similar type organizations, as well as an individual or partnership regularly engaged in the described business.

(4) *Taxpayer.* The term *taxpayer* means any person to whom the Act applies.

(5) *Other terms.* All other terms which are not specifically defined shall have the same meaning as when used in the Code except where otherwise distinctly expressed or manifestly intended.

[T.D. 6490, 25 FR 8371, Sept. 1, 1960]

§ 1.9002-2 Election to have the provisions of section 481 of the Internal Revenue Code of 1954 apply.

(a) *In general.* Section 3(a) of the Act provides that if the income tax treatment of dealer reserve income by the taxpayer is changed (whether or not such change is initiated by the taxpayer) to a proper method under the accrual method of accounting, then the taxpayer may elect to have such change treated as a change in method of accounting not initiated by the taxpayer to which the provisions of section 481 of the Code apply. This election may be made only when the alternative election under section 4(a) of the Act has not been exercised.

(b) *Year of change.* Where an election has been made under section 3(a) of the Act to have section 481 of the Code apply, then for purposes of applying section 481 of the Code the year of change shall be determined in accordance with the provisions of section 3(b) of the Act. Section 3(b) provides that the year of change is the earlier of (1)

the first taxable year ending after June 22, 1959, or (2) the earliest taxable year for which, on or before June 22, 1959,

(i) There was issued a notice of deficiency or written notice of a proposed deficiency attributable to the erroneous treatment of dealer reserve income, or

(ii) The taxpayer filed a claim for refund or credit with respect to the treatment of such income,

and in respect of which the assessment of any deficiency, or the refund or credit of any overpayment, was not prevented on June 21, 1959, by the operation of any law or rule of law. The written notice of proposed deficiency includes a 15- or 30-day letter issued under established procedure or other similar written notification.

(c) *Application to pre-1954 Code years.* If the earliest year described in paragraph (b) of this section is a year subject to the Internal Revenue Code of 1939 in respect of which assessment of any deficiency or refund or credit of any overpayment was not prevented on June 21, 1959, by the operation of any law or rule of law, section 481 of the Internal Revenue Code of 1954 shall be treated as applying in the same manner it would have applied had it been enacted as part of the Internal Revenue Code of 1939.

(d) *Examples.* The operation of this section in determining the year of change may be illustrated by the following examples:

Example (1). D, a taxpayer on the calendar year basis who employs the accrual method of accounting, voluntarily changed to the proper method of accounting for dealer reserve income for the taxable year 1959. A statutory notice of deficiency, however, was issued prior to June 23, 1959, relating to the erroneous treatment of such income for the taxable year 1956, which was the earliest taxable year in respect of which assessment of a deficiency or credit or refund of an overpayment was not prevented on June 21, 1959. Prior to September 1, 1960, D properly exercises his election under section 3 of the Act to have the change in the treatment of dealer reserve income treated as a change in method of accounting not initiated by the taxpayer to which section 481 of the Code applies. Under these facts, 1956 is the year of the change for purposes of applying section 481. Accordingly, the net amount of any adjustment found necessary as a result of the

change in the treatment of dealer reserve income which is attributable to taxable years subject to the 1954 Code shall be taken into account for the year of change in accordance with section 481. The net amount of the adjustments attributable to pre-1954 Code years is to be disregarded. The income of each taxable year succeeding the year of change in respect of which the assessment of any deficiency or refund or credit of any overpayment is not prevented will be recomputed under the proper method of accounting initiated by the change.

Example (2). Assume the same facts as set forth in example (1), except that no notice of a proposed deficiency of any type has been issued, and assume further that no claim for refund has been filed. Since there was no earlier year open on June 21, 1959, for which the taxpayer either was notified of a proposed deficiency attributable to the erroneous treatment of dealer reserve income or for which he had filed a claim for refund or credit with respect to the treatment of such income, the year of change is 1959, the first taxable year ending after June 22, 1959. Accordingly, the net amount of any adjustment found necessary as a result of the change in the treatment of dealer reserve income which is attributable to taxable years subject to the 1954 Code shall be taken into account for the year of the change in accordance with section 481. The net amount of the adjustments attributable to pre-1954 Code years is to be disregarded.

Example (3). Assume the same facts as set forth in example (1), except that a refund claim specifying adjustments relative to dealer reserve income was timely filed for the taxable year 1951, which was the earliest taxable year for which a refund or credit of an overpayment or assessment of a deficiency was not prevented on June 21, 1959. Under this factual situation, the year of change for purposes of applying section 481 would be 1951. Section 481 would be applied to 1951 and be given effect for that year in the same manner as it would have applied had it been enacted as a part of the 1939 Code and as if the change to the proper method of accounting had not been initiated by the taxpayer. Any adjustment with regard to dealer reserve income attributable to pre-1951 years is disregarded. The income of each taxable year succeeding the year of change in respect of which the assessment of any deficiency or refund or credit of any overpayment is not prevented will be recomputed under the proper method of accounting initiated by the change.

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