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**DEPARTMENT:** News, Commentary, and Analysis; News Stories**CITE:** 2011 TNT 68-2**LENGTH:** 589 words**HEADLINE:** #2 2011 TNT 68-2 LB&I WON'T CHALLENGE MARK-TO-MARKET VALUATIONS IN AUDITS.  
(Section 475 -- Mark-to-Market Accounting) (Release Date: APRIL 07, 2011) (Doc 2011-7469)**CODE:** *Section 475* -- Mark-to-Market Accounting**ABSTRACT:** The IRS Large Business and International Division will now accept during an audit some financial statements that use mark-to-market principles to establish the value of securities and commodities, according to an April 6 agency directive.

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The IRS Large Business and International Division will now accept during an audit some financial statements that use mark-to-market principles to establish the value of securities and commodities, according to an April 6 agency directive.

Because "valuation audits are extremely subjective," LB&I directed its examiners to accept reported financial accounting values for securities transmitted to the SEC that follow the tax mark-to-market provisions of *section 475*. The move, which allows taxpayers to use qualified offer statements as documentation, is a result of the division's recognition that significant resources are drained during audits surrounding non-publicly-traded securities. Conducting those audits "requires a substantial commitment of limited LB&I audit resources," the directive says. (For LB&I-04-1110-033, see *Doc 2011-7432*.)

The directive states that taxpayers using qualified offer statements, defined as SEC statements under rules 17a-5 or 17a-12 of the Securities Exchange Act of 1934, can sign a certification statement attesting that "the taxpayer's mark-to-market values reported on its qualified offer statement are consistent with" *section 475*.

In 2007 Treasury issued final regulations establishing an elective safe harbor for satisfying the requirement to value securities and commodities for *section 475* mark-to-market accounting purposes. (For *T.D. 9328*, see *Doc 2007-13875* or *2007 TNT 113-12*. For *Rev. Proc. 2007-41*, *2007-1 C.B. 1492*, see *Doc 2007-13873* or *2007 TNT 113-13*.)

Practitioners called the guidance a welcome relief from burdensome review procedures in the examination process. Ellen McCarthy, managing director of government affairs for the Securities Industry and Financial Markets Association, told Tax Analysts that the LB&I directive "is a significant direction for the IRS to take." She said her organization has been engaged in extensive education on the difficulties posed by mark-to-market valuations for securities and derivatives. By allowing a certification process for companies that have to file financial statements with the SEC, the directive "reduces administrative burdens on both the IRS and taxpayers and creates a lot more certainty for our members," she said.

Viva Hammer of KPMG LLP's Washington National Tax practice said the directive "really is a more practical way to deal with the mark-to-market problem over the regulation's approach." Hammer, who was one of the lawyers at Treasury responsible for the safe harbor final regs, said both internal government pressure and industry concerns drove Treasury to provide some measure of relief in the regs. But because "the statute is inflexible, Treasury couldn't write a regulation contrary to the face of the statute," she said.

Hammer said the book-tax conformity problem often forces taxpayers and the IRS to invest an inordinate amount of resources in the exam process as the IRS tries to understand the taxpayer's valuation approach. While useful, the directive still follows the regs by limiting relief to qualified financial statements, she said, although she added that "overall, this is a blueprint for best practices."

