

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

ACCOUNTING PRACTICES AND TAX RULES FOR  
COMPETITIVE PRODUCTS

Docket No. RM2008-5

REPLY COMMENTS OF THE UNITED STATES POSTAL  
SERVICE IN RESPONSE TO ORDER NO. 106  
(November 3, 2008)

On September 11, 2008, the Commission issued Order No. 106, seeking comments on proposed new rules regarding accounting practices, computation of the assumed Federal income tax, and associated issues relating to the Competitive Products Fund. The Postal Service provided its initial comments on the proposed rules on October 20, as did one other commenter, the Public Representative. The Postal Service hereby provides its reply comments in response to the initial comments of the Public Representative.

Like the Initial Comments of the Postal Service, the Initial Comments of the Public Representative (PR Comments) express overall support for the Commission's proposed rules, and the determination to rely on a "paper only" enterprise for Competitive Products Fund (CPF) reporting. See PR Comments at 3, 5-6. The PR Comments also observe, however, that compared with other possible approaches, the Commission places "somewhat less emphasis on minimizing compliance effort and expense." *Id.* at 3. The Postal Service concurs with this observation, and therefore sought in its Initial Comments to recommend an alternative, simplified approach to the

assumed Federal income tax calculation which, while more specifically geared to the definitional requirements of 39 U.S.C. § 3634(a) than previous simplified proposals, would be much less onerous than the procedures apparently contemplated by Order No. 106. Of course, the PR Initial Comments could not address the Postal Service's proposed alternative, because it had not yet been presented. However, the fact that the PR Comments (at 9) indicate an inability to determine if the Commission's proposed approach would impose an undue burden on the Postal Service certainly reflects some level of concern that it might.

On pages 4-5, 10, and in Attachment A to her comments, the Public Representative discusses the need for a rule on the establishment of a formal docket each year for purposes of CPF reporting, and the ability of parties to present comments in such a docket. While not adverse to the apparent motivation underlying these discussions, the Postal Service does not perceive any compelling need to extend the rules in the manner suggested. The Postal Service views the CPF reports (Part 3060) due on January 15<sup>th</sup> of each year as comparable in certain respects to the ACR report (Part 3050) due 90 days from the end of the fiscal year. In both instances, the Postal Service will file with the Commission an integrated set of materials in response to the rules on a date certain. Section 3653(a) requires the Commission to "promptly provide" interested parties with an opportunity to comment on the ACR. While there is no explicit requirement in section 3634 that the Commission provide the same opportunity, the Postal Service would expect the Commission to issue a notice of these filings and an invitation for public comments, very shortly after receipt of the filings, just as it did for the ACR last year. See the Commission's Notice of ACR Filing by the Postal Service and

Solicitation of Public Comment, Docket No. ACR2007 (Dec. 31, 2007). Just as the proposed rules for Part 3050 contain no separate section to mandate the provision of notice pursuant to section 3653(a), there is no need for Part 3060 to contain such an express requirement. As acknowledged in the PR Comments at 4, the Commission has the standing option to obtain public input in this fashion. That practice worked well for the 2007 ACR, and should work well for future ACR and CPF filings. The Postal Service therefore sees no deficiency in the proposed rules for Part 3050 in this respect, and likewise sees no deficiency in the corresponding proposed rules for Part 3060. In order to achieve a more closely integrated CPF filing, however, this discussion does underscore the need to revise the proposed due date for the Competitive Products Fund Report in proposed section 3060.24 from 90 days after the fiscal year to January 15, as discussed on page 5-6 of the Postal Service's Initial Comments in this proceeding.

The Public Representative at pages 11-12 comments on the proposed rule for the treatment of net operating losses, and suggests revised wording in her Attachment B. The Public Representative observes that the "Commission's proposed rule does not appear to parallel the income tax regulations," and suggests an alternative formula for calculating the amount of the transfer from the Postal Service Fund to the Competitive Products Fund. The revised formula takes into account the effect of the application of the tax rate to the loss as part of the formula.

The Postal Service agrees with the Public Representative's observation, and with the substance of her proposed alternative language. It may be possible, however, to condense and refine that language to achieve the two main objectives (to enable carry-back of losses if there have been payments in either of the two previous tax years, and

to allow for the carry-forward of any losses than cannot be applied to tax payments for the previous two tax years). To that end, the following is the Postal Service's suggested alternative revision to proposed subsections 3060.43(d)(1) and (d)(2) on the treatment of losses for the CPF:

(1) If a payment was made to the Postal Service Fund for either of the two previous tax years, a transfer equaling the lesser of (a) the amount paid into the Postal Service Fund for the past 2 tax years and (b) the "tax effect" of the amount of the loss shall be made from the Postal Service Fund to the Competitive Products Fund. The "tax effect" of the amount of the loss is calculated as the tax rate multiplied by the loss.

(2) If no payment has been made into the Postal Service Fund for the previous 2 tax years, or if the tax effect of the loss is greater than the amount paid into the Postal Service Fund for the past 2 tax years, then any such excess loss may be carried forward for 20 years and is available to offset competitive products income upon which the assumed Federal tax is calculated.

## **CONCLUSION**

As noted earlier, the Postal Service has relatively few comments on the proposed rules, and agrees with much of what is said in the PR Comments. As also indicated in its Initial Comments, however, the Postal Service nonetheless has serious reservations about the approach included in the proposed rules regarding the assumed Federal income tax for competitive products. The Postal Service hopes that the Commission will find the alternative approach for tax computation proposed by the Postal Service in

its Initial Comments to provide the opportunity for a mutually-beneficial refinement to the proposed rules.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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