Internal Revenue
bulletin

Bulletin No. 2007-2
January 8, 2007

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 9300, page 246.

Final regulations under section 6011 of the Code eliminate regulatory obstacles to the electronic filing of certain business income tax returns and other forms. Requiring signatures on attachments to a tax return, for example, can impede a taxpayer's ability to file the return electronically. The regulations provide that in a number of situations, the signature on a taxpayer's return covers attachments to that return.

T.D. 9301, page 244.
REG–152043–05, page 263.

Temporary and proposed regulations under section 63 of the Code provide rules relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers who provide housing in their principal residences to individuals displaced by Hurricane Katrina.

Notice 2007–1, page 254.

This notice permits foreign corporations engaged, or treated as engaged, in a trade or business within the United States whose tax year end is on or after September 30, 2005, and whose original tax return due date (including extensions) was on or after June 15, 2006, and on or before August 17, 2006, to elect to apply the provisions of T.D. 9281, 2006–39 I.R.B. 517, for such tax return filing period. Such taxpayers may adopt the rules provided in T.D. 9281 only if the rules are adopted in their entirety on an amended return filed within 180 days of December 18, 2006.

Notice 2007–2, page 254.

This notice provides transition relief for the use of debit cards for medical expense reimbursements at certain merchants with non-health care related merchant category codes (MCC) and addresses the use of debit cards for medical expense reimbursements at stores with the Drug Stores and Pharmacies MCC. Rev. Rul. 2003–43 modified.

Notice 2007–4, page 260.

Extension of transition relief for certain partnerships and other pass-thru entities under section 470. This notice extends to taxable years that begin before January 1, 2007, the transition relief under section 470 of the Code provided under Notice 2005–29, 2005–1 C.B. 796, and Notice 2006–2, 2006–2 I.R.B. 278, to partnerships and certain other pass-thru entities that are treated as holding tax-exempt use property because of the application of section 168(h)(6). Notices 2005–29 and 2006–2 modified and superseded.

EMPLOYEE PLANS

Notice 2007–3, page 255.

Retirement plans; qualification, list of changes. This notice sets forth a list of changes referred to in Rev. Proc. 2005–66, 2005–2 C.B. 509, pertaining to the statutory, regulatory, and guidance changes needed for certain requests to the Service.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9300, page 246.

Final regulations under section 6011 of the Code eliminate regulatory obstacles to the electronic filing of certain business income tax returns and other forms. Requiring signatures on attachments to a tax return, for example, can impede a taxpayer's ability to file the return electronically. The regulations provide that in a number of situations, the signature on a taxpayer's return covers attachments to that return.

Rev. Proc. 2007–11, page 261.

This procedure provides the maximum vehicle values using the special valuation rules under sections 1.61–21(d) and (e) of the regulations. These values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index (CPI).

Announcement 2007–2, page 263.

This document cancels a public hearing on proposed regulations (REG–142270–05, 2006–43 I.R.B. 791) relating to the railroad track maintenance credit determined for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 61.—Gross Income Defined

26 CFR 1.61–21(e): Vehicle cents-per-mile valuation.

A revenue procedure provides maximum vehicle values for which the special valuation rules of regulations sections 1.61–21(d) and (e) may be used. See Rev. Proc. 2007-11, page 261.

Section 63.—Taxable Income Defined

26 CFR 1.9300–1T: Reduction in taxable income for housing Hurricane Katrina displaced individuals.

T.D. 9301

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Reduction in Taxable Income for Housing Hurricane Katrina Displaced Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers who provide housing in their principal residences to individuals displaced by Hurricane Katrina. The text of the temporary regulations also serves as the text of the proposed regulations (REG–152043–05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective December 11, 2006.

Applicability Date: For date of applicability, see §1.9300–1T(g).

FOR FURTHER INFORMATION CONTACT: Marnette M. Myers, 202–622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the reduction in taxable income for housing provided to displaced individuals under section 302 of the Katrina Emergency Tax Relief Act of 2005 (Pub. L. No. 109–73, 119 Stat. 2016) (KETRA).

For taxable years beginning in 2005 and 2006, a taxpayer may reduce taxable income by $500 for each Hurricane Katrina displaced individual to whom the taxpayer provides free housing in the taxpayer's principal residence for a period of 60 consecutive days that ends in the taxable year. No reduction is allowed if the taxpayer receives rent or other compensation from any source for providing the housing.

A taxpayer may not claim a reduction in taxable income with respect to the same Hurricane Katrina displaced individual in more than one taxable year and must include the Hurricane Katrina displaced individual's tax identification number on the taxpayer's return. Generally, the total reduction for all taxable years is $2,000.

A Hurricane Katrina displaced individual is defined as a natural person who was displaced from a principal place of abode that, on August 28, 2005, was in the Hurricane Katrina core disaster area. A Hurricane Katrina displaced individual also is defined as an individual whose principal place of abode was located in the Hurricane Katrina disaster area, but outside the core disaster area, if the abode was damaged by Hurricane Katrina or the individual was evacuated from the abode because of Hurricane Katrina. A Hurricane Katrina displaced individual may not be the taxpayer's spouse or dependent.

Under section 2(1) of KETRA, the Hurricane Katrina disaster area is the area with respect to which a major disaster by reason of Hurricane Katrina has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (Stafford Act). For purposes of relief provided under KETRA, this area comprises the states of Louisiana, Mississippi, Alabama, and Florida. Under section 2(2) of KETRA, the Hurricane Katrina core disaster area is the portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act. See Appendix to Notice 2005–73, 2005–2 C.B. 723, (Oct. 17, 2005) (listing parishes and counties designated for assistance under the Stafford Act).

Explanation of Provisions

Provision of Housing

The temporary regulations provide that a taxpayer is considered to provide housing if the housing is provided either in, or on the site of, the taxpayer's principal residence. In addition, the taxpayer must be an owner or lessee of the residence to be treated as providing housing to a Hurricane Katrina displaced individual. The term *principal residence* has the same meaning as in section 121 and the regulations thereunder. Amounts in connection with the provision of housing (for which the taxpayer may not be reimbursed or compensated) include rent and utilities. Amounts for telephone calls, food, clothing and transportation are not amounts in connection with the provision of housing for this purpose.

Limitations on Amount of Reduction

The temporary regulations provide that the $2,000 aggregate limit on the reduction in taxable income applies to unmarried individuals and married taxpayers filing a joint tax return. Married taxpayers who file separate returns may reduce taxable income by $1,000 each for all taxable years.

The temporary regulations clarify that a taxpayer may reduce taxable income with respect to a specific Hurricane Katrina displaced individual in 2005 or 2006, but not both years. Additionally, the temporary regulations provide that a Hurricane Katrina displaced individual may be taken

into account by only one taxpayer occupying the same principal residence.

Effective Date

The temporary regulations apply to taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006, which is the date the temporary regulations were filed with the **Federal Register**. Taxpayers may rely on the temporary regulations with respect to taxable years ending before the filing date, but may not rely on the absence of regulations for taxable years ending before the filing date for a result contrary to that under the temporary regulations.

Special Analyses

It has been determined that this Treasury decision 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. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Bulletin for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marnette M. Myers of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 * * *

Section 1.9300–1T also issued under 26 U.S.C. 6001. * * *

Par. 2. Section 1.9300–1T is added to read as follows:

§1.9300–1T Reduction in taxable income for housing Hurricane Katrina displaced individuals.

(a) *In general*. For a taxable year beginning in 2005 or 2006, a taxpayer who is a natural person may reduce taxable income by $500 for each Hurricane Katrina displaced individual (as defined in paragraph (e)(1) of this section) to whom the taxpayer provides housing free of charge in, or on the site of, the taxpayer's principal residence for a period of 60 consecutive days ending in the taxable year. A taxpayer may not claim the reduction in taxable income unless the taxpayer includes the taxpayer identification number of the Hurricane Katrina displaced individual on the taxpayer's income tax return.

(b) *Provision of housing*—(1) *Principal residence*. For purposes of this section, the term *principal residence* has the same meaning as in section 121 and the regulations thereunder. See §1.121–1(b)(1) and (b)(2).

(2) *Legal interest required*. A taxpayer is treated as providing housing for purposes of this section only if the taxpayer is an owner or lessee (including a co-owner or co-lessee) of the residence.

(3) *Compensation for providing housing*—(i) *In general*. No reduction in taxable income is allowed under this section to a taxpayer who receives rent or any other amount from any source in connection with the provision of housing.

(ii) *Amounts in connection with the provision of housing*. For purposes of this section, amounts in connection with the provision of housing include (but are not limited to) amounts for rent and utilities. Amounts for telephone calls, food, clothing, and transportation are examples of amounts not in connection with the provision of housing.

(c) *Limitations*—(1) *Dollar limitation*—(i) *In general*. The reduction under paragraph (a) of this section may not exceed the maximum dollar limitation reduced by the amount of the reduction under this section for all prior taxable years. The maximum dollar limitation is—

(A) $2,000 in the case of an unmarried individual;

(B) $2,000 in the case of a husband and wife who file a joint income tax return; and

(C) $1,000 in the case of a married individual who files a separate income tax return.

(ii) *Married individuals with separate principal residences*. The limitations in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section apply without regard to whether the married individuals occupy the same principal residence. A person is treated as married for purposes of this section if the individual is treated as married under section 7703.

(2) *Spouse or dependent of the taxpayer*. No reduction is allowed for a Hurricane Katrina displaced individual who is the spouse or dependent of the taxpayer.

(3) *Individual taken into account only once*. A taxpayer may not reduce taxable income under paragraph (a) of this section with respect to a Hurricane Katrina displaced individual who was taken into account by the taxpayer for any prior taxable year.

(4) *Taxpayers occupying the same principal residence*. A Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence for all taxable years.

(d) *Substantiation*. A taxpayer claiming a reduction under this section must prepare and maintain records sufficient to show entitlement to the reduction as provided in Form 8914 *(Exemption Amount for Taxpayers Housing Individuals Displaced by Hurricane Katrina)* or other forms, instructions, publications or guidance published by the IRS.

(e) *Definitions*. The following definitions apply for purposes of this section.

(1) *Hurricane Katrina displaced individual*. The term *Hurricane Katrina displaced individual* means any natural person if the following requirements are met—

(i) The person's principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area (as defined in paragraph (e)(2) of this section);

(ii) The person was displaced from that abode; and

(iii) If the abode was located outside the Hurricane Katrina core disaster area (as defined in paragraph (e)(3) of this section)—

(A) The abode was damaged by Hurricane Katrina; or

(B) The person was evacuated from that abode by reason of Hurricane Katrina.

(2) *Hurricane Katrina disaster area*. The term *Hurricane Katrina disaster area* means the states of Alabama, Florida, Louisiana, and Mississippi.

(3) *Hurricane Katrina core disaster area*. The term *Hurricane Katrina core disaster area* means the portion of the Hurricane Katrina disaster area designated by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(f) *Examples*. The provisions of this section are illustrated by the following examples in which each Hurricane Katrina displaced individual, who is not a dependent or spouse of the taxpayer, is provided housing (within the meaning of paragraph (b) of this section) in, or on the site of, the taxpayer's principal residence for a period of at least 60 consecutive days ending in the applicable taxable year. The examples are as follows:

Example 1. Taxpayer A provides housing to N, a Hurricane Katrina displaced individual, from September 1, 2005, until March 10, 2006. Under paragraphs (a) and (c)(3) of this section, A may reduce taxable income by $500 on A's 2005 income tax return or A's 2006 income tax return, but not both, with respect to N.

Example 2. The facts are the same as in *Example 1* except that A and B, A's unmarried roommate and co-lessee, provide housing to N. Under paragraphs (a) and (c)(4) of this section, either A or B, but not both, may reduce taxable income by $500 for 2005 with respect to N. If either A or B reduces taxable income for 2005 with respect to N, neither A nor B may reduce taxable income with respect to N for 2006.

Example 3. Unmarried roommates and co-lessees C and D provide housing to eight Hurricane Katrina displaced individuals during 2005. Under paragraphs (a) and (c)(1)(i)(A) of this section, C and D each may reduce taxable income by $2,000 on their 2005 income tax returns.

Example 4. (i) H and W are married to each other and provide housing to a Hurricane Katrina displaced individual, O, in 2005. H and W file their 2005 income tax return married filing jointly. Under paragraphs (a) and (c)(4) of this section, H and W may reduce taxable income by $500 on their 2005 income tax return with respect to O.

(ii) In 2006, H and W provide housing to O and to another Hurricane Katrina displaced individual, P. H and W file their 2006 income tax return married filing separately. Because H and W reduced their 2005 taxable income with respect to O, under paragraph (c)(3) of this section, neither H nor W may reduce taxable income on their 2006 income tax return with respect to O. Under paragraphs (a) and (c)(4) of this section, either H or W, but not both, may reduce taxable income by $500 on his or her 2006 income tax return with respect to P.

(g) *Effective date*. This section applies for taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006.

Linda M. Kroening,
Acting Deputy Commissioner for Services and Enforcement.

Approved December 1, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 11, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 12, 2006, 71 F.R. 74467)

Section 280F.—Limitation on Depreciation for Luxury Automobiles; Limitation Where Certain Property Used for Personal Purposes

A revenue procedure provides maximum vehicle values for which the special valuation rules of regulations sections 1.61–21(d) and (e) may be used. See Rev. Proc. 2007-11, page 261.

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.556–2: Adjustments to taxable income.

T.D. 9300

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 301 and 602

Guidance Necessary to Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. This document also makes conforming changes to certain current regulations.

DATES: *Effective Date:* These regulations are effective on December 8, 2006.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§1.170A–11T, 1.556–2T, 1.565–1T, 1.936–7T, 1.1017–1T, 1.1368–1T, 1.1377–1T, 1.1502–21T(b)(3)(i) and (b)(3)(ii)(B), 1.1502–75T, 1.1503–2T, 1.6038B–1T(b)(1)(ii) and 301.7701–3T will expire on December 8, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1868. The collection of information in these final regulations is in §1.170A–11(b)(2). The information required in §1.170A–11(b)(2) concerning the date on which a corporation's board of directors authorizes a certain type of charitable contribution assists the IRS in determining the deductibility of such contributions. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent is .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports, Clearance Officer,

SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 and 26 CFR part 301 designed to eliminate regulatory impediments to the electronic submission of tax returns and other forms filed by corporations, partnerships, other business entities, and their owners.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Pub. L. No. 105–206 (112 Stat. 685) (1998). RRA 1998 states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Finalization of December 2003 Regulations Facilitating Electronic Filing

On December 19, 2003, the IRS and Treasury published in the **Federal Register** (T.D. 9100, 2004–1 C.B. 297 [68 FR 70701]) temporary and final regulations modifying the regulations under sections 170, 556, 565, 936, 1017, 1368, 1377, 1502, 1503, 6038B and 7701 of the Internal Revenue Code. In the same issue of the **Federal Register**, the IRS and Treasury published a notice of proposed rulemaking (REG–116664–01, 2004–1 C.B. 319 [68 FR 70747]) proposing to amend regulations under the code sections noted in the previous sentence. The temporary, final, and proposed regulations published on December 19, 2003, are collectively referred to as the December 2003 Regulations.

The December 2003 Regulations generally affect taxpayers who must file any of the following forms: Form 926, "*Return by a U.S. Transferor of Property to a Foreign Corporation*"; Form 972, "*Consent of Shareholder To Include Specific Amount in Gross Income*"; Form 973, "*Corporation Claim for Deduction for Consent Dividends*"; Form 982, "*Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*"; Form 1120, "*U.S. Corporation Income Tax Return*"; Form 1120S, "*U.S. Income Tax Return for an S Corporation*"; Form 1122, "*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*"; Form 5471, "*Information Return of U.S. Persons With Respect To Certain Foreign Corporations*"; Form 5712–A, "*Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)*"; and Form 8832, "*Entity Classification Election*."

Prior to the changes adopted by the December 2003 Regulations, certain regulations under the code sections cited above impeded electronic filing of returns. Some of these regulations, for example, impeded electronic filing by requiring taxpayers to include third-party signatures on their tax returns or by requiring taxpayers to attach documents or statements generated by a third party. Other regulations required a taxpayer to sign an IRS form and file it as an attachment to the taxpayer's income tax return. To address certain situations in which regulations required taxpayers to attach documents or statements to their tax returns, for example, the December 2003 Regulations allowed taxpayers to retain such items in their books and records. Taxpayers would be obligated, of course, to make the items available for inspection by the IRS.

The IRS received no comments responding to the December 2003 Regulations, and no public hearing regarding the proposed regulations was requested or held. Accordingly, the temporary and proposed regulations are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed. These final regulations make certain non-substantive changes to the December 2003 Regulations as described below.

Section 556 was repealed by the American Jobs Creation Act, Pub. L. No. 108–357 (118 Stat. 1418), effective for taxable years of foreign corporations beginning after December 31, 2004, and effective for taxable years of United States shareholders with or within which such taxable years of foreign corporations end. The provision in the December 2003 Regulations eliminating an electronic filing impediment under section 556 applied to tax years ending before the repeal of section 556. Therefore, these final regulations amend section 1.556–2 of the Income Tax Regulations despite the repeal of section 556 itself.

These final regulations remove certain portions of section 1.1502–21T and place such language in sections 1.1502–21(b)(3)(i) and (b)(3)(ii)(B), so as to eliminate impediments to the electronic filing of Form 1120. Other portions of that temporary regulation, however, predate the December 2003 Regulations or relate to matters other than electronic filing, and this document does not revise those portions.

The regulations as finalized by this Treasury decision clarify that references in the following regulations to tax return due dates include extensions of such due dates: See 1.565–1(b)(3), 1.936–7(b), Q. & A. 1, 1.1368–1(f)(5)(iii) and (g)(2)(iii) and 1.1503–2(g)(2)(i) and (iv)(B)(3)(*iii*).

January 2006 Final Regulations Facilitating Electronic Filing

On January 23, 2006, the IRS and Treasury released final regulations (T.D. 9243, 2006–8 I.R.B. 475 [71 FR 4276]) (the January 2006 Final Regulations) which, among other things, removed an impediment to electronic filing of Form 926. In the December 2003 Regulations, the IRS and Treasury had previously amended both sections 1.6038B–1(b)(1)(i) and 1.6038B–1(b)(1)(ii) of the Income Tax Regulations to eliminate an impediment to electronic filing of Form 926. The January 2006 Final Regulations amended section 1.6038B–1(b)(1)(i) and removed temporary regulations section 1.6038B–1T(b)(1)(i). Therefore, because the amendment in the December 2003 Regulations to 1.6038B–1T(b)(1)(i) has already been adopted in final regulations, these final regulations amend 1.6038B–1(b)(1)(ii) and remove

1.6038B–1T(b)(1)(ii), but do not address section 1.6038B–1(b)(1)(i).

May 2006 Regulations Facilitating Electronic Filing

On May 26, 2006, the IRS and Treasury Department released final and temporary regulations (T.D. 9264, 2006–26 I.R.B. 1150 [71 FR 30591]) (the May 2006 Regulations), which contained numerous temporary regulations amending or replacing final regulations. Some of these final regulations had required taxpayers to provide detailed information about a transaction. In other cases, the scope of various reporting requirements was not clear. The May 2006 Regulations simplified, clarified or, in some cases, eliminated these reporting burdens.

The May 2006 Regulations also eliminated regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. In some cases, this impediment was removed by deleting the requirement that the taxpayer sign such statement. In other cases, where the taxpayer and a third party were both required to sign such statement, this impediment was removed by requiring each party to indicate on such statement that it had entered into an agreement with the other party addressing the substantive matters covered by the final regulations. Requiring such a statement from the parties in place of the dual signatures eliminates an e-file impediment, but to protect the Service's interests, the May 2006 regulations require each party to keep either the original or a copy of the underlying agreement in its records.

Special Analyses

It has been determined that this Treasury decision 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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information in these regulations involves an insignificant expenditure of time by taxpayers, as noted above under the heading "Paperwork Reduction Act." Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the December 2003 Regulations and the December 2003 notice of proposed rulemaking were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 is 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 1.170A–11 is amended by revising paragraph (b)(2) to read as follows:

§1.170A–11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by §1.6001–1(e).

* * * * *

§1.170A–11T [Removed]

Par. 3. Section 1.170A–11T is removed.

Par. 4. Section 1.556–2 is amended by revising paragraph (e)(2)(vii) and adding paragraph (e)(3) to read as follows:

§1.556–2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) In the case of a return for a taxable year beginning before January 1, 2003, a copy of the contract, lease, or rental agreement;

* * * * *

(3) If the statement described in §1.556–2(e)(2) is attached to a taxpayer's income tax return for a taxable year beginning after December 31, 2002, a copy of the applicable contract, lease or rental agreement is not required to be submitted with the return, but must be retained by the taxpayer and kept available for inspection in the manner required by §1.6001–1(e).

* * * * *

§1.556–2T [Removed]

Par. 5. Section 1.556–2T is removed.

Par. 6. Section 1.565–1 is amended by revising paragraph (b)(3) to read as follows:

§1.565–1 General rule.

* * * * *

(b) * * *

(3) A consent may be filed at any time not later than the due date (including extensions) of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date (including extensions) thereof, the corporation must file Forms 972 for each

consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. For taxable years beginning before January 1, 2003, the Form 973 filed with the corporation's income tax return shall contain or be verified by a written declaration that is made under the penalties of perjury and the Forms 972 filed with the return must be duly executed by the consenting shareholders. For taxable years beginning after December 31, 2002, the Form 973 filed with the corporation's income tax return shall be verified by signing the return and the Forms 972 filed with the return must be duly executed by the consenting shareholders or, if unsigned, must contain the same information as the duly executed originals. If the corporation submits unsigned Forms 972 with its return for a taxable year beginning after December 31, 2002, the duly executed originals are records that the corporation must retain and keep available for inspection in the manner required by §1.6001–1(e).

* * * * *

§1.565–1T [Removed]

Par. 7. Section 1.565–1T is removed.

Par. 8. Section 1.936–7 is amended by revising paragraph (b), Q. & A. 1, to read as follows:

§1.936–7 Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) *Manner of making election*.

Q. 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

A. 1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712–A *("Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)")* and attaching it to its tax return. Form 5712–A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. For elections filed with respect to taxable years beginning before January 1, 2003, an authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. Elections filed for taxable years beginning after December 31, 2002, must incorporate a declaration by the electing corporation that it has received a signed consent from an authorized officer, director, or other appropriate official of each member of the affiliated group and will be verified by signing the return. The election is not valid for a taxable year unless all affiliates consent. A failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712–A with its timely filed (including extensions) income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

* * * * *

§1.936–7T [Removed]

Par. 9. Section 1.936–7T is removed.

Par. 10. Section 1.1017–1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) *Taxpayer's requirement*. For taxable years beginning before January 1, 2003, statements described in §1.1017–1(g)(2)(iii)(A) must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). For taxable years beginning after December 31, 2002, taxpayers must retain the statements and keep them available for inspection in the manner required by §1.6001–1(e), but are not required to attach the statements to their returns.

* * * * *

§1.1017–1T [Removed]

Par. 11. Section 1.1017–1T is removed.

Par. 12. Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§1.1368–1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) *Corporate statement regarding elections*. A corporation makes an election for a taxable year under §1.1368–1(f) by attaching a statement to a timely filed (including extensions) original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under §1.1368–1(f) and must state that each shareholder consents to the election. In the case of elections for taxable years beginning before January 1, 2003, an officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. In the case of elections for taxable years beginning after December 31, 2002, the statement described in this paragraph

(f)(5)(iii) shall be verified by signing the return. A statement of election to make a deemed dividend under §1.1368–1(f) must include the amount of the deemed dividend that is distributed to each shareholder.

* * * * *

(g) * * *

(2) * * *

(iii) *Time and manner of making election*. A corporation makes an election under §1.1368–1(g)(2)(i) for a taxable year by attaching a statement to a timely filed (including extensions) original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under §1.1368–1(g)(2)(i)). In the statement, the corporation must state that it is electing for the taxable year under §1.1368–1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (*e.g.*, sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under §1.1368–1(g)(2)(i)) consents to this election. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under §1.1368–1(g)(2)(i) for the taxable year. An election made under §1.1368–1(g)(2)(i) is irrevocable. In the case of elections for taxable years beginning before January 1, 2003, the statement through which a corporation makes an election under §1.1368–1(g)(2)(i) must be signed by an officer of the corporation under penalties of perjury. In the case of elections for taxable years beginning after December 31, 2002, the statement described in the preceding sentence shall be verified by signing the return.

* * * * *

§1.1368–1T [Removed]

Par. 13. Section 1.1368–1T is removed.

Par. 14. Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§1.1377–1 Pro rata share .

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury, except that for taxable years beginning after December 31, 2002, the election statement described in §1.1377–1(b)(5)(i) of this section shall be verified, and the requirement of this paragraph (b)(5)(i)(C) is satisfied, by the signature on the Form 1120S filed by the S corporation.

* * * * *

§1.1377–1T [Removed]

Par. 15. Section 1.1377–1T is removed.

Par. 16. Section 1.1502–21 is amended by revising paragraphs (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§1.1502–21 Net operating losses.

* * * * *

(b)

* * *

(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in §1.1502–21(b)(3)(ii)(B), the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled "THIS IS AN ELECTION UNDER §1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(ii) * * *

(B) *Acquisition of member from another consolidated group*. If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER §1.1502–21(b)(3)(ii)(B)(*2*) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members]." The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

* * * * *

Par. 17. Section 1.1502–21T is amended by revising paragraphs (a) through (b)(3)(ii)(B) to read as follows:

§1.1502–21T Net operating losses (Temporary).

(a) through (b)(3)(ii)(B) [Reserved]. For further guidance, see §1.1502–21(a) through (b)(3)(ii)(B).

* * * * *

Par. 18. Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

§1.1502–75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) *Filing of Form 1122 for first year*. If, under the provisions of paragraph (a)(1) of this section, a group wishes to file a consolidated return for a taxable year, then a Form 1122 ("*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*") must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by §1.6001–1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

* * * * *

§1.1502–75T [Removed]

Par. 19. Section 1.1502–75T is removed.

Par. 20. Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(*3*)(*iii*) and (g)(2)(vi)(B) to read as follows:

§1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(i) *In general*. Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of this paragraph (g)(2). In order to elect relief under this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed (including extensions) U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by §1.6001–1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraph (g)(2)(i)(A) through (F) of this section.

(A) A statement that the document submitted is an election and an agreement under the provisions of paragraph (g)(2) of this section.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner to comply with all of the provisions of §1.1503–2(g)(2)(iii)–(vii).

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

* * * * *

(iv) * * *

(B) * * *

(*3*) * * *

(*iii*) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed (including extensions) income tax return for the taxable year in which the event described in paragraph (g)(2)(iv)(B)(*1*) or (*2*) of this section occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to this paragraph (g)(2)(iv)(B)(*3*)(*iii*). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by §1.6001–1(e).

* * * * *

(vi) * * *

(B) *Annual certification*. Except as provided in §1.1503–2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a

person authorized to sign the agreement described in §1.1503–2(g)(2)(i). For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the certification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

* * * * *

§1.1503–2T [Removed]

Par. 21. Section 1.1503–2T is removed.

Par. 22. Section 1.6038B–1 is amended by revising paragraph (b)(1)(ii) to read as follows:

§1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * *

(1) * * *

(ii) *Reporting by corporate transferor*. For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

* * * * *

Par. 23. Section 1.6038B–1T is amended by revising paragraphs (a) through (b)(3) to read as follows:

§1.6038B–1T Reporting of certain transactions to foreign corporations (Temporary).

(a) through (b)(3) [Reserved]. For further guidance, see §1.6038B–1(a) through (b)(3).

* * * * *

PART 301 — PROCEDURE AND ADMINISTRATION

Par. 24. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 25. Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§301.7701–3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) *Further notification of elections*. An eligible entity required to file a Federal tax or information return for the taxable year for which an election is made under §301.7701–3(c)(1)(i) must attach a copy of its Form 8832 to its Federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 *("Entity Classification Election")* must be attached to the Federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under §301.7701–3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the Federal tax or information returns are inconsistent with the entity's election under §301.7701–3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

* * * * *

§301.7701–3T [Removed]

Par. 26. Section 301.7701–3T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 27. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 28. In §602.101, paragraph (b) is amended by removing the entry for "1.170A–11T" and revising the entry for "1.170A–11" to read as follows:

§602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.170A–11	1545–0123 1545–0074 1545–1868
* * * * *	

Linda M. Kroening,
Acting Deputy Commissioner for Services and Enforcement.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 7, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 8, 2006, 71 F.R. 71040)

Approved November 29, 2006.

Part III. Administrative, Procedural, and Miscellaneous

T.D. 9281 Effective Date

Notice 2007–1

On August 17, 2006, the Treasury Department and the IRS published temporary and proposed income tax regulations T.D. 9281, 2006–39 I.R.B. 517 [71 FR 47443] under §1.882–5 regarding the determination of the interest expense allocable to effectively connected income of foreign corporations engaged, or treated as engaged in a trade or business within the United States, and under §1.884–1(e)(3) regarding the determination of branch profits tax under a liability reduction election. The temporary and proposed regulations revised final regulations under §1.882–5 issued in T.D. 8658, 1996–1 C.B. 161 [61 FR 15891] and under §1.884–1 issued in T.D. 8432, 1992–2 C.B. 157 [57 FR 41644].

The temporary regulations provided in T.D. 9281 are effective for the first tax year end for which a foreign corporate taxpayer's original tax return due date (including extensions) is after August 17, 2006. Accordingly, for calendar-year taxpayers, the applicability date for T.D. 9281 is the tax year ended December 31, 2005, for which an original tax return due date (including extensions) was September 15, 2006. The temporary regulations provide a one-time, additional period for taxpayers whose original tax return due date (including extensions) is after August 17, 2006, and not later than December 31, 2006, to adopt the tax return elections covered by the temporary regulations on an amended income tax return within 180 days after the original allowable extended due date (whether or not the taxpayer timely filed its tax return by the original due date (without regard to extensions)).

This notice permits foreign corporations engaged, or treated as engaged in a trade or business within the United States whose tax year end is on or after September 30, 2005, and whose original tax return due date (including extensions) was on or after June 15, 2006, and on or before August 17, 2006, to elect to apply the provisions of T.D. 9281 for such earlier tax return filing period. Such taxpayers may adopt the rules provided in T.D. 9281, including the one-time amended return elections of §§1.882–5T(a)(7)(iii), 1.882–5T(d)(5)(ii)(B) and 1.884–1T (e)(3)(iv), and the mandatory conforming election in §1.882–5(b)(2)(ii)(A)(2) for such year only if the rules are adopted in their entirety on an amended return filed within 180 days of December 18, 2006. Accordingly, a taxpayer may not file an amended return for the tax period provided in this notice to adopt the annual published LIBOR rate election of §1.882–5T(d)(5)(ii)(B) and also remain on the 93-percent fixed ratio election and branch profits tax rules that were amended by the temporary rules in T.D. 9281. This notice does not change any of the temporary and proposed rules provided in T.D. 9281 other than allowing eligible taxpayers to elect to apply such rules to the earlier tax return filing period provided in this notice within 180 days of December 18, 2006.

The principal author of this notice is Gregory A. Spring of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Gregory A. Spring or Paul S. Epstein at (202) 622–3870 (not a toll-free call).

Amounts Received Under Accident and Health Plans

Notice 2007–2

PURPOSE

This notice provides transition relief with respect to the use of debit cards for medical expense reimbursements at certain merchants with non-health care related merchant category codes. It also addresses the use of debit cards for medical expense reimbursements at stores with the Drug Stores and Pharmacies merchant category code.

BACKGROUND

Rev. Rul. 2003–43, 2003–1 C.B. 935, sets forth rules for determining whether employer-provided medical expense reimbursements made through debit cards and other electronic media (debit cards) are excludable from gross income under §105(b) of the Internal Revenue Code. Situation 1 of the ruling describes an employer who sponsors both a health flexible spending arrangement (health FSA) and a health reimbursement arrangement (HRA). In conjunction with the health FSA and HRA, the employer permits electronic reimbursement of medical expenses through the use of debit cards. Under the arrangement, the cardholder's use of the card is limited to merchants and service providers with specific merchant category codes related to health care. The ruling states that, "the card's use is limited to physicians, pharmacies, dentists, vision care offices, hospitals, and other medical care providers." Thus, the use of the card at other than these merchants or service providers would be rejected.

Situation 1 of Rev. Rul. 2003–43 also sets forth rules for substantiation of medical expenses and provides that debit card charges other than matched copayments, recurring expenses and real-time substantiation are treated as conditional pending confirmation of the charges through additional third-party information. If the debit card charges are subsequently identified as not qualifying for medical reimbursement, the employer must follow certain correction procedures with respect to the improper payments. The after-the-fact substantiation and correction procedures described in Situation 1 of Rev. Rul. 2003–43 are sometimes referred to as "pay and chase." The ruling holds that employer-provided medical expense reimbursements made through the cards, as described in Situation 1, are excludable from gross income under § 105(b).

Notice 2006–69, 2006–31 I.R.B. 107, describes an inventory information approval system that may be used by merchants with non-health care related merchant category codes for substantiating employees' claimed medical expenses. It has been determined that transition relief is warranted for a limited period, in order for these non-health care merchants to implement the inventory information approval system.

TRANSITION RELIEF

All supermarkets, grocery stores, discount stores, and wholesale clubs that do

not have a merchant category code related to health care will nevertheless be deemed to be an "other medical care provider" within the meaning of Situation 1 of Rev. Rul. 2003–43 with respect to debit card transactions occurring on or before December 31, 2007. In addition, mail order vendors and web-based vendors that sell prescription drugs will also be deemed to be an "other medical care provider" with respect to debit card transactions occurring on or before December 31, 2007. As required in Rev. Rul. 2003–43, employers must substantiate all debit card charges incurred during the relief period and follow the correction procedures in Rev. Rul. 2003–43 with respect to any unsubstantiated payment. After December 31, 2007, health FSA or HRA debit cards may not be used at any store, vendor or merchant that does not have health care related merchant category codes unless the store, vendor or merchant has implemented an inventory information approval system as described in Notice 2006–69.

STORES WITH DRUG STORES AND PHARMACIES MERCHANT CATEGORY CODE

Under Rev. Rul. 2003–43, health FSA and HRA debit cards may be used at stores with the merchant category code for Drug Stores and Pharmacies. However, many stores with this code also sell a significant number of items which do not qualify as medical expenses under § 213(d). In order to curtail the ability to purchase non-medical items with such debit cards, as well as to provide a level playing field, the IRS and Treasury have determined that it is appropriate to require similar substantiation rules for all stores that sell a significant number of items which do not qualify as medical expenses under § 213(d).

Accordingly, after December 31, 2008, health FSA and HRA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless (1) the store participates in the inventory information approval system as described in Notice 2006–69, or (2) on a store location by store location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care under § 213(d) (including nonprescription medications as described in Rev. Rul. 2003–102, 2003–2 C.B. 559).

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2003–43, 2003–1 C.B. 935, is modified.

DRAFTING INFORMATION

The principal author of this notice is Stephanie L. Caden of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Caden at (202) 622–6080 (not a toll-free call).

2006 Cumulative List of Changes in Plan Qualification Requirements

Notice 2007–3

I. PURPOSE

This notice contains the 2006 Cumulative List of Changes in Plan Qualification Requirements (2006 Cumulative List) described in section 4 of Rev. Proc. 2005–66, 2005–2 C.B. 509. The 2006 Cumulative List is to be used primarily by (1) plan sponsors of individually designed plans (that is, single employer individually designed defined contribution plans, including employee stock ownership plans (ESOPs), and single employer individually designed defined benefit plans) and plan sponsors of multiple employer plans that fall in Cycle B and (2) plan sponsors and practitioners in drafting defined benefit pre-approved plans (that is, defined benefit plans that are master and prototype (M&P) or volume submitter (VS) plans) for their first submission under the initial remedial amendment cycle under Rev. Proc. 2005–66. An individually designed plan is in Cycle B if the last digit of the employer identification number is 2 or 7. Multiple employer plans are also in Cycle B, pursuant to section 10.03 of Rev. Proc. 2005–66.

The list of changes in section V of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2005–66. Section III of Notice 2005–95, 2005–2 C.B. 1172, provides that the general timing rules to adopt a plan amendment described in section 5.05 of Rev. Proc. 2005–66 do not apply if a statutory provision or guidance issued by the Service provides an earlier or later date than the deadline set forth in Rev. Proc. 2005–66.

II. BACKGROUND

Rev. Proc. 2005–66 sets forth procedures for issuing opinion, advisory, and determination letters and establishes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2005–66 provides the deadline for timely adoption of an interim amendment or discretionary amendment. Notice 2005–95 clarifies the interaction of the Rev. Proc. 2005–66 amendment timing deadlines for qualified plans with the deadlines set forth in statutory provisions or guidance issued by the Service.

Under section 4 of Rev. Proc. 2005–66, the Internal Revenue Service intends to annually publish a Cumulative List to identify statutory, regulatory and guidance changes that must be taken into account in submissions by plan sponsors to the Service for opinion, advisory and determination letters whose remedial amendment period begins on February 1st following issuance of the Cumulative List.

In Notice 2005–101, 2005–2 C.B. 1219, the Service published the 2005 Cumulative List of Changes in Plan Qualification Requirements (2005 Cumulative List). The 2005 Cumulative List is used primarily by plan sponsors of individually designed plans that fall in Cycle A that must be submitted to the Service for review by January 31, 2007. Thus, the 2005 Cumulative List set forth those plan qualification requirements that applied to individually designed defined contribution plans, including ESOPs, and individually designed defined benefit plans. Plan qualification requirements included statutory changes and guidance that became effective after December 31, 2001. The Service stated that plan language for guidance issued after December 13, 2005 would not

be reviewed, unless it was on the 2005 Cumulative List.

In Notice 2004–84, 2004–2 C.B. 1030, the Service published the 2004 Cumulative List of Changes in Plan Qualification Requirements (2004 Cumulative List). The 2004 Cumulative List was used primarily by plan sponsors and practitioners in drafting defined contribution pre-approved plans (that is, defined contribution plans that are master and prototype or volume submitter plans) that were required to be submitted to the Service for review by January 31, 2006. Thus, the 2004 Cumulative List set forth only those plan qualification requirements that applied to defined contribution pre-approved plans. Plan qualification requirements included statutory changes and guidance that became effective after December 31, 2001 and any relevant qualification requirements not contained in the 2004 Cumulative List. The Service also stated that plan language for guidance issued after December 14, 2004 would not be reviewed, unless it was on the 2004 Cumulative List.

III. APPLICATION OF 2006 CUMULATIVE LIST

This notice is being issued in conjunction with the determination letter program for individually designed plans and multiple employer plans eligible for Cycle B and the opinion and advisory letter programs for M&P and VS defined benefit pre-approved plans. In Rev. Proc. 2005–66, the Service announced the opening of the initial five-year remedial amendment cycle. In accordance with Rev. Proc. 2005–66, the Service will start accepting determination letter applications for Cycle B individually designed plans (*i.e.*, the last digit of the plan sponsor's employer identification number is 2 or 7) and multiple employer plans beginning on February 1, 2007. The 12-month submission period for Cycle B individually designed plans and multiple employer plans will end January 31, 2008. In addition, the Service will start accepting opinion and advisory letter applications for defined benefit pre-approved plans beginning on February 1, 2007. The 12-month submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end January 31, 2008. The 9-month submission period for mass-submitters and national sponsors will end October 31, 2007, as provided in section 18.02 of Rev. Proc. 2005–66.

The 2006 Cumulative List, set forth in sections V and VI of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether an individually designed plan, multiple employer plan or defined benefit pre-approved plan has been properly updated. Specifically, the 2006 Cumulative List reflects law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107–16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 104–147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108–218, the American Jobs Creation Act of 2004 (AJCA), Pub. L. 108–357, the Gulf Opportunity Zone Act of 2005 (GOZA), Pub. L. 109–135, and certain law changes under the Pension Protection Act of 2006 (PPA '06), Pub. L. 109–280, described below. In order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2006 Cumulative List. The following items on the 2006 Cumulative List include guidance that has not yet been published: 2, 8, 11, 18, 25, 28, 29, 30, 31, 32, and 33.

Except for the items listed in section V and the items listed in section VI (to the extent provided in section IV) of this notice, the Service will not consider in its review of any opinion, advisory or determination letter application, for the submission period that begins February 1, 2007, any:

1. guidance published after December 14, 2006;

2. statutes enacted after December 14, 2006;

3. qualification requirements first effective in 2008 or later; or

4. statutory provisions that are first effective in 2007, for which there is no guidance identified in this notice.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2005–66 regarding plan termination.

IV. SPECIAL RULES FOR THE PENSION PROTECTION ACT OF 2006

Under section 1107 of PPA '06, a plan amendment made pursuant to any amendment made by PPA '06 generally may be retroactively effective, if, in addition to meeting the other applicable requirements, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of a governmental plan). Section VI of the notice includes certain PPA '06 law changes effective in 2006 and 2007.

Master and prototype plan sponsors and VS practitioners are required to include applicable PPA '06 provisions listed in section VI of this notice in plan documents submitted with their opinion and advisory letter applications for pre-approved defined benefit plans. The Service will consider PPA '06 in issuing opinion and advisory letters, and such letters may be relied on with respect to PPA '06, but only for the PPA '06 provisions listed in section VI of this notice under items 27, 28, 31, 32, and 33.

Individually designed plans and multiple employer plans can be amended, at the option of plan sponsors, to include the applicable PPA '06 provisions listed in section VI of this notice. Individually designed plans and multiple employer plans must identify which PPA '06 provisions the plan has been amended to include and the plan provision that reflects the PPA '06 provision when submitting the determination letter application. However, the Service will not consider PPA '06 in issuing determination letters for individually designed plans and multiple employer plans, and such letters cannot be relied on with respect to any plan provision identified as reflecting PPA '06, regardless of whether the plan has been amended to reflect PPA '06 provisions.

Terminating plans must include the applicable PPA '06 provisions that are in effect at the time of termination.

V. 2006 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance which

reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2005 Cumulative List as "(New)". Thus, the 2006 Cumulative List contains those plan qualification requirements listed in the 2004 and 2005 Cumulative Lists as well as additional 2006 plan qualification requirements.

1. 72(p): Section 1.72(p)–1 of the Income Tax Regulations relating to plan loans was published on December 3, 2002 (67 Fed. Reg. 71821). (2004 C. L.).

2. 401(a): Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages will be published soon. (New).

3. 401(a)(4):

   - Amendments to § 1.401(a)(4)–8 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2004 C. L.).
     - Rev. Rul. 2001–30, 2001–2 C.B. 46. (2004 C. L.).
   - Amendments to § 1.401(a)(4)–9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).
     - Rev. Rul. 2004–21, 2004–1 C.B. 544. (2005 C. L.).

4. 401(a)(9):

   - Sections 1.401(a)(9)–1 through –9 of the Regulations were published on April 17, 2002 and June 15, 2004 (67 Fed. Reg. 18988 and 69 Fed. Reg. 33288). (2004 C. L.).

5. 401(a)(17): Section 401(a)(17) of the Code was amended by § 611(c) of EGTRRA to increase the compensation limit to $200,000. (2004 C. L.).

   - Notice 2001–56, 2001–2 C.B. 277. (2004 C. L.).

6. 401(a)(31):

   - Section 401(a)(31) was amended by § 643(b) of EGTRRA to allow employees' after-tax contributions to be rolled over under certain circumstances. (2004 C. L.).
   - Section 401(a)(31)(B) was amended by § 657(a) of EGTRRA (as amended by § 411(t) of JCWAA) to provide for the automatic rollover of certain mandatory distributions. The effective date is March 28, 2005. (2004 C. L.).
     - Notice 2005–5, 2005–1 C.B. 337. (2004 C. L.).
   - Sections 641, 642 and 643 of EGTRRA (as amended by § 411(q) of JCWAA) amended the definition of eligible retirement plan in § 402 to include a § 403(b) annuity contract and eligible governmental § 457(b) plan. (2004 C. L.).
   - Section 636(b) of EGTRRA modified the definition of eligible rollover distribution to exclude hardship distributions. (2004 C. L.).

7. 401(k) & 401(m):

   - Section 401(k)(2) and § 401(k)(10) of the Code were amended by § 646(a)(1) of EGTRRA to permit distributions of elective deferrals from a § 401(k) plan upon severance from employment. (2004 C. L.).
     - Notice 2002–4, 2002–1 C.B. 298. (2004 C. L.).
   - Section 636(a) of EGTRRA directed the Secretary of the Treasury to revise the regulations relating to safe harbor hardship distributions of elective deferrals from § 401(k) plans so that the time the employee is prohibited from making elective and employee contributions is reduced from one year to six months after a hardship distribution. (2004 C. L.).
     - Notice 2001–56. (2004 C. L.).
     - Notice 2002–4. (2004 C. L.).
   - Section 401(k)(11) of the Code was amended by § 611(f) of EGTRRA to increase the maximum amount of qualified salary reduction contributions that can be made to SIMPLE 401(k) plans. (2004 C. L.).
   - Section 402(g) of the Code was amended by § 611(d) of EGTRRA to increase the applicable dollar amount. (2004 C. L.).
   - Section 401(m)(9) of the Code was amended by § 666 of EGTRRA to eliminate the multiple use test. (2004 C. L.).
   - Final Regulations under § 401(k) and § 401(m) of the Code were published on December 29, 2004 (69 Fed. Reg. 78144). (2004 C. L.).

8. 402A: Section 402A of the Code was added by § 617 of EGTRRA to offer optional treatment of elective deferrals as designated Roth contributions to defined contribution plans, effective for taxable years beginning after December 31, 2005. (2004 C. L.).

   - Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).
     - Notice 2006–44, 2006–20 I.R.B. 889, provides a sample amendment for Roth § 401(k) plans. (New).
   - Final Regulations under § 402A will be issued soon.[1] (New).

9. 404:

   - Section 404(k)(2)(A) of the Code was amended by § 662(a) of EGTRRA (as amended by § 411(w) of JCWAA) to allow ESOP dividends to be reinvested without the loss of dividend deductions. (2005 C. L.).
     - Notice 2002–2, 2002–1 C.B. 285, provides guidance with respect to the changes made to § 404(k) of the Code and on the effective date of § 409(p) of the Code. (2005 C. L.).

[1] Proposed Regulations under § 402A were published on January 26, 2006 (71 Fed. Reg. 4320). (2005 C. L.).

10. 408(q): Section 408(q) of the Code was added by § 602 of EGTRRA (as amended by § 411(i) of JCWAA) to allow for deemed individual retirement accounts (IRAs) in an eligible retirement plan. (2004 C. L.).

    - Section 1.408(q)–1 of the Regulations was published on July 22, 2004 (69 Fed. Reg. 43735). (2004 C. L.).

11. 409: Section 409(p) of the Code was added by § 656 of EGTRRA relating to restrictions on the allocation of employer securities in an ESOP maintained by an S corporation. (2005 C. L.).

    - Section 1.409(p)–1T of the Regulations was published on July 21, 2003 (68 Fed. Reg. 42970). (2005 C. L.).
    - Section 1.409(p)–1T of the Regulations was published on December 17, 2004 (69 Fed. Reg. 75455). (2005 C. L.).
    - Rev. Proc. 2003–23, 2003–1 C.B. 599, as modified and superseded by Rev. Proc. 2004–14, 2004–1 C.B. 489, allows a direct rollover from an ESOP maintained by an S corporation to an individual retirement plan (IRA). (2005 C. L.).
    - Rev. Rul. 2003–6, 2003–1 C.B. 286, provides guidance with respect to whether an ESOP maintained by an S corporation is eligible for the delayed effective date of § 409(p) under § 656(d)(2) of EGTRRA. (2005 C. L.).
    - Rev. Rul. 2004–4, 2004–1 C.B. 414, provides guidance relating to synthetic equity owned by a disqualified person in a nonallocation year of an ESOP maintained by an S corporation. (2005 C. L.).
    - Final Regulations will be published soon that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (New).

12. 410(b): Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (New).

13. 411(a):

    - Section 411(a) of the Code was amended by § 633 of EGTRRA (as amended by § 411(o) of JCWAA) to provide for faster vesting of matching contributions. (2004 C. L.).
    - Rev. Rul. 2003–65, 2003–1 C.B. 1035. (2005 C. L.).
    - Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (New).

14. 411(a)(11): Section 411(a)(11)(D) of the Code was added by § 648(a) of EGTRRA (as amended by § 411(r) of JCWAA) to allow amounts attributable to rollover contributions to be disregarded in determining the value of an account balance for involuntary distributions. (2004 C. L.).

15. 411(d)(6):

    - *Central Laborers' Pension Fund v. Heinz*, 124 S.Ct. 2230 (2004). (2005 C. L.).
        - Rev. Proc. 2005–23, 2005–1 C.B. 991, as modified by Rev. Proc. 2005–76, 2005–2 C.B. 1139. (2005 C. L.).
        - Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (New).
    - Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
        - Section 1.411(d)–3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (2005 C. L.).
        - Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (New).
    - Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).
        - Section 1.411(d)–4, Q&A–2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).

16. 412:

    - Rev. Rul. 2004–20, 2004–1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant's benefits at normal retirement age under the plan. (2005 C. L.).
    - Notice 2004–59, 2004–2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer's election of an alternative deficit reduction contribution. (2005 C. L.).

17. 414(v): Section 414(v) of the Code was added by § 631 of EGTRRA (as amended by § 411(o) of JCWAA) to allow for catch-up contributions for individuals age 50 or older. (2004 C. L.).

    - Regulations under § 414(v) were published on July 8, 2003 (68 Fed. Reg. 40510). (2004 C. L.).
        - Notice 2002–4. (2004 C. L.).

18. 415:

    - Section 415(b) of the Code was amended by § 611 of EGTRRA to increase the dollar limit and change the age when the limit is reduced or increased. (2005 C. L.).
        - Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).

- Section 415(b)(2)(E)(ii) of the Code was amended by § 101(b)(4) of PFEA to fix the percentage at 5.5%. (2005 C. L.).
  - Notice 2004–78, 2004–2 C.B. 879, provides the actuarial assumptions that must be used for distributions with annuity starting dates occurring during the plans years beginning in 2004 and 2005. (2005 C. L.).
- Section 415(c) of the Code was amended by §§ 611(b) and 632 of EGTRRA (as amended by § 411(p) of JCWAA) to increase the maximum annual additions permitted to the lesser of $40,000 or 100% of compensation. (2004 C. L.).
  - Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).
- Rev. Rul. 2002–27, 2002–1 C.B. 925, provided that "compensation" within the meaning of § 415(c) could in certain situations include "deemed § 125 compensation". (2004 C. L.).
- Final Regulations under § 415 with respect to pre-PPA '06 law will be published soon.[2] (New).
  - See section VI of this notice for PPA '06 provisions related to § 415 that will be reflected in the § 415 Final Regulations. (New).

19. 416: Section 416 of the Code was amended by § 613 of EGTRRA (as amended by § 411(k) of JCWAA) to make several changes to the top-heavy rules. (2004 C. L.).

- Section 416(g)(4)(H) of the Code was added by § 613(d) of EGTRRA to provide certain safe harbor § 401(k) plans and § 401(m) plans an exemption from the top-heavy rules. (2004 C. L.).
  - Rev. Rul. 2004–13, 2004–1 C.B. 485. (2004 C. L.).
- Section 416(c)(1)(C) of the Code was amended by § 613(e) of EGTRRA (as amended by § 411(k)(1) of JCWAA) to provide when a frozen defined benefit plan is exempt from the minimum benefit requirements. (2005 C. L.).

20. 417:

- Section 1.417(e)–1 of the Regulations was published on July 16, 2003 (68 Fed. Reg. 41906) relating to retroactive annuity starting date. (2005 C. L.).
- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg. 14798) regarding the disclosure of the relative value of optional forms of benefit. (New).

21. 4975:

- Section 4975 of the Code was amended by § 612 of EGTRRA to allow plan loans for Subchapter S shareholder-employees. (2004 C. L.).
- Section 4975(f) of the Code was amended by § 240 of AJCA to allow an S corporation distribution on allocated shares to pay off an exempt loan as long as equal amounts are allocated to participant accounts. (2005 C. L.).

22. Hurricane Relief:

- Katrina Emergency Tax Relief Act of 2005, P.L. 109–73. (2005 C. L.).
  - Notice 2005–92, 2005–2 C.B. 1165. (2005 C. L.).
- Announcement 2005–70, 2005–2 C.B. 682. (2005 C. L.).
- Gulf Opportunity Zone Act of 2005, P.L. 109–135, added § 1400M and § 1400Q to the Code to provide certain tax benefits to those areas affected by Hurricanes Katrina, Wilma, and Rita. (New).

23. Miscellaneous:

- Rev. Rul. 2001–62, 2001–2 C.B. 632, provides guidance with respect to the mortality table under § 415(b)(2)(E)(v) of the Code and the applicable mortality table under § 417(e)(3)(A)(ii)(I) of the Code. (2005 C. L.).
- Rev. Rul. 2002–42, 2002–1 C.B. 76, provides guidance with respect to a situation where a money purchase pension plan is merged or converted into a profit sharing plan. (2004 C. L.).
- Rev. Proc. 2002–21, 2002–1 C.B. 911, provides guidance with respect to defined contribution retirement plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Proc. 2003–86, 2003–2 C.B. 1211, amplifies Rev. Proc. 2002–21 relating to relief provided for certain defined contribution plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Rul. 2003–11, 2003–1 C.B. 285, provides guidance with respect to satisfying the nondiscrimination rules under § 401(a)(4) of the Code and the minimum coverage requirements under § 410(b) of the Code when applying the increased compensation limit to former employees. (2005 C. L.).
- Rev. Rul. 2004–10, 2004–1 C.B. 484, provides guidance with respect to charging administrative expenses to former and current employees. (2004 C. L.).
- Rev. Rul. 2004–12, 2004–1 C.B. 478, provides guidance with respect to the distribution restrictions applicable to rollover contributions. (2004 C. L.).
- Rev. Rul. 2005–55, 2005–2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)–21 of the Final Regulations were published on October 20, 2006 (71 Fed. Reg. 61877) setting forth standards for the use of an electronic medium to applicable notices to recipients or to make participant elections. (New).

The following guidance contains sample or model amendments: Notice 2001–57, 2001–1 C.B. 279 (miscellaneous EGTRRA amendments); Rev. Rul. 2001–62, 2001–2 C.B. 632 (applicable mortality table); Rev. Proc. 2002–29, 2002–2 C.B. 1176 (required minimum distribution amendments); Rev. Proc.

[2] Section 1.415(c)–2(e) of the Proposed Regulations under § 415 was published on May 31, 2005 (70 Fed. Reg. 31214). (2004 C. L.).

2003–13, 2003–1 C.B. 317 (required language for deemed IRAs); Notice 2005–5 (automatic rollover); and Notice 2006–44, 2006–20 I.R.B. 889 (Roth section 401(k) plans).

VI. PENSION PROTECTION ACT OF 2006 PROVISIONS

The following is a list of PPA '06 provisions effective in 2007 or earlier. See section IV of this notice for rules that apply to the PPA '06 provisions identified below:

24. 401(a)(35): PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded securities. (New).
    - Notice 2006–107, 2006–51 I.R.B. 1114 (December 18, 2006). (New).
25. 401(k): PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (New).
    - Guidance regarding PPA '06 § 826 will be issued soon. (New).
26. 401(k)(2)(B)(i)(V): PPA '06 § 827 permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan. (New).
27. 402(c)(2)(A): PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (New).
28. 402(c)(11): PPA '06 § 829(a)(1) added § 402(c)(11) to allow nonspouse beneficiaries to roll over distributions from a qualified plan to an individual retirement plan. (New).
    - Guidance regarding § 402(c)(11) will be issued soon. (New).
29. 411: PPA '06 § 701 provides rules for cash balance plans and other hybrid defined benefit plans. (New).
    - Guidance will be issued regarding cash balance plans and other hybrid defined benefit plans soon. (New).
30. 411(a): Section 411(a) of the Code was amended by § 904 of PPA '06 to provide for faster vesting of employer nonelective contributions. (New).
    - Guidance regarding § 411(a), as amended by § 904 of PPA '06, will be issued soon. (New).
31. 415(b)(2)(E)(ii): Section 415(b)(2)(E)(ii) of the Code was amended by § 303 of PPA '06 regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (New).
    - Guidance regarding § 415(b)(2)(E)(ii), as amended by PPA '06, will be included in the § 415 Final Regulations, to be issued soon. (New).
32. 415(b)(11): PPA '06 § 867(a) removed the 100% of compensation limitation for a church plan participant if the participant has never been a highly compensated employee of the church. (New).
    - Guidance regarding § 415(b)(11), as added by PPA '06, will be included in the § 415 Final Regulations, to be issued soon. (New).
33. PPA '06 § 1102(a) provides that notice required to be provided under §§ 402(f), 411(a)(11), or 417 may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 provides that the notice under § 411(a)(11) also include a description of the consequences of failing to defer receipt of a distribution. (New).
    - Guidance regarding PPA '06 § 1102 will be issued soon. (New).

DRAFTING INFORMATION

The principal author of this notice is Angelique V. Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Ms. Carrington may be reached at (202) 283–9888 (not a toll-free number).

Transition Relief for Certain Partnerships and Other Pass-Thru Entities Under § 470

Notice 2007–4

PURPOSE

This notice extends by one year the transition relief in Notice 2006–2, 2006–2 I.R.B. 278, and Notice 2005–29, 2005–1 C.B. 796, provided previously to partnerships and other pass-thru entities that are treated under § 470 of the Internal Revenue Code as holding tax-exempt use property solely as a result of the application of § 168(h)(6).

BACKGROUND

Section 848 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418, 1602 (AJCA), enacted on October 22, 2004, added § 470, which imposes new limitations on the deductibility of losses relating to tax-exempt use property. Under § 470(c)(2), "tax-exempt use property" has the meaning provided under § 168(h) (with certain modifications). Under § 168(h)(6), if any property that is not otherwise "tax-exempt use property" under § 168(h) is owned by a partnership that has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and any allocation to the tax-exempt entity of partnership items is not a qualified allocation, an amount equal to the tax-exempt entity's proportionate share of the property generally is treated as tax-exempt use property. Section 168(h)(6)(E) provides that, for purposes of determining

whether property is tax-exempt use property, rules similar to those applicable to partnerships apply to other pass-thru entities. Section 849(a) of the AJCA provides that § 470 generally applies to leases entered into after March 12, 2004. Section 403(ff) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109–135, 119 Stat. 2632, amended § 849(a) of the AJCA to provide that, in the case of property treated as tax-exempt use property solely by reason of § 168(h)(6), § 470 applies to property acquired after March 12, 2004.

Notice 2006–2 and Notice 2005–29 provide transition relief to partnerships and other pass-thru entities that are treated by § 470 as holding tax-exempt use property as a result of the application of § 168(h)(6). Specifically, Notice 2006–2 and Notice 2005–29 provide that, in the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2006, and January 1, 2005, respectively, the Internal Revenue Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6). Notice 2006–2 was issued subsequent to the receipt by the Treasury Department of a letter from the Chairmen and Ranking Members of both the Senate Finance Committee and House Ways and Means Committee requesting that the Treasury Department consider extending the transition relief provided in Notice 2005–29 for taxable years beginning before January 1, 2006.

On September 29, 2006, the Tax Technical Corrections Act of 2006 was introduced in Congress. This legislation addresses, among other things, the application of § 470 to partnerships and other pass-thru entities with tax-exempt use property as a result of § 168(h)(6). See H.R. 6264, 109th Cong. 2nd Sess. § 6(e) (2006) and S. 4026, 109th Cong. 2nd Sess. § 6(e) (2006). The Chairmen of the Senate Finance Committee and House Ways and Means Committee solicited comments regarding the legislation. As of the date of this notice, no congressional action has been taken on the legislation.

If enacted in its current form, the legislation will be effective retroactively, in the case of property treated as tax-exempt use property solely by reason of § 168(h)(6), to property acquired after March 12, 2004. However, the DESCRIPTION OF THE TAX TECHNICAL CORRECTIONS ACT OF 2006, as prepared by the Staff of the Joint Committee on Taxation (October 2, 2006, JCX–48–06), provides that it is not intended that the effective date of the legislation supersede the rules set forth in Notice 2006–2 and Notice 2005–29, with respect to the application of § 470 in the case of partnerships and other pass-thru entities, for taxable years of these entities beginning in 2005 and 2004, respectively. The Service will continue to apply the rules set forth in Notice 2005–29 and Notice 2006–2. Additionally, in the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years beginning before January 1, 2007, the Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6).

EXTENSION OF TRANSITION RELIEF

In the case of partnerships and other pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2007, the Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6). Abusive transactions involving partnerships and other pass-thru entities remain subject to challenge by the Service under other provisions of the tax law.

EFFECT ON OTHER DOCUMENTS

Notice 2006–2 and Notice 2005–29 are modified and superseded.

DRAFTING INFORMATION

For further information regarding this notice, contact John Aramburu of the Office of the Associate Chief Counsel (Income Tax & Accounting) at (202) 622–4960 (not a toll-free call).

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26 CFR 1.61–21: Taxation of fringe benefits.
(Also Internal Revenue Code §§ 61, 280F.)

Rev. Proc. 2007–11

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2007 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable is $15,100 for a passenger automobile and $16,100 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2007 for which the fleet-average valuation rule provided under section 1.61–21(d) of the regulations may be applicable is $20,100 for a passenger automobile and $21,100 for a truck or van.

SECTION 2. BACKGROUND

.01 If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. Internal Revenue Code § 61; Treas. Reg. § 1.61–21.

.02 For employer-provided passenger automobiles (including trucks and vans) made available to employees for personal use that meet the requirements of section 1.61–21(e)(1) of the regulations, generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of section 1.61–21(e). However, regulations section 1.61–21(e)(1)(iii)(A) provides that for a passenger automobile first made available after 1988 to any employee of the employer for personal use, the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the passenger automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (iv)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.03 For employer-provided vehicles available to employees for personal use

for an entire year, generally the value of the personal use may be determined under the automobile lease valuation rule of section 1.61–21(d) of the regulations. Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of regulations section 1.61–21(d)(5)(v) are met, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, section 1.61–21(d)(5)(v)(D) of the regulations provides that for an automobile first made available after 1988 to an employee of the employer for personal use, the value of the personal use may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (v)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.04 The maximum passenger automobile values for applying the vehicle cents-per-mile and the fleet-average value rules reflect the automobile price inflation adjustment of Code section 280F(d)(7). The method of calculating this price inflation amount for automobiles other than trucks and vans uses the "new car" component of the Consumer Price Index (CPI) "automobile component". When calculating this price inflation adjustment for trucks and vans, the "new trucks" component of the CPI is used. This results in somewhat higher maximum values for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988, and is consistent with the change announced in Rev. Proc. 2003–75, 2003–2 C.B. 1018, for purposes of calculating depreciation deductions. See also Rev. Proc. 2004–20, 2004–1 C.B. 642, Rev. Proc. 2005–13, 2005–1 C.B. 759, and Rev. Proc. 2006–18, 2006–12 I.R.B. 645. For purposes of this revenue procedure, the term "trucks and vans" refers to passenger automobiles that are built on a truck chassis, including minivans and sport utility vehicles (SUVs) that are built on a truck chassis.

SECTION 3. PROCEDURE

.01 Maximum Automobile Value for Using the Cents-per-mile Valuation Rule. An employer providing a passenger automobile for the first time in calendar year 2007 for the personal use of any employee may determine the value of the personal use by using the vehicle cents-per-mile valuation rule in section 1.61–21(e) of the regulations if its fair market value on the date it is first made available does not exceed $15,100 for a passenger automobile other than a tuck or van, or $16,100 for a truck or van. If the fair market value of the passenger automobile exceeds this amount, the employer may determine the value of the personal use under the general valuation rules of regulations section 1.61–21(b) or under the special valuation rules of section 1.61–21(d) (Automobile lease valuation) or section 1.61–21(f) (Commuting valuation) if the applicable requirements are met. See Rev. Proc. 2005–48, 2005–2 C.B. 271, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2005, and Rev. Proc. 2006–15, 2006–5 I.R.B. 387, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2006.

.02 Maximum Automobile Value for Using the Fleet-Average Valuation Rule. An employer with a fleet of 20 or more automobiles providing an automobile for the first time in calendar year 2007 for the personal use of any employee for an entire year may determine the value of the personal use by using the fleet-average valuation rule in regulations section 1.61–21(d)(5)(v) to calculate the Annual Lease Values of the automobiles in the fleet. The fleet-average valuation rule may not be used to determine the Annual Lease Value of any automobile if its fair market value on the date it is first made available exceeds $20,100 for a passenger automobile other than a truck or van, or $21,100 for a truck or van. If all other applicable requirements are met, an employer with a fleet of 20 or more vehicles consisting of passenger automobiles other than trucks or vans as well as trucks and vans may use the fleet-average valuation rule as long as none of the vehicles exceed their respective maximum allowable values. If the fair market value of any passenger automobile in the fleet exceeds these amounts, the employer may determine the value of the personal use under regulations section 1.61–21(f) (Commuting valuation) or the general valuation rules of section 1.61–21(b) or may determine the Annual Lease Value of such automobile separately under the automobile lease valuation rule of section 1.61–21(d)(2) if the applicable requirements are met.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to employer-provided passenger automobiles first made available to employees for personal use in calendar year 2007.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Don M. Parkinson of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding the maximum automobile value for applying the valuation rules of regulations section 1.61–21(e)(1)(iii)(A) (the vehicle cents-per-mile valuation rule), and section 1.61–21(d)(5)(v)(D) (the fleet average valuation rule), contact Don M. Parkinson at (202) 622–6040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Reduction in Taxable Income for Housing Hurricane Katrina Displaced Individuals

REG–152043–05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9301) relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers that provide housing in their principal residences to individuals displaced by Hurricane Katrina. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by March 12, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:RU (REG–152043–05), Internal Revenue Service, POB 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–152043–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–152043–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Marnette M. Myers, (202) 622–4920 (not a toll-free number); concerning submission of comments and/or to request a public hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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 the 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 Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may 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 written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

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 1.9300–1 is added to read as follows:

[The text of proposed §1.9300–1 is the same as the text of §1.9300–1T published elsewhere in this issue of the Bulletin.]

Linda M. Kroening,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register for December 11, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 12, 2006, 71 F.R. 74482)

Railroad Track Maintenance Credit; Hearing Cancellation

Announcement 2007–2

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations (REG–142270–05, 2006–43 I.R.B. 791) by cross-reference to temporary regulations relating to the railroad track maintenance credit determined for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year.

DATES: The public hearing, originally scheduled for January 9, 2007 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Friday, September 8, 2006 (71 FR 53053), announced that a public hearing was scheduled for January 9, 2006, at 10 a.m. in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The subject of the public hearing is under section 45G of the Internal Revenue Code.

The public comment period expired on December 7, 2006. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, December 11, 2006, no one has requested to speak. Therefore, the public hearing scheduled for January 9, 2007, is cancelled.

LaNita Van Dyke,
Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on December 26, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 27, 2006, 71 F.R. 77654)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

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