

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

Rev. Rul. 2003-125, page 1243.

Worthless security deduction. This ruling discusses when a shareholder is, and is not, allowed a worthless security deduction under section 165(g)(3) of the Code when an election is made to change the federal tax classification of an entity from a corporation to a disregarded entity. Rev. Rul. 70-489 superseded and Rev. Rul. 59-296 amplified.

Rev. Rul. 2003-126, page 1249.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2004, will be 4 percent for overpayments (3 percent in the case of a corporation), 4 percent for underpayments, and 6 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 1.5 percent.

Rev. Rul. 2003-127, page 1245.

Hedge identification. This ruling holds that for purposes of the income timing rules in regulations section 1.446-4, the hedging transaction definition in section 1.1221-2(b) is not modified by section 1.1221-2(g)(2), which deals with the effects on income characterization of a mis-identification or failure to identify a hedging transaction. If a taxpayer has used a method of accounting for a type of hedging transaction but, under section 1.446-4, that method is impermissible for those transactions, the taxpayer must obtain the Commissioner's consent before changing to a method of accounting that is permitted.

Rev. Rul. 2003-128, page 1247.

LIFO; price indexes; department stores. The October 2003 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in,

first-out inventory methods for valuing inventories for tax years ended on, or with reference to, October 31, 2003.

T.D. 9098, page 1248.

REG-153319-03, page 1256.

Temporary and proposed regulations under section 1502 of the Code amend proposed regulations (REG-132760-03, 2003-43 I.R.B. 933) and temporary regulations (T.D. 9089, 2003-43 I.R.B. 906). These regulations provide guidance concerning how a corporation that is a member of a consolidated group reduces its tax attributes when that member realizes discharge of indebtedness income that is excluded from gross income under section 108.

EXEMPT ORGANIZATIONS

Announcement 2003-89, page 1256.

A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

T.D. 9097, page 1239.

Final regulations under section 148 of the Code set forth rules for determining when a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is treated as a qualified administrative cost.

Announcement of Declaratory Judgment Proceedings Under Section 7428 begins on page 1259.

Finding Lists begin on page ii.

Index for July through December begins on page x.



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 consolidated 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.*

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* Beginning with Internal Revenue Bulletin 2003-43, we are publishing the index at the end of the month, rather than at the beginning.

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

Section 148.—Arbitrage

26 CFR 1.148-5: Yield and valuation of investments.

T.D. 9097

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments. The regulations affect issuers of tax-exempt bonds and provide a safe harbor for qualified administrative costs for broker's commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow.

DATES: *Effective Date:* These regulations are effective February 9, 2004.

Applicability Date: For dates of applicability, see §1.148-11(i) of these regulations.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 under section 148 of the Internal Revenue Code by providing rules for determining when certain brokers' commissions or similar fees are qualified administrative costs (the final regulations). On August 27, 1999, the IRS published in the **Federal Register** a notice of proposed rule-making (REG-105565-99, 1999-2 C.B.

418 [64 FR 46876]) (the proposed regulations). The proposed regulations modify §1.148-5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs. Comments on the proposed regulations were received and a hearing was held on December 14, 1999. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

I. Existing Regulations

A. Investment yield and administrative costs

Section 148 limits the yield on investments purchased with proceeds of tax-exempt bonds. In general, under §1.148-5(b)(1) of the existing regulations, the yield on an investment is computed by comparing receipts from the investment to payments for the investment. Section 1.148-5(e)(1) provides that the yield on an investment generally is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (administrative costs). However, §1.148-5(e)(2)(i) provides that the yield on nonpurpose investments (as defined in §1.148-1(b)) is adjusted to take into account qualified administrative costs. Qualified administrative costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. In general, under §1.148-5(e)(2)(i), administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds (the comparability standard).

B. Special rule for guaranteed investment contracts

Section 1.148-5(e)(2)(iii) of the existing regulations provides that, for a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the guaranteed investment contract provider generally is a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, does not exceed the lesser of (x) a reasonable amount within the meaning of §1.148-5(e)(2)(i) or (y) the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed using the taxable discount rate used by the parties to compute the commission, or if not readily ascertainable, the yield to the issuer on the investment contract or other reasonable taxable discount rate.

C. Special rule for yield restricted defeasance escrows

Section 1.148-5(e)(2)(iv) of the existing regulations provides that, for investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to meet both the comparability and reasonableness requirements if it does not exceed the lesser of \$10,000 or .1 percent of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

II. Proposed Regulations

The proposed regulations were issued in response to comments stating that issuers were having difficulty applying §1.148-5(e)(2)(iii) and (iv), primarily because of uncertainty about whether a particular broker's commission or similar fee is reasonable. The proposed regulations delete the existing provisions of

§1.148-5(e)(2)(iii) and (iv) and create a single rule for qualified administrative costs that treats a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as a qualified administrative cost if the fee is reasonable within the meaning of §1.148-5(e)(2)(i) of the existing regulations.

The proposed regulations also set forth a safe harbor, which treats a broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as reasonable within the meaning of §1.148-5(e)(2)(i) if two requirements are met. Under the first requirement for the safe harbor, the amount of the broker's commission or similar fee treated by the issuer as a qualified administrative cost cannot exceed the lesser of \$25,000 or 0.2 percent of the computational base (the per-investment safe harbor). For guaranteed investment contracts, the computational base is the aggregate amount reasonably expected as of the issue date to be deposited over the term of the contract. For example, for a guaranteed investment contract used to earn a return on what otherwise would be idle cash balances from maturing investments in a yield restricted defeasance escrow, the aggregate amount reasonably expected to be deposited includes all periodic deposits reasonably expected to be made pursuant to the terms of the contract. For investments, other than guaranteed investment contracts, deposited in a yield restricted defeasance escrow, the computational base is the initial amount invested in those investments. Under the second requirement for the safe harbor, for any issue of bonds, the issuer cannot treat as qualified administrative costs more than \$75,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue (the per-issue safe harbor).

III. *Final Regulations*

A. *Safe harbor approach*

Some commentators suggested that the existing regulations, coupled with competitive market forces, work well to produce reasonable brokers' fees. Commentators also suggested that the proposed regulations will eliminate much of the incentive for the independent bidding agent to actively participate in the market, with the result that, in many cases, tax-exempt bond proceeds will be placed in lower-yielding and often riskier investments. These commentators recommended against adopting the safe harbor in the proposed regulations.

Other commentators suggested that the existing regulations do not work well. They stated that the current rules provide little practical guidance upon which an issuer can rely to determine whether a broker's fee for a guaranteed investment contract is a reasonable amount. These commentators recommended that the safe harbor be adopted with modifications. They suggested that the safe harbor will provide a much needed level of certainty.

The IRS and Treasury Department do not believe the final regulations will result in tax-exempt bond proceeds being invested in low-yielding, risky investments because the regulations do not adversely affect an issuer's incentive to realize investment earnings and to invest in secure investments. To provide simplicity and certainty, the final regulations retain the safe harbor, with certain modifications discussed below. The final regulations do not limit the amount of brokers' fees that may be paid by issuers. Thus, for example, the final regulations do not restrict the ability of an issuer to pay a particular fee that exceeds the safe harbor amount. Furthermore, brokers' commissions or similar fees in excess of the safe harbor are qualified administrative costs if they are reasonable within the meaning of §1.148-5(e)(2)(i).

B. *Per-investment safe harbor*

Commentators suggested that, if the per-investment safe harbor is retained, it should be increased. These commentators stated that in some circumstances the safe harbor does not reflect the value provided by brokers, particularly in the case of small or large transactions and long-term debt service reserve fund investments.

Suggestions for modifying the per-investment safe harbor included adding a minimum fee for smaller transactions and a sliding scale for larger transactions. Commentators also suggested increasing the computational base for long-term guaranteed investment contracts by treating them as a series of shorter-term contracts.

The final regulations increase the \$25,000 amount to \$30,000 and provide for a minimum fee of \$3,000. Thus, if 0.2 percent of the computational base is less than \$3,000, the per-investment safe harbor is \$3,000. The final regulations do not adopt a sliding scale and do not treat long-term contracts as a series of shorter-term contracts because the IRS and Treasury Department have concluded that the per-investment safe harbor in the final regulations provides much needed certainty without requiring issuers to pay less than fair market value for brokers' fees.

C. *Per-issue safe harbor*

Commentators recommended that the per-issue safe harbor be increased or eliminated. Some commentators suggested replacing the per-issue safe harbor with an anti-abuse rule to prevent the artificial creation of multiple investments when a single investment would be appropriate. Suggestions included aggregating separate investments that (1) are made at or about the same time if the bond proceeds being invested have similar rebate or yield characteristics, or (2) would normally be bid together as a single investment unless there was a good business reason for the separation.

The final regulations retain the per-issue safe harbor and increase the \$75,000 amount to \$85,000. To maintain simplicity and certainty, the final regulations do not adopt the suggestion to replace the per-issue safe harbor with an anti-abuse rule. The IRS and Treasury Department have concluded that the per-issue safe harbor in the final regulations limits artificial separation of investments without requiring issuers to pay less than fair market value for brokers' fees.

D. *Fees in excess of safe harbor*

Some commentators requested guidance on the factors for determining whether a fee in excess of the safe harbor

is reasonable. Suggested factors included the duration of the contract, the complexity of its terms, the creditworthiness of the issuer, the availability of providers to deliver the contract, the presence of unusual features in the issue or the contract, custom in the industry, and the level of risk to the broker. The IRS and Treasury Department have considered the suggested factors and have concluded that they do not represent administrable standards for determining whether a particular fee is reasonable. Therefore, the final regulations do not specify factors for determining the reasonableness of fees in excess of the safe harbor. Under the final regulations, the determination of whether a fee is reasonable is made based on all the facts and circumstances, including whether the fee satisfies the comparability standard in §1.148-5(e)(2)(i).

Some commentators suggested that the portion of a fee that is within the safe harbor should be a qualified administrative cost, even if the total fee exceeds the safe harbor. The final regulations adopt this suggestion.

E. Computational base for guaranteed investment contracts

Commentators suggested that the computational base for a guaranteed investment contract should be determined as of the date the contract is acquired, rather than the issue date, so that the safe harbor may be applied to guaranteed investment contracts that are not anticipated on the issue date. The final regulations adopt this suggestion.

F. Cost-of-living adjustments

Commentators requested that the final regulations provide for periodic adjustments to the dollar limits in the safe harbor to reflect inflation. The final regulations provide a cost-of-living adjustment for both the per-investment safe harbor and the per-issue safe harbor. The adjusted safe harbor dollar amounts will be published in the annual revenue procedure that sets forth inflation-adjusted items.

G. Interpretative rule

One commentator questioned whether the proposed regulations should have been

classified as a legislative rule. The IRS and Treasury Department have reviewed the applicable authorities and have determined that the regulations are properly classified as an interpretative rule.

Effective Dates

The final regulations apply to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to §1.148-5 (pre-effective date bonds), issuers may apply the final regulations, in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies the final regulations to pre-effective date bonds, the per-issue safe harbor is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§1.148-5(e)(2)(iii)(B)(3) and 1.148-5(e)(2)(iii)(B)(6) of the final regulations (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

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 has also 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 rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Drafting Information

The principal authors of these final regulations are Rose M. Weber and Rebecca L. Harrigal, Office of Chief Counsel, IRS (TE/GE), and Stephen J. Watson, Office of Tax Policy, Treasury Department. 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 * * *

Par. 2. Section 1.148-0 is amended by revising the entry in paragraph (c) for §1.148-11 (i) to read as follows:

§1.148-0 Scope and table of contents.

* * * * *

(c) *Table of contents.*

* * * * *

§1.148-11 Effective dates.

* * * * *

(i) Special rule for certain broker's commissions and similar fees.

* * * * *

Par. 3. In §1.148-5, paragraph (e) is amended as follows:

1. Paragraph (e)(2)(iii) is revised.
2. Paragraph (e)(2)(iv) is removed.

The revision reads as follows:

§1.148-5 Yield and valuation of investments.

* * * * *

(e) * * *

(2) * * *

(iii) *Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow—(A) In general.* An amount paid for a broker's commission or similar fee with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is a qualified administrative cost if the fee is reasonable within the meaning of paragraph (e)(2)(i) of this section.

(B) *Safe harbor—(1) In general.* A broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable within the meaning of paragraph (e)(2)(i) of this section to the extent that—

(i) The amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of:

(A) \$30,000; and

(B) 0.2% of the computational base or, if more, \$3,000; and

(ii) For any issue, the issuer does not treat as qualified administrative costs more than \$85,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(2) *Computational base.* For purposes of paragraph (e)(2)(iii)(B)(1) of this section, computational base shall mean—

(i) For a guaranteed investment contract, the amount of gross proceeds the issuer reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract, and

(ii) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(3) *Cost-of-living adjustment.* In the case of a calendar year after 2004, each of the dollar amounts in paragraph (e)(2)(iii)(B)(1) of this section shall be increased by an amount equal to—

(i) Such dollar amount; multiplied by

(ii) The cost-of-living adjustment determined under section 1(f)(3) for such calendar year by using the language “calendar year 2003” instead of “calendar year 1992” in section 1(f)(3)(B).

(4) *Rounding.* If any increase determined under paragraph (e)(2)(iii)(B)(3) of this section is not a multiple of \$1,000, such increase shall be rounded to the nearest multiple thereof.

(5) *Applicable year for cost-of-living adjustment.* The cost-of-living adjustments under paragraph (e)(2)(iii)(B)(3) of this section shall apply to the safe harbor amounts under paragraph (e)(2)(iii)(B)(1) of this section based on the year the guaranteed investment contract or the investments for the yield restricted defeasance escrow, as applicable, are acquired.

(6) *Cost-of-living adjustment to determine remaining amount of per-issue safe harbor—(i) In general.* This paragraph (e)(2)(iii)(B)(6) applies to determine the portion of the safe harbor amount under paragraph (e)(2)(iii)(B)(1)(ii) of

this section, as modified by paragraph (e)(2)(iii)(B)(3) of this section (the per-issue safe harbor), that is available (the remaining amount) for any year (the determination year) if the per-issue safe harbor was partially used in one or more prior years.

(ii) *Remaining amount of per-issue safe harbor.* The remaining amount of the per-issue safe harbor for any determination year is equal to the per-issue safe harbor for that year, reduced by the portion of the per-issue safe harbor used in one or more prior years.

(iii) *Portion of per-issue safe harbor used in prior years.* The portion of the per-issue safe harbor used in any prior year (the prior year) is equal to the total amount of broker's commissions or similar fees paid in connection with guaranteed investment contracts or investments for a yield restricted defeasance escrow acquired in the prior year that the issuer treated as qualified administrative costs for the issue, multiplied by a fraction the numerator of which is the per-issue safe harbor for the determination year and the denominator of which is the per-issue safe harbor for the prior year. See paragraph (e)(2)(iii)(C) *Example 2* of this section.

(C) *Examples.* The following examples illustrate the application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example 1. Multipurpose issue. In 2003, the issuer of a multipurpose issue uses brokers to acquire the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on what otherwise would be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer deposits \$22,000,000 into the construction GIC and reasonably expects that no further deposits will be made over its term. The issuer uses \$8,040,000 of the proceeds to purchase the Treasury investments. The issuer reasonably expects that it will make aggregate deposits of \$600,000 to the float GIC over its term. The brokers' fees are \$30,000 for the construction GIC, \$16,080 for the Treasury investments and \$3,000 for the float GIC. The issuer has not previously treated any brokers' commissions or similar fees as qualified administrative costs. The issuer may claim all \$49,080 in brokers' fees for these investments as qualified administrative costs because the fees do not exceed the safe harbors in paragraph (e)(2)(iii)(B) of this section. Specifically, each of the brokers' fees equals the lesser of \$30,000 and 0.2% of the computational base (or, if more, \$3,000) (i.e., lesser of \$30,000 and 0.2% x \$22,000,000 for the construction GIC; lesser of \$30,000 and 0.2% x

\$8,040,000 for the Treasury investments; and lesser of \$30,000 and \$3,000 for the float GIC). In addition, the total amount of brokers' fees claimed by the issuer as qualified administrative costs (\$49,080) does not exceed the per-issue safe harbor of \$85,000.

Example 2. Cost-of-living adjustment. In 2003, an issuer issues bonds and uses gross proceeds of the issue to acquire two guaranteed investment contracts. The issuer pays a total of \$50,000 in brokers' fees for the two guaranteed investment contracts and treats these fees as qualified administrative costs. In a year subsequent to 2003 (Year Y), the issuer uses gross proceeds of the issue to acquire two additional guaranteed investment contracts, paying a total of \$20,000 in broker's fees for the two guaranteed investment contracts, and treats those fees as qualified administrative costs. For Year Y, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(3) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(1) of this section are \$3,000, \$32,000 and \$90,000. The remaining amount of the per-issue safe harbor for Year Y is \$37,059 (\$90,000 - [\$50,000 x \$90,000/\$85,000]). The broker's fees in Year Y do not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(1)(ii) (as modified by paragraph (e)(2)(iii)(B)(3)) of this section because the broker's fees do not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(6) of this section for Year Y. In a year subsequent to Year Y (Year Z), the issuer uses gross proceeds of the issue to acquire an additional guaranteed investment contract, pays a broker's fee of \$15,000 for the guaranteed investment contract, and treats the broker's fee as a qualified administrative cost. For Year Z, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(3) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(1) of this section are \$3,000, \$33,000 and \$93,000. The remaining amount of the per-issue safe harbor for Year Z is \$17,627 (\$93,000 - [(\$50,000 x \$93,000/\$85,000) + (\$20,000 x \$93,000/\$90,000)]). The broker's fee incurred in Year Z does not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(1)(ii) (as modified by paragraph (e)(2)(iii)(B)(3)) of this section because the broker's fee does not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(6) of this section for Year Z. See paragraph (e)(2)(iii)(B)(6) of this section.

* * * * *

Par. 4. Section 1.148-11 is amended by revising paragraph (i) to read as follows:

§1.148-11 *Effective dates.*

* * * * *

(i) *Special rule for certain broker's commissions and similar fees.* Section 1.148-5(e)(2)(iii) applies to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to §1.148-5 (pre-effective date bonds), issuers may apply §1.148-5(e)(2)(iii), in whole but not in part, with respect to transactions entered

into on or after December 11, 2003. If an issuer applies §1.148-5(e)(2)(iii) to pre-effective date bonds, the per-issue safe harbor in §1.148-5(e)(2)(iii)(B)(1)(ii) is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§1.148-5(e)(2)(iii)(B)(3) and 1.148-5(e)(2)(iii)(B)(6) (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

Approved December 2, 2003.

Gregory Jenner,
Deputy Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on December 10, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 11, 2003, 68 F.R. 69020)

Section 165.—Losses

26 CFR 1.165-1: Losses.
(Also § 332; § 1.332-2.)

Worthless security deduction. This ruling discusses when a shareholder is, and is not, allowed a worthless security deduction under section 165(g)(3) of the Code when an election is made to change the federal tax classification of an entity from a corporation to a disregarded entity. Rev. Rul. 70-489 superseded and Rev. Rul. 59-296 amplified.

Rev. Rul. 2003-125

ISSUE

Under the circumstances described below, when an election is made to change the federal tax classification of an entity from a corporation to a disregarded entity under § 301.7701-3 of the Procedure and Administration Regulations, is the shareholder allowed a worthless security deduction under § 165(g)(3) of the Internal Revenue Code?

FACTS

Situation 1

P is a domestic corporation that is a calendar year taxpayer. FS is an entity that is organized under the laws of Country X. FS has only one class of equity interests outstanding, all of which is owned by P. Since the date of its organization, FS has derived all of its gross receipts from manufacturing operations. FS is indebted to P and to trade creditors. All of FS's indebtedness constitutes valid indebtedness for federal tax purposes and is recourse to FS. FS is an eligible entity within the meaning of § 301.7701-3(a) and, prior to July 1, 2003, FS is treated as a corporation within the meaning of § 7701(a)(3) for federal tax purposes.

On December 31, 2002, P's FS stock was not worthless. On July 1, 2003, P files a valid Form 8832, *Entity Classification Election*, changing the classification of FS from a corporation to a disregarded entity for federal tax purposes effective as of that date. The election has no effect on the treatment of FS under Country X law. After the election is effective, FS continues its manufacturing operations. At the close of the day immediately before the effective date of the election, the fair market value of FS's assets, including intangible assets such as goodwill and going concern value, exceeds the sum of its liabilities. However, at that time, the fair market value of FS's assets, excluding intangible assets such as goodwill and going concern value, does not exceed the sum of its liabilities.

Situation 2

The facts are the same as in *Situation 1*, except that at the close of the day immediately before the effective date of the election, the fair market value of FS's assets, including intangible assets such as goodwill and going concern value, does not exceed the sum of its liabilities.

LAW AND ANALYSIS

Section 301.7701-3(g)(1)(iii) provides that if an eligible entity classified as an association properly elects under § 301.7701-3(c)(1)(i) to be classified as a disregarded entity, the association is deemed to distribute all of its assets and

liabilities to its single owner in liquidation of the association.

Under § 301.7701-3(g)(2), the tax treatment of a change in the classification of an entity for federal income tax purposes by an election under § 301.7701-3(c)(1)(i) is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

Section 301.7701-3(g)(3) provides that any transaction deemed to occur as a result of a change in classification is treated as occurring immediately before the close of the day before the election is effective.

Under § 332(a), no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation. Section 332(b) provides, in part, that a distribution shall be considered to be in complete liquidation only if the corporation receiving such property was, on the date of the adoption of the plan of liquidation and at all times thereafter until the receipt of the property, the owner of stock that meets the requirements of § 1504(a)(2) and the distribution is made in complete cancellation or redemption of all of the stock of the liquidating corporation.

Section 1.332-2(b) of the Income Tax Regulations provides that § 332 applies only to those cases in which the recipient corporation receives at least partial payment for stock which it owns in the liquidating corporation. If § 332 is not applicable, see § 165(g) relative to allowance of losses on worthless securities.

In determining the amount of gain recognized by shareholders upon a taxable corporate liquidation, courts have recognized that goodwill and other intangible assets that are distributed in the liquidation must be taken into account. See, e.g., *Carty v. Commissioner*, 38 T.C. 46 (1962).

Section 165(a) allows as a deduction any loss sustained during the year and not compensated for by insurance or otherwise. Under § 1.165-1(b) and (d), to be allowable as a deduction under § 165(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and, with certain exceptions, actually sustained during the taxable year. Only a *bona fide* loss is allowable. Substance and not mere form governs in determining a deductible loss.

Under § 165(g)(1), if any security which is a capital asset becomes worthless during the taxable year, the resulting loss is treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset. Section 165(g)(2)(A) provides that for purposes of a worthless security deduction, the term "security" includes a share of stock in a corporation.

Under § 165(g)(3), any security in a corporation affiliated with a taxpayer that is a domestic corporation is not treated as a capital asset. A corporation is treated as affiliated with the taxpayer only if the taxpayer directly owns stock of the corporation that meets the requirements of § 1504(a)(2), and more than 90 percent of the aggregate of the corporation's gross receipts for all taxable years are from sources other than royalties, certain rents, dividends, certain interest, annuities, and gains from sales of stocks and securities.

Section 166(a)(1) allows as a deduction any debt which becomes worthless within the taxable year.

Section 166(a)(2) provides that the Secretary, when satisfied that a debt is recoverable only in part, may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

Whether a loss due to worthlessness is actually sustained during the taxable year is a factual determination. *Boehm v. Commissioner*, 326 U.S. 287, 293 (1945), *reh'g denied*, 326 U.S. 811 (1946). A taxpayer must prove with objective evidence that the stock in question becomes worthless during the taxable year. *Id.* at 292.

In *Morton v. Commissioner*, 38 B.T.A. 1270, 1279 (1938), *aff'd*, 112 F.2d 320 (7th Cir. 1940), a shareholder claimed a worthless stock deduction for the year in which the corporation liquidated and the Commissioner denied the deduction on the grounds that the stock became worthless in a prior year. The court concluded that stock is worthless when it has neither liquidating value nor potential future value. Applying this standard, the court concluded that the stock became worthless in a prior year and, thus, denied the worthless stock deduction in the year claimed by the taxpayer. Where a worthless stock deduction is claimed upon the liquidation of a corporation and the stock did not become worthless in a prior tax year, the standard for determining worthlessness is whether

the shareholders receive payment for their stock. *See H.K. Porter Co. v. Commissioner*, 87 T.C. 689 (1986).

Rev. Rul. 70-489, 1970-2 C.B. 53, *amplifying* Rev. Rul. 59-296, 1959-2 C.B. 87, holds that where a wholly owned subsidiary had *bona fide* indebtedness to its parent corporation that exceeded the fair market value of its assets and the subsidiary transferred all of its assets to its parent in partial satisfaction of its indebtedness, the parent could claim both a bad debt deduction and a worthless security deduction, even though the parent continued the business formerly conducted by the subsidiary. The ruling states as a fact that the stock of the subsidiary became worthless in the year at issue.

If a shareholder receives no payment for its stock in a liquidation of the corporation, neither § 331 nor § 332 applies to the liquidation. The fact that a shareholder receives no payment for its stock in a liquidation of the corporation demonstrates that such shareholder's stock is worthless. In addition, the liquidation is an identifiable event that fixes the loss with respect to the stock.

A shareholder receives no payment for its stock in a liquidation if, at the time of the liquidation, the fair market value of the corporation's assets is less than the corporation's liabilities. In determining the fair market value of a corporation's assets, all of the corporation's assets, including tangible and intangible assets (such as goodwill and going concern value) and assets that may not appear on the corporation's balance sheet, must be taken into account. In addition, the fair market value of an asset may be different than the value that appears on the corporation's balance sheet. The estate tax regulations provide that the fair market value of property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. *See* § 20.2031-1(b) of the Estate Tax Regulations. The Service and the courts regularly apply the valuation standards in the estate tax regulations for purposes of determining the value of property for income tax purposes. *See, e.g., Krapf v. United States*, 977 F.2d 1454, 1457 (Fed. Cir. 1992); *Martin Ice Cream Co. v. Commissioner*, 110 T.C. 189, 220 (1998).

The fair market value of a corporation's intangible assets is determined by reference to all of the facts and circumstances, which may include, but are not limited to, the corporation's prospects for future profit as evidenced by such things as the corporation's economic outlook, the demand for the corporation's products, the efficiency of the corporation's operations, and the size of the corporation's customer base. Other factors used in making this determination may include, but are not limited to, whether a substantial capital infusion will be necessary in order to continue operations, whether any significant operational changes are anticipated, and whether an impairment loss is or will be reported for financial statement purposes or whether the operations are or will be reported as discontinued operations for financial statement purposes. Where a corporation's business continues after a liquidation of the corporation without a substantial infusion of capital and the revenues of that business following the liquidation exceed the amount required to service debt that existed immediately prior to the liquidation, such facts may suggest that at the time of liquidation the fair market value of the liquidating entity's assets, including goodwill and going concern value, exceeded the sum of its liabilities and that the deemed distribution of assets was with respect to stock within the meaning of § 1.332-2(b).

In *Situation 1*, at the close of the day immediately before the effective date of the election, the stock of FS is not worthless because the fair market value of FS's assets, including intangible assets such as goodwill and going concern value, exceeds the sum of FS's liabilities. Accordingly, P receives at least partial payment on its FS stock in the deemed liquidation of FS. Hence, § 332 applies to the deemed liquidation and no loss is allowable to P.

In *Situation 2*, at the close of the day immediately before the effective date of the election, the stock of FS is worthless because the fair market value of FS's assets, including intangible assets such as goodwill and going concern value, does not exceed the sum of FS's liabilities. Accordingly, P does not receive any payment on its FS stock in the deemed liquidation of FS and § 332 does not apply to the deemed liquidation. The deemed liquidation is an

identifiable event that fixes P's loss with respect to the FS stock. Therefore, P is allowed a worthless security deduction under § 165(g)(3) on its tax return for the 2003 taxable year. FS's creditors, including P, may be entitled to a deduction for a partially or wholly worthless debt under § 166.

HOLDING

When an election is made to change the classification of an entity from a corporation to a disregarded entity, the shareholder of such entity is allowed a worthless security deduction under § 165(g)(3) if the fair market value of the assets of the entity, including intangible assets such as goodwill and going concern value, does not exceed the entity's liabilities such that on the deemed liquidation of the entity the shareholder receives no payment on its stock.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 70-489 is superseded and Rev. Rul. 59-296 is amplified.

DRAFTING INFORMATION

For further information regarding this revenue ruling, contact Glenn Bogdonoff of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4950 (not a toll-free call) or Sean McKeever of the Office of Associate Chief Counsel (Corporate) at (202) 622-7750 (not a toll-free call).

Section 332.—Complete Liquidations of Subsidiaries

26 CFR 1.332-2: Requirements for nonrecognition of gain or loss.

When a shareholder is, and is not, allowed a worthless security deduction under section 165(g)(3) when an election is made to change the federal tax classification of an entity from a corporation to a disregarded entity. See Rev. Rul. 2003-125, page 1243.

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446-4: Hedging transactions. (Also §§ 1221; 1.1221-2.)

Hedge identification. This ruling holds that for purposes of the income timing rules in regulations section 1.446-4,

the hedging transaction definition in section 1.1221-2(b) is not modified by section 1.1221-2(g)(2), which deals with the effects on income characterization of a mis-identification or failure to identify a hedging transaction. If a taxpayer has used a method of accounting for a type of hedging transaction but, under section 1.446-4, that method is impermissible for those transactions, the taxpayer must obtain the Commissioner's consent before changing to a method of accounting that is permitted.

Rev. Rul. 2003-127

ISSUES

(1) If a transaction satisfies the definitions of a hedging transaction in § 1221(b)(2)(A) of the Internal Revenue Code and § 1.1221-2(b) of the Income Tax Regulations but the taxpayer fails to identify the transaction under §§ 1.1221-2(f) and 1.446-4(d)(2), must the taxpayer nevertheless account for the transaction using a method of accounting that is permissible under § 1.446-4?

(2) If a taxpayer has used a method of accounting for a type of hedging transaction but, under § 1.446-4, that method is impermissible for that type of transaction, is the taxpayer required to obtain the Commissioner's consent before changing to a method of accounting permitted by § 1.446-4?

FACTS

In the normal course of *H*'s trade or business, *H* borrows money and enters into a contract to manage the risk of interest rate changes with respect to that borrowing. The contract is not a § 1256 contract as defined in § 1256(b) of the Code. *H* fails to identify the contract as a hedging transaction under § 1.1221-2(f). *H*'s failure to identify the contract as a hedging transaction does not satisfy the conditions for the application of either § 1.1221-2(g)(2)(ii) (which addresses certain inadvertent errors) or § 1.1221-2(g)(iii) (which provides an anti-abuse rule). In addition, *H* fails to comply with the identification requirements in § 1.446-4(d)(2). Section 1.446-4(a)(1) and (2), which sets forth exceptions to the general rules in § 1.446-4, does not apply to the contract.

H has previously established a method of accounting for hedging transactions of this type, but the method is not a permissible method under § 1.446-4.

LAW AND ANALYSIS

Issue (1)

Section 1221 defines a capital asset as property that is not described in § 1221(a)(1) through § 1221(a)(8). Among the excluded classes of property are the transactions described in § 1221(a)(7) that are clearly identified as hedging transactions before the close of the day on which they are acquired, originated, or entered into. Thus, to be excluded from treatment as a capital asset under § 1221(a)(7), a transaction must fall within the definition of a hedging transaction and must be properly identified as a hedging transaction.

The term "hedging transaction" is defined in § 1221(b)(2)(A) and § 1.1221-2(b) as any transaction entered into by a taxpayer in the normal course of the taxpayer's trade or business primarily to manage the risks specified in § 1221(b)(2)(A)(i) through (iii). Because the contract is entered into in the normal course of *H*'s business primarily to manage the risk of interest rate changes with respect to a borrowing, the contract falls within the definition of a hedge set forth in § 1221(b)(2)(A)(i) and § 1.1221-2(b)(2).

The general requirements for a proper identification, as required by § 1221(a)(7), are set forth in § 1.1221-2(f). Additional identification requirements are set forth in § 1.446-4(d)(2). Furthermore, § 1221(b)(2)(B) specifically directs the Secretary to prescribe regulations that properly characterize any income, gain, expense, or loss arising from a transaction that (1) is a hedging transaction but is not properly identified under § 1221(a)(7) or (2) is not a hedging transaction but is so identified. Section 1.1221-2(g)(2) generally provides that a failure to make a proper identification under § 1.1221-2(f)(1) "establishes that a transaction is not a hedging transaction" and that the rules of § 1.1221-2(a)(1) and (2) (providing special rules for the character of gain or loss) do not apply. Consequently, because *H* fails to identify the contract as a hedging transaction under § 1.1221-2(f),

and because the exceptions set forth in §§ 1.1221-2(g)(2)(ii) or (iii) do not apply, then § 1.1221-2(a)(1) and (2) do not apply to the contract.

Section 1.446-4(a) provides that “a hedging transaction as defined in § 1.1221-2(b) (whether or not the character of the gain or loss from the transaction is determined under § 1.1221-2) must be accounted for under the rules of [§ 1.446-4].” Because § 1.1221-2(g) causes *H*'s contract to fail to be a hedging transaction for purposes of § 1.1221-2(a)(1) and (2), the question arises whether *H*'s contract also fails to be a hedging transaction for purposes of § 1.446-4(a).

H's contract is a hedging transaction for purposes of § 1.446-4. First, the definitions of a hedging transaction set forth in § 1221(b)(2)(A) and § 1.1221-2(b) do not contain an identification requirement. In fact, § 1221(b)(2)(B) refers to a transaction “which is a hedging transaction but which was not identified as such in accordance with [§ 1221(a)(7)]” This language indicates that, even though § 1221(a)(7) does not cause the transaction to give rise to ordinary income or loss unless it is properly identified, that transaction may nevertheless be a hedging transaction.

Second, § 1.446-4(a) refers only to the definition of a hedging transaction in § 1.1221-2(b) and does not refer to the additional rules contained in § 1.1221-2(g)(2) regarding the treatment of unidentified transactions.

Third, the purpose of §§ 1221(a)(7) and 1221(b) is to address the character of income or loss. Specifically, these sections match the character of the hedge to that of the hedged item in a manner that is generally advantageous to taxpayers. The purpose of § 1.446-4 is to clearly reflect income by matching the timing of income, gain, loss, and deductions of a hedging transaction to income, gain, loss and deductions of a hedged item. This purpose is independent of character of income and loss. Thus, § 1.1221-2(g)(1) and (2) affects the character of income or loss but does not modify the definition of a hedging transaction under § 1221(b)(2)(A) and § 1.1221-2(b). Despite *H*'s failure to identify the contract as a hedging transaction under § 1.1221-2(f)(1), *H*'s failure to identify the hedged item, items, or aggregate

risk under § 1.1221-2(f)(2), and *H*'s failure to comply with the identification requirements in § 1.446-4(d)(2), *H* must account for income, deduction, gain, or loss on the contract using a method of accounting that clearly reflects income under § 1.446-4.

Issue (2)

Section 1.446-4 provides guidance regarding methods of accounting that clearly reflect income from hedging transactions. See § 1.446-4(b), which states that “[t]o clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of the income, deduction, gain, or loss from the item or items being hedged.” Each method of accounting used by a taxpayer must clearly reflect income.

Section 1.446-4(c) generally permits a taxpayer to adopt a method of accounting that clearly reflects the taxpayer's income from a particular type of transaction. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and may only be changed with the consent of the Commissioner, as provided by § 446(e) and the applicable regulations and procedures.

Rev. Rul. 90-38, 1990-1 C.B. 57, holds that in determining gross income or deductions, the treatment of a material item in the same way for two or more consecutively filed tax returns represents consistent treatment of that item for purposes of § 1.446-1(e)(2)(ii)(a). If a taxpayer treats an item properly in the first return that reflects the item, however, the taxpayer need not have treated the item consistently in two or more consecutive tax returns to have adopted a method of accounting. If a taxpayer has adopted a method of accounting, the taxpayer may not change the method by amending its prior income tax returns.

Despite *H*'s failure to identify the contract as a hedging transaction under § 1.1221-2(f) and *H*'s failure to comply with the identification requirements in § 1.446-4(d)(2), *H* must account for the gain or loss on the contract using a method of accounting that clearly reflects income

under § 1.446-4. See § 1.446-1(b)(1) (which provides that if the taxpayer does not regularly employ a method of accounting which clearly reflects income, the computation of taxable income shall be made in a manner which, in the opinion of the Commissioner, does clearly reflect income). Because *H* has previously adopted a method of accounting for the same type of hedging transaction, *H* must use that method to account for the gain or loss on the contract unless *H* obtains the consent of the Commissioner to change to a method that satisfies § 1.446-4. See § 1.446-1(e)(2)(i) (which provides that a taxpayer must obtain the consent of the Commissioner before changing its method of accounting, whether or not its method of accounting is permissible) and § 446(f) (which provides that failure to file a request to change the method of accounting does not prevent the imposition, or diminish the amount of, any penalties or additions to tax). See Rev. Proc. 97-27, 1997-1 C.B. 680, for the procedure to obtain the Commissioner's consent to change to a permissible method.

HOLDINGS

(1) If a transaction satisfies the definitions of a hedging transaction in § 1221(b)(2)(A) and § 1.1221-2(b), the taxpayer must account for the transaction using a method of accounting that is permissible under § 1.446-4, even if the taxpayer fails to identify the transaction under §§ 1.1221-2(f) and 1.446-4(d)(2).

(2) If a taxpayer has used a method of accounting for a type of hedging transaction but, under § 1.446-4, that method is impermissible for those transactions, the taxpayer must obtain the Commissioner's consent before changing to a method of accounting permitted by § 1.446-4.

DRAFTING INFORMATION

The principal author of this revenue ruling is Arturo Estrada of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Mr. Estrada at (202) 622-3900 (not a toll-free call).

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The October 2003 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, October 31, 2003.

Rev. Rul. 2003-128

The following Department Store Inventory Price Indexes for October 2003 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory

methods for tax years ended on, or with reference to, October 31, 2003.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Oct. 2002	Oct. 2003	Percent Change from Oct. 2002 to Oct. 2003 ¹
1. Piece Goods	485.7	487.3	0.3
2. Domestic and Draperies	581.6	556.5	-4.3
3. Women's and Children's Shoes	660.4	657.4	-0.5
4. Men's Shoes	895.6	844.9	-5.7
5. Infants' Wear	628.9	609.1	-3.1
6. Women's Underwear	544.2	520.2	-4.4
7. Women's Hosiery	339.8	352.3	3.7
8. Women's and Girls' Accessories	551.6	578.0	4.8
9. Women's Outerwear and Girls' Wear	388.2	387.8	-0.1
10. Men's Clothing	573.0	552.3	-3.6
11. Men's Furnishings	599.3	592.1	-1.2
12. Boys' Clothing and Furnishings	459.4	441.9	-3.8
13. Jewelry	897.1	883.7	-1.5
14. Notions	808.9	786.9	-2.7
15. Toilet Articles and Drugs	975.1	984.0	0.9
16. Furniture and Bedding	626.4	618.8	-1.2
17. Floor Coverings	592.6	589.4	-0.5
18. Housewares	745.8	714.3	-4.2
19. Major Appliances	223.7	210.2	-6.0
20. Radio and Television	47.6	44.4	-6.7
21. Recreation and Education ²	85.2	82.1	-3.6
22. Home Improvements ²	124.6	125.3	0.6
23. Automotive Accessories ²	111.3	111.8	0.4
Groups 1-15: Soft Goods	582.7	574.9	-1.3
Groups 16-20: Durable Goods	407.4	390.0	-4.3
Groups 21-23: Misc. Goods ²	95.7	93.8	-2.0
Store Total ³	518.1	507.8	-2.0

¹Absence of a minus sign before the percentage change in this column signifies a price increase.

²Indexes on a January 1986 = 100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Denise Carmichael of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Carmichael at (202) 622-6888 (not a toll-free call).

Section 1502.—Regulations

26 CFR 1.1502-28T: Consolidated section 108 (temporary).

T.D. 9098

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These temporary regulations affect corporations filing consolidated returns. The text of the temporary regulations also serves as the text of the proposed regulations (REG-153319-03) 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 10, 2003.

FOR FURTHER INFORMATION CONTACT: Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code (Code) provides that gross income includes income from the discharge of indebtedness, except as provided by law. Section 108(a) provides that, in certain cases, gross income of a C corporation does not include certain amounts of discharge of indebtedness income that would otherwise be includible in gross income. In these cases, however, the taxpayer must reduce its tax attributes, including the basis of property, by the excluded amount of discharge of indebtedness income (excluded COD income). This provision reflects Congressional intent of “deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge.” See H.R. Rep. 96-833 at 9 (1980); S. Rep. No. 96-1035 at 10 (1980).

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG-132760-03, 2003-43 I.R.B. 933 [68 FR 52542]) and temporary regulations (T.D. 9089, 2003-43 I.R.B. 906 [68 FR 52487]) under section 1502 (the original regulations). The original regulations provide guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes excluded COD income and the method for reducing those attributes. As explained in the preamble to the original regulations, those regulations adopt a consolidated approach that is intended to reduce all attributes that are available to the debtor member and contain a rule governing the order in which attributes are reduced. In particular, under the original regulations, the attributes attributable to the debtor member are first subject to reduction. For this purpose, attributes attributable to the debtor member include (1) consolidated attributes attributable to the debtor member, (2) attributes that arose in separate return limitation years of the debtor member, and (3) the basis of property of the debtor member. To the extent that the excluded COD income exceeds the attributes attributable to the debtor member, the original regulations require the reduction of consolidated attributes attributable to other members and

attributes attributable to other members that arose (or are treated as arising) in a separate return limitation year to the extent that the debtor member is a member of the separate return limitation year subgroup with respect to such attribute.

Explanation of Provisions

The IRS and Treasury Department have become aware that the original regulations may not provide for the reduction of all the attributes that are in fact available to the debtor member. In particular, those regulations may not require the reduction of tax attributes attributable to members other than the debtor member that arise in a separate return year and that are not subject to a SRLY limitation. Such attributes, for example, include attributes from separate return limitation years that are not subject to a SRLY limitation as a result of the application of the overlap rule of §1.1502-15(g) or §1.1502-21(g).

These temporary regulations, therefore, amend the original regulations to include among the tax attributes that are subject to reduction, after the reduction of the tax attributes attributable to the debtor member, tax attributes attributable to members other than the debtor member (other than asset basis) that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year to the extent that no SRLY limitation applies to the use of such attributes by the group. This amendment is consistent with the approach of the original regulations to make available for reduction all of the attributes that are available to offset income of the debtor member.

Effective Date

These amendments to the original regulations generally apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003.

Other Issues

The IRS and Treasury Department are aware that there are a number of other technical issues that have been identified regarding the operation of the original regulations. The IRS and Treasury Department

are currently studying these issues, including the application of section 1245 to property the basis of which has been reduced, the timing of certain basis adjustments, and the timing of taking into account certain excess loss accounts. It is expected that guidance regarding these issues will be issued in the near future and may be available on a retroactive basis.

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. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income and the application of previously promulgated regulations regarding such application. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. 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 Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). 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 1.1502-28T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-28T is amended by revising paragraphs (a)(4) and (d) to read as follows:

§1.1502-28T Consolidated section 108 (temporary).

(a) * * *

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute if a SRLY limitation applies to the use of such attribute. In addition, such amount shall be applied to reduce the tax attributes attributable to members that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year if no SRLY limitation applies to the use of such attribute. The reduction of each tax attribute pursuant to the three preceding sentences shall be made in the order prescribed in section 108 and pursuant to the principles of §1.1502-21T(b)(1). Except as otherwise provided in this paragraph (a)(4), a tax attribute that arose in a separate return year or that arose (or is treated as arising) in a separate return limitation year is not subject to reduction pursuant to this paragraph (a)(4). Basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such

excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

* * * * *

(d) *Effective dates.* This section other than paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003. Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

Approved December 2, 2003.

Gregory Jenner,
*Deputy Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on December 10, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 11, 2003, 68 FR. 69024)

Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2004, will be 4 percent for overpayments (3 percent in the case of a corporation), 4 percent for underpayments, and 6 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 1.5 percent.

Rev. Rul. 2003-126

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate beginning January 1, 2004, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of October 2003 is 1 percent. Accordingly, an overpayment rate of 4 percent (3 percent

in the case of a corporation) and an underpayment rate of 4 percent are established for the calendar quarter beginning January 1, 2004. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning January 1, 2004, is 1.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2004, is 6 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 4 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2004 and for the first 15 days in April 2004.

Interest factors for daily compound interest for annual rates of 1.5 percent, 3 percent, 4 percent, and 6 percent are published in Tables 56, 59, 61, and 65 of Rev. Proc. 95-17, 1995-1 C.B. 556, 610, 613, 615, and 619.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Crystal Foster of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Foster at (202) 622-7326 (not a toll-free call).

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B.
		DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	1995-1 C.B.		
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	1995-1 C.B.		
	RATE	TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

		1995-1 C.B.	
	RATE	TABLE	PG
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT

		1995-1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

REG-153319-03

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: Temporary regulations (T.D. 9098) in this issue of the Bulletin amend the Income Tax Regulations relating to section 1502. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by January 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-153319-03), room 5203, 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-153319-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622-7530; concerning submission of comments, LaNita Van Dyke at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR part 1 relating

to section 1502. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

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. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. 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 Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (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 rules and how they 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the

Office of Associate Chief Counsel (Corporate). 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 continues to read in part as follows:

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

Section 1.1502-28 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-28 is added to read as follows:

§1.1502-28 Consolidated section 108.

[The text of this proposed section is the same as the text of §1.1502-28T published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on December 10, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 11, 2003, 68 F.R. 69062)

Foundations Status of Certain Organizations

Announcement 2003-89

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

120 Gerry Street Housing Development Fund Corporation, Brooklyn, NY
Aerospace Education Alliance, Inc., Homestead, FL
Aircraft Enterprises, Inc., Lafayette, GA
Alliance for Life International, Laguna Niguel, CA
American Friends of Siach Simcha, Cleveland, OH
American Samoa Equestrian Federation, Pago, Pago, AS
American Voter, Henderson, NV
Anil Gandhi MD Charitable Corporation, c/o Harold Drooz, Norwalk Town Square, CA
Animal Therapy Association, Barnesville, MD
Anoka Tornado Hoops, Inc., Anoka, MN
Applehouse Retreat, Inc., Goldsby, OK
Asklepia Foundation, Grants Pass, OR
Association of the Triumphant Vjara, Kenosha, WI
Atone Youth Program, Inc., Brockton, MA
Automotive Repair Coalition Foundation, Sacramento, CA
Bachbridge Limited, Riverside, CA
Batavia Main Street, Batavia, IL
Beautiful Camino Real, Inc., Boca Raton, FL
Black Men & Women Entrepreneur Support Association, Brooklyn, NY
Black-White Productions, Inc., Oak Park, IL
Blackhawk Baseball, Inc., Argyle, TX
Blessed Sacrament School Alumni Association, Newark, OH
Blooming Society, Lake Worth, FL
Borden K-12 Schools PTO, Borden, IN
Bridges for Jesus Ministry, Falfurrias, TX
Business Prize, Las Vegas, NV
Calvary International Missions, Inc., Tucson, AZ
Caribbean American Legal Defense Fund, Inc., New York, NY
C.C.A.P., Greencastle, PA
Center for Innovation in Health Facilities, Houston, TX
Center for Justice, Spokane, WA
Central and Eastern European Schools Association, Princeton, NJ
C E P A, Inc., Dallas, TX

Cerebral Palsy Commission, Los Lunas, NM
C H A M P S, Inc., Memphis, TN
Changing the World, Inc., Houston, TX
Charis Charitable Foundation, Houston, TX
Chasdei Shlomo Trust, New York, NY
Chesterfield Education and Training Institute, Seattle, WA
Chicago Area Program for Economic Development and Adult Education, Chicago, IL
Child's Night Inn, Inc., Newport News, VA
Christian Family Foundation, Water Valley, MS
Clearview Terrace II, Inc., Hanover, PA
Closing the Gap, Inc., Charleston, MA
Coats Missions and Education Ministries, Mesquite, TX
Community Enrichment Association, New Smyrna Beach, FL
Community Health Resource Center, Richmond, VA
Community Youth Initiative Advisory Board, Inc., Dillon, MT
Competitive Aquatic Support Foundation, Inc., Longwood, FL
Conner Community Development Corporation, Connersville, IN
Construction Career Training, Inc., West Des Moines, IA
Corona Norco Day of the Child Committee, Corona, CA
Corporate Assistance Program, Sherman Oaks, CA
Courtlandt Masonic Historical Society, Peekskill, NY
Crimebusters, Inc., Hendersonville, TN
Danse Mirage South, Inc., New Hope, PA
David & Goliath International Ministries, Fountain Hills, AZ
Day Star Community Development Corporation, Dix Hills, NY
Death Valley Childrens Support Group, Death Valley, CA
Denton Baseball, Inc., Denton, TX
Desmond Institute, Fresno, CA
Dialysis Patients Association – Warwick, Warwick, RI
Dubay Performing Arts & Cultural Center of Polson, Inc., Polson, MT
Earth Kids Foundation, Carlsbad, CA
Eastern Missouri Shotokan Karate Association, St. Louis, MO
Edward B. Howell Memorial Scholarship, Watsonville, CA
ELIYAH, Phoenix, AZ

Emergency Mental Health Technicians Associate Group, Inc., Belgrade, MT
Enstrom Foundation, Julian, CA
Eternity Now Ministries, Monument, CO
Eye, Ear, Nose and Throat Foundation, Metairie, LA
Faith Community Development Corporation, Inc., Dayton, OH
Far West Historical Society, Dallas, TX
Feigenbaum Foundation, Inc., Chevy Chase, MD
Feline Society, Inc., Birmingham, AL
First American Enterprises, Inc., West Palm Beach, FL
Focus on Leadership, Incorporated, Gainesville, FL
Foundation for Entrepreneurship and Strategic Partnering in the Americas, Inc., Miami, FL
Foundation for Science Technology Education and Research, Inc., New York, NY
Friends of the Biltmore, Inc., Baltimore, MD
Giving Back, Inc., Chicago, IL
Global Institute for Small Business Corporations, Midlothian, VA
GlobeLearn, Los Gatos, CA
Gods House of Deliverance, Lancaster, CA
Good Shepherd Foundation, Inc., Fort Wayne, IN
Gordon B. Hancock Memorial Foundation, Richmond, VA
Grace Unlimited, Inc., Anderson, SC
Gray Cup, Inc., Jackson, MS
Greater Works CDC, Philadelphia, PA
Greenville Educational Enrichment Foundation, Greenville, TX
GSM Community Development, Houston, TX
Gulf Coast Therapeutic Foster Parent Association, Mobile, AL
Hartford Botanical Garden Planning Committee, Inc., Hartford, CT
High Point Community Pride Association, Clearwater, FL
House of Corinth, Houston, TX
Immaculate Heart of Mary Shrine of Abbeville, Abbeville, LA
Imperial County Sheriffs Activities League, Inc., Seeley, CA
Impressions of Grace A B G, Inc., Baldwin, CA
Infinite Blue Productions, Inc., Emeryville, CA
Inland Rivers Ports and Terminals Education Program, Jackson, MS

Institute for Infrastructure Asset Management, Inc., Troy, NY
 Institute for Telehealth, Denver, CO
 International Cultural Alliance, Inc., Daly City, CA
 International Shinto Foundation, Inc., New York, NY
 Its About Time Committee, Sacramento, CA
 Jadid Urdu Tehrik, Inc., Staten Island, NY
 Junction City Swim Team, Junction City, OR
 June Foundation for Prenatal Maternal Health, Inc., Cumberland, MD
 Junior Auxiliary of Indianola, Indianola, MS
 Kamp Kindness, Inc., Bowie, MD
 Kandid Kids, Inc., Los Angeles, CA
 Kelsey Creek Sanctuary, Inc., Gilmer, TX
 Kennedy Nordic Booster Club, Bloomington, MN
 Keystone Oaks Cheerleading Association, Pittsburgh, PA
 Kids Love Gymnastics Center, San Diego, CA
 Kids World Family Day Care, Compton, CA
 Kimberlys Foundation, Inc., New York, NY
 La Jolla Jaguars Hockey Association, San Diego, CA
 Labor of Love International, Inc., Miami Beach, FL
 Langford School Foundation, Langford, SD
 Las Vegas Kite Club, Las Vegas, NV
 Latter Day Messiah, Incorporated, Detroit, MI
 Laymen for Christ Ministries, Inc., Oklahoma City, OK
 Let the Healing Begin, Inc., Hempstead, NY
 Locks of Love, Inc., Hayward, CA
 Loma Vista Inn, Inc., Santa Barbara, CA
 Louisa Community Development Corporation, Incorporation, New Orleans, LA
 LPI Charities, Inc., Chicago, IL
 Lydia Whitney Foundation, Inc., Collinsville, CT
 Marana Unified School District PTO, Marana, AZ
 Maritime Heritage Project, San Anselmo, CA
 Marshalltown Community School District Foundation, Marshalltown, IA
 Mary & Elizabeth Crisis Pregnancy Center, Inc., Toano, VA
 Melba & Friends, Urbana, IL
 Michigan Antique Fire Equipment Preservation Group, Ann Arbor, MI
 Middleton Center, Inc., Detroit, MI
 Montgomery Housing, Inc., Gaithersburg, MD
 Morton Mustang Hockey Club, Inc., Berwyn, IL
 Mothers Opposed to Mistreatment of Minors, Inc., Amarillo, TX
 Mount Hope Economic Development Corporation, Warren, RI
 Mount Lebanon Travel Hockey Association, Inc., Pittsburgh, PA
 National Free Flight Society, Millcreek, WA
 National Infantry Foundation, Inc., Columbus, GA
 National Urban Alliance for Effective Education, Inc., Valley Stream, NY
 New Dy Aero-Medical Foundation, Inc., Snellville, GA
 New Hampshire Association of Public Accountants Educational Foundation, Londenberry, NH
 New Haven Shelter, Los Angeles, CA
 New Union Education Project, Inc., Cambridge, MA
 Nim Yan Choi Scholarship Foundation, San Gabriel, CA
 North American Affordable Housing Initiative, Inc., San Antonio, TX
 North Carolina Life of Rehabilitation, Inc., Charlotte, NC
 Northeast Texas Search Team, Inc., Texarkana, TX
 Northfield Villa Foundation, Inc., Scottsbluff, NE
 Northwest Colorectal Foundation, Seattle, WA
 Northwest Region of the William Glasser Institute, Newport, WA
 Oaks of Righteousness, Fort Mill, SC
 Ontario Youth Sports, Inc., Crestline, OH
 Opportunity Enrichment Services, Inc., Austin, TX
 Outer Mission Development Corporation, San Francisco, CA
 Pennies for the Homeless, Albuquerque, NM
 Perpich Center for Arts Education Foundation, Golden Valley, MN
 Physics Intuition Applications, Inc., Woodland Hills, CA
 Players Development Academy Corp., Bernardsville, NJ
 Police Athletic League of Palm Springs, Palm Springs, FL
 Polisci Financials, Inc., Villanova, PA
 Precision Pilgrim Ministries, Birmingham, AL
 Primary Rendition Educational Productions, Chapel Hill, TN
 Ps Theatre Works, Inc., Wayland, MA
 Public Housing Advocacy for Disability and Diversity, Inc., Atlanta, GA
 Reis Foundation, Inc., Los Angeles, CA
 Reuben Kadish Art Foundation, New York, NY
 Rob Palmer Blue Holes Foundation, Charleston, SC
 Salvatore Martirano Foundation, Urbana, IL
 San Diego Environmental Foundation, Inc., San Diego, CA
 Sarah Allen Services, Inc., Philadelphia, PA
 Savannah State Student Athletic Assoc., Inc., Savannah, GA
 Science Education Outreach, Inc., Princeton, NJ
 Senior Leaders Professional Workshop, Clio, MI
 Seva International, Cerritos, CA
 Shalom Ministries, Inc., Prince George, VA
 Shelly Dorgan Memorial Scholarship Fund, Edina, MN
 Shelter Options, Inc., Costa Mesa, CA
 Shree Chakradhar Charitable Foundation, Inc., Valrico, FL
 Somebody Cares Community Center, Inc., Ft. Lauderdale, FL
 Sunshine All-Star Booster Club, Conway, AR
 South Florida Board of Realtists Foundation, Inc., Miami, FL
 Space Development Institute, Inc., Poway, CA
 Spark Foundation, Fairfax, VA
 Sparkle Industrial Services, Dolton, IL
 Spectrum Theatre, Charlottesville, VA
 St. Francis Youth Hockey Association, E. Bethel, MN
 Stanislaus Family Daycare Association, Modesto, CA
 Starlight Educational Foundation, Inc., Tracy, CA
 Stars in the Forest Wildlife Rehabilitation, Inc., Manhasset, NY
 Start Here, Blacksburg, VA
 Summit Skating Club, Inc., Dimondale, MI
 Surgtrain, Galveston, TX
 Teen Mercy, Scranton, PA

Thomas Worthington and Worthington
Kilbourne Ice Hockey Boosters,
Columbus, OH

Tom Kaney Benevolent Medical Fund,
Inc., Tampa, FL

Tony Ferro Scholarship Fund,
Nederland, TX

Topcoats Booster Club, Inc.,
The Colony, TX

Towel Ministries, Inc., Spring, TX

Toy Soldier and Model Museum,
Hornell, NY

Traveling Classroom Foundation,
Kenmore, WA

Triangle Learning Foundation,
Chapel Hill, NC

United Affordable Housing, Inc.,
St. Petersburg, FL

United Pet Foundation, New York, NY

Universal Studios Archives Foundation,
New York, NY

Violence Prevention Education,
Minneapolis, MN

Visions of the Soul V O T S, Inc.,
Los Angeles, CA

Warner G. Leppin Foundation, Inc.,
Winslow, AZ

Waterstown Masonic Historical Society,
Waterstown, NY

Western Community Tae Kwon Do Fund,
Inc., Royal Palm Beach, FL

Western Institute for Nature Resources
Education and Policy, Rickreall, WA

Why We Were Chosen Foundation
Corporation, Ft. Lauderdale, FL

Wilmer-Louise Thornton Academy,
Detroit, MI

Wings of Love, Memphis, TN

Youth Character Development, Inc.,
Dallas, TX

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or

determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

Announcement 2003-90

This announcement serves notice to donors that on April 9, 2003, the United States Court of Appeals for the Tenth Circuit affirmed the decision of the Tax Court which was entered on September 25, 2001. The court agreed with the Service that the organization listed below is not described in section 501(c)(3) and is not exempt from taxation under section 501(a) effective January 1, 1987.

IHC Health Plans
Salt Lake City, UT

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

Announcement 2003-91

This announcement serves notice to potential donors that on January 16, 2003, the United States Tax Court granted the Service's motion to dismiss the case. Thus,

the organization listed below is not recognized as an organization described in section 501(c)(3) and is not exempt from taxation under section 501(a) of the Internal Revenue Code effective January 1, 1993.

San Diego World Heritage
Foundation, Inc.
San Diego, CA

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

Announcement 2003-92

This announcement serves notice to donors that on July 21, 2003, the United States Tax Court entered a Decision accepting the agreement of the parties regarding the organization described below. Pursuant to the Decision, the organization listed below is not recognized as an organization described in section 501(c)(3) and is not exempt from tax under section 501(a) and is not an organization described in section 170(c)(2) effective April 26, 1995.

T.L.C. Environmental
Encinitas, CA

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.

Numerical Finding List¹

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003-1 through 2003-26 is in Internal Revenue Bulletin 2003-27, dated July 7, 2003.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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