

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.

SPECIAL ANNOUNCEMENT

Announcement 2004-46, page 964.

This announcement is a settlement initiative for taxpayers to resolve transactions described in Notice 2000-44, 2000-2 C.B. 255, and substantially similar transactions (Son of Boss transactions).

INCOME TAX

Rev. Rul. 2004-47, page 941.

Section 265(a)(2); expenses and interest relating to tax-exempt income. This ruling deals with the application of section 265 of the Code to affiliated corporate groups when one member of the group borrows from outside the group and makes funds available to another member of the group that is a dealer in tax-exempt securities.

Rev. Rul. 2004-48, page 945.

LIFO; price indexes; department stores. The March 2004 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, March 31, 2004.

T.D. 9128, page 943.

Final regulations under sections 446, 860G, and 863 of the Code set out rules relating to the proper timing and source of income from fees received to induce taxpayers to become the holders of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs).

REG-128590-03, page 952.

Proposed regulations under section 265 of the Code provide guidance regarding the consolidated return treatment of intercompany obligations that are treated as financing tax-exempt obligations. These regulations provide that, if a member of a consolidated group incurs or continues debt to a nonmember that is directly traceable to an intercompany obligation extended to a member of the group (the borrowing member) by another member of the group (the lending member), and section 265(a)(2) applies to disallow a deduction for the borrowing member's interest expense incurred with respect to the intercompany obligation, then the lending member's corresponding interest income will not be excluded under the intercompany transaction regulations.

Notice 2004-38, page 949.

This notice announces that the Service and the Treasury Department will issue temporary and proposed regulations that will modify the definition of "qualified amended return" in regulations section 1.6664-2(c)(3).

Rev. Proc. 2004-30, page 950.

This procedure provides automatic consent procedures for taxpayers to change their method of accounting for income from REMIC inducement fees to a safe harbor method set forth in T.D. 9128. Rev. Proc. 2002-9 modified and amplified.

Announcement 2004-44, page 957.

This announcement solicits comments and suggestions regarding the scope and details of regulations that may be proposed under section 7701(f) of the Code that will address the application of sections 265(a)(2) and 246A in transactions involving related parties, pass-through entities, or other intermediaries.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 966.
Finding Lists begin on page ii.
Index for January through May begins on page vi.



Announcement 2004–46, page 964.

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EMPLOYEE PLANS

Announcement 2004–43, page 955.

Alternative deficit reduction election; notice to Pension Benefit Guaranty Corporation (PBGC) and plan participants and beneficiaries. This announcement describes how notice must be given to the Pension Benefit Guaranty Corporation and to plan participants and their beneficiaries under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 when an employer elects to make an alternative deficit reduction contribution under section 412(1) of the Code. This announcement also provides special timing and transitional rules. Announcement 2004–38 modified.

Announcement 2004–47, page 966.

This document contains corrections to temporary regulations (T.D. 9118, 2004–15 I.R.B. 718) under section 337 of the Code that clarify that in computing the amount of stock loss attributable to the recognition of built-in gain, gain recognized on the disposition of an asset may be reduced by expenses directly attributable to the recognition of that gain.

EXEMPT ORGANIZATIONS

Announcement 2004–45, page 958.

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

ADMINISTRATIVE

Rev. Rul. 2004–49, page 939.

Partnerships; amortization of intangibles. This ruling provides that if a section 197(f)(9) intangible is amortizable in the hands of a partnership, the anti-churning rules under section 1.197–2(h)(12)(vii)(A) of the regulations do not apply to curative or remedial reverse section 704(c) allocations of amortization. It also provides that if a section 197(f)(9) intangible was not amortizable in the hands of the partnership, then remedial, not curative, reverse section 704(c) allocations of amortization are permitted.

Notice 2004–37, page 947.

Section 1504. This notice announces circumstances in which the failure to satisfy the value requirement of section 1504(a)(2)(B) of the Code will be disregarded under section 1504(a)(5)(C) and (D) in determining whether a corporation is treated as a member of an affiliated group. The notice also announces that regulations will be proposed and invites comments.

Notice 2004–38, page 949.

This notice announces that the Service and the Treasury Department will issue temporary and proposed regulations that will modify the definition of “qualified amended return” in regulations section 1.6664–2(c)(3).

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 197.—Amortization of Goodwill and Certain Other Intangibles

26 CFR 197-2: Amortization of goodwill and certain other intangibles.

If, pursuant to section 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, a partnership revalues a section 197 intangible, may the partnership allocate amortization with respect to the section 197 intangible so as to take into account the built-in gain or loss from the revaluation? See Rev. Rul. 2004-49, page 939.

26 CFR 1.197-2: Amortization of goodwill and certain other intangibles.
(Also §§ 704; 1.704-1; 1.704-3.)

Partnerships; amortization of intangibles. This ruling provides that if a section 197(f)(9) intangible is amortizable in the hands of a partnership, the anti-churning rules under section 1.197-2(h)(12)(vii)(A) of the regulations do not apply to curative or remedial reverse section 704(c) allocations of amortization. It also provides that if a section 197(f)(9) intangible was not amortizable in the hands of the partnership, then remedial, not curative, reverse section 704(c) allocations of amortization are permitted.

Rev. Rul. 2004-49

ISSUE

If, pursuant to § 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, a partnership revalues a section 197 intangible, may the partnership allocate amortization with respect to the section 197 intangible so as to take into account the built-in gain or loss from the revaluation?

FACTS

Situation 1. A and B are partners in the AB partnership. C contributes money (more than a *de minimis* amount) to the partnership in exchange for a partnership interest. The partnership revalues the assets of the partnership under § 1.704-1(b)(2)(iv)(f). The AB partnership owns several assets, including Asset 1, a section 197 intangible. Asset 1 is

amortizable in the hands of the partnership. A, B, and C are not related.

Situation 2. Situation 2 is the same as Situation 1 except that Asset 1 is not amortizable in the hands of the partnership.

LAW

Section 197(a) provides that a taxpayer is entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over the 15-year period beginning with the month in which the intangible was acquired.

Section 197(c)(1) provides that, with certain exceptions, the term “amortizable section 197 intangible” means any section 197 intangible, (A) that is acquired by the taxpayer after the date of the enactment of § 197, and (B) that is held in connection with the conduct of a trade or business or an activity described in § 212.

Section 197(d)(1) provides that the term “section 197 intangible” means (A) goodwill; (B) going concern value; (C) any of the following intangible items: (i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment, (ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers), (iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar items, (iv) any customer-based intangible, (v) any supplier-based intangible, and (vi) any other similar item; (D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (E) any covenant not to compete (or other arrangement to the extent the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof; and (F) any franchise, trademark, or trade name.

Under § 197(f)(9)(A), the term “amortizable section 197 intangible” does not in-

clude any section 197 intangible that is goodwill or going concern value (or for which depreciation or amortization would not have been allowable but for § 197) and that is acquired by the taxpayer after the date of the enactment of § 197, if (i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person, (ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or (iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

An intangible described in § 197(f)(9) (a section 197(f)(9) intangible) is treated as an amortizable section 197 intangible only to the extent permitted under § 1.197-2(h). The purpose of the anti-churning rules of § 197(f)(9) and § 1.197-2(h) is to prevent the amortization of section 197(f)(9) intangibles unless they are transferred after the applicable effective date in a transaction giving rise to a significant change in ownership or use. Section 1.197-2(h)(1)(ii). Section 1.197-2(h)(12) provides special rules that apply for purposes of determining whether transactions involving partnerships give rise to a significant change in ownership or use.

Under § 1.197-2(h)(5), a section 197(f)(9) intangible may be amortized by the acquirer of the intangible if the intangible was an amortizable section 197 intangible in the hands of the seller (or transferor), but only if the acquisition transaction and the transaction in which the seller (or transferor) acquired the intangible or interest therein are not part of a series of related transactions.

Under § 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partnership agreement provided that those allocations have substantial economic effect. If the allocations under the partnership agreement do not have substantial economic effect or the

partnership agreement does not provide as to a partner's distributive shares of partnership items, then the partner's distributive share of such items is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances).

Section 1.704-1(b) describes various requirements that must be met for partnership allocations to have substantial economic effect. Among these requirements is that (except as otherwise provided in § 1.704-1(b)) the partnership agreement must provide for the determination and maintenance of capital accounts in accordance with the rules of § 1.704-1(b)(2)(iv).

Section 1.704-1(b)(2)(iv)(f) provides that, if certain criteria are met, the capital account maintenance rules of § 1.704-1(b)(2)(iv) will not be violated if a partnership agreement, upon the occurrence of certain events, increases or decreases the capital accounts of the partners to reflect a revaluation of partnership property (including intangibles such as goodwill) on the partnership's books.

Section 704(c)(1)(A) provides that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

Section 1.704-3 provides rules applicable to partnership allocations under § 704(c)(1)(A). Section 1.704-3(a)(1) provides that allocations under § 704(c)(1)(A) must be made using a reasonable method that is consistent with the purpose of § 704(c). Section 1.704-3 describes three allocation methods that are generally reasonable: the traditional method, the traditional method with curative allocations, and the remedial allocation method.

Section 1.704-3(a)(6)(i) provides that the principles of § 1.704-3 apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704-1(b)(2)(iv)(f) (reverse § 704(c) allocations). Partnerships are not required to use the same allocation method for reverse § 704(c) allocations as for contributed property, even if at the

time of revaluation the property is already subject to §§ 704(c)(1)(A) and 1.704-3.

Section 1.197-2(g)(4)(i) provides that, to the extent that an intangible was an amortizable section 197 intangible in the hands of the contributing partner, a partnership may make allocations of amortization deductions with respect to the intangible to all of its partners under any of the permissible methods described in the regulations under § 704(c).

Section 1.197-2(g)(4)(ii) provides that, to the extent that an intangible was not an amortizable section 197 intangible in the hands of the contributing partner, the intangible is not amortizable by the partnership. However, if a partner contributes a section 197 intangible to a partnership and the partnership adopts the remedial allocation method for making § 704(c) allocations of amortization deductions, the partnership generally may make remedial allocations of amortization deductions with respect to the contributed section 197 intangible in accordance with § 1.704-3(d).

Section 1.197-2(h)(12)(vii)(A) provides that the anti-churning rules do not apply to curative or remedial allocations of amortization with respect to a section 197(f)(9) intangible if the intangible was an amortizable section 197 intangible in the hands of the contributing partner (unless § 1.197-2(h)(10) causes the intangible to cease to be an amortizable section 197 intangible in the hands of the partnership).

Section 1.197-2(h)(12)(vii)(B) provides that, if a section 197(f)(9) intangible was not amortizable in the hands of the contributing partner, a non-contributing partner generally may receive remedial allocations of amortization under § 704(c) that are deductible for federal income tax purposes. However, such a partner may not receive remedial allocations of amortization under § 704(c) if that partner is related to the partner that contributed the intangible or if, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner or related person (other than the partnership) becomes (or remains) a direct user of the contributed intangible. Under § 1.197-2(h)(12)(vii)(B), taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used

does not contravene the purposes of the anti-churning rules.

ANALYSIS

If, under § 1.704-1(b)(2)(iv)(f), a partnership revalues a section 197 intangible that is amortizable in the hands of the partnership, then the partnership may make allocations of amortization deductions with respect to the built-in gain or loss from the revaluation (*i.e.*, the increase or decrease, respectively, in the book value of the intangible as a result of the revaluation) to all of its partners under any of the permissible methods described in § 1.704-3. If the revalued section 197 intangible is not amortizable in the hands of the partnership, then §§ 1.197-2(g)(4)(ii) and 1.197-2(h)(12)(vii) generally prevent the partnership from allocating amortization with respect to the intangible under § 1.704-3(a)(6)(i), but do not prevent the partnership from making remedial allocations of amortization with respect to the intangible. However, remedial allocations of amortization with respect to built-in gain or loss from the revaluation of a section 197(f)(9) intangible are not allowed to the extent that such allocations are, in substance, the equivalent of a remedial allocation of amortization to a partner that is related to the "contributing partner" (with respect to the revaluation). Also, under § 1.197-2(h)(12)(vii)(B), remedial allocations of amortization with respect to the built-in gain or loss from the revaluation of a section 197(f)(9) intangible are not allowed if, as part of a series of related transactions that includes the revaluation, the "contributing partners" (with respect to the revaluation) or related persons (other than the partnership) become (or remain) direct users of the intangible.

In *Situation 1*, the partnership may make traditional, curative, or remedial allocations of amortization under § 1.704-3 to take into account the built-in gain or loss from the revaluation of Asset 1. Section 1.197-2(g)(4)(i). Because Asset 1 is amortizable in the hands of the AB partnership, the anti-churning rules do not apply to reverse § 704(c) allocations of amortization from Asset 1.

In *Situation 2*, because Asset 1 is not amortizable in the hands of AB, the anti-churning rules apply. Under § 1.197-2(g)(4)(ii) and (h)(12)(vii)(B), the

partnership may make deductible remedial, but not traditional or curative, allocations of amortization to take into account the built-in gain or loss from the revaluation of Asset 1, provided that such allocations are not limited by § 1.197-2(h)(12)(vii)(B).

HOLDING

If, pursuant to § 1.704-1(b)(2)(iv)(f), a partnership revalues a section 197 intangible that was amortizable in the hands of the partnership, then the § 197 anti-churning rules do not apply and the partnership may make reverse § 704(c) allocations (including curative and remedial allocations) of amortization to take into account the built-in gain or loss from the revaluation of the intangible. If the revalued section 197 intangible was not amortizable in the hands of the partnership, then the partnership may make remedial, but not traditional or curative, allocations of amortization to take into account the built-in gain or loss from the revaluation of the intangible, provided that such allocations are not limited by § 1.197-2(h)(12)(vii)(B).

DRAFTING INFORMATION

The principal author of this revenue ruling is Laura C. Nash of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Nash at (202) 622-3050 (not a toll-free call).

Section 246A.—Dividends Received Deduction Reduced Where Portfolio Stock is Debt Financed

Generally, section 246A reduces the dividend received deduction otherwise allowable under sections 243, 244, or 245(a) in proportion to the extent that the portfolio stock, with respect to which the dividends are received, is debt-financed. Stock is treated as debt-financed if there is indebtedness directly attributable to the stock investment. See Announcement 2004-44, page 957, and Rev. Rul. 2004-47, page 941.

Section 265.—Expenses and Interest Relating to Tax-Exempt Income

Section 265(a) disallows expenses that would otherwise be allowable as a deduction when these expenses are allocable to income that is wholly exempt from Federal Income taxes. Section 265(a)(2) disallows interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income taxes. See Announcement 2004-44, page 957, and Rev. Rul. 2004-47, page 941.

26 CFR 1.265-2: Interest relating to tax-exempt income.

Section 265(a)(2); expenses and interest relating to tax-exempt income. This ruling deals with the application of section 265 of the Code to affiliated corporate groups when one member of the group borrows from outside the group and makes funds available to another member of the group that is a dealer in tax-exempt securities.

Rev. Rul. 2004-47

ISSUE

If a member of an affiliated group borrows money and transfers the money to another member of the group that is a dealer in tax-exempt obligations, does § 265(a)(2) of the Internal Revenue Code apply to disallow the interest expense of the borrowing corporation?

FACTS

Situation 1. — P and S are corporations that are members of the same affiliated group, but file separate tax returns. P and S use the calendar year as their taxable year. S is a dealer in tax-exempt obligations, whose general business includes purchasing and carrying tax-exempt securities.

On January 1, 2004, L, a bank unrelated to the affiliated group that includes P and S, lends \$40x to P for 5 years. L's loan to P provides for payments of interest on December 31 of each year at a rate higher than the appropriate applicable Federal rate. P contributes the \$40x borrowed from L to the capital of S, and S uses the contributed funds in its business. Although the borrowed funds are directly traceable from P to S, they are not directly traceable to

the purchase or carry of specific tax-exempt obligations by S. During its taxable year 2004, S holds an average of \$500x of tax-exempt obligations (valued at their adjusted bases), and an average of \$1,000x of total assets (valued at their adjusted bases). During its taxable year 2004, P holds an average of \$10,000x of total assets (valued at their adjusted bases) and no tax-exempt obligations in the active conduct of its trade or business, and incurs \$2x of interest expense on its \$40x loan from L.

Situation 2. — The facts are the same as in *Situation 1*, except that P and S file a consolidated return.

Situation 3. — The facts are the same as in *Situation 1*, except that the funds that P borrowed from L are not directly traceable to any funds transferred from P to S and there is no other direct evidence linking the borrowed funds to any funds transferred from P to S.

Situation 4. — The facts are the same as in *Situation 1*, except that P loans to S the \$40x borrowed from L on the same terms and conditions as the loan from L to P. During its taxable year 2004, S incurs \$2x of interest expense on its \$40x loan from P.

LAW AND ANALYSIS

In general, a deduction is allowed under § 163 of the Code for all interest paid or accrued on indebtedness. Under § 265(a)(2), however, no deduction is allowed for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income taxes.

Rev. Proc. 72-18, 1972-1 C.B. 740, sets forth guidelines for the application of § 265(a)(2). Section 3.01, which applies to all taxpayers, states that the application of § 265(a)(2) requires a determination of the taxpayer's purpose in incurring or continuing each item of indebtedness, based on all the facts and circumstances. That section further states that the taxpayer's purpose may be established by either direct or circumstantial evidence.

Section 3.02 of Rev. Proc. 72-18 provides that direct evidence of a purpose to purchase tax-exempt obligations exists when the proceeds of indebtedness are used for, and are directly traceable to, the purchase of tax-exempt obligations. *Wynn v. United States*, 411 F.2d 614 (3d

Cir. 1969), *cert. denied*, 396 U.S. 1008 (1970). Section 265(a)(2) does not apply, however, when proceeds of a *bona fide* business indebtedness are temporarily invested in tax-exempt obligations under circumstances similar to those set forth in Rev. Rul. 55-389, 1955-1 C.B. 276.

Section 3.03 of Rev. Proc. 72-18 provides that direct evidence of a purpose to carry tax-exempt obligations exists when tax-exempt obligations are used as collateral for indebtedness. “[One] who borrows to buy tax-exempts and one who borrows against tax-exempts already owned are in virtually the same economic position. Section 265(2) [the predecessor of § 265(a)(2)] makes no distinction between them.” *Wisconsin Cheeseman v. United States*, 388 F.2d 420 (7th Cir. 1968), at 422. Section 3.04 of Rev. Proc. 72-18 states that in the absence of direct evidence linking indebtedness with the purchase or carrying of tax-exempt obligations as illustrated in paragraphs 3.02 and 3.03 of Rev. Proc. 72-18, section 265(a)(2) of the Code will apply only if the totality of facts and circumstances supports a reasonable inference that the purpose to purchase or carry tax-exempt obligations exists. Stated alternatively, section 265(a)(2) will apply only when the totality of facts and circumstances establishes a “sufficiently direct relationship” between the borrowing and the investment in tax-exempt obligations. See *Wisconsin Cheeseman*, 388 F.2d at 422. The guidelines set forth in sections 4, 5, and 6 of Rev. Proc. 72-18 are used to determine whether such a relationship exists.

Section 3.05 of Rev. Proc. 72-18 provides that generally, when a taxpayer’s investment in tax-exempt obligations is insubstantial, the purpose to purchase or carry tax-exempt obligations will ordinarily not be inferred in the absence of direct evidence as set forth in sections 3.02 and 3.03 of that revenue procedure. Section 3.05 provides further that in the case of a corporation, an investment in tax-exempt obligations shall be presumed insubstantial only when during the taxable year the average amount of the tax-exempt obligations (valued at their adjusted bases) does not exceed 2 percent of the average total assets (valued at their adjusted bases) held in the active conduct of the trade or business. The *de minimis* rule of paragraph 3.05 does not apply to dealers in tax-exempt obligations.

Section 5 of Rev. Proc. 72-18 provides special rules for dealers in tax-exempt obligations. Specifically, section 5.03 states that if debt is incurred or continued for the general purpose of carrying on a brokerage business that includes the purchase of both taxable and tax-exempt obligations, and the use of the borrowed funds cannot be directly traced, it is reasonable to infer that the borrowed funds were used for all the activities of the business, including the purchase of tax-exempt obligations. Section 5 of Rev. Proc. 72-18 refers to a specific allocation formula in section 7 of Rev. Proc. 72-18, derived from the formula in *Commissioner v. Leslie*, 413 F.2d 636 (2d. Cir. 1969), *cert. denied*, 396 U.S. 1007 (1970). The formula is applied to interest on borrowed funds that are not directly traceable to tax-exempt obligations. The formula consists of a fraction, whose numerator is the average amount during the taxable year of the taxpayer’s tax-exempt obligations (valued at their adjusted bases), and whose denominator is the average amount during the taxable year of the taxpayer’s total assets (valued at their adjusted bases) minus the amount of any indebtedness the interest on which is not subject to disallowance to any extent under Rev. Proc. 72-18.

In *H Enterprises International v. Commissioner*, 75 T.C.M. 1948 (1998), *aff’d*, 183 F.3d 907 (8th Cir. 1999), a parent and a subsidiary were members of the same consolidated group of corporations. The subsidiary declared a dividend and, a few days later, borrowed funds and immediately used part of those funds to make the dividend distribution to the parent. A portion of the distributed funds was disbursed to two investment divisions of the parent, which used the funds to acquire investments including tax-exempt obligations.

The court held that a portion of the subsidiary’s indebtedness was incurred for the purpose of purchasing or carrying tax-exempt obligations (held in the parent’s investment divisions) and, therefore, no deduction was allowed for the interest on this portion of the indebtedness under § 265(a)(2). To establish the required purposive connection under § 265(a)(2), the court reasoned that the activities of the parent corporation were relevant in determining the subsidiary’s purpose for borrowing the funds. If the analysis only focused on the borrower and

not the transferee, then the purpose of the borrower corporation would always be acceptable, frustrating the legislative intent of § 265(a)(2).

In both *Situations 1* and 2, following the rationale of *H Enterprises*, the activities of S must be taken into account to determine P’s purpose under § 265(a)(2) for borrowing the \$40x of funds that are directly traceable to P’s contribution to the capital of S. In order to determine the activities of S, however, Rev. Proc. 72-18 must be applied. Because S’s brokerage business includes the purchase of both taxable and tax-exempt obligations, it is reasonable to infer under section 5.03 of Rev. Proc. 72-18 that part of P’s debt was incurred for the purpose of purchasing or carrying tax-exempt obligations. Applying the allocation formula in section 7 of Rev. Proc. 72-18, the interest expense incurred by P on the \$40x borrowed is subject to partial disallowance. The ratio of S’s average tax-exempt obligations to S’s total assets is \$500x/\$1,000x. Therefore, one-half of the \$2x interest expense incurred by P (*i.e.*, \$1x) is disallowed as a deduction to P under § 265(a)(2). P is not entitled to the 2 percent *de minimis* rule provided by section 3.05 of Rev. Proc. 72-18 because S is a dealer in tax-exempt obligations.

In *Situation 3*, there is no direct evidence that P transferred to S any portion of the \$40X P borrowed from L. Without such direct evidence, the activities of S will not be taken into account to determine P’s purpose under § 265(a)(2) for borrowing the \$40x and it is not reasonable to infer that part of P’s debt was incurred for the purpose of purchasing or carrying tax-exempt obligations. Therefore, none of the \$2x interest expense incurred by P is disallowed as a deduction under § 265(a)(2).

In *Situation 4*, the \$40x that P borrowed from L is directly traceable to P’s loan to S. Accordingly, the two separate back-to-back loans (*i.e.*, the loan from L to P, followed by the loan from P to S) must each be examined for the potential application of § 265(a)(2). With regard to the loan from L to P, P uses the borrowed funds to make a loan to S, and separately accounts for the taxable interest income from this loan. P does not have a purpose of using the borrowed funds to purchase or carry tax-exempt obligations within the meaning of § 265(a)(2). With regard to the loan from P to S, although the borrowed

funds are not directly traceable to S's purchase or carry of tax-exempt obligations, § 265(a)(2) applies to S, a dealer in tax-exempt obligations, to disallow a portion of its interest expense. The portion of S's interest deduction that is disallowed is computed by applying the allocation formula in section 7 of Rev. Proc. 72-18. The ratio of S's average tax-exempt obligations to S's total assets is \$500x/\$1,000x. Accordingly, one-half of the \$2x interest expense incurred by S (i.e., \$1x) is disallowed to S as a deduction under § 265(a)(2). S is not entitled to the 2 percent *de minimis* rule provided by section 3.05 of Rev. Proc. 72-18 because S is a dealer in tax-exempt obligations.

HOLDINGS

If a member of an affiliated group borrows money and contributes the borrowed funds to another member that is a dealer in tax-exempt obligations such that the funds contributed to the dealer are directly traceable to the contributor's borrowing, but are not directly traceable to the dealer's purchase or carry of tax-exempt obligations, § 265(a)(2) applies to disallow a portion of the interest expense of the contributor. The portion of the contributor's interest deduction to be disallowed is determined by applying the allocation formula in section 7 of Rev. Proc. 72-18 to the dealer that uses the borrowed funds in its business.

If a member of an affiliated group borrows money and there is no direct evidence linking the borrowed funds to any funds transferred to another member who is a dealer in tax-exempt obligations, § 265(a)(2) does not apply to disallow any portion of the interest expense of the borrowing member based on the dealer member's investment in tax-exempt obligations.

If the funds borrowed by a member of an affiliated group are directly traceable to a loan to another member that is a dealer in tax-exempt obligations, § 265(a)(2) does not apply to disallow the interest expense of the lending member, but does apply to disallow a portion of the interest expense of the dealer. The portion of the dealer's interest deduction to be disallowed is determined by applying the allocation formula in section 7 of Rev. Proc. 72-18.

DRAFTING INFORMATION

The principal authors of this revenue ruling are David B. Silber and Avital Grunhaus of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Mr. Silber or Ms. Grunhaus at (202) 622-3930 (not a toll-free call).

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446-1: General rule for methods of accounting.

Rev. Proc. 2004-30 provides automatic consent procedures for taxpayers to change their method of accounting for income from REMIC inducement fees to a safe harbor method set forth in T.D. 9128, published May 11, 2004, in the Federal Register. See Rev. Proc. 2004-30, page 950.

26 CFR 1.446-6: REMIC inducement fees.

T.D. 9128

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect to Inducement Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the proper timing and source of income from fees received to induce taxpayers to become the holders of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs).

DATES: *Effective Date:* These regulations are effective May 11, 2004.

Applicability Dates: For dates of applicability of the final regulations, see §§1.446-6(g) and 1.863-1(f).

FOR FURTHER INFORMATION CONTACT: For information concerning accounting for inducement fees relating to noneconomic REMIC residual interests, contact John W. Rogers III at (202) 622-3950 (not a toll-free number). For information concerning the source of REMIC inducement fee income, contact Bethany Ingwalson at (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 446(b) (relating to general rules for methods of accounting), 860C (relating to other definitions and special rules applicable to REMICs), and 863(a) (relating to special rules for determining source) of the Internal Revenue Code of 1986 (Code). On July 21, 2003, the IRS and Treasury Department published a notice of proposed rulemaking (REG-162625-02, 2003-35 I.R.B. 500 [68 FR 43055]) in the Federal Register.

In the notice of proposed rulemaking, the IRS and Treasury Department requested comments on the proper method of accounting to be used by taxpayers for inducement fee income. No written or electronic comments were received from the public in response to the notice of proposed rulemaking. No requests to speak at the public hearing were received, and, accordingly, the hearing was canceled. Therefore, these final regulations adopt without substantive changes the proposed regulations set out in the notice of proposed rulemaking.

Explanation of Provisions

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic residual interests. Those regulations do not, however, contain rules that address the transferee's treatment of the fee received to induce the transferee to become the holder of a noneconomic residual interest. Following release of the final REMIC regulations, the IRS and the Treasury Department received requests for guidance on the proper method of accounting to be used by taxpayers for inducement fee income. These

regulations provide rules relating to the proper timing and source of income from an inducement fee received in connection with becoming the holder of a noneconomic residual interest in a REMIC.

The notice of proposed rulemaking published on July 21, 2003, stated that, to clearly reflect income, an inducement fee must be included in income over a period that is reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest. The notice of proposed rulemaking further stated that an inducement fee generally may not be taken into account in a single tax year. The notice of proposed rulemaking also set forth two safe harbor methods of accounting for inducement fees and contained a rule clarifying that an inducement fee is income from sources within the United States. The final regulations adopt these provisions without substantive change. For further information on the rationale for the rules set out in these final regulations, see the preamble for the proposed regulations in the notice of proposed rulemaking.

The effective date provision of §1.446-6(g) contained in the notice of proposed rulemaking stated that these regulations would become effective upon publication of the final regulations in the Federal Register. The notice of proposed rulemaking specifically requested comments on whether the applicability of these regulations should be limited to transactions arising on or after their effective date and whether some delay in the effective date of these regulations is warranted. No comments were received from the public in response to this request. In finalizing these regulations, the IRS and Treasury Department have determined not to limit the applicability of these regulations to transactions arising on or after the effective date of the final regulations or to delay the effective date. The effective date provision in §1.446-6(g), therefore, is also adopted without substantive change.

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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is John W. Rogers III, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the 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 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.446-6 also issued under 26 U.S.C. 446 and 26 U.S.C. 860G; * * *

Par. 2. Section 1.446-6 is added to read as follows:

§1.446-6 REMIC inducement fees.

(a) *Purpose.* This section provides specific timing rules for the clear reflection of income from an inducement fee received in connection with becoming the holder of a noneconomic REMIC residual interest. An inducement fee must be included in income over a period reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest.

(b) *Definitions.* For purposes of this section:

(1) *Applicable REMIC.* The applicable REMIC is the REMIC that issued the

noneconomic residual interest with respect to which the inducement fee is paid.

(2) *Inducement fee.* An inducement fee is the amount paid to induce a person to become the holder of a noneconomic residual interest in an applicable REMIC.

(3) *Noneconomic residual interest.* A REMIC residual interest is a noneconomic residual interest if it is a noneconomic residual interest within the meaning of §1.860E-1(c)(2).

(4) *Remaining anticipated weighted average life.* The remaining anticipated weighted average life is the anticipated weighted average life determined using the methodology set forth in §1.860E-1(a)(3)(iv) applied as of the date of acquisition of the noneconomic residual interest.

(5) *REMIC.* The term REMIC has the same meaning in this section as given in §1.860D-1.

(c) *General rule.* All taxpayers, regardless of their overall method of accounting, must recognize an inducement fee over the remaining expected life of the applicable REMIC in a manner that reasonably reflects, without regard to this paragraph, the after-tax costs and benefits of holding that noneconomic residual interest.

(d) *Special rule on disposition of a residual interest.* If any portion of an inducement fee received with respect to becoming the holder of a noneconomic residual interest in an applicable REMIC has not been recognized in full by the holder as of the time the holder transfers, or otherwise ceases to be the holder for Federal tax purposes of, that residual interest in the applicable REMIC, then the holder must include the unrecognized portion of the inducement fee in income at that time. This rule does not apply to a transaction to which section 381(c)(4) applies.

(e) *Safe harbors.* If inducement fees are recognized in accordance with a method described in this paragraph (e), that method complies with the requirements of paragraph (c) of this section.

(1) *The book method.* Under the book method, an inducement fee is recognized in accordance with the method of accounting, and over the same period, used by the taxpayer for financial reporting purposes (including consolidated financial statements to shareholders, partners, beneficiaries, and other proprietors and

for credit purposes), provided that the inducement fee is included in income for financial reporting purposes over a period that is not shorter than the period during which the applicable REMIC is expected to generate taxable income.

(2) *The modified REMIC regulatory method.* Under the modified REMIC regulatory method, the inducement fee is recognized ratably over the remaining anticipated weighted average life of the applicable REMIC as if the inducement fee were unrecognized gain being included in gross income under §1.860F-2(b)(4)(iii).

(3) *Additional safe harbor methods.* The Commissioner, by revenue ruling or revenue procedure (see §601.601(d)(2) of this chapter), may provide additional safe harbor methods for recognizing inducement fees relating to noneconomic REMIC residual interests.

(f) *Method of accounting.* The treatment of inducement fees is a method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. A taxpayer is generally permitted to adopt a method of accounting for inducement fees that satisfies the requirements of paragraph (c) of this section. Once a taxpayer adopts a method of accounting for inducement fees, that method must be applied consistently to all inducement fees received in connection with noneconomic REMIC residual interests and may be changed only with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(g) *Effective date.* This section is applicable for taxable years ending on or after May 11, 2004.

Par. 3. Section 1.860A-0 is amended by adding an entry in the outline for §1.860C-1(d) to read as follows:

§1.860A-0 Outline of REMIC provisions.

§1.860C-1 Taxation of holders of residual interests.

(d) Treatment of REMIC inducement fees.

Par. 4. Section 1.860C-1 is amended by adding paragraph (d) to read as follows:

§1.860C-1 Taxation of holders of residual interests.

(d) For rules on the proper accounting for income from inducement fees, see §1.446-6.

Par. 5. Section 1.863-0 is amended by:

1. Revising the entry for the section heading for §1.863-1.

2. Adding an entry for §1.863-1(d).

3. Redesignating the entry for §1.863-1(e) as §1.863-1(f).

4. Adding a new entry for §1.863-1(e).

The additions and revisions read as follows:

§1.863-0 Table of contents.

§1.863-1 Allocation of gross income under section 863(a).

(d) Scholarships, fellowship grants, grants, prizes and awards.

(e) REMIC inducement fees.

Par. 6. Section 1.863-1 is amended as follows:

1. Paragraph (e) is revised.

2. Paragraph (f) is added.

The revision and addition read as follows:

§1.863-1 Allocation of gross income under section 863(a).

(e) *REMIC inducement fees.* An inducement fee (as defined in §1.446-6(b)(2)) shall be treated as income from sources within the United States.

(f) *Effective dates.* The rules of paragraphs (a), (b), and (c) of this section apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of paragraphs (a), (b), and (c) of this section for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see §1.863-1 (as contained in 26 CFR part 1 revised as of

April 1, 1996). See paragraph (d)(4) of this section for rules regarding the applicability date of paragraph (d) of this section. Paragraph (e) of this section is applicable for taxable years ending on or after May 11, 2004.

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

Approved May 4, 2004.

Gregory Jenner,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on May 7, 2004, 8:45 a.m., and published in the issue of the Federal Register for May 11, 2004, 69 F.R. 26040)

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

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

LIFO; price indexes; department stores. The March 2004 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, March 31, 2004.

Rev. Rul. 2004-48

The following Department Store Inventory Price Indexes for March 2004 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, March 31, 2004.

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	March 2003	March 2004	Percent Change from March 2003 to March 2004 ¹
1. Piece Goods	458.9	491.8	7.2
2. Domestic and Draperies	552.6	537.6	-2.7
3. Women's and Children's Shoes	642.6	643.4	0.1
4. Men's Shoes	842.0	840.1	-0.2
5. Infants' Wear	600.3	593.2	-1.2
6. Women's Underwear.....	524.9	493.6	-6.0
7. Women's Hosiery	341.2	334.6	-1.9
8. Women's and Girls' Accessories	556.0	561.7	1.0
9. Women's Outerwear and Girls' Wear	380.1	379.7	-0.1
10. Men's Clothing	570.0	539.2	-5.4
11. Men's Furnishings.....	591.1	580.7	-1.8
12. Boys' Clothing and Furnishings	470.9	451.9	-4.0
13. Jewelry.....	871.7	890.0	2.1
14. Notions	797.1	798.5	0.2
15. Toilet Articles and Drugs	976.3	982.7	0.7
16. Furniture and Bedding	625.2	620.3	-0.8
17. Floor Coverings	589.1	596.8	1.3
18. Housewares.....	734.0	714.4	-2.7
19. Major Appliances.....	217.5	205.2	-5.7
20. Radio and Television.....	46.6	43.1	-7.5
21. Recreation and Education ²	83.8	81.6	-2.6
22. Home Improvements ²	125.7	127.8	1.7
23. Automotive Accessories ²	111.7	112.3	0.5
Groups 1-15: Soft Goods	570.4	564.9	-1.0
Groups 16-20: Durable Goods	400.8	387.2	-3.4
Groups 21-23: Misc. Goods ²	95.0	93.8	-1.3
Store Total ³	508.5	501.0	-1.5

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 Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7924 (not a toll-free call).

Section 481.—Adjustments Required by Changes in Method of Accounting

Rev. Proc. 2004-30 provides automatic consent procedures for taxpayers to change their method of accounting for income from REMIC inducement fees to a safe harbor method set forth in T.D. 9128, published May 11, 2004, in the Federal Register. See Rev. Proc. 2004-30, page 950.

Section 860C.—Taxation of Residual Interests

26 CFR 1.860C-1: Taxation of holders of residual interests.

Rev. Proc. 2004-30 provides automatic consent procedures for taxpayers to change their method of accounting for income from REMIC inducement fees to a safe harbor method set forth in T.D. 9128, published May 11, 2004, in the Federal Register. See Rev. Proc. 2004-30, page 950.

Part III. Administrative, Procedural, and Miscellaneous

Guidance Regarding Affiliation

Notice 2004-37

SECTION 1. PURPOSE

This notice announces those circumstances under which a consolidated group that owns stock of an includible corporation will be treated as satisfying the value requirement of § 1504(a)(2)(B) of the Internal Revenue Code for certain purposes. It also announces the intention of the Internal Revenue Service and the Treasury Department to propose regulations pursuant to § 1504(a)(5)(C) providing that the value requirement will be treated as satisfied if the affiliated group, in reliance on a good faith determination of value, treated such requirement as satisfied. In addition, pursuant to § 1504(a)(5)(D), the proposed regulations will disregard an inadvertent ceasing to satisfy the value requirement by reason of changes in relative values of different classes of stock. This notice describes the issues that the Service and the Treasury Department are studying and invites comments on those issues.

SECTION 2. BACKGROUND

Section 1504(a)(1) provides that an affiliated group means one or more chains of includible corporations connected through stock ownership with a common parent which is an includible corporation, but only if (A) the common parent owns directly stock meeting the requirements of § 1504(a)(2) in at least one of the includible corporations and (B) stock meeting the requirements of § 1504(a)(2) in each of the includible corporations (other than the common parent) is owned directly by one or more of the other includible corporations. Section 1504(a)(2) imposes two requirements. First, pursuant to § 1504(a)(2)(A), the stock must possess at least 80 percent of the total voting power of the stock of the corporation. Second, pursuant to § 1504(a)(2)(B), the stock must have a value equal to at least 80 percent of the total value of the stock of the corporation (the value requirement).

Section 1504(a)(5)(C) directs the Secretary to prescribe regulations that provide that the value requirement will be treated

as met if the affiliated group, in reliance on a good faith determination of value, treated it as met (the good faith exception). Section 1504(a)(5)(D) directs the Secretary to prescribe regulations that disregard an inadvertent ceasing to meet the value requirement by reason of changes in relative values of different classes of stock (the inadvertence exception). The legislative history of § 1504 reflects that the inadvertence exception should be available only if the changes in relative value are “not large” and are not “intentionally generated.” H.R. Rep. No. 98-861 at 834, 1984-3 C.B. (vol. 2) 87 (1984). Section 1504(a)(5)(C) and (D), therefore, contemplate that affiliation could be treated as continuing, notwithstanding that the value requirement is not satisfied.

The Service and Treasury Department intend to promulgate regulations implementing the provisions of § 1504(a)(5)(C) and (D). This document outlines those circumstances under which the Service will provide relief from the failure to satisfy the value requirement until temporary or final regulations are promulgated or until this notice is revised. It is possible that the standards adopted in such regulations will vary from and, in certain circumstances, be narrower than the interim relief provided in this document.

SECTION 3. INTERIM RELIEF

.01 *Scope.* Until temporary or final regulations implementing § 1504(a)(5)(C) and (D) are promulgated, or until this notice is revised, the Service will not challenge a consolidated group’s position on a consolidated return that the stock ownership of a “qualifying corporation” satisfies the value requirement for purposes of applying any “value provision” if the consolidated group (including a consolidated group that arises or continues to exist by reason of the relief provided in this notice) satisfies the requirements of either section 3.02 or section 3.03. For purposes of the preceding sentence, a “qualifying corporation” is an includible corporation (within the meaning of § 1504(b) or (c)). In addition, a “value provision” is any provision of the Code and the regulations promulgated thereunder for which ownership of stock, as defined in § 1504, represent-

ing 80 percent (or any lesser threshold percentage) of the total value of the stock of the qualifying corporation is relevant. A “value provision” is also any provision of the Code and the regulations promulgated that refers to “affiliated group” as such term is defined in § 1504.

This notice does not require a taxpayer to treat the value requirement as satisfied with respect to a corporation for purposes of any value provision if the requirements of the value provision are not in fact satisfied. This notice does not permit a taxpayer to treat the value requirement as satisfied with respect to a corporation for purposes of some but not all value provisions (see section 3.04(7)).

Finally, the relief provided in this notice extends only to the taxpayer that satisfies the requirements of section 3.02 or section 3.03. For example, assume a consolidated group’s ownership of the stock of a qualifying corporation does not satisfy the value requirement and, consistent with the terms of this notice (because it is entitled to either the good faith or inadvertence exception), the consolidated group takes the position on its consolidated return that its ownership of the stock of the qualifying corporation satisfies the value requirement. If the group sells all of its stock of the qualifying corporation, unless the purchaser of the stock independently satisfies the requirements of section 3.02, an election under § 338(h)(10) may not be made in respect of the stock of the qualifying corporation.

.02 *Good Faith Exception.* The requirement of this section 3.02 will be satisfied if the consolidated group made a good faith determination that the value requirement was satisfied. The requirement of this section 3.02 will cease to be treated as satisfied immediately before the occurrence of a designated event described in section 3.04, unless the consolidated group makes a good faith determination that, immediately after such designated event, the value requirement is satisfied. If, at any time prior to the occurrence of a designated event, the consolidated group knows or should know that the good faith determination that the value requirement was satisfied was incorrect, the requirement of this section 3.02 nonetheless will continue to be treated as satisfied until immedi-

ately before the occurrence of a designated event described in section 3.04.

.03 *Inadvertence exception.* The requirement of this section 3.03 will be satisfied if (a) the consolidated group's ownership of stock of the corporation does not satisfy the value requirement as a result of a change in the relative values of different classes of stock and such change is not attributable to the occurrence of a designated event described in section 3.04, and (b) immediately before such change in relative values, the consolidated group's ownership of stock of the corporation satisfied the value requirement. The requirement of this section 3.03 will cease to be treated as satisfied immediately before the occurrence of a designated event described in section 3.04.

.04 *Designated Events.* The following events are designated events:

(1) The corporation issues stock to a person that is not a member of the consolidated group.

(2) The corporation redeems stock owned by a member of the consolidated group, other than in complete liquidation of the corporation.

(3) A member of the consolidated group (directly or indirectly) transfers stock of the corporation to a person that is not a member of the consolidated group.

(4) The corporation after May 6, 2004, distributes with respect to its stock money or other property to a member of the consolidated group or a person related (within the meaning of § 267(b) or § 707(b)) to a member of the consolidated group. However, a transaction that is not in form a distribution with respect to a corporation's stock (for example, a distribution deemed to occur by reason of the application of § 482) is a designated event only if (a) the corporation accounts for it on its books and records as a transaction with respect to its stock, (b) it involves the transfer of money or other property (including stock of the corporation) by the corporation to a person in satisfaction of the indebtedness of another member of the consolidated group or a person related thereto, or (c) it involves the forgiveness by the corporation of indebtedness of a member of the consolidated group or a person related (within the meaning of § 267(b) or § 707(b)) to a member of the consolidated group.

(5) The consolidated group claims a worthless stock deduction with respect to

any of the stock of the corporation. In this case, the designated event shall be treated as occurring on the later of the last date on which members of the group own stock that actually satisfies the value requirement or the first day of the taxable year for which the deduction is claimed.

(6) The corporation engages in a recapitalization described in § 368(a)(1)(E).

(7) The consolidated group takes a position on its consolidated Federal income tax return that the value requirement is not satisfied for purposes of applying any value provision. In this case, unless the position taken reflects the occurrence of another designated event, the designated event shall be treated as occurring on the later of the last date on which members of the group own stock that actually satisfies the value requirement or the first day of the taxable year for which the position is taken. However, if a consolidated group took such a position before May 6, 2004, and the group would otherwise be eligible for relief under this notice, a designated event will not result from taking such inconsistent position if the group amends the relevant return or returns to take a position consistent with satisfaction of the value requirement for purposes of applying every applicable value provision.

SECTION 4. REQUEST FOR COMMENTS

The following paragraphs describe the issues the Service and Treasury Department are considering in connection with promulgating regulations implementing the good faith and inadvertence exceptions. The Service and Treasury Department request comments on these issues as well as any other issues that are relevant to regulations implementing these exceptions.

.01 *Scope.* The interim relief set forth in this notice applies only to corporations that are members of a consolidated group (including corporations that are members of a consolidated group by virtue of being entitled to the interim relief set forth in this notice). The Service and Treasury Department request comments regarding whether the good faith and inadvertence exceptions should, by regulation, permit a corporation that is not a member of a consolidated group to treat its ownership of the stock of another corporation as satisfying the value

requirement. The Service and Treasury Department also request comments identifying any special issues that may arise if the good faith and inadvertence exceptions were to apply not only in the consolidated group context, but more broadly in the affiliated group context, and the manner in which those issues should be addressed.

.02 *The Good Faith Exception.* The Service and Treasury Department believe that, in order to establish that the affiliated group, in reliance on a good faith determination of value, treated the value requirement as satisfied, members of the affiliated group must have filed Federal income tax returns in a manner that is consistent with satisfaction of the value requirement. Consideration is being given to whether evidence, such as a third party appraisal, should be required to establish reliance on a good faith determination of value.

The Service and Treasury Department are also considering whether the good faith exception should be presumptively available if the value of the affiliated group's ownership of the stock of the corporation does not fall below a requisite percentage that is relatively small. In addition, the Service and Treasury are considering whether to adopt a rule providing that, if the value of the affiliated group's ownership of stock of the corporation falls below a requisite percentage, the affiliated group's treatment of the value requirement as satisfied is not based in reliance on a good faith determination of value.

Finally, the Service and Treasury Department are considering whether the good faith exception should be available only if the affiliated group cures the value deficiency within a specified period of time after the deficiency arose, or, alternatively, after becoming aware of the deficiency.

.03 *The Inadvertence Exception.* The Service and Treasury Department are considering what evidence an affiliated group must produce to establish that the failure to satisfy the value requirement was inadvertent by reason of a change in the relative values of different classes of stock. The Service and Treasury Department are also considering whether the inadvertence exception should be available only if the value deficiency does not exceed a certain percentage.

The Service and Treasury Department are considering whether the inadvertence exception should be available only if the

affiliated group cures the value deficiency within a certain period of time after the deficiency arose or the affiliated group became aware of it. In that regard, the Service and Treasury Department are considering whether the inadvertence exception should be available only if the value deficiency is cured by the end of the taxable year in which the affiliated group became aware of the value deficiency, by the date the original return (without extensions) for the taxable year in which the affiliated group became aware of the value deficiency, or by the end of the taxable year following the taxable year in which the group became aware of the value deficiency.

Finally, the Service and Treasury Department are considering what events, such as the designated events, should terminate the availability of the inadvertence exception.

The Service and Treasury Department are considering whether, in cases in which the inadvertence exception applies, the failure to satisfy the value requirement should not be disregarded for certain purposes. In particular, in the consolidated group context, the failure to satisfy the value requirement should not be disregarded to the extent treating that requirement as satisfied permits the group to obtain excess tax benefits. One possible approach to prevent a consolidated group from obtaining excess tax benefits would be to limit the use of losses (for example, to prevent creating or increasing an excess loss account in the stock of the corporation) and credits of the corporation to offset income of other members of the consolidated group or to reduce the tax liability of the consolidated group for a taxable year during which the value requirement is not satisfied. Comments are requested regarding whether such an approach is appropriate and what the terms of such an approach should be.

.04 Application To Different Provisions. The Service and Treasury Department request comments regarding whether the parameters of the good faith and inadvertence exceptions should vary for purposes of determining whether corporations are affiliated for different provisions of the Internal Revenue Code. That is, the Service and Treasury Department request comments regarding whether the policies underlying the various provisions of the

Code for which affiliated status is relevant suggests that the good faith and inadvertence exceptions should be interpreted differently for these various provisions.

.05 Comments. Comments should refer to Notice 2004-37, and should be submitted by July 31, 2004, to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:LPD:PR
Room 5203

or electronically via the Service internet site at: *Notice.Comments@irs.counsel.treas.gov*. All comments will be available for public inspection and copying.

SECTION 5. DRAFTING INFORMATION

For further information regarding this notice, contact Mr. David Kessler of the Office of Associate Chief Counsel (Corporate) at (202) 622-7770 (not a toll-free call).

Qualified Amended Returns

Notice 2004-38

PURPOSE

The purpose of this notice is to announce that the Internal Revenue Service and the Treasury Department will issue temporary and proposed regulations that will modify the definition of “qualified amended return” in Treasury Regulations § 1.6664-2(c)(3). The temporary regulations will provide that the period for filing a qualified amended return is terminated when the Service serves a John Doe summons under section 7609(f) of the Internal Revenue Code with respect to the taxpayer’s tax liability. The temporary regulations also will provide that the period for filing a qualified amended return is terminated when the Service contacts a promoter, organizer or material advisor concerning a listed transaction for which the taxpayer has claimed a tax benefit.

The temporary regulations will be effective for amended returns or requests for administrative adjustment filed on or after April 30, 2004.

BACKGROUND

Section 1.6664-2(c)(3) of the Treasury Regulations requires a taxpayer to file a qualified amended return before the earliest of: (1) the date on which the taxpayer is first contacted by the Service concerning an examination of the return; (2) the date on which a person described in section 6700(a) is first contacted by the Service concerning the examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or (3) for certain pass-through items, the date on which the pass-through entity is first contacted by the Service in connection with an examination to which the pass-through item relates.

The Service may serve a John Doe summons pursuant to section 7609(f) after a court proceeding in which the Service establishes that: (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons; (2) there is a reasonable basis for believing that the person, group, or class may fail or may have failed to comply with any internal revenue provision; and (3) the information sought from the examination of records and testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

In February 2000, the Treasury Department and the Service issued temporary and proposed regulations requiring certain corporations to disclose “reportable transactions” that were reflected on their federal income tax returns. A reportable transaction included a transaction that is the same as or substantially similar to one of the types of transactions that the Service determined to be a tax avoidance transaction and identified by published guidance as a “listed transaction,” if the transaction also gave rise to federal income tax savings above a certain dollar threshold. In June 2002, the Treasury Department and the Service extended the disclosure requirement for listed transactions to individuals, partnerships, S corporations, and other noncorporate persons. This change was effective for transactions entered into on or after January 1, 2001, that had not been reported on a return filed on or before

June 14, 2002. (T.D. 9000, 2002-2 C.B. 87, 6/14/2002). The June 2002 modifications also removed the dollar thresholds related to tax savings for all taxpayers engaging in listed transactions. The regulations under section 6011 requiring disclosure of reportable transactions were modified substantially in October 2002 (T.D. 9017, 2002-2 C.B. 815, 10/17/2002) and finalized in February 2003 (T.D. 9046, 2003-1 C.B. 614, 2/27/2003). The February 2003 final regulations also amended the regulations under sections 6111 and 6112 relating to the registration of and list maintenance for certain transactions.

In early 2002, the Treasury Department and the Service gave taxpayers the opportunity to avoid the imposition of certain penalties by disclosing their participation in any transaction for which the imposition of the accuracy-related penalty under section 6662 may be appropriate. In Announcement 2002-2, 2002-1 C.B. 304, the Service agreed to waive certain components of the accuracy-related penalty under section 6662 for taxpayers who disclosed any item in accordance with the terms of Announcement 2002-2 by April 23, 2002.

DISCUSSION

I. Revised Definition of Qualified Amended Returns

The Treasury Department and the Service have identified additional periods of time after which a taxpayer is no longer permitted to file a qualified amended return. In addition to the current requirements, the temporary regulations will require that a taxpayer file a qualified amended return before the earliest of:

(1) The date on which a third party is served a John Doe summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer, with respect to the return reflecting the transactions or tax items that are the subject of the summons, or

(2) The “date of contact” or “date of request,” described below, in the case of a transaction with respect to which the taxpayer claimed any direct or indirect tax benefits on its return and that is the same or substantially similar to a transaction that has been designated as a “listed transaction” (regardless of whether the taxpayer’s transaction is required to be

disclosed as a listed transaction under Treasury Regulation § 1.6011-4), unless the taxpayer disclosed the transaction under Treasury Regulation § 1.6011-4 or pursuant to Announcement 2002-2 before the date of contact or date of request.

(a) *Date of contact.* The date of contact is the date on which any person required to register a tax shelter under section 6111(a) is first contacted by the Service concerning an examination of an activity described in section 6707(a) (relating to the failure to register a tax shelter as defined in section 6111 or the filing of false or incomplete information with respect to that registration) relating to a type of listed transaction with respect to which the taxpayer claimed any direct or indirect tax benefits on its return. The rules in the temporary regulations will apply even if the taxpayer’s transaction is not required to be disclosed as a listed transaction under Treasury Regulation § 1.6011-4.

(b) *Date of request.* The date of request is the date on which any person described in section 6112(a) (organizer or seller, including a material advisor as defined in the Treasury Regulations under section 6112) receives a request from the Service for information required to be included on a list under section 6112 relating to a type of listed transaction with respect to which the taxpayer claimed any direct or indirect tax benefits on its return. The rules in the temporary regulations will apply even if the taxpayer’s information is not required to be included on the list requested by the Service.

The regulations also will provide similar rules in the case of pass-through items. In addition, where appropriate, the regulations will reference the October 2002 temporary regulations under sections 6011 and 6112 and other temporary regulations under sections 6011, 6111, and 6112.

II. Effective Date of Regulations Issued Pursuant to This Notice

The regulations to be issued will be effective for amended returns and requests for administrative adjustment filed on or after April 30, 2004, the date this notice is issued.

DRAFTING INFORMATION

The principal author of this notice is Nancy M. Galib of the Office of Associate

Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact Ms. Galib at (202) 622-4940 (not a toll-free call).

26 CFR 1.446-6: REMIC inducement fees.
(Also §§ 446, 481, 860C; 1.446-1, 1.860C-1.)

Rev. Proc. 2004-30

SECTION 1. PURPOSE

This revenue procedure provides the procedures for taxpayers described in section 3 to change their methods of accounting for inducement fees received in connection with becoming holders of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs) to a safe harbor method provided under § 1.446-6(e)(1)-(2) of the Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Under § 1.446-6, if a taxpayer receives an inducement fee in connection with becoming the holder of a noneconomic residual interest in a REMIC, the inducement fee must be taken into account over the remaining expected life of the applicable REMIC in a manner that reasonably reflects, without regard to § 1.446-6(c), the after-tax costs and benefits of holding that noneconomic residual interest. See § 1.446-6(c) and (d). Section 1.446-6 provides two safe harbor methods of accounting for these inducement fees, the book method in § 1.446-6(e)(1) and the modified REMIC regulatory method in § 1.446-6(e)(2). Section 1.446-6(e)(3) authorizes the Commissioner to provide one or more additional safe harbor methods by publishing a revenue ruling or revenue procedure.

.02 If a method of accounting for inducement fees received with respect to becoming the holder of noneconomic REMIC residual interests does not comply with § 1.446-6, that method of accounting is impermissible. Any change in a taxpayer’s treatment of these inducement fees, including a change to conform to § 1.446-6, is a change in method of accounting to which the provisions of §§ 446

and 481 of the Internal Revenue Code and the regulations thereunder apply.

.03 Under § 446(e) and § 1.446-1(e)(2)(i), a taxpayer generally must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the terms and conditions necessary to obtain consent to change a method of accounting. Except as provided in sections 3 and 4 of this revenue procedure, a taxpayer seeking to change the taxpayer's method of accounting for inducement fees must follow the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680 (or successor), as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432.

.04 Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432), provides procedures by which taxpayers may obtain automatic consent to change to the methods of accounting described in the Appendix of the revenue procedure. Section 5.03 of Rev. Proc. 2002-9 provides

that, unless otherwise provided, a taxpayer making a change in method of accounting under the revenue procedure must take into account a § 481(a) adjustment in the manner provided in section 5.04 of the revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that seeks to change from any method of accounting for inducement fees received with respect to becoming the holder of noneconomic REMIC residual interests (including one of the safe harbor methods provided under § 1.446-6(e)) to one of the safe harbor methods provided under § 1.446-6(e)(1)-(2).

SECTION 4. CHANGE IN METHOD OF ACCOUNTING

A taxpayer within the scope of this revenue procedure must follow the automatic change in method of accounting provisions of Rev. Proc. 2002-9 (or successor), with all of the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a taxpayer that wants to make the change for the taxpayer's first taxable year ending on or after May 11, 2004.

(2) The taxpayer prepares and files the newest version of the Form 3115 in ac-

cordance with section 6 of Rev. Proc. 2002-9, and the taxpayer enters the designated number for the automatic change in method in Line 1a of the Form 3115. The designated number for the automatic accounting method change authorized by this revenue procedure is "79".

(3) The taxpayer identifies the specific safe harbor method under § 1.446-6(e) to which the taxpayer is changing.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on May 11, 2004.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include this automatic change in section 4.01 of the APPENDIX.

DRAFTING INFORMATION

The principal authors of this revenue procedure are John W. Rogers III and Tina Jannotta of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Mr. Rogers at (202) 622-3950 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Special Consolidated Return Rules for the Disallowance of Interest Expense Deductions Under Section 265(a)(2)

REG-128590-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 265(a)(2) that affect corporations filing consolidated returns. These regulations provide special rules for the treatment of certain intercompany transactions involving interest on intercompany obligations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 5, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-128590-03), 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-128590-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-128590-03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Frances L. Kelly, (202) 622-7770; concerning submissions of comments and/or requests for a public hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 265(a)(2)

Section 163(a) generally allows a deduction for all interest paid or accrued within the taxable year on indebtedness. Under section 265(a)(2), however, no deduction is allowed for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income taxes.

Rev. Proc. 72-18, 1972-1 C.B. 740, provides guidelines for the application of section 265(a)(2) to taxpayers holding tax-exempt obligations. Section 3.01 of the revenue procedure states that the application of section 265(a)(2) requires a determination, based upon all the facts and circumstances, of the taxpayer's purpose in incurring or continuing each item of indebtedness. Such purpose may be established by either direct or circumstantial evidence. Direct evidence includes direct tracing of borrowed funds to investments in tax-exempt obligations and the pledging of tax-exempt obligations as security for the indebtedness. To the extent that there is direct evidence establishing a purpose to purchase or carry tax-exempt obligations, the interest paid or incurred on such indebtedness may not be deducted. In certain other cases when an interest deduction is disallowed (for example, when amounts borrowed by a dealer in tax-exempt obligations are not directly traceable to tax-exempt obligations), section 7 of Rev. Proc. 72-18 sets forth a formula to calculate the disallowed interest deduction. That formula provides that the amount of the disallowed interest deduction is determined by multiplying the total interest on the indebtedness by a fraction, the numerator of which is the average amount during the taxable year of the taxpayer's tax-exempt obligations (valued at their adjusted bases), and the denominator of which is the average amount during

the taxable year of the taxpayer's total assets (valued at their adjusted bases) minus the amount of any indebtedness the interest deduction on which is not subject to disallowance to any extent under Rev. Proc. 72-18.

In *H Enterprises International, Inc. v. Commissioner*, 75 T.C.M. (CCH) 1948 (1998), *aff'd*, 183 F.3d 907 (8th Cir. 1999), a parent and a subsidiary were members of the same consolidated group of corporations. The subsidiary declared a dividend and, a few days later, borrowed funds and immediately used part of those funds to make the dividend distribution to the parent. A portion of the distributed funds was disbursed to two investment divisions of the parent, which used the funds to acquire investments including tax-exempt obligations.

The court held that a portion of the subsidiary's indebtedness was incurred for the purpose of purchasing or carrying tax-exempt obligations (held in the parent's investment divisions) and, therefore, no deduction was allowed for the interest on this portion of the indebtedness under section 265(a)(2). To establish the required purposive connection under section 265(a)(2), the court reasoned that the activities of the parent corporation were relevant in determining the subsidiary's purpose for borrowing the funds. The court stated that if the analysis only focused on the borrower and not the transferee, then the purpose of the borrower corporation would always be acceptable, frustrating the legislative intent of section 265(a)(2).

Rev. Rul. 2004-47, 2004-21 I.R.B. 941, provides guidance on the application of section 265(a)(2) in a number of situations in which a member of an affiliated group borrows money from an unrelated party and transfers funds to another member of the group that is a dealer in tax-exempt obligations. In *Situation 4*, P and S are members of the same affiliated group but file separate tax returns. P borrows funds from L, an unrelated bank, and lends the borrowed funds to S, a dealer in

tax-exempt obligations. S uses the borrowed funds in its business. The ruling examines the obligation from L to P and the obligation from P to S for the application of section 265(a)(2). With regard to the loan from L to P, P uses the borrowed funds to make a loan to S, and P separately accounts for the taxable interest income from the obligation. The ruling concludes that P does not have a purpose of using the borrowed funds to purchase or carry tax-exempt obligations within the meaning of section 265(a)(2). With regard to the loan from P to S, although the borrowed funds are not directly traceable to S's purchase or carry of tax-exempt obligations, the ruling concludes that section 265(a)(2) applies to disallow a deduction for a portion of S's interest expense. The portion of S's interest deduction that is disallowed is determined pursuant to the formula of section 7 of Rev. Proc. 72-18.

The Intercompany Transaction Regulations

Section 1.1502-13 prescribes rules relating to the treatment of transactions between members of a consolidated group. With respect to intercompany obligations, the intercompany transaction rules generally operate to match the debtor member's items with the lending member's items from the intercompany obligation.

Under §1.1502-13(c)(6)(i), if section 265(a)(2) permanently and explicitly disallows a debtor member's interest deduction with respect to a debt to another member, the lending member's interest income is treated as excluded from gross income. See §1.1502-13(g)(5), *Example 1*(d). In cases when a member of the group borrows from another member to purchase or carry tax-exempt obligations, and the lending member has not borrowed from sources outside of the group to fund the intercompany obligation, the result reached under the §1.1502-13(c)(6)(i) exclusion rule is appropriate in that it reflects that intercompany lending transactions do not alter the net worth of the group and, thus, should not affect consolidated taxable income.

However, when the lending member borrows from a nonmember, the lending member lends those funds to the debtor member, and the debtor member uses those funds to purchase or carry tax-exempt obligations, the application of the

§1.1502-13(c)(6)(i) exclusion rule may produce inappropriate results. For example, assume P borrows \$100 from L, a nonmember, for the purpose of lending the \$100 to S under the same terms, and S's purpose for borrowing \$60 of the intercompany loan from P is to purchase \$60 of tax-exempt obligations. Under section 265(a)(2), a deduction would be disallowed for a portion of S's interest expense on the intercompany obligation and a portion of P's interest income would be excluded from P's gross income under §1.1502-13(c)(6)(i). Accordingly, section 265(a)(2) may have no effect on the group's taxable income, even though the group has borrowed to purchase tax-exempt obligations.

Explanation of Provisions

The IRS and Treasury Department believe that, when a member's indebtedness to a nonmember is directly traceable to an intercompany obligation and another member of the group uses the funds borrowed from the nonmember to purchase or carry tax-exempt obligations, the net tax effect of these transactions for the group should be a disallowance of a deduction for interest under section 265(a)(2).

These proposed regulations reflect that when a member (P) borrows funds from a nonmember and lends all of those funds to another member (S) that uses those funds to purchase tax-exempt obligations, section 265(a)(2) will apply to disallow a deduction for the interest on S's obligation to P, not P's obligation to the nonmember. These proposed regulations provide that, if a member of a consolidated group incurs or continues indebtedness to a nonmember, that indebtedness to the nonmember is directly traceable to all or a portion of an intercompany obligation extended to a member of the group (the borrowing member) by another member of the group (the lending member), and section 265(a)(2) applies to disallow a deduction for all or a portion of the borrowing member's interest expense incurred with respect to the intercompany obligation, then §1.1502-13(c)(6)(i) will not apply to exclude an amount of the lending member's interest income with respect to the intercompany obligation that equals the amount of the borrowing member's disallowed interest deduction. This override

of the exclusion rule is subject, however, to a limitation. In particular, the amount of interest income not excluded cannot exceed the interest expense on the portion of the nonmember indebtedness that is directly traceable to the intercompany obligation. This limitation ensures that applying section 265(a)(2) to disallow an interest deduction with respect to an intercompany obligation that can be directly traced to nonmember indebtedness does not result in a worse overall tax position for the group than applying section 265(a)(2) to disallow a deduction for the interest paid to the nonmember.

Therefore, subject to the limitation discussed above, if the proceeds of P's borrowing from a nonmember can be directly traced to a P-S intercompany obligation and all or a portion of S's interest expense on the P-S intercompany obligation is disallowed as a deduction under section 265(a)(2), these proposed regulations require that all or a portion of P's interest income on the intercompany obligation not be excluded under §1.1502-13(c)(6)(i).

In an Advance Notice of Proposed Rulemaking (REG-128572-03, published as Announcement 2004-44) in this issue of the Bulletin, the IRS and Treasury Department are soliciting comments regarding whether regulations under section 7701(f) should address the application of sections 265(a)(2) and 246A in transactions involving related parties, pass-thru entities, or other intermediaries, and suggestions as to the approach that should be taken by those regulations. It is possible that those comments and any regulations proposed under section 7701(f) will result in amendments to the rules set forth in these proposed regulations.

Proposed Effective Date

These regulations are proposed to apply to taxable years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

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. 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 upon 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. Therefore, 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, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Frances L. Kelly, Office of the 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 for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
 Section 1.265-2 also issued under 26 U.S.C. 1502 and 7701(f). * * *
 Par. 2. In §1.265-2, paragraph (c) is added to read as follows:

§1.265-2 Interest relating to tax-exempt income.

* * * * *

(c) *Special rule for consolidated groups*—(1) *Treatment of intercompany obligations*—(i) *Direct tracing to non-member indebtedness*. If a member of a consolidated group incurs or continues indebtedness to a nonmember, that indebtedness is directly traceable to all or a portion of an intercompany obligation (as defined in §1.1502-13(g)(2)(ii)) extended to a member of the group (B) by another member of the group (S), and section 265(a)(2) applies to disallow a deduction for all or a portion of B's interest expense incurred with respect to the intercompany obligation, then §1.1502-13(c)(6)(i) will not apply to exclude an amount of S's interest income with respect to the intercompany obligation that equals the amount of B's disallowed interest deduction.

(ii) *Limitation*. The amount of interest income to which §1.1502-13(c)(6)(i) will not apply as a result of the application of paragraph (c)(1)(i) of this section cannot exceed the interest expense on the portion of the indebtedness to the nonmember that is directly traceable to the intercompany obligation.

(2) *Examples*. The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, unless otherwise stated, P and S are members of a consolidated group of which P is the common parent. P owns all of the outstanding stock of S. The taxable year of the P group is the calendar year and all members of the P group use the accrual method of accounting. L is a bank unrelated to any member of the consolidated group. All obligations are on the same terms and conditions, remain outstanding at the end of the applicable year, and provide for payments of interest on December 31 of each year that are greater than the appropriate applicable Federal rate (AFR). The examples are as follows:

Example 1. (i) *Facts*. On January 1, 2005, P borrows \$100x from L and lends the entire \$100x of borrowed proceeds to S. S uses the \$100x of borrowed

proceeds to purchase tax-exempt securities. P's indebtedness to L is directly traceable to the intercompany obligation between P and S. In addition, there is direct evidence that the proceeds of S's intercompany obligation to P were used to fund S's purchase or carrying of tax-exempt obligations. During the 2005 taxable year, P incurs \$10x of interest expense on its loan from L, and S incurs \$10x of interest expense on its loan from P. Under section 265(a)(2), the entire \$10x of S's interest expense on the intercompany obligation to P is disallowed as a deduction.

(ii) *Analysis*. Because section 265(a)(2) permanently and explicitly disallows \$10x of S's interest expense, ordinarily \$10x of P's interest income on the intercompany obligation would be redetermined to be excluded from P's gross income under §1.1502-13(c)(6)(i). However, under this paragraph (c), §1.1502-13(c)(6)(i) will not apply to exclude P's interest income with respect to the intercompany obligation in an amount that equals S's disallowed interest deduction with respect to the intercompany obligation. Accordingly, §1.1502-13(c)(6)(i) will not apply to exclude P's \$10x of interest income on the intercompany obligation and P must include in income \$10x of interest income from the intercompany obligation.

Example 2. (i) *Facts*. The facts are the same as in Example 1, except that P incurs only \$8x of interest expense on its loan from L.

(ii) *Analysis*. Section 1.1502-13(c)(6)(i) will apply to exclude only a portion of P's \$10x of interest income on the intercompany obligation. Under paragraph (c)(1)(ii) of this section, the amount of P's interest income that §1.1502-13(c)(6)(i) will not apply to exclude is \$8x, the total interest expense incurred by P on its indebtedness to L. Consequently, P must include in income \$8x of interest income from the intercompany obligation and §1.1502-13(c)(6)(i) will apply to exclude \$2x of interest income from the intercompany obligation.

(3) *Effective date*. The provisions of this section shall apply to taxable years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 1.1502-13 is amended by:

1. Adding a sentence immediately after the second sentence of paragraph (c)(6)(ii)(A).
2. Adding paragraph (c)(6)(iii).
3. Revising the first sentence of *Example 1*(d) of paragraph (g)(5).

The revisions and additions read as follows:

§1.1502-13 Intercompany transactions.

* * * * *

- (c) * * *
- (6) * * *
- (ii) * * *

(A) * * * However, see §1.265-2(c) for special rules related to the application of

paragraph (c)(6)(i) of this section to interest income with respect to certain intercompany obligations the interest deduction on which is disallowed under section 265(a)(2). * * * *

* * * * *

(iii) *Effective date.* The third sentence of paragraph (c)(6)(ii)(A) of this section shall apply to taxable years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(g) * * *

(5) * * *

Example 1 * * * *

* * * * *

(d) *Tax-exempt income.* The facts are the same as in paragraph (a) of this *Example 1*, except that B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies and §1.265-2(c) does not apply. * * *

* * * * *

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

(Filed by the Office of the Federal Register on May 6, 2004, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2004, 69 F.R. 25535)

Election of Alternative Deficit Reduction Contribution

Announcement 2004-43

This announcement provides guidance on the notices that must be given by an employer to plan participants and their beneficiaries and to the Pension Benefit Guaranty Corporation (the "PBGC") if the employer elects the alternative deficit reduction contribution under § 412(l)(12) of the Internal Revenue Code (the "Code") and section 302(d)(12) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as added by section 102 of the Pension Funding Equity Act of 2004, Pub. L. 108-218 ("PFEA'04"). This announcement also sets forth timing requirements for the election.

I. Background

Section 102 of PFEA'04, which was enacted on April 10, 2004, added § 412(l)(12) to the Code and section 302(d)(12) to ERISA. Section 412(l)(12) of the Code permits certain employers who are required to make additional contributions under § 412(l) to elect a reduced amount of those contributions ("alternative deficit reduction contributions") for certain plan years. An employer is eligible to make such an election if it is (1) a commercial passenger airline, (2) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or (3) an organization described in § 501(c)(5) that established a plan on June 30, 1955, to which § 412 now applies. On April 12, 2004, the Internal Revenue Service (the "Service") issued Announcement 2004-38, 2004-18 I.R.B. 878, which provides guidance for making the election for an alternative deficit reduction contribution.

Section 302 of ERISA contains minimum funding standard requirements that are parallel to those under § 412 of the Code, and section 302(d)(12) of ERISA provides an election that is identical to the election under § 412(l)(12) of the Code. Moreover, section 302(d)(12)(E) of ERISA requires an employer that elects an alternative deficit reduction contribution under section 302(d)(12) of ERISA and § 412(l)(12) of the Code for any year to provide certain notices to the participants and beneficiaries under the plan and to the PBGC. The notices must be provided within 30 days of the filing of the election for such year, and the written notices of the election must specify various information.

Section 302(d)(12)(F) of ERISA as added by section 102(a) of PFEA'04 authorizes the Secretary of the Treasury to prescribe the time and manner of making an alternative deficit reduction contribution election. In addition, under section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, the Secretary of the Treasury has sole interpretive authority (except for certain matters not relevant here) over the subject matter addressed in this announcement.

Section 102(d) of PFEA'04 amended section 502(c)(3) of ERISA to provide that if an employer fails to provide the required notices on a timely basis to a participant or

beneficiary, or to the PBGC, that employer may be liable to such participant or beneficiary or to the PBGC, in the discretion of the court, for a penalty of up to \$100 a day from the date of the failure, or such other relief as the court deems proper.

II. Required Notice to Participants and Beneficiaries

A. *Explanation of Context*—Pursuant to section 302(d)(12)(E)(i) of ERISA, an employer that elects an alternative deficit reduction contribution must provide written notice of the election to each participant and to each beneficiary under the plan ("the participant notice") and must explain the context in which the information set forth in section II.B. of this announcement is being provided. This requirement to explain the context is satisfied if the notice includes the following information:

"As permitted under a new law called the Pension Funding Equity Act of 2004, Pub. L. 108-218 ("PFEA'04"), [enter name of corporation] has made a special election that reduces the amount of contributions that are required to be made for [enter plan year] to [enter name of pension plan]. The election was made on [enter date of election]. The following information is being provided to you pursuant to the new law."

B. *Information Required in Notice to Participants and Beneficiaries*—Pursuant to section 302(d)(12)(E)(i) of ERISA, the participant notice must also include the information described in this Section II.B.

1. *Due Date of the Alternative Deficit Reduction Contribution and Amount by Which Required Contribution is Reduced*

The participant notice must specify the following information with respect to the due date and the reduction in required contributions resulting from the alternative deficit reduction contribution election for the plan year:

a. The amount of the required minimum contribution under § 412 of the Code for the plan year for which the alternative deficit reduction contribution election was made, calculated taking into account that election;

b. The amount of the required minimum contribution under § 412 for the plan

year for which the alternative deficit reduction contribution election was made, calculated without taking into account the election;

c. The due date of the required minimum contribution under § 412 for the plan year for which the alternative deficit reduction contribution election was made; and

d. If the electing employer is required to make quarterly contributions to the plan for the plan year for which the election is made, the aggregate amount of the required minimum contribution under § 412 for the plan year that is required to be paid in quarterly installments (calculated taking into account the election).

The employer may provide reasonable estimates of the amounts described above, and the participant notice may also specify the amount and date of any contributions that were made for the plan year prior to the date of the participant notice.

2. *Benefits Eligible for Guarantee and Limitations on Guarantee*

The participant notice must include a description of the benefits under the plan that are eligible for guarantee by the PBGC, an explanation of the limitations on the PBGC's guarantee and the circumstances in which the limitations apply, including the maximum guaranteed monthly benefits that the PBGC would pay if the plan terminated while underfunded. This requirement will be satisfied if an employer includes in the participant notice the text from the portion of the model notice in Appendix A to 29 CFR Part 4011 that is found under the heading "PBGC Guarantees."

C. *Method of Delivery*

The delivery requirement for the participant notice is treated as satisfied if the participant notice is mailed to the last known address of each participant or beneficiary.

III. **Required Notice to PBGC**

Pursuant to section 302(d)(12)(E)(iii) of ERISA an employer electing an alternative deficit reduction contribution must provide the information described in this section.

A. *Due Date of the Alternative Deficit Reduction Contribution and Amount by Which Required Contribution Was Reduced*

This PBGC notice must include the information regarding the contribution amounts and due dates set forth in the description of the participant notice in section II.B.1. of this announcement.

B. *Time to Restore Plan to Full Funding*

The PBGC notice must include the number of years it will take to restore the plan to full funding if the employer only makes the required minimum contributions. For this purpose, a plan will be considered to be in full funding for a plan year if, for the plan year, the plan is subject to the full-funding limitation of § 412(c)(7), taking into account the 90% override of § 412(c)(7)(E).

The projection of when the plan will be in full funding must be based on reasonable actuarial assumptions and, for plan years beginning in 2006 and later years, must reflect the interest rate rules (§§ 412(b)(5)(ii)(III) and 412(l)(7)(C)(i)(II)) that are applicable for plan years beginning after 2005. In addition, the PBGC notice must also include the required minimum contributions that form the basis of the projections for the plan year of the election and each of the 4 subsequent plan years.

C. *Comparison of Underfunded Amount with Capitalization*

The PBGC notice must include (1) the amount by which the plan is underfunded and (2) the capitalization of the employer making the election.

For purposes of providing the amount by which the plan is underfunded, the PBGC notice must include the plan's termination liability as of a date within the most recently ended plan year and the market value of plan assets as of that date.

In the case of an employer whose stock is publicly traded, the capitalization of the employer is the product of the number of outstanding shares of stock and the market price per share. In the case of any other employer, the capitalization information required to be shown is the following: (1) the fair market value of total as-

sets, (2) total liabilities, (3) stockholder equity (deficit), (4) paid-in capital, and (5) retained earnings (accumulated loss).

The capitalization information should be shown as of the same date for which the underfunded amount in the paragraph above is specified. If, however, the capitalization information is not available as of such date, capitalization information as of the end of the most recently ended fiscal year of the corporation may be substituted.

Method of Delivery

The delivery requirement for the PBGC notice is set forth on the PBGC's website at www.pbgc.gov.

IV. **Time For Making Election**

Pursuant to the authority contained in section 302(d)(12)(F) of ERISA, and subject to the transition rule in Section V of this announcement, an election to make the alternative deficit reduction contribution for any plan year must be made by the end of the first quarter of that plan year.

V. **Transition**

Notwithstanding the requirement to make an election by the end of the first quarter of the plan year, the following transitional rules are applicable. If an employer makes an alternative deficit reduction contribution election on or before June 30, 2004, that election will be deemed timely for the plan year that begins during calendar 2004. In addition, if an employer issues a PBGC notice for a plan on or before June 5, 2004, the PBGC will treat the PBGC notice as timely issued.

VI. **Paperwork Reduction Act**

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1884.

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

The collection of information in this announcement is in sections II and III. This information is required to meet the

requirements of section 102 of the Pension Funding Equity Act of 2004 to monitor and make valid determinations with respect to employers that elect an alternative deficit reduction contribution for certain plans. As a result of such elections, an employer's deficit reduction contribution for certain plans will be based on amounts specified under § 412(l)(12) of the Code. If an employer does not give timely notice of an election to make a deficit reduction contribution (including all of the requirements described above), a court may in its discretion impose a penalty. The likely respondents are businesses or other for-profit institutions, and nonprofit institutions.

The estimated total annual reporting and/or recordkeeping burden is 12,000 hours.

The estimated annual burden per respondent/recordkeeper varies from 20 to 100 hours, depending on individual circumstances, with an estimated average of 60 hours. The estimated number of respondents and/or recordkeepers is 200.

The estimated frequency of responses is occasional.

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

VII. Effect on Other Documents

Announcement 2004-38, 2004-18 I.R.B. 878, is modified.

Drafting Information

The principal authors of this announcement are James E. Holland and Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Holland may be reached at 1-202-283-9699 and Mr. Rubin may be reached at 1-202-283-9888 (not toll-free numbers).

Application of Sections 265(a)(2) and 246A in Multi-Party Financing Arrangements; Request for Comments

Announcement 2004-44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The IRS and Treasury Department are soliciting comments and suggestions regarding the scope and details of regulations (REG-128572-03) that may be proposed under section 7701(f) of the Internal Revenue Code to address the application of sections 265(a)(2) and 246A in transactions involving related parties, pass-through entities, or other intermediaries.

DATES: Written or electronic comments must be submitted by August 5, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-128572-03), 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-128572-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC or sent electronically, via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-128572-03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622-7180; concerning the notice, Avital Grunhaus, (202) 622-3930 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 163(a) generally allows a deduction for all interest paid or accrued within the taxable year on indebtedness. Section 265(a)(2), however, provides that

no deduction shall be allowed for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income taxes.

Generally, section 246A reduces the dividends received deduction under section 243, 244, or 245(a) to the extent that the portfolio stock, with respect to which the dividends are received, is debt-financed. Stock is treated as debt-financed if there is indebtedness directly attributable to the stock investment.

Section 7701(f) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the provisions of the Internal Revenue Code that deal with (1) the linking of borrowing to investment, or (2) diminishing risk, through the use of related persons, pass-thru entities, or other intermediaries.

Concurrent with the publication of this advance notice of proposed rulemaking in the **Federal Register**, the IRS and Treasury are issuing Rev. Rul. 2004-47, 2004-21 I.R.B. 941, which provides guidance on the application of section 265(a)(2) to disallow a portion of interest incurred by one member of an affiliated group when it transfers borrowed funds to another member of the group that is a dealer in tax-exempt bonds. In the circumstances described in *Situations 1* and *2* of that ruling, the funds borrowed by one member are directly traceable to the funds the borrowing member transfers to the dealer member. Under Rev. Proc. 72-18, 1972-1 C.B. 740, the application of section 265(a)(2) to these facts requires a determination of the borrowing member's purpose for incurring or continuing each item of indebtedness. The revenue ruling holds that the purpose of the borrowing member is determined by reference to the use of the borrowed funds in the business of the dealer member to whom the funds are made available. This conclusion is based on *H Enterprises International v. Commissioner*, 75 T.C.M. 1948 (1998), *aff'd per curiam*, 183 F.3d 907 (8th Cir. 1999). The result is a disallowance of the borrowing member's interest expense under section 265(a)(2).

In *H Enterprises*, a parent and a subsidiary were members of the same consolidated group of corporations. The subsidiary declared a dividend and, a few

days later, borrowed funds and immediately used part of those funds to make the dividend distribution to the parent. A portion of the distributed funds was disbursed to two investment divisions of the parent, which used the funds to acquire investments including tax-exempt obligations and corporate stock. The court held that a portion of the indebtedness was incurred to purchase and carry tax-exempt obligations for the purpose of section 265(a)(2) and that a portion of the indebtedness was directly attributable to the purchase and carry of portfolio stock for the purpose of section 246A.

The transactions described in *Situations 1* and *2* of Rev. Rul. 2004-47 and the transaction before the court in *H Enterprises* all involve funds borrowed by one member of an affiliated group that can be directly traced to funds transferred to another member of the group.

In contrast to the transactions described in *Situations 1* and *2*, in the transaction described in *Situation 3* of Rev. Rul. 2004-47, the borrowed funds are not directly traceable to the funds transferred to the dealer member, and there is no other direct evidence linking the borrowed funds to the funds transferred to the dealer member. The revenue ruling holds that in these circumstances, section 265(a)(2) will not be applied to disallow interest expense of the borrowing member.

Other situations may not be so clear. For example, funds may be transferred among the members of an affiliated or consolidated return group in a variety of ways that make it difficult to match borrowed funds with particular investments or other uses. Furthermore, certain taxpayers may affirmatively seek to avoid application of the rules of sections 265(a)(2) and 246A by using related parties, pass-thru entities, or other intermediaries in a manner that obscures the linkage between borrowing outside of the affiliated group and the purchase or carry of investments within the group.

During the course of developing Rev. Rul. 2004-47, the IRS and Treasury began preliminary consideration of possible regulations that might be adopted under the authority granted by section 7701(f) to provide clearer rules for matching borrowings and investments and for administering more effectively the purposes of section 265(a)(2). For example, Treasury

and IRS are considering a rule that would permit taxpayers to trace proceeds of borrowings to specific taxable investments or other specific uses but would apply a *pro rata* approach to determine the use of proceeds of borrowings that are not traceable to a specific use. This would differ from a general rule requiring a *pro rata* allocation of borrowings among all available uses, such as the rule in section 265(b) applicable to financial institutions.

The IRS and Treasury also are considering whether to adopt regulations under section 7701(f) for purposes of section 246A (dealing with debt financing of portfolio stock).

The IRS and Treasury are requesting comments on whether regulations should be adopted under section 7701(f) for purposes of applying section 265(a)(2) or section 246A and, if so, the approach that should be taken in such regulations. Specifically, the IRS and Treasury are inviting comments on the approach of supplementing a specific tracing rule with a *pro rata* allocation rule, as well as suggestions for alternative approaches. Comments addressing the possible adoption of regulations for purposes of section 246A should take into account any differences in approach that may be required under section 7701(f) because section 246A defines portfolio indebtedness by reference to indebtedness "directly attributable to" portfolio stock, while section 265(a)(2) refers to indebtedness "incurred or continued to purchase or carry" tax-exempt obligations. Persons making comments may also wish to address the mandate in section 246A(f) to adopt regulations providing for interest disallowance, rather than disallowance of the dividends received deduction, when indebtedness is incurred by a person other than the person receiving dividends.

SPECIAL ANALYSIS

This advance notice of proposed rule-making is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

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

(Filed by the Office of the Federal Register on May 6, 2004, 8:45 a.m., and published in the issue of the Federal Register for May, 7, 2004, 69 F.R. 25534)

Foundations Status of Certain Organizations

Announcement 2004-45

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:

4 the Kids, Mountain View, CA
4K12 Com, Las Vegas, NV
Abundant Life of Perrysburg 3, Inc.,
Perrysburg, OH
Academy for Adult Learning,
St. Augustine, FL
ADA A Grant, Inc., Chicago, IL
Adaptive Recovery Options, Inc.,
Tigard, OR
Agape Productions, Inc., Passaic, NJ
Aixale Martial Arts Fitness, Inc.,
Bronx, NY
Alaqua Womens Charitable Fund, Inc.,
Lake Mary, FL
Alcatorrian Senior Housing Corporation,
Bloomington, MN
Alicias Animal Haven, Los Angeles, CA
Alliance for Gifted Children,
Ann Arbor, MI
Alpha-Omega Sports Ministries,
Ridgefield, WA
Alta California Regional Foundation,
Sacramento, CA
Alumni Partners, Fairfax, VA
American Academy for Integrated
Practice of Medicine, Berkeley, CA
American Bulldoggers Helping to Educate
and Rescue Together, Islip Terrace, NY

American Center for Cultural and Education, Washington, DC
American Dream Associates, Inc., Los Angeles, CA
American Friends of the Calgary Health Trust Foundation, Calgary, Alberta, Canada
American High School of Fremont Alumni Association, Inc., Fremont, CA
American Home Care Services, Inc., Los Angeles, CA
American Israel Education Fund, Troy, MI
American Russian Publishing, Inc., Longmeadow, MA
Amigos De La Raza, Inc., Chattanooga, TN
Andrew Paul Foundation, Staten Island, NY
Annex Credit Management, Inc., Orlando, FL
Apelles Quest, Santa Clarita, CA
Appalachian Mountain Ministries, Inc., Brevard, NC
Arizona Grassroots Collaborations, Phoenix, AZ
Arizona Public Schools Donation Service, Phoenix, AZ
Arizona Scholarships and Grants Organization A S G O, Phoenix, AZ
Ars Antiqua Biblica, Los Angeles, CA
Artists Gym, Toluca Lake, CA
Ashona Foundation, Valley Center, CA
Australian Legal Resources International, Sydney South NSW 1235, Australia
Autum Springs Corporation, Smithville, TX
Baptist Saint Thomas Home Care Services, Inc., Nashville, TN
Barlow High School Boosters Club, Gresham, OR
Basin Educational Excellence Foundation, Durango, CO
Bay County D A R E Officers Association, Inc., Panama City, FL
Beckendorf Intermediate School Parent Teacher Organization, Tomball, TX
Ben Amarzio International Sports Company, Staten Island, NY
Benicia Education and Astronomical Research, Inc., Benicia, CA
Berks Radio Association, Lenhartsville, PA
Bethel Sexual Assault Response Team, Inc., Bethel, AK
Beyond Dreams Foundation, San Francisco, CA
Bico Properties, Inc., Colorado Springs, CO
Big Sur Arts Initiative, Inc., Big Sur, CA
Birth Network of Santa Cruz County, Santa Cruz, CA
Blackwater Research Initiatives, Inc., Kingsport, TN
Blake Elementary PTO, Spokane, WA
Blue Circles, Inc., Nashville, TN
Bobbindoctrin Puppet Theatre, Houston, TX
Booker T. Washington High School National Alumni Association, Inc., Tulsa, OK
Boston Center for Propagation & Knowledge, Boston, MA
Bread of Life, Royal, NE
B S A Troop 206 Margate FL, Inc., Coral Springs, FL
Buena Vista Childrens Center, Inc., Walnut Creek, CA
Building Science Resource Group, Berkeley, CA
Burning Bush, Inc., Los Angeles, CA
Businesses Against Drugs, Inc., Salt Lake City, UT
Caleb Missionary Relief Services, Inc., Decatur, GA
California Association of Local Agency Formation Commissions, Nevada City, CA
California Space Program, Berkeley, CA
California Wild Turkey Association, Stockton, CA
Cameron Park Volunteer Firefighter Association, Cameron Park, CA
Caring About Kids, Auburn, CA
Carmel Art Festival, Carmel, CA
Carteret County International Choralfest, Inc., Morehead City, NC
Casa De Paz Housing, Inc., Thousand Oaks, CA
C A S A Guardian Ad Litem of McIntosh Co., Inc., Eufaula, OK
Catholic Charities Connect IPA, Inc., Brooklyn, NY
Catoosa Foundation for the Performing Art, Inc., Ringgold, GA
CCM Ministries, Inc., Evansville, IN
CCM Ministries, Inc., Minneapolis, MN
Center for Market-Based Education, Inc., Rumney, NH
Center for Performance Enhancement Research and Education, Omaha, NE
Center for the Study of Adult Development, Montecillo, CA
Center of Resource for Educational Enhancement and Development, Inc., Laud Lakes, FL
Center Sown Seed Ministries Outreach, Inc., Ft. Worth, TX
Central Maui Youth Center, Kahului, HI
Centre for Self Empowerment and Social Services, Inc., San Diego, CA
C E S Care, Tempe, AZ
Chamberlyne Foundation, Inc., Winter Haven, FL
Chandler Sister Cities, Inc., Chandler, AZ
Change Agent Programs, Inc., Orlando, FL
Changes Behavioral Services, Inc., Oak Park, IL
Changing Helping and Networking for Community Empowerment, Inc., Fort Valley, GA
Chaplains for Assisted Living, Inc., Buttgart, AR
Charlotte Amalie High School Class of 1991, Inc., Charlotte Ama, VI
Charlotte Amalie High School Class of 1991, Inc., St. Thomas, VI
Children Helped in Illness Loss or Death, Inc., Rochester, NY
Children Need Both Parents, Grand Rapids, MI
Children of Promise, Inc., Acworth, GA
Children Yes, Santa Barbara, CA
Childrens Helpers Educating Reassuring & Uniting by Sharing, North Bend, WA
Christian Child Care Center, Inc., Memphis, TN
Christian Life Movement, Inc., Denver, CO
Christmas in April Albuquerque, Albuquerque, NM
Christmas in April Truckee Meadows, Reno, NV
Church Computer Project, Inc., Harriman, TN
Circle of Wellness, Inc., Salt Lake City, UT
Cirrus Arts, Houston, TX
City of Brevig Mission, Brevig, AK
Civitas Associates, Inc., St. Louis, MO
Clackamas County Duii Impact Panel, Oregon City, OR
Coalition for Youth, Roswell, NM
Coalition on Media Concerns, Inc., Santa Monica, CA
Collaborative for Tribal Education, Sacramento, CA
College of John Paul in the Desert, Tucson, AZ
Columbus Housing Development Corporation, Columbus, NE
Communities in School of Walton County, Inc., Monroe, GA

Communities in Schools of Okeechobee, Inc., Okeechobee, FL
 Communities in Schools of Orange County, Inc., Orlando, FL
 Community Advancement Through Service, Hawthorne, CA
 Community Development Corporation of Northeast Tennessee, Inc., Johnson City, TN
 Community Growth, Inc., Long Beach, CA
 Community Helps of Coosa County, Inc., Goodwater, AL
 Community Housing Assistance of New Mexico, Inc., Edgewood, NM
 Community Resources Network of Arkansas, Inc., Little Rock, AR
 Compass Montessori Erd Kinder Foundation, Lakewood, CO
 Computer Sciences for the Blind, Inc., Brooklyn, NY
 Concerned Area Residents Get Organized, Smyrna, TN
 Coppell Organization of Parents for Education, Coppell, TX
 Corans Dream, Los Angeles, CA
 Corban, Inc., Alto, TX
 Corn Palace Balloon Club, Tyndall, SD
 Covenant Partners of Dekalb County, Inc., Smithville, TN
 Crafty Chair-Ubs, Inc., Old Hickory, TN
 Creative You, Glendale, AZ
 Critical Ceramics, Freeport, ME
 Cross to Freedom Ministries, Mesquite, TX
 Dallas Stars Foundation, Inc., Arlington, TX
 Danville Area Housing Foundation, Inc., Danville, IL
 Deaf Abused Women and Children Advocacy Services, Austin, TX
 Deerfield Beach Roller Hockey Association, Inc., Deerfield Beach, FL
 Denton Creek Elementary Parent Teacher Organization, Coppell, TX
 Devereux Kids, Inc., Orlando, FL
 Dewitt Community Development Foundation, Inc., Cuero, TX
 Disabled Childrens Assistance Fund, Glendale, AZ
 Discipleship in Action, Booneville, MS
 Dive Deeper, Honolulu, HI
 Diversified Working Solutions, Bolivar, MO
 Donations for Christian Education Foundation, Purvis, MS
 Don't Give Up, Inc., Las Vegas, NV
 E-Access Foundation, Van Nuys, CA
 E-Mainstreet, Honolulu, HI
 Eagle Valley Merit Award Fund, Vail, CO
 East Diablo Tournaments, Brentwood, CA
 East Diablo Tournaments, Temple, TX
 East Mesa Friends, Inc., Organ, NM
 East Timor Scholarship Foundation, Keaau, HI
 Eastern Technology Council Foundation, Wayne, PA
 Eastside Community Substance Abuse Center, Inc., Des Moines, IA
 Edserve, Inc., Littleton, CO
 Educare, Incorporated, Las Vegas, NV
 El Rito Public Library, El Rito, NM
 Elder Care Advocates of Marin, Novato, CA
 Elizabethtown Christian Academy, Elizabethtown, KY
 Eljeannette White Helping Hands Parent Child Center, New Orleans, LA
 Elmer G. Bondy PTO, Pasadena, TX
 Employment Job Seekers, Inc., Los Angeles, CA
 Employment of Adults With Disabilities, Inc., Tamarac, FL
 Endless Mountains Theatre Company, New Milford, PA
 Ernest J. Brucker Foundation, Inc., Antigo, WI
 Escontrias Elementary PTO, El Paso, TX
 Excellence Foundation, Canton, MS
 Faith and Health International Ministries, Lake Forest, IL
 Faith United, Inc., Frankfort, KY
 Families in Crisis Ministries, Orlando, FL
 Family Support Services, Inc., Pasadena, CA
 Family Support Services, Inc., White Hall, AR
 Family Tree Services, Chico, CA
 Fanus Non Profit Organization, Woodland Hills, CA
 Faunavision, Inc., New York, NY
 F B Alliance, Los Angeles, CA
 Fighting Spartan Scholarship, Inc., Houston, TX
 Fine Arts Norwalk, Inc., Norwalk, CT
 Five Acre School PSO, Carlsborg, WA
 Five Star Gymnastics Boosters, Erlanger, KY
 Fleishmann Family Fund, Galveston, TX
 Florida Association for Pupil Transportation, Inc., Tallahassee, FL
 Flury Place, Inc., Catonsville, MD
 Flying Eagle Community Development Corporation, Inc., North Stonington, CT
 Focused, Philadelphia, PA
 Foundation for American Renewal Corp., Indianapolis, IN
 Foundations for Success II, Bellevue, WA
 Franklin Childrens Foundation, Las Vegas, NV
 Fraternidad Misionera De La Providencia, Perth Amboy, NJ
 Freedom Educational Group, Philadelphia, PA
 Freedom West Computer Learning Center, San Francisco, CA
 Freemasons Hall, Inc., Indianapolis, IN
 Friends of 32nd St. School Booster Club, Los Angeles, CA
 Friends of Alameda County Casa, Inc., Oakland, CA
 Friends of Albuquerque Environmental Story, Albuquerque, NM
 Friends of Bellaire High School Choirs, Bellaire, TX
 Friends of Childrens United Succeed, Inc., Ft. Lauderdale, FL
 Friends of Evergreen and Fairview Cemeteries, Colorado Springs, CO
 Friends of the Monterey Public Library, Monterey, CA
 Fund for the National Commission on Nonprofit Governance, East Patchogue, NY
 Garza Rodriguez & Tajon Childrens Services, Santa Maria, CA
 George Washington School Foundation, Inc., South America
 Giles County Youth Leadership Development, Pulaski, TN
 GLA Foundation, Grove, OK
 Global Alliance for the Less Privileged, Roswell, GA
 Global House, Inc., Philadelphia, PA
 Global Seas Foundation, Inc., Lake Worth, FL
 Gods World Photography, Bothell, WA
 Good Works Foundation, Inc., Hood River, OR
 Granbury Educational Access Channel, Inc., Granbury, TX
 Great Falls Elks Lodge Charitable Corp., Great Falls, MT
 Greater New Jericho Economic Development, Los Angeles, CA
 Greek American Medical Society of South Florida, Inc., Boca Raton, FL
 Green River Regional Education Cooperative, Inc., Bowling Green, KY
 Greenbriar P E A S, Fort Worth, TX
 Groups Memorial, Inc., of the Army Air Forces, Canon City, CO

Guadalupe Educational Technology Association, Guadalupe, CA
 Gunnerman Global Environmental Foundation, Reno, NV
 Hallsville Rotary Club Foundation, Inc., Longview, TX
 Handicapped Health Housing Education Activity League, Inc., Cranston, RI
 Harney County Watershed Council, Inc., Burns, OR
 Haven of Hope, Inc., Oklahoma City, OK
 Haven West, Inc., Edmond, OK
 Healdsburg Hope Homes, Inc., Healdsburg, CA
 Health Adventures Visioning Education Network, Batside, CA
 Heart and Soul Studios, Inc., Boca Raton, FL
 Helms Manor, Culver City, CA
 Henderson Aquatic Center Corporation, Henderson, KY
 Herd Community Development Corporation, Los Angeles, CA
 High Desert Employment Services Network, Inc., Victorville, CA
 High Hopes Childrens Center, Redway, CA
 Highland Oaks Educational Foundation, Grass Valley, CA
 Hillcrest Elementary PTA, Oak Harbor, WA
 Hispanic Arts Center of New York State, Peekskill, NY
 HIVAIDS Resource Team, Inc., H A R T, Thibodaux, LA
 Hmong Organization for Parents Educators and Students, Inc., Sacramento, CA
 Hollywood Arts and Education Coalition, Hollywood, CA
 Holy Temple Human Services Corporation, Opa Locka, FL
 Home Church International, Aurora, CO
 Hope Tree, Inc., Baton Rouge, LA
 House of Umpja Bridgeport, Inc., New Haven, CT
 Hui Maka Ainana O Makana, Hanalei, HI
 Human Development & Resource Center of Ft. Pierce Florida, Inc., Ft. Pierce, FL
 Hurricane Baseball Booster Club of Palm Harbor, Inc., Palm Harbor, FL
 Ican Project, Inkom, ID
 Immunology Allergy & Asthma Foundation, Inc., Fort Wayne, IN
 Impressions of Grace Abg, Inc., Baldwin, CA
 Indian River Institute, Inc., Fort Pierce, FL
 Industry Hills Rotary Foundation, La Puente, CA
 Informed Buyers Coalition, Sylmar, CA
 Innovators in Milestones, Inc., New Orleans, LA
 Inoka, Inc., Lake Oswego, OR
 Institute for Renaissance and Reformation Biblical Studies, Philadelphia, PA
 Instituto Sanchez-Mendoza Para La Capacitacion De La Comunidad, Santa Rosa, CA
 Intercollegiate Equestrian Foundation, Inc., Stony Brook, NY
 International Center for Art Intelligence, Inc., Culver City, CA
 International Institute for Womens Health, Vancouver, WA
 International Pediatric Respiratory and Allergy Forum, San Francisco, CA
 International Service and Aid, Inc., Oklahoma City, OK
 Ishi Valley Family Resources, Inc., Chico, CA
 It's a Wonderful Life, Inc., Allendale, NJ
 J & T Enterprises, Inc., Pine Bluff, AR
 Jacob K. Javits Foundation, Inc., New York, NY
 Jason Berger Memorial Scholarship Fund, Boston, MA
 Jeff Davis County Family Connection Council, Inc., Hazlehurst, GA
 Jefferson County Tea Coalition, Pine Bluff, AR
 Jesse James Carter Memorial Foundation, New Orleans, LA
 Journal of Legal Advocacy & Practice, Inc., Woodland Hills, CA
 Journal Press, Salt Lake City, UT
 Junior Stars Hockey Association, Arlington, TX
 Justice for all Alliance, Houston, TX
 Kefalas-Pinto Foundation, Mountainside, NJ
 Kennedy Krieger Marcus National Foundation, Inc., Baltimore, MD
 Kerry Restoration, Inc., Huntington Beach, CA
 Kid Gloves Boxing Foundation, Simi Valley, CA
 Kids for Literary and the Arts, Inc., Evergreen, CO
 K I D S of Sonoma County, Santa Rosa, CA
 Kidsville Preschool & Daycare Center, Jackson, MS
 Krista Ford Foundation, Stone Mountain, GA
 Kristen Watt Foundation for Eating Disorders Awareness, Stockton, CA
 La Causa Alcohol & Drug Services, San Bernardino, CA
 Laborers in the Harvest Unlimited, Omaha, NE
 Laborers Local 300 Scholarship Fund, Los Angeles, CA
 Lafreniere Soccer Association, Inc., Metairie, LA
 Lakeview High School Alumni Association, Lakeview, OR
 Lakewood School PTO, Sunnyvale, CA
 Lambda Chi Alpha Educational Foundation, Inc., Indianapolis, IN
 Landowner Resource Management Corporation, Central Point, OR
 Lapetite Preparatory School, Pine Bluff, AR
 Las Casas De Vida Corporation, Clovis, NM
 Latinos in America Moving for Peace, Highland, CA
 League of Idaho Cities, Incorporated, Boise, ID
 Liberty Lake Elementary PTSA, Tacoma, WA
 Life Building Ministries, Inc., Florence, KY
 Linda Cesarski & Mary Ann Evans Foundation for Cancer Research, Batesville, AR
 Lions Club of North Bend, Incorporated, Coos Bay, OR
 London Parent Teacher Organization, Corpus Christi, TX
 Long Island Chapter of the Association of Certified Fraud Examiners, Inc., Hicksville, NY
 Longboat Key Lions Foundation, Inc., Longboat Key, FL
 Longview Childrens Clinic, Inc., Longview, TX
 Loudoun Bar Foundation, Leesburg, VA
 Louisiana Pharmacists Recovery Network, Inc., Monroe, LA
 Lovefest Charities, Inc., Hollywood, FL
 Loving Care Center, San Diego, CA
 Low Income Living, Inc., Los Angeles, CA
 Maap Foundation, Pacific Beach, WA
 Mac Foundation, Pahoehoe, HI
 Male Advocacy in Pregnancy and Parenting, Richmond, CA
 Maricopa Community Chamber of Commerce, Inc., Maricopa, AZ
 Maryland Regional Practitioners Network for Fathers and Families, Baltimore, MD

Master Classes International, Inc.,
 Los Angeles, CA
 McKinney High School Basketball
 Booster Club, McKinney, TX
 Media Literacy Alliance Central Coast,
 Salinas, CA
 Medicine and Science Discovery Center
 of Central Texas, Temple, TX
 Memphis Performing Arts Conservatory,
 Inc., Memphis, TN
 Men's Self Advocacy Council of
 Durango, Inc., Durango, CO
 Mexican American Historical Society in
 Ventura County, Oxnard, CA
 Mexico Academy Educational
 Foundation, Mexico, NY
 Miami Contender Yamaha Kingfish
 Championship, Inc., Miami, FL
 Miami County Arts Foundation, Troy, OH
 Michael Charles Albert Scholarship Fund,
 Walkerton, IN
 Mickey Cox Elementary School Parent
 Club, Clovis, CA
 Mid-San Gabriel Valley Televillage, Inc.,
 El Monte, CA
 Middle Country Central School
 District Education Foundation, Inc.,
 Centerreach, NY
 Millbrae Community Foundation a
 California Non Profit Benefit Corp.,
 Millbrae, CA
 Minnesota American Legion and
 Auxiliary Brain Science Foundation,
 St. Paul, MN
 Moments 2 Success, Sacramento, CA
 Monticello High School Music Boosters,
 Inc., Charlottesville, VA
 Montly Sponsor, Tooele, UT
 Mud, Inc., Philadelphia, PA
 Museum of the American West,
 Lander, WY
 Music at La Gesse Foundation, Inc.,
 Cabin John, MD
 My Contribution, Hercules, CA
 My Fathers House of Erie, Erie, PA
 Na Mele Hawaii Apau, Honolulu, HI
 National Council of Negro Women, Inc.,
 Seattle, WA
 National Down Payment Assistance
 Corp., Northglenn, CO
 Neuronoetics, Edmonds, WA
 New Era Armenian Charitable Mission
 USA, Inc., Burbank, CA
 New Joshua Center for Hope,
 Cleveland, OH
 New Sardis Daycare, Memphis, TN
 Newman Center Foundation,
 Columbia, MO
 Noel's Barn, Tucson, AZ
 Nolan Elementary School Parent Teacher
 Association, Signal Mountain, TN
 North American Housing Foundation,
 Inc., Englewood, CO
 North American Transportation Institute,
 Oklahoma City, OK
 North Carolina Public Interest
 Research Group Education Fund,
 Inc., Chapel Hill, NC
 North Star Alliance Bingo Boosters,
 Bakersfield, CA
 Northern Kentucky Workforce Investment
 Board, Inc., Florence, KY
 Nowata Area Senior Service Organization,
 Inc., Nowata, OK
 Nu Chapter Alpha Chi Sigma Professional
 Society, Schaefferstown, PA
 NVCSS Whispering Oaks, Inc.,
 Redding, CA
 Oak Park Education Foundation,
 Oak Park, CA
 Oak View Parent Club, Acampo, CA
 On the Way Home, Inc., Logandale, NV
 Open Door Program, Greensboro, NC
 Opera in the Hills, Fremont, CA
 Oregon Foundation for Free Expression,
 Inc., Portland, OR
 Orinda Intermediate School Parents Club,
 Inc., Orinda, CA
 Oxnard Public Access Assistance
 Corporation, Oxnard, CA
 Palms Manor, Culver City, CA
 Pannonia Christian Educational Exchange,
 Inc., Grand Rapids, MI
 Panthers Operation Graduation, Inc.,
 Grangerland, TX
 Pathways to Achievement,
 Sacramento, CA
 Paws Animal Rescue, Inc., Alvin, TX
 Peace Foundation, Inc., Chester, NY
 Pendulum, Inc., Houston, TX
 Personal Retirement Alliance, Ltd.,
 New York, NY
 Pet Pals, Inc., Fort Lauderdale, FL
 Petlink, Inc., Nicholasville, KY
 Philanthropy Foundation, Inc.,
 Ft. Lauderdale, FL
 Philippine American National Museum,
 Los Angeles, CA
 Place in Time, Coosada, AL
 Placer County Crime Stoppers, Inc.,
 Rocklin, CA
 Plano West Senior High School Band
 Boosters, Plano, TX
 Plantados Until Freedom and Democracy
 in Cuba, Inc., Miami, FL
 Plasma @ Cincinnati, Utica, IN
 Polaris Chapter of Texas Mental Health
 Consumers, Inc., El Paso, TX
 Portland Pounders, Portland, OR
 Positive Attitude Outlook of Southern
 California, Rancho Cucamonga, CA
 Preston Hot Springs Library Memorial
 Foundation, Hot Springs, MT
 Prince Boxing Gym, Inc., Houston, TX
 Prodigals House, Bakersfield, CA
 Progressive Housing Concepts, Inc.,
 Los Angeles, CA
 Progressive Rehabilitation Center, Inc.,
 New Orleans, LA
 Project America Development Company,
 Phoenix, AZ
 PTA Texas Congress, El Paso, TX
 Public Education Enrichment Fund,
 Nevada City, CA
 Quality Community Services,
 Whittier, CA
 Rancho Cordova Rotary Charitable
 Foundation, Rancho Cordova, CA
 Rapides Community Housing
 Development Corporation, Inc.,
 Alexandria, LA
 Razy Baileys I Hate Hate, Inc.,
 Goochlettsville, TN
 Real People Ministries, Inc., Dallas, TX
 Red Bluff Parent Teacher Organization,
 Pasadena, TX
 Reflections of Love, Inc., Chicago, IL
 Renewed Family Joy Service,
 Los Angeles, CA
 Rescue Animal Fund, Inc., Divide, CO
 Retired Scientists Cooperative, Inc.,
 Douglaston, NY
 Richard Burdell Memorial Foundation,
 Portland, OR
 Ridgerunner Wrestling Club, Grove, OK
 Riverrun, Salem, OR
 Riverton School Preservation Society,
 Riverton, UT
 Rocklin Elementary Parent Teacher Club,
 Rocklin, CA
 Romeo Corporation, Tempe, AZ
 Ropp for Girls, Inc., Dallas, TX
 Rowan County Domestic Violence
 Council, Morehead, KY
 Royal High Dance Guard Booster,
 Simi Valley, CA
 Royal Palm Symphony Chorus and
 Orchestra, Inc., Boca Raton, FL
 Sackets Safe Harbor, Sackets Harbor, NY
 S A F E Coalition, Inc., Bakersfield, CA
 Sage Theatre Group, Dallas, TX
 Salinas Barrios Unidos, Inc., Salinas, TX
 Sami Disharoon Brain Tumor Research
 Foundation, Cotati, CA

Samoa for all of Sacramento,
 Sacramento, CA
 San Francisco Bay Area Polio Survivors,
 Concord, CA
 Santa Fe High School Parent Teacher
 Coalition, Santa Fe, NM
 Santa Monica Citizen Police Academy
 Alumni Association, Santa Monica, CA
 Santee Focus Foundation, Santee, CA
 Sassfa, Inc., Whittier, CA
 Sausalito Jazz and American Music
 Foundation, Sausalito, CA
 Say Yes to Life, Los Angeles, CA
 Scholarship Association of Fort Plain,
 Inc., Fort Plain, NY
 Scholarship Foundation of the Colorado
 Technical Recruiters Network,
 Denver, CO
 Seattle Debate Foundation, Seattle, WA
 Self Advocacy Council VI, Stockton, CA
 Services & Immigrant Rights & Education
 Network, San Jose, CA
 Shawnee Surge, Inc., Shawnee, OK
 Shelby County Alcohol and Drug
 Rehabilitation School, Memphis, TN
 Shepherds Ranch, Snowflake, AZ
 Sickle Cell Forum, Phoenix, AZ
 Sierra Food Bank, Inc., Placerville, CA
 Sierra High School Band Boosters,
 Manteca, CA
 Sims Middle School PTO, Pace, FL
 Sipa Community Development Corp.,
 Los Angeles, CA
 Snake River Chamber Orchestra,
 Idaho Falls, ID
 Society of Academy Women, Hudson, OH
 Soroptimist International Boca Raton
 Deerfield Beach, Inc., Boca Raton, FL
 Soroptimist International of St. Petersburg
 Florida, Inc., St. Petersburg, FL
 SOS Children's Village of Arizona, Inc.,
 Scottsdale, AZ
 South Aurora Family Resource Center,
 Aurora, CO
 South Everett Mukilteo Rotary
 Foundation, Everett, WA
 South Hills High School Scorpions
 Athletics Booster Club, Ft. Worth, TX
 South Stockton Diabetes Society,
 Stockton, CA
 Southern California Rays Women Hockey
 Club, Diamond Bar, CA
 Southern High School Athletic Booster
 Club, Inc., Louisville, KY
 Southside School Alumni Association,
 Rowland, NC
 Southwest Care, Inc., McComb, MS
 Southwest College of Naturopathic
 Medicine Student Government,
 Tempe, AZ
 Southwest Georgia Perpetual Arts Fund,
 Inc., Cordele, GA
 Southwest Section PGA Foundation,
 Scottsdale, AZ
 Special Kids Network, Inc., Jackson, MS
 Springs of Life Community Outreach,
 Inc., Atlanta, GA
 St. Luke Surgical Foundation, Inc.,
 Cleveland, OH
 Starz Gymnastics Competitive Team,
 Reno, NV
 Stone City Art Institute, Cedar Rapids, IA
 Student Junxion, Santa Cruz, CA
 Sunshine Vision, Fort Pierce, FL
 Supai PTO, Scottsdale, AZ
 Supporters of Summit, Inc., Boulder, CO
 Tacoma Chapter of the Washington
 State Music Teachers Association,
 Tacoma, WA
 Tara De Christo, Inc., Austin, TX
 Taytumns House, Inc., Loveland, CO
 Team Hardin County, Inc., Savannah, TN
 Ted Warthen Center, St. George, UT
 Texarkana Wilbur Smith Rotary Club
 Foundation, Texarkana, TX
 Texas Christian Counseling Services, Inc.,
 Palestine, TX
 Theta Upsilon Education Company, Inc.,
 Newark, OH
 Threshold of Hope Center, Inc.,
 Eunice, LA
 Tri County Childrens Advocacy Center,
 Lafayette, AL
 Trussville-East Jefferson Rotary
 Foundation, Birmingham, AL
 Tuba City Boarding School, Inc.,
 Tuba City, AZ
 Ujima, San Bernardino, CA
 United Coalition of Families, Inc.,
 Cedar Hill, TX
 United Counties Minority Aids Care and
 Education, Inc., Defuniak Springs, FL
 Upper Room Ministry, Inc., Cushing, OK
 Van R. Butler Elementary School
 Parent Teacher Organization, Inc.,
 Santa Rosa Beach, FL
 Velvet Victories, Inc., Bartlett, TN
 Villa Apartments Housing Foundation,
 Pasadena, CA
 VNA Foundation, Inc., Orlando, FL
 Volunteer Coordinators of Pueblo,
 Pueblo, CO
 Volunteers of Africa, Inglewood, CA
 Voters United in God We Trust, Inc.,
 New Port Richey, FL
 Waimea Project Graduation, Waimea, HI
 Walksacramento, Sacramento, CA
 Washington County Community
 Partnership, Springdale, AR
 Washington County Fire Chiefs
 Association, Vera, OK
 W E C Group Home, Portland, OR
 Weed Wildlife Refuge & Botanical
 Gardens, Weed, CA
 Wesley Neighborhood, Inc., Redding, CA
 West Coast Armor and Artillery Museum,
 Petaluma, CA
 West Hollywood Community Foundation,
 W. Hollywood, CA
 West Kauai Early Childhood Development
 Center, Eleele, HI
 Western Regional EMS Council, Inc.,
 Montrose, CO
 Western States Health Alliance,
 Tesuque, NM
 Westside Community Park, Lakeport, CA
 Westside Cultural Center, Ventura, CA
 Wholly Living for Him Educational
 Resources, Inc., Decatur, GA
 Why We Were Chosen Foundation
 Corporation, Fort Lauderdale, FL
 Wicker Basket Alzheimer Homes,
 Las Vegas, NV
 Willie Landry Mount Foundation,
 Lake Charles, LA
 Windsong Intermediate School Parent
 Teacher Organization, Friendswood, TX
 Winters Conservancy, Winters, CA
 Wisconsin North Youth Ballet State
 Regional Arts Center, Altoona, WI
 Women and Children Center for
 Development, San Francisco, CA
 Women and Children First, Inc.,
 Helena, MT
 Women in Motion Incorporation,
 Denver, CO
 Women of Vision, Los Angeles, CA
 Womens Armed Forces Memorial,
 Cincinnati, OH
 Women's Outreach, Inc., Syracuse, NY
 Womens Resource Center, Inc.,
 Nashville, TN
 Womens Resource Center, Inc.,
 New Orleans, LA
 Woodbridge Rotary Foundation,
 Woodbridge, VA
 Woodlands High School Boys Track and
 Field Booster Club, The Woodlands, TX
 Word of Salvation, El Paso, TX
 Wyoming Alternatives for Youth, Inc.,
 Buffalo, NY
 Yeuani, San Diego, CA

Youth Education and Safety for Kids, Inc.,
Osnard, CA
Youth Educational Sports, Inc.,
Chatsworth, CA
Young Entrepreneurs Association,
Colorado Springs, CO
Youth On Ice, Green Bay, WI
Youth Under-Served Disabilities
Empowerment Service Agency,
Philadelphia, PA

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.

Son of Boss Settlement Initiative

Announcement 2004-46

Section 1. Purpose and Scope of Initiative

The Internal Revenue Service announces a settlement initiative for taxpayers to resolve transactions described in Notice 2000-44, 2000-2 C.B. 255, and substantially similar transactions (Son of Boss transactions).

The Service has determined that Son of Boss transactions are abusive and were designed, marketed, and undertaken solely to create tax benefits unintended by any reasonable interpretation of the tax laws. The Service believes that it will prevail in litigation on the merits of these transactions and that the imposition of penalties will be upheld. For efficient tax administration reasons, however, the Service offers taxpayers an opportunity to resolve their civil tax liabilities under this initiative and avoid litigation.

Section 2. Terms of Initiative

(a) Tax Adjustments—

(1) Taxpayers will concede all claimed tax benefits and attributes, including basis adjustments, from the Son of Boss transaction.

(2) Taxpayers will be allowed to treat (i) their net out-of-pocket costs and fees as a long-term capital loss, or (ii) one-half of their net out-of-pocket costs and fees as an ordinary loss, in the year those costs and fees were paid or accrued. If tax benefits, including benefits attributable to those costs and fees, were claimed in a year barred by the period of limitations on assessment, the costs and fees will be allowed only to the extent they exceed the tax benefits claimed in the barred years.

(b) Application of Penalties—

(1) Taxpayers who properly disclosed their Son of Boss transaction under Announcement 2002-2, 2002-1 C.B. 304, will not pay a penalty on the underpayment attributable to that Son of Boss transaction.

(2) Taxpayers who did not properly disclose their Son of Boss transaction under Announcement 2002-2 and who:

(i) Did not directly or indirectly claim tax benefits from any other listed transaction, including any other Son of Boss transaction, will pay a penalty of 10 percent of the underpayment attributable to the Son of Boss transaction; or

(ii) Directly or indirectly claimed tax benefits from another listed transaction, including any other Son of Boss transaction, will pay a penalty of 20 percent on the underpayment attributable to the Son of Boss transaction.

For purposes of this announcement, a "listed transaction" is a transaction that is the same as, or substantially similar to, one identified by the Service under section 6011 and the Treasury regulations as of the date the taxpayer submits the Notice of Election, regardless of whether (a) the Service had identified the transaction as a listed transaction at the time the taxpayer entered into the transaction, or (b) the transaction is (or was) required to be disclosed by the taxpayer as a listed transaction pursuant to the regulations (including the temporary regulations) under section 6011.

Section 3. Eligibility Requirements

All taxpayers that claimed tax benefits in a manner described in Notice 2000-44 are eligible to participate in this initiative except:

(1) Persons who (i) organized or participated directly or indirectly in the sale or promotion of any Son of Boss transaction, (ii) received fees for organizing, selling or promoting one, (iii) were partners in a partnership, or employees of a person, that engaged in activities described in (i) or (ii) of this paragraph at the time they participated in the Son of Boss transaction, or (iv) were related to a person described in this paragraph within the meaning of section 267(b), other than section 267(b)(1), at the time they participated in the Son of Boss transaction.

(2) All partners in entities subject to the unified partnership audit and litigation provisions of sections 6221 through 6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA partnerships), that include a partner described in paragraph (1) of this section who directly or indirectly claimed tax benefits in a manner described in Notice 2000-44 with respect to those TEFRA partnerships.

(3) Taxpayers who, individually or as a partner in a TEFRA partnership, are a party in a court proceeding to determine the tax treatment of the Son of Boss transaction.

(4) Taxpayers where the Service has informed the taxpayer, or the tax matters partner of a TEFRA partnership in which the taxpayer was a partner, that the Service has designated, or is considering designating, the Son of Boss transaction for litigation.

Section 4. Required Procedures for Electing Participants

(a) Notice of Election

Taxpayers participating in this initiative must notify the Service of their election by sending the Notice of Election, as set out below, on or before June 21, 2004. The Notice of Election must be sent by certified mail or designated delivery service (within the meaning of section 7502(f)) to:

INTERNAL REVENUE SERVICE
Attn: Announcement 2004-46
1901 Butterfield Road, Ste. 310
Downers Grove, IL 60515

If the taxpayer, or a TEFRA partnership in which the taxpayer was a partner, is under examination, the taxpayer also must provide a copy of the Notice of Election to the examining agent.

The Notice of Election must be prepared under penalties of perjury and:

(1) State that the taxpayer elects to participate in the settlement initiative in Announcement 2004-46;

(2) Include the taxpayer's name, taxpayer identification number (TIN), current address, and daytime telephone number, and, if under examination, the name, address, and daytime telephone number of the examining agent. If a tax practitioner will represent the taxpayer, the practitioner must provide a completed Form 2848 or other valid power of attorney;

(3) Include the name and TIN of all other entities known to the taxpayer that directly or indirectly were parties in the Son of Boss transaction, and for each TEFRA entity, the name, address, and daytime telephone number of the tax matters partner;

(4) State whether the taxpayer claims qualification for a penalty of 0 percent, 10 percent or 20 percent; and

(5) Either (i) identify all listed transactions in which the taxpayer directly or indirectly claimed tax benefits (for example, a spouse filing jointly with a participant in a listed transaction, or as a trust beneficiary that entered into a listed transaction), or (ii) state that the taxpayer did not directly or indirectly claim tax benefits in any other listed transaction.

(b) Additional Information and Documentation — 60 days

Upon receipt and review of an election to participate, the Service will notify the taxpayer by mail whether the taxpayer is eligible to participate in this initiative. The notification will include a request for additional information and documentation. The taxpayer must submit all requested information under penalties of perjury to the Service within 60 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 60-day period.

(c) Closing Agreement and Payment — 30 days

After receiving the requested information, the Service will prepare a closing agreement under section 7121 reflecting the terms of the settlement. The closing agreement will provide that (1) without limitation as to the otherwise applicable effect of section 7121(b), providing inaccurate information about tax benefits claimed from other listed transactions, including other Son of Boss transactions, as required in the Notice of Election, is a misrepresentation of a material fact within the meaning of section 7121(b), and (2) the taxpayer waives all defenses to the assessment and collection of the tax liabilities determined under this initiative, including the applicable penalty and interest.

The Service will mail the closing agreement to the taxpayer who must sign and return it to the Service within 30 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 30-day period. Full payment of the liabilities under this initiative must be made by the date the closing agreement is executed. Any taxpayer not making full payment must submit complete financial statements and agree to other financial arrangements acceptable to the Service before the Service will execute the closing agreement. A taxpayer will be ineligible to participate in this initiative if an agreement regarding an acceptable financial arrangement cannot be reached.

(d) Other Matters

(1) Denial of a taxpayer's request to participate in this initiative is not subject to judicial review.

(2) Execution of a closing agreement under this initiative does not preclude the Service from investigating any associated criminal conduct or recommending prosecution for violation of any criminal statute.

Section 5. Dispute Resolution Procedures for Nonparticipants

Appeals Office consideration will not be available for Son of Boss transactions. For all taxpayers ineligible or not participating in this initiative, the Service will (a) develop the cases, (b) disallow all tax benefits and attributes claimed from the Son of

Boss transaction, including out-of-pocket costs and fees, (c) determine appropriate penalties, including those under section 6662 or section 6663, and (d) issue a Notice of Deficiency or Notice of Final Partnership Administrative Adjustment, as appropriate.

The Office of Chief Counsel will closely coordinate Son of Boss cases by treating them as if they were designated for litigation under Chief Counsel procedures for designating cases for litigation. Likewise, in refund and TEFRA partnership suits handled by the Department of Justice, Chief Counsel expects to recommend against any settlement more favorable to the taxpayer than is provided in this initiative. Department of Justice regulations require Assistant Attorney General approval of any settlement contrary to the Chief Counsel's recommendation. Consequently, taxpayers should not expect to settle their cases on better terms if they proceed to litigation, whether in the Tax Court or in other forums.

Section 6. Paperwork Reduction Act

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1885. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number. The collection of information in this announcement is in section 4 entitled REQUIRED PROCEDURES FOR ELECTING PARTICIPANTS. This information is required to apply the terms of the settlement set forth in this announcement. The information will be used to determine whether the taxpayer has reported the disclosed item properly for income tax purposes. The collection of information is required to obtain the benefit described in this announcement. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, and individuals.

The estimated total annual reporting burden is 5000 hours.

The estimated annual burden per respondent varies from 3 hours to 7 hours, depending on individual circumstances,

with an estimated average of 5 hours. The estimated number of respondents is 1000.

The estimated frequency of responses is one time per respondent.

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

CONTACT INFORMATION

For additional information regarding this announcement, including answers to frequently asked questions, see www.irs.gov, or contact Paul Zamolo of the Office of Division Counsel (SB/SE) at (415) 744-9217 (not a toll-free number) or James Fee of the Office of Division Counsel (LMSB) at (215) 597-3442 (not a toll-free number).

Loss Limitation Rules; Correction

Announcement 2004-47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to T.D. 9118, 2004-15 I.R.B. 718 [69 FR 12799], which was published in the **Federal Register** on Thursday, March 18, 2004, relating to certain aspects of the temporary regulations addressing the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group and to the consequences of treating subsidiary stock as worthless.

DATES: This correction is effective on March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Weiss (202) 622-7790 or Lola Johnson (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 9118) that are the subject of this correction is under 1502 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9118 contains errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

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 * * *

§1.1502-35T [Corrected]

Par. 2. Section 1.1502-35T(f)(1), the language “expired as of the day following the last” is removed and the language “expired as of the beginning of the day following the last”.

Par. 3. Section 1.1502-35T(f)(1), the language “shall be treated as expired as of the day” is removed and the language “shall be treated as expired as of the beginning of the day”.

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

(Filed by the Office of the Federal Register on May 5, 2004, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2004, 69 F.R. 25315)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2004-49

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Disbarments From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to disbarment from such practice. The Director, Office of Professional Responsibility, in his discretion, may disbar an attorney, certified public ac-

countant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent disbarment from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Disbarment
Ranes III, Wesse C.	Annapolis, MD	CPA	Indefinite from May 1, 2004

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled ac-

tuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Montgomery, Goldie L.	Lancaster, CA	Enrolled Agent	Indefinite from February 1, 2004
Frost, Charles L.	San Antonio, TX	Enrolled Agent	Indefinite from February 1, 2004
Briggs, John W.	Sayville, NY	Enrolled Agent	February 10, 2004 from August 8, 2004
Lahman, Gary M.	Ft. Collins, CO	Enrolled Agent	Indefinite from February 12, 2004
Stanny, Gertrude M.	South Lyon, MI	Enrolled Agent	Indefinite from March 1, 2004

Name	Address	Designation	Date of Suspension
Millar, Mark	Tall Timbers, MD	Enrolled Agent	Indefinite from March 1, 2004
Murray, Maureen E.	Naugatuck, CT	Enrolled Agent	Indefinite from March 1, 2004
Keith, James S.	Imperial Beach, CA	Enrolled Agent	March 2, 2004 from June 30, 2004
Zelek, Linda S.	Moultonboro, NH	CPA	Indefinite from March 4, 2004
Gilpin, Charles H.	San Leandro, CA	Enrolled Agent	Indefinite from March 5, 2004
Smith, Sean M.	Silver Spring, MD	Enrolled Agent	Indefinite from March 15, 2004
Morelini, Wayne C.	Modesto, CA	Enrolled Agent	Indefinite from March 15, 2004
Bower, Jay	Redmond, OR	Enrolled Agent	Indefinite from March 16, 2004
Lynn, Celia M.	Locust Grove, VA	Enrolled Agent	Indefinite from April 1, 2004
Swantz Jr., H. E.	San Diego, CA	Enrolled Agent	Indefinite from April 6, 2004
Hart, David A.	Lake Zurich, IL	Enrolled Agent	Indefinite from April 8, 2004
Lau, Dennis K.M.	Honolulu, HI	Enrolled Agent	Indefinite from April 20, 2004
Lentz, Carole	Mastic, NY	Enrolled Agent	Indefinite from April 23, 2004
Goble, Dennis R.	Valparaiso, IN	CPA	Indefinite from April 26, 2004
Rivera, Eduardo M.	Torrence, CA	Attorney	May 1, 2004 to October 29, 2006

Name	Address	Designation	Date of Suspension
Grant, Elaine C.	Woodway, WA	Enrolled Agent	May 1, 2004 to October 31, 2004
Bell, Don	Grand Junction, CO	Enrolled Agent	Indefinite from May 1, 2004
Cohick, Jeffrey S.	Newville, PA	Enrolled Agent	May 1, 2004 from October 30, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Candelario, Alexander	Cabins, WV	CPA	Indefinite from February 1, 2004
Riener, Richard	St. Paul, MN	Attorney	Indefinite from March 1, 2004
Dunkle, Clark	Carlisle, PA	CPA	Indefinite from March 15, 2004
Bailey, Donald D.	Tucson, AZ	CPA	Indefinite from March 18, 2004
Hill, Donald R.	Clinchco, VA	CPA	Indefinite from April 1, 2004
Bergeson, Nancy	Inver Grove Hghts, MN	CPA	Indefinite from April 14, 2004
Reese, Kenneth J.	Nebraska City, NE	CPA	Indefinite from April 15, 2004
Coates, Marsden S.	Baltimore, MD	Attorney	Indefinite from April 15, 2004

Name	Address	Designation	Date of Suspension
Schaefer, Robert J.	Moorhead, MN	Attorney	Indefinite from April 20, 2004
Mills, Stuart B.	Pender, NE	Attorney	Indefinite from May 1, 2004
Harris-Smith, Bridgette	Silver Spring, MD	Attorney	Indefinite from May 3, 2004
Janousek, Donald R.	Omaha, NE	Attorney	Indefinite from May 3, 2004
Williams, Gary W.	Diamond Bar, CA	CPA	Indefinite from May 3, 2004
Demaio, Louis J.	Bel Air, MD	Attorney	Indefinite from May 3, 2004
Miller, Frederick C.	Cedar Hill, TX	CPA	Indefinite from May 15, 2004

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Friedman, Milton G.	Ft. Lauderdale, FL	CPA	December 30, 2003
Stevens, William E.	Omaha, NE	CPA	February 13, 2004
Turner, Mark A.	Cincinnati, OH	CPA	February 25, 2004
Rath, Dorris A.	Bradenton, FL	Enrolled Agent	March 9, 2004
Damiano, Lisa	South Windsor, CT	Enrolled Agent	March 9, 2004
Silbiger, Arnold R.	Baltimore, MD	Attorney	March 11, 2004
Farwell, Nancy K.	Citrus Heights, CA	Enrolled Agent	April 5, 2004
Dembrowski, Karen E.	Encino, CA	CPA	April 13, 2004

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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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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