member of a consolidated group for a loss
with respect to a share of stock of the parent
of that consolidated group, if the member
does not take the gain or loss into account
pursuant to section 475(a).)

(c) Securities deemed not held for in-
vestment; dealers in notional principal
contracts and derivatives. (1) Except as
otherwise determined by the Commis-
sioner in a revenue ruling, revenue pro-
cedure, or letter ruling, section 475(b)(1)(A) (exempting from mark-to-
market accounting certain securities
that are held for investment) does not
apply to a security if—

(i) The security is described in sec-
tion 475(c)(2) (D) or (E) (describing cer-
tain notional principal contracts and
derivative securities); and

(ii) The taxpayer is a dealer in such
securities.

(2) See § 1.475(d)–1(b) for a rule con-
cerning the character of gain or loss on
securities described in this paragraph
(c).

(d) Special rule for hedges of another
member’s risk. A taxpayer may identify
under section 475(b)(1)(C) (exempting
a security that hedges a
position of another member of the tax-
payer’s consolidated group if the secur-
ity meets the following require-
ments—

(1) The security is a hedging trans-
action within the meaning of § 1.1221–
2(b);

(2) The security is timely identified
as a hedging transaction under § 1.1221–
2(f) (including identification of the
hedged item); and

(3) The security hedges a position
that is not marked to market under
section 475(a).

(e) Transitional rules—(1) Stock, part-
nership, and beneficial ownership inter-
ests in certain controlled corporations,
partnerships, and trusts before January
23, 1997—(i) In general. The following
items held by a dealer in securities are
per se held for investment within the
meaning of section 475(b)(1)(A) and are
deemed to be properly identified as
such for purposes of section 475(b)(2)—

(A) A partnership or beneficial own-
ership interest in a widely held or pub-
licly traded partnership or trust that
the taxpayer controls (within the mean-
ing of paragraph (e)(1)(ii) of this
section).

(ii) Control defined. Control means the
ownership, directly or indirectly
through persons described in section
267(b) (taking into account section
267(c)), of—

(A) 50 percent or more of the total
combined voting power of all classes of
stock entitled to vote; or

(B) 50 percent or more of the capital
interest, the profits interest, or the
beneficial ownership interest in the
widely held or publicly traded partner-
ship or trust.

(iii) Applicability. The rules of this
paragraph (e)(1) apply only before Jan-

(2) Dealers in notional principal con-
tracts and derivatives acquired before
January 23, 1997—(i) General rule. Sec-
tion 475(b)(1)(A) (exempting certain se-
curities from mark-to-market account-
ing) does not apply to a security if—

(A) The security is described in sec-
tion 475(c)(2) (D) or (E) (describing cer-
tain notional principal contracts and
derivative securities); and

(B) The taxpayer is a dealer in such
securities.

(ii) Exception for securities not acquired
in dealer capacity. This paragraph (e)(2)
does not apply if the taxpayer estab-
ishes unambiguously that the security
was not acquired in the taxpayer’s ca-
pacity as a dealer in such securities.

(iii) Applicability. The rules of para-
graph (e)(2) apply only to securities ac-

[T.D. 8700, 61 FR 67720, Dec. 24, 1996, as
amended by T.D. 8985, 67 FR 12865, Mar. 20,
2002]

§ 1.475(b)–2 Exemptions—identifica-
tion requirements.

(a) Identification of the basis for exemp-
tion. An identification of a security as
exempt from mark to market does not
satisfy section 475(b)(2) if it fails to
state whether the security is described in—

(1) Either of the first two subpara-
graphs of section 475(b)(1) (identifying
a security as held for investment or
not held for sale); or
(2) The third subparagraph thereof (identifying a security as a hedge).

(b) Time for identifying a security with a substituted basis. For purposes of determining the timeliness of an identification under section 475(b)(2), the date that a dealer acquires a security is not affected by whether the dealer’s basis in the security is determined, in whole or in part, either by reference to the basis of the security in the hands of the person from whom the security was acquired or by reference to other property held by the dealer at any time by the dealer. See §1.475(a)-3 for rules governing how the dealer accounts for such a security if this identification is not made.

(c) Integrated transactions under §1.1275-6—(1) Definitions. The following terms are used in this paragraph (c) with the meanings that are given to them by §1.1275-6: integrated transaction, legging into, legging out, qualifying debt instrument, §1.1275-6 hedge, and synthetic debt instrument.

(2) Synthetic debt held by a taxpayer as a result of legging in. If a taxpayer is treated as the holder of a synthetic debt instrument as the result of legging into an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the synthetic debt instrument is treated as having the same acquisition date as the qualifying debt instrument. A pre-leg-in identification of the qualifying debt instrument under section 475(b)(2) applies to the integrated transaction as well.

(3) Securities held after legging out. If a taxpayer legs out of an integrated transaction, then, for purposes of the timeliness of an identification under section 475(b)(2), the qualifying debt instrument, or the §1.1275-6 hedge, that remains in the taxpayer’s hands is generally treated as having been acquired, originated, or entered into, as the case may be, immediately after the leg-out. If any loss or deduction determined under §1.1275-6(d)(2)(i)(D) is disallowed by §1.1275-6(d)(2)(ii)(D) (which disallows deductions when a taxpayer legs out of an integrated transaction within 30 days of legging in), then, for purposes of this section and section 475(b)(2), the qualifying debt instrument that remains in the taxpayer’s hands is treated as having been acquired on the same date that the synthetic debt instrument was treated as having been acquired.


§1.475(b)-3 [Reserved]

§1.475(b)-4 Exemptions—transitional issues.

(a) Transitional identification—(1) Certain securities previously identified under section 1236. If, as of the close of the last taxable year ending before December 31, 1993, a security was identified under section 1236 as a security held for investment, the security is treated as having been properly identified under section 475(b). (2) Consistency requirement for other securities. In the case of a security (including a security described in section 475(c)(2)(F)) that is not described in paragraph (a)(1) of this section and that was held by the taxpayer as of the close of the last taxable year ending before December 31, 1993, the security is treated as having been properly identified under section 475(b)(2) or 475(c)(2)(F)(iii) if the information contained in the dealer’s books and records as of the close of that year supports the identification. If there is any ambiguity in those records, the taxpayer must, no later than January 31, 1994, place in its records a statement resolving this ambiguity and indicating unambiguously which securities are to be treated as properly identified. Any information that supports treating a security as having been properly identified under section 475(b)(2) or (c)(2)(F)(iii) must be applied consistently from one security to another.

(b) Corrections on or before January 31, 1994—(1) Purpose. This paragraph (b) allows a taxpayer to add or remove certain identifications covered by §1.475(b)-1.

(2) To conform to §1.475(b)-1(a)—(i) Added identifications. To the extent permitted by paragraph (b)(2)(ii) of this section, a taxpayer may identify as being described in section 475(b)(1) (A) or (B)—

(A) A security that was held for immediate sale but was not held primarily for sale to customers in the ordinary course of the taxpayer’s trade