

Section 404.—Deduction for Contributions of an Employer to an Employees' Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan

Deductibility; timing. This ruling modifies Rev. Rul. 2002-46 to provide that the scope limitations imposed by Rev. Proc. 2002-9 (providing for automatic consent to change a method of accounting) are waived for taxpayers who wish to change their method of accounting to comply with the holding of Rev. Rul. 2002-46. This ap-

plies only for the taxpayers' first taxable year ending on or after October 16, 2002, effective on that date.

Rev. Rul. 2002-73

Rev. Rul. 2002-46, 2002-29 I.R.B. 117, holds that grace period contributions to a qualified cash or deferred arrangement within the meaning of § 401(k) of the Internal Revenue Code or to a defined contribution plan as matching contributions within the meaning of § 401(m) are not deductible by the employer for a taxable year

if the contributions are attributable to compensation earned by plan participants after the end of that taxable year.

Rev. Rul. 2002-46 modifies Rev. Proc. 2002-9, 2002-3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432) to add to the Appendix of Rev. Proc. 2002-9 a change in method of accounting to conform to the holding of Rev. Rul. 2002-46. Thus, taxpayers wishing to change to a method consistent with Rev. Rul. 2002-46 must apply for automatic approval under Rev. Proc. 2002-9. Rev. Rul. 2002-46 provides that the scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a change to a method consistent with Rev. Rul. 2002-46, unless the taxpayer's method of accounting is an issue under consideration for a taxable year under examination within the meaning of section 3.09(1) of Rev. Proc. 2002-9 when the Form 3115, *Application to Change a Method of Accounting*, is filed with the national office.

Upon further consideration, the Internal Revenue Service has determined that it is appropriate to waive the scope limitations of section 4.02 for this change only for a limited period of time. Accordingly, the APPLICATION section of Rev. Rul. 2002-46 is modified to read as follows:

APPLICATION

A change in a taxpayer's treatment of contributions to a method consistent with this revenue ruling is a change in method of accounting to which §§ 446 and 481 apply. A taxpayer that wants to change its treatment of contributions to a method consistent with this revenue ruling must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9, 2002-3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432), with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a tax-

payer that wants to make the change for its first taxable year ending on or after October 16, 2002, provided the taxpayer's method of accounting for contributions addressed in this revenue ruling is not an issue under consideration for taxable years under examination, within the meaning of section 3.09(1) of Rev. Proc. 2002-9, at the time the Form 3115 is filed with the national office;

(2) To assist the Service in processing changes in method of accounting under this revenue ruling, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue ruling include the statement: "Automatic Change Filed Under Rev. Rul. 2002-46." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue ruling."

EFFECTIVE DATE

This modification is effective October 16, 2002.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2002-46 is modified. Rev. Proc. 2002-9 is modified and amplified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Grant D. Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Anderson at (202) 622-4970 (not a toll-free call). For information regarding any other aspect of Rev. Rul. 2002-46, contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday.