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Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125949–10]

RIN 1545–BJ64

Retail Inventory Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the retail inventory method of accounting. The regulations restate and clarify the computation of ending inventory values under the retail inventory method and provide a special rule for certain taxpayers that receive margin protection payments and similar vendor allowances. The regulations affect taxpayers that are retailers and elect to use a retail inventory method.

DATES: Written or electronically generated comments and requests for a public hearing must be received by January 5, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125949–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–125949–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–125949–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natasha M. Mulleneaux, (202) 622–3967; concerning submission of comments and requests for a public hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the retail inventory method under § 1.471–8 of the Income Tax Regulations.

Section 471 provides that a taxpayer's method of accounting for inventories must clearly reflect income. Section 1.471–2(c) provides that the bases of inventory valuation most commonly used and meeting the requirements of section 471 are (1) cost and (2) cost or market, whichever is lower (LCM). Section 1.471–8 allows retailers to approximate cost or LCM by using the retail inventory method. A last-in, first out (LIFO) taxpayer that elects to use the retail inventory method must approximate cost.

Under the retail inventory method, the retail selling price of ending inventory is converted to approximate cost or approximate LCM using a cost-to-retail ratio, or cost complement. The numerator of the cost complement is the value of beginning inventory plus the cost of purchases during the taxable year, and the denominator is the retail selling prices of beginning inventories plus the initial retail selling prices of purchases. The cost complement is then multiplied by the retail selling price of ending inventory (multiplicand) to determine the ending inventory value.

Section 1.471–3 provides that, for inventory valuation purposes, the cost of purchases during the year generally includes invoice price less trade or other discounts. A discount may be based on a retailer's sales volume (sales-based allowance) or on the quantity of merchandise a retailer purchases (volume-based allowance), or may relate to a retailer's reduction in retail selling price (markdown allowance or margin protection payment). A vendor may provide a retailer with a markdown allowance or margin protection payment when the retailer temporarily or permanently reduces the retail selling price of its inventory to sell it. A markdown allowance or margin protection payment differs from other types of discounts because it is intended to maintain the retailer's profit margin and therefore is directly related to the inventory selling price.

Under proposed § 1.471–3(e) (75 FR 78944), the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise (a sales-based vendor allowance) is a reduction in the cost of the merchandise sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year.

Explanation of Provisions

1. Overview

The proposed regulations restructure and restate the regulations under § 1.471–8 in plain language. The proposed regulations also add rules addressing the treatment of sales-based vendor allowances and of vendor markdown allowances and margin protection payments in the retail inventory method computation.

2. Sales-Based Vendor Allowances

The proposed regulations clarify the interaction of proposed § 1.471–3(e) with the retail inventory method by excluding from the numerator of the cost complement formula the amount of a sales-based vendor allowance.

3. Computation of Cost Complement Under the Retail LCM Method

The retail inventory method determines an ending inventory value by maintaining proportionality between costs and selling prices. Under the retail LCM method, a reduction in retail selling price reduces the value of ending inventory in the same ratio as the cost complement.

If a taxpayer earns an allowance, discount, or price rebate, the inventory cost in the numerator of the cost complement declines, resulting in a reduction of ending inventory value computed under the retail inventory method. If the allowance, discount, or price rebate is related to a permanent markdown of the retail selling price (as in the case of a markdown allowance or margin protection payment), ending inventory value is further reduced as a result of the decrease in ending retail selling prices (the multiplicand in the formula). This additional reduction of ending inventory value caused by reducing both the numerator of the cost complement and the multiplicand (1) Generally results in a lower ending inventory value for a retail LCM method taxpayer than for a similarly situated first-in, first-out (FIFO) taxpayer that values inventory at LCM, and (2) does not clearly reflect income.

To address this distortion, the proposed regulations provide that a retail LCM method taxpayer may not reduce the numerator of the cost complement for an allowance, discount, or price rebate that is related to or intended to compensate for a permanent markdown of retail selling prices. Thus, in the case of markdown allowances and margin protection payments, the value of ending inventory as computed under the retail LCM method is reduced solely as a result of the reduction in retail selling price, avoiding an unwarranted additional reduction in inventory value for a single markdown allowance and more reasonably approximating LCM.

As an alternative to this proposed modification, the retail inventory method could achieve the same result by permitting taxpayers to reduce the numerator of the cost complement for all non-sales based allowances, discounts, or price rebates, including markdown allowances, but requiring a reduction of the denominator of the cost complement for all permanent markdowns related to markdown allowances. Comments are specifically requested on whether the final regulations should provide this or other alternative retail LCM methods.

4. Temporary Price Adjustments

The proposed regulations clarify that under the retail inventory method taxpayers do not adjust the cost complement or ending retail selling prices for temporary markdowns and markups.

Effective/Applicability Date

These regulations are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS. Comments may be submitted electronically or via a signed original with eight (8) copies. Comments are requested on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.471–8 is revised to read as follows:

§ 1.471–8 Inventories of retail merchants.

(a) *In general.* A taxpayer that is a retail merchant may use the retail inventory method of accounting described in this section. The retail inventory method uses a formula to convert the retail selling price of ending inventory to an approximation of cost (retail cost method) or an approximation of lower of cost or market (retail LCM method). A taxpayer may use the retail inventory method instead of valuing inventory at cost under § 1.471–3 or lower of cost or market under § 1.471–4.

(b) *Computation*—(1) *In general.* A taxpayer computes the value of ending inventory under the retail inventory method by multiplying a cost complement by the retail selling prices of the goods on hand at the end of the taxable year.

(2) *Cost complement*—(i) *In general.* The cost complement is a ratio computed as follows—

(A) The numerator is the value of beginning inventory plus the cost of goods purchased during the taxable year; and

(B) The denominator is the retail selling prices of beginning inventory plus the retail selling prices of goods purchased during the year (that is, the bona fide retail selling prices of the items at the time acquired), adjusted for all permanent markups and markdowns, including markup and markdown cancellations and corrections. The denominator is not adjusted for temporary markups or markdowns.

(ii) *Sales-based vendor allowances.* A taxpayer may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise.

(iii) *Special rules for cost complement for retail LCM method*—(A) *Margin protection payments and similar allowances.* A taxpayer using the retail inventory method to approximate LCM may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is related to or intended to compensate for a permanent reduction in the taxpayer's retail selling price of inventory (for example, a margin protection payment or markdown allowance).

(B) *Exclusion of markdowns in denominator.* A taxpayer using the retail inventory method to approximate LCM excludes markdowns (and markdown cancellations or corrections) from the denominator of the cost complement. Any markups must be reduced by the markdowns made to cancel or correct them.

(3) *Ending inventory retail selling prices.* A taxpayer must include all permanent markups and markdowns but may not include temporary markups or markdowns in determining the retail selling prices of goods on hand at the end of the taxable year. A taxpayer may not include a markdown that is not an actual reduction of retail selling price.

(c) *Special rules for LIFO taxpayers.* A taxpayer using the last-in, first-out (LIFO) inventory method with the retail inventory method uses the retail inventory method to approximate cost. See § 1.472–1(k) for additional adjustments for a taxpayer using the LIFO inventory method with the retail cost method.

(d) *Scope of retail inventory method.* A taxpayer may use the retail inventory method to value ending inventory for a department, a class of goods, or a stock-keeping unit. A taxpayer maintaining more than one department or dealing in classes of goods with different percentages of gross profit must compute cost complements separately for each department or class of goods.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) R, a retail merchant who uses the retail method to approximate LCM, has no beginning inventory in 2010. R purchases 40 tables during 2010 for $60 each for a total of $2,400. R offers the tables for sale at $100 each for an aggregate retail selling price of $4,000. R does not sell any tables at a price of $100, so R permanently marks down the retail selling price of its tables to $90 each. As a result of the $10 markdown, R's supplier provides R a $6 per table margin protection payment. R sells 25 tables during 2010 and has 15 tables in ending inventory at the end of 2010.

(ii) Under paragraph (b)(2)(i)(A) of this section, the numerator of the cost complement is the aggregate cost of the tables. Under paragraph (b)(2)(iii)(A) of this section, R may not reduce the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, the denominator of the cost complement is the aggregate of the bona fide retail selling prices of all the tables at the time acquired. Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdown from the denominator of the cost complement. Therefore, R's cost complement is $2,400/$4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is $1,350 (15 * $90). Approximating LCM under the retail method, the value of R's ending table inventory is $810 (60 percent * $1,350).

Example 2. (i) The facts are the same as in *Example 1,* except that R permanently reduces the retail selling price of all 40 tables to $50 per unit and the 15 tables on hand at the end of the year are marked for sale at that price. In contrast to the $10 markdown, the additional $40 markdown is unrelated to a margin protection payment or other allowance.

(ii) Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdowns from the denominator of the cost complement. Therefore, R's cost complement is $2,400/ $4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdowns in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $750 (15 * $50). Approximating LCM under the retail method, the value of R's ending inventory is $450 (60 percent * $750).

Example 3. (i) The facts are the same as in *Example 1,* except that R uses the LIFO inventory method. R must value inventories at cost and, under paragraph (c) of this section, uses the retail method to approximate cost.

(ii) Under paragraph (b)(2)(i)(A) of this section, R reduces the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, R includes the markdown in the denominator of the cost complement. Therefore, R's cost complement is $2,160/$3,600, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is $1,350 (15 * $90). Approximating cost under the retail method, the value of R's ending inventory is $810 (60 percent * $1,350).

(f) *Effective/applicability date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1101]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–19545 appearing on pages 46715–46716 in the issue of August 3, 2011, make the following correction:

In the proposed rule document 2011–19545, the table appearing on pages 46715–46716 was printed incorrectly. It was corrected and appears below:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Anne Arundel County, Maryland, and Incorporated Areas				
Cabin Branch	Approximately 122 feet downstream of Chessie System.	+8	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 325 feet upstream of Andover Road.	+115	+118	
Franklin Branch	At the Midway Branch confluence	None	+127	Unincorporated Areas of Anne Arundel County.
	Approximately 780 feet upstream of Clark Road.	None	+214	
Hall Creek	At the most downstream Calvert County boundary.	+43	+40	Unincorporated Areas of Anne Arundel County.
	At the most upstream Calvert County boundary	+54	+52	
Little Patuxent River	Approximately 600 feet upstream of the Patuxent River confluence.	+43	+46	Unincorporated Areas of Anne Arundel County.
	Approximately 1,456 feet upstream of Brock Bridge Road.	+130	+132	
Marley Creek	Approximately 485 feet upstream of Arundel Expressway.	+8	+7	Unincorporated Areas of Anne Arundel County.
	Approximately 165 feet upstream of Elevation Road.	+28	+26	