Internal Revenue
bulletin

Bulletin No. 2004-27
July 6, 2004

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2004–63, page 6.

Special use value; farms; interest rates. The 2004 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2004–66, page 4.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2004.

T.D. 9131, page 2.

Final regulations amend the regulations under sections 263A and 448 of the Code to allow taxpayers changing a method of accounting under those sections to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that applies to taxpayers changing a method of accounting under the general administrative procedures issued by the Service.

Notice 2004–43, page 10.

This notice provides transition relief for individuals in states where high deductible health plans (HDHPs) are not available because state laws require health plans to provide certain benefits with a low or no deductible.

Rev. Proc. 2004–38, page 10.

This procedure informs owners of qualified low-income housing projects how to obtain the waiver of annual recertification of tenant income provided in section 42(g)(8)(B) of the Code. New Form 8877, *Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit*, will be used to make the request. Rev. Proc. 94–64 superseded.

EMPLOYEE PLANS

Rev. Rul. 2004–65, page 1.

Post-retirement health benefits; waiver. This ruling holds that an employer has reduced retiree health coverage, within the meaning of section 420(c)(2)(E) of the Code, if an individual who has coverage for retiree health benefits ("covered individual") accepts an offer from the employer to waive the coverage in exchange for enhanced pension benefits.

Announcement 2004–57, page 15.

Age-discrimination regulations; proposed withdrawal. Proposed regulations that would have interpreted the provisions of sections 411(b)(1)(H) and 411(b)(2) of the Code will be withdrawn. The mandatory technical advice cases involving cash balance conversions will not be processed while these issues are under consideration by Congress.

EXEMPT ORGANIZATIONS

Announcement 2004–55, page 15.

Mid-South Transportation Management, Inc., of Cincinnati, OH, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ESTATE TAX

Rev. Rul. 2004–64, page 7.
Tax reimbursement clause. This ruling addresses issues presented with respect to a trust whose grantor is treated as its owner. It addresses the gift tax consequences when the grantor pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income. It also addresses the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax.

GIFT TAX

Rev. Rul. 2004–64, page 7.
Tax reimbursement clause. This ruling addresses issues presented with respect to a trust whose grantor is treated as its owner. It addresses the gift tax consequences when the grantor pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income. It also addresses the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A–7: Changing a method of accounting under section 263A.

Final regulations provide that any section 481(a) adjustment resulting from a change in method of accounting under section 263A may be taken into account over the same number of taxable years that applies to taxpayers changing a method of accounting under the general administrative procedures issued by the Service. See T.D. 9131, page 2.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 420.—Transfers of Excess Pension Assets to Retiree Health Accounts

26 CFR 1.420–1: Significant reduction in retiree health coverage during the cost maintenance period.

Post-retirement health benefits; waiver. This ruling holds that an employer has reduced retiree health coverage, within the meaning of section 420(c)(2)(E) of the Code, if an individual who has coverage for retiree health benefits ("covered individual") accepts an offer from the employer to waive the coverage in exchange for enhanced pension benefits.

Rev. Rul. 2004–65

ISSUE

Has an employer reduced retiree health coverage, within the meaning of § 420(c)(3)(E) of the Internal Revenue Code, if an individual who has coverage for retiree health benefits ("covered individual") accepts an offer from the employer to waive such coverage in exchange for enhanced pension benefits?

FACTS

Employer M maintains Plan X, a single-employer defined benefit plan qualified under § 401(a) of the Code with a plan year ending June 30. Plan X contains a retiree health benefits account that satisfies the requirements of § 401(h). Under Plan X, Employer M is permitted to make qualified transfers of excess pension assets, in accordance with § 420, to such account from time to time to fund applicable health benefits. On June 30, 2002, Employer M makes a qualified transfer of excess pension assets to the § 401(h) account. Effective July 1, 2004, Employer M offers to covered individuals the opportunity to receive enhanced pension benefits in return for waiving their applicable health benefits.

LAW AND ANALYSIS

Section 420(a) provides that if there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account which is part of such a plan, the related trust shall not be treated as failing to meet the requirements of § 401(a) or (h) solely by reason of such transfer. In addition, no amount shall be includible in gross income of the employer solely by reason of such transfer, and such transfer shall not be treated as an employer reversion for purposes of § 4980 or as a prohibited transaction for purposes of § 4975.

Among the requirements for a transfer to be a qualified transfer as defined in § 420(b) is that the minimum cost requirements of § 420(c)(3) must be satisfied. Section 420(c)(3)(A) provides, in relevant part, that each group health plan or arrangement under which applicable health benefits are provided must provide that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the two (2) taxable years immediately preceding the taxable year of the qualified transfer. Section 420(c)(3)(B) defines applicable employer cost, and § 420(c)(3)(C) allows the minimum cost requirement to be applied separately with regard to individuals eligible for benefits under title XVIII of the Social Security Act. Under § 420(c)(3)(D), the cost maintenance period is the period of five (5) taxable years beginning with the taxable year in which the qualified transfer occurs. Section 420(c)(3)(E) provides that the Secretary shall prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement.

Section 420(e)(1)(C) defines "applicable health benefits" to mean health benefits or coverage which are provided to (i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and (ii) their spouses and dependents.

Section 1.420–1 of the Income Tax Regulations provides guidance pursuant to § 420(c)(3)(E) regarding when an employer is considered to have significantly reduced retiree health coverage during the cost maintenance period. Section 1.420–1(b) provides, in general, that there is a significant reduction if, for any taxable year beginning on or after January 1, 2002, that is included in the cost maintenance period, either the employer-initiated

reduction percentage for that year exceeds 10%, or the sum of the employer-initiated reduction percentage for that taxable year and all prior taxable years during the cost maintenance period exceeds 20%. The employer-initiated reduction percentage for any taxable year equals the number of individuals (retired employees plus their spouses and dependents) receiving coverage for applicable health benefits as of the day before the first day of the taxable year whose coverage for applicable health benefits ended during the taxable year by reason of employer action, divided by the total number of such individuals receiving coverage for applicable health benefits as of the day before the first day of the taxable year.

Section 1.420–1(b)(4) defines the term "employer action" for purposes of determining the employer-initiated reduction percentage. An individual's eligibility for applicable health benefits ends during a taxable year by reason of employer action if, on any day within the taxable year, the individual's eligibility for applicable health benefits ends as a result of a plan amendment or any other action of the employer (*e.g.*, the sale of all or a part of the employer's business) that, in conjunction with the plan terms, has the effect of ending the individual's eligibility.

An employer's offer to covered individuals to waive their retiree health benefit coverage in exchange for an incentive offered by the employer, such as enhanced pension benefits, is employer action under § 1.420–1(b)(4). Accordingly, if a covered individual accepts the offer to waive such coverage, the cessation of coverage will be treated as an employer-initiated reduction in coverage for purposes of determining whether the employer has significantly reduced retiree health coverage during the cost maintenance period.

HOLDING

An employer has reduced retiree health coverage, within the meaning of § 420(c)(3)(E), if an individual who has coverage for retiree health benefits ("covered individual") accepts an offer from the employer to waive such coverage in exchange for enhanced pension benefits.

This ruling does not address other tax consequences that could arise from the offer.

DRAFTING INFORMATION

The principal author of this revenue ruling is Diane S. Bloom of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact the Employee Plans taxpayer assistance telephone service between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday, by calling (877) 829–5500 (a toll-free number). Ms. Bloom may be reached at (202) 283–9888 (not a toll-free number).

Section 448.—Limitation on Use of Cash Method of Accounting

26 CFR 1.448–1: Limitation on the use of the cash receipts and disbursements method of accounting.

T.D. 9131

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Administrative Simplification of Section 481(a) Adjustment Periods in Various Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: *Effective Date*: These regulations are effective on or after June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Christian Wood, 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2003, the IRS and Treasury published in the **Federal Register** (68 FR 25310) proposed amendments to the regulations (REG–142605–02, 2003–23 I.R.B. 1010) under sections 263A and 448 of the Internal Revenue Code (Code). These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448. Neither public comments in response to the proposed regulations nor any request to speak at a public hearing were received. The proposed regulations under sections 263A and 448 are adopted as revised by this Treasury decision.

The proposed regulations provided that they are applicable to taxable years ending on or after the date those regulations are published as final regulations. However, the proposed regulations allowed taxpayers to rely on them for taxable years ending on or after May 12, 2003, by filing a Form 3115, "*Application for Change in Accounting Method*," in the time and manner provided in the regulations (in the case of a change in method of accounting under section 448) or applicable administrative procedure (in the case of a change in method of accounting under section 263A) for such a taxable year that reflects a section 481 adjustment period that is consistent with the proposed regulations. Taxpayers may continue to rely on the proposed regulations for taxable years ending on or after May 12, 2003, but ending before June 16, 2004.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, 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 Internal Revenue 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 authors of these regulations are Christian Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. In §1.263A–7, paragraph (b)(2)(ii) is revised to read as follows:

§1.263A–7 Changing a method of accounting under section 263A.

* * * * *

(b) * * *

(2) * * *

(ii) Adjustment required by section 481(a). In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The taxpayer must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, and Rev. Proc. 97–27, 1997–1 C.B. 680 (also see § 601.601(d)(2) of this chapter). This paragraph applies to taxable years ending on or after June 16, 2004.

* * * * *

Par. 3. Section 1.448–1 is amended as follows:

1. Paragraphs (g)(2)(i) and (g)(3)(i) are revised.

2. Paragraphs (g)(3)(ii) and (g)(3)(iii) are removed.

3. Paragraph (g)(3)(iv) is redesignated as paragraph (g)(3)(ii) and the introductory language is revised.

4. Paragraph (g)(6) is removed.

5. Paragraph (i)(1) is amended by removing the language "and (4)" and adding "(4), and (5)" in its place.

6. Paragraph (i)(5) is added.

The revisions and addition read as follows:

§1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(2) * * *

(i) *In general*. Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under §1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, and Rev. Proc. 97–27, 1997–1 C.B. 680 (also see § 601.601(d)(2) of this chapter), provided the taxpayer complies with the provisions of paragraph (h)(2) or (3) of this section for its first section 448 year.

* * * * *

(3) * * *

(i) *Cessation of trade or business*. If the taxpayer ceases to engage in the trade or business to which the section 481(a) adjustment relates, or if the taxpayer operating the trade or business terminates existence, and such cessation or termination occurs prior to the expiration of the adjustment period described in paragraph (g)(2)(i) or (ii) of this section, the taxpayer must take into account, in the taxable year of such cessation or termination, the balance of the adjustment not previously taken into account in computing taxable income. For purposes of this paragraph (g)(3)(i), the determination as to whether a taxpayer has ceased to engage in the trade or business to which the section 481(a) adjustment relates, or has terminated its existence, is to be made under the principles of §1.446–1(e)(3)(ii) and its underlying administrative procedures.

(ii) *De minimis rule for a taxpayer other than a cooperative.* Notwithstanding paragraph (g)(2)(i) and (ii) of this section, a taxpayer other than a cooperative (within the meaning of section 1381(a)) that is required to change from the cash method by this section may elect to use, in lieu of the adjustment period described in paragraph (g)(2)(i) and (ii) of this section, the adjustment period for *de minimis* section 481(a) adjustments provided in the applicable administrative procedure issued under §1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method. A taxpayer may make an election under this paragraph (g)(3)(ii) only if —

* * * * *

(i) * * *

(5) *Effective date of paragraph (g)(2)(i)*. Paragraph (g)(2)(i) of this section applies to taxable years ending on or after June 16, 2004.

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

Approved June 1, 2004.

Gregory F. Jenner,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on June 15, 2004, 8:45 a.m., and published in the issue of the Federal Register for June 16, 2004, 69 F.R. 33571)

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners

What are the gift tax consequences if the grantor of a trust with respect to which the grantor is treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, and what are the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax? See Rev. Rul. 2004-64, page 7.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2004.

Rev. Rul. 2004–66

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2004 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Table 5 contains the federal rate for determining the present value of annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2004 for purposes of section 7872.

REV. RUL. 2004–66 TABLE 1

Applicable Federal Rates (AFR) for July 2004

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	2.26%	2.25%	2.24%	2.24%
110% AFR	2.50%	2.48%	2.47%	2.47%
120% AFR	2.72%	2.70%	2.69%	2.68%
130% AFR	2.95%	2.93%	2.92%	2.91%
Mid-term				
AFR	4.11%	4.07%	4.05%	4.04%
110% AFR	4.53%	4.48%	4.46%	4.44%
120% AFR	4.94%	4.88%	4.85%	4.83%
130% AFR	5.36%	5.29%	5.26%	5.23%
150% AFR	6.20%	6.11%	6.06%	6.03%
175% AFR	7.25%	7.12%	7.06%	7.02%
Long-term				
AFR	5.34%	5.27%	5.24%	5.21%
110% AFR	5.88%	5.80%	5.76%	5.73%
120% AFR	6.42%	6.32%	6.27%	6.24%
130% AFR	6.97%	6.85%	6.79%	6.75%

REV. RUL. 2004–66 TABLE 2

Rates Under Section 382 for July 2004

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.78%	1.77%	1.77%	1.76%
Mid-term adjusted AFR	3.34%	3.31%	3.30%	3.29%
Long-term adjusted AFR	4.72%	4.67%	4.64%	4.63%

REV. RUL. 2004–66 TABLE 3

Rates Under Section 382 for July 2004

Adjusted federal long-term rate for the current month	4.72%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.72%

REV. RUL. 2004–66 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for July 2004

Appropriate percentage for the 70% present value low-income housing credit	8.10%
Appropriate percentage for the 30% present value low-income housing credit	3.47%

REV. RUL. 2004–66 TABLE 5	
Rate Under Section 7520 for July 2004	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.0%

REV. RUL. 2004–66 TABLE 6	
Blended Annual Rate for 2004	
Section 7872(e)(2) blended annual rate for 2004	1.98%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

26 CFR 20.2032A–4: Method of valuing farm real property.

Special use value; farms; interest rates. The 2004 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2004–63

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Chartered Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2004.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A–4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Chartered Territory are set forth in the accompanying Table of Farm Credit System Bank Chartered Territories (Table 2).

Rev. Rul. 81–170, 1981–1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2003 are in Rev. Rul. 2003–53, 2003–1 C.B. 969. For rate information for years prior to 2003, see Rev. Rul. 2002–26, 2002–1 C.B. 906, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 622–3090 (not a toll-free call).

REV. RUL. 2004–63 TABLE 1 TABLE OF INTEREST RATES (Year of Valuation 2004)	
Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB	8.32
AgriBank, FCB	6.93
CoBank, ACB	6.64
Texas, FCB	6.59
U.S. AgBank, FCB	6.84

REV. RUL. 2004–63 TABLE 2

TABLE OF FARM CREDIT SYSTEM BANK CHARTERED TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.
U.S. Agbank, FCB.	Arizona, California, Colorado, Hawaii, Kansas, New Mexico, Nevada, Oklahoma, Utah

Section 2036.—Transfers With Retained Life Estate

26 CFR 20.2036–1: Transfers with retained life estate.

What are the gift tax consequences if the grantor of a trust with respect to which the grantor is treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, and what are the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax? See Rev. Rul. 2004-64, page 7.

Section 2501.—Imposition of Tax

What are the gift tax consequences if the grantor of a trust with respect to which the grantor is treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, and what are the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax? See Rev. Rul. 2004-64, page 7.

Section 2511.—Transfers in General

26 CFR 25.2511–1: Transfers in general.
(Also §§ 671, 2036, 2501, 2512; 20.2036–1, 25.2511–2.)

Tax reimbursement clause. This ruling addresses issues presented with respect to a trust whose grantor is treated as its owner. It addresses the gift tax consequences when the grantor pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income. It also addresses the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax.

Rev. Rul. 2004–64

ISSUES

With respect to a trust whose grantor is treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), what are the gift tax consequences when the grantor pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, and what are the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax?

FACTS

In Year 1, *A*, a United States citizen, establishes and funds Trust, an irrevocable inter vivos trust, for the benefit of *A*'s descendants. The governing instrument of Trust requires that the trustee be a person not related or subordinate to *A* within the meaning of § 672(c) of the Internal Revenue Code. *A* appoints a trustee that satisfies this requirement. Trust is governed by the laws of State. Under the terms of Trust, *A* retains no beneficial interest in or power over Trust income or corpus that would cause the transfer to Trust to constitute an incomplete gift for federal gift tax purposes, or that would cause Trust corpus to be included in *A*'s gross estate for federal estate tax purposes on *A*'s death. However, *A* retains sufficient powers with respect to Trust so that *A* is treated as the owner of Trust under subpart E.

During Year 1, Trust receives taxable income of $10*x*. Pursuant to § 671, *A* includes the $10*x* in *A*'s taxable income. As a result, *A*'s personal income tax liability for Year 1 increases by $2.5*x*. *A* dies in Year 3. As of the date of *A*'s death, the fair market value of Trust's assets is $150*x*.

Situation 1: Neither State law nor the governing instrument of Trust contains any provision requiring or permitting the trustee to distribute to *A* amounts sufficient to satisfy *A*'s income tax liability attributable to the inclusion of Trust's income in *A*'s taxable income. Accordingly, *A* pays

the additional $2.5x liability from *A*'s own funds.

Situation 2: The governing instrument of Trust provides that if *A* is treated as the owner of any portion of Trust pursuant to the provisions of subpart E for any taxable year, the trustee shall distribute to *A* for the taxable year, income or principal sufficient to satisfy *A*'s personal income tax liability attributable to the inclusion of all or part of Trust's income in *A*'s taxable income. Accordingly, the trustee distributes $2.5*x* to *A* to reimburse *A* for the $2.5*x* income tax liability.

Situation 3: The governing instrument of Trust provides that if *A* is treated as the owner of any portion of Trust pursuant to the provisions of subpart E for any taxable year, the trustee may, in the trustee's discretion, distribute to *A* for the taxable year, income or principal sufficient to satisfy *A*'s personal income tax liability attributable to the inclusion of all or part of Trust's income in *A*'s taxable income. Pursuant to the exercise of the trustee's discretionary power, the trustee distributes $2.5*x* to *A* to reimburse *A* for the $2.5*x* income tax liability.

LAW AND ANALYSIS

Under § 671, if the grantor of a trust is treated as the owner of any portion of the trust under subpart E, those items of income, deductions, and credits against tax of the trust that are attributable to that portion of the trust must be included in computing the taxable income of the grantor.

Section 2501 imposes a tax on the transfer of property by gift by an individual, resident or nonresident. Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(b) provides that the gift tax applies only to the extent that property is transferred for less than an adequate and full consideration in money or money's worth.

Section 25.2511–2(b) of the Gift Tax Regulations provides that a gift is complete and subject to gift tax to the extent the donor has so parted with dominion and control as to leave in the donor no power to change the disposition of the property, whether for the benefit of the donor, or any other person.

Section 25.2511–1(c)(1) provides that the gift tax applies with respect to any transaction in which an interest in property is gratuitously passed or conferred on another regardless of the means or device employed. Thus, the gift tax may apply if one party forgives or fails to collect on the indebtedness of another. Section 25.2511–1(a); *Estate of Lang v. Commissioner*, 64 T.C. 404 (1975), *aff'd*, 613 F.2d 770 (9th Cir. 1980); Rev. Rul. 81–264, 1981–2 C.B. 185. Similarly, the gift tax applies if one person gratuitously pays the tax liability of another. *Doerr v. United States*, 819 F.2d 162 (7th Cir. 1987) (donor's payment of the donee's state gift tax liability constitutes an additional gift to the donee).

Section 2036(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a *bona fide* sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period that does not in fact end before death the possession or enjoyment of, or the right to the income from, the property.

Section 20.2036–1(b)(2) of the Estate Tax Regulations provides that the use, possession, right to income, or other enjoyment of transferred property is treated as having been retained by the decedent to the extent that the transferred property is to be applied towards the discharge of a legal obligation of the decedent. *Estate of Prudowsky v. Commissioner*, 55 T.C. 890 (1971), *aff'd*, 465 F.2d 62 (7th Cir. 1972) (property held under the state Uniform Gifts to Minors Act was included in the decedent's gross estate under § 2036(a)(1) because decedent, as custodian, retained the power to use the property to satisfy the decedent's legal obligation to support the minor for whose benefit the custodianship was established); *Richards v. Commissioner*, T.C.M. 1965–263, *aff'd*, 375 F.2d 997 (10th Cir. 1967) (trust corpus includible in decedent's gross estate under § 2036(a)(1) because mandatory distributions of trust income to the decedent's spouse satisfied the decedent's spousal support obligation). On the other hand, § 2036 generally does not apply when trust property may be used to satisfy the decedent's legal obligations only in the discretion of the trustee, whether or not the discretion is exercised by the trustee. *Commissioner v. Estate of Douglas*, 143 F.2d 961 (3d Cir. 1944), *acq.* 1944 C.B. 7; *Estate of Mitchell v. Commissioner*, 55 T.C. 576 (1970), *acq.* 1971–2 C.B. 3.

In the present situations, Trust includes provisions that cause *A* to be treated as the owner of Trust under subpart E and, as a result, to be liable for any income tax attributable to Trust's income. Thus, even though *A* is not a Trust beneficiary, any income tax *A* pays that is attributable to Trust's income is paid in discharge of *A*'s own liability, imposed on *A* by § 671.

In *Situation 1*, *A*'s payment of the $2.5*x* income tax liability does not constitute a gift by *A* to Trust's beneficiaries for federal gift tax purposes because *A*, not Trust, is liable for the taxes. In contrast, in the situation presented in *Doerr v. United States*, cited above, the donor's payment was for the donee's tax liability and, as a result, the payment constituted an additional gift to the donee. In addition, no portion of Trust is includible in *A*'s gross estate for federal estate tax purposes under § 2036, because *A* has not retained the right to have trust property expended in discharge of *A*'s legal obligation.

In *Situation 2*, the governing instrument of Trust requires the trustee to reimburse *A* from Trust's assets for the amount of income tax *A* pays that is attributable to Trust's income. *A*'s payment of the $2.5*x* income tax liability does not constitute a gift by *A*, because *A* is liable for the tax. The trustee's distribution of $2.5*x* to *A* as reimbursement for the income tax payment by *A* is not a gift by the trust beneficiaries to *A*, because the distribution from Trust is mandated by the terms of the trust instrument.

However, *A* has retained the right to have trust property expended in discharge of *A*'s legal obligation. *A*'s retained right to receive reimbursement attributable to Trust's income causes the full value of Trust's assets at *A*'s death ($150*x*) to be included in *A*'s gross estate under § 2036(a)(1). The result would be the same if, under applicable state law, the trustee must, unless the governing instrument provides otherwise, reimburse *A* for

A's personal income tax liability attributable to the inclusion of all or part of the Trust's income in *A*'s taxable income, and the governing instrument does not provide otherwise.

In *Situation 3*, the governing instrument of Trust provides the trustee with the discretion to reimburse *A* from Trust's assets for the amount of income tax *A* pays that is attributable to Trust's income. As is the case in *Situation 1* and *Situation 2*, *A*'s payment of the $2.5*x* income tax liability does not constitute a gift by *A* because *A* is liable for the income tax. Further, the $2.5*x* paid to *A* from Trust as reimbursement for *A*'s income tax payment was distributed pursuant to the exercise of the trustee's discretionary authority granted under the terms of the trust instrument. Accordingly, this payment is not a gift by the trust beneficiaries to *A*. In addition, assuming there is no understanding, express or implied, between *A* and the trustee regarding the trustee's exercise of discretion, the trustee's discretion to satisfy *A*'s obligation would not alone cause the inclusion of the trust in *A*'s gross estate for federal estate tax purposes. This is the case regardless of whether or not the trustee actually reimburses *A* from Trust assets for the amount of income tax *A* pays that is attributable to Trust's income. The result would be the same if the trustee's discretion to reimburse *A* for this income tax is granted under applicable state law rather than under the governing instrument. However, such discretion combined with other facts (including but not limited to: an understanding or pre-existing arrangement between *A* and the trustee regarding the trustee's exercise of this discretion; a power retained by *A* to remove the trustee and name *A* as successor trustee; or applicable local law subjecting the trust assets to the claims of *A*'s creditors) may cause inclusion of Trust's assets in *A*'s gross estate for federal estate tax purposes.

HOLDINGS

When the grantor of a trust, who is treated as the owner of the trust under subpart E, pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, the grantor is not treated as making a gift of the amount of the tax to the trust beneficiaries. If, pursuant to the trust's governing instrument or applicable local law, the grantor must be reimbursed by the trust for the income tax payable by the grantor that is attributable to the trust's income, the full value of the trust's assets is includible in the grantor's gross estate under § 2036(a)(1). If, however, the trust's governing instrument or applicable local law gives the trustee the discretion to reimburse the grantor for that portion of the grantor's income tax liability, the existence of that discretion, by itself (whether or not exercised) will not cause the value of the trust's assets to be includible in the grantor's gross estate.

PROSPECTIVE APPLICATION

The Internal Revenue Service will not apply the estate tax holding in *Situation 2* of this revenue ruling adversely to a grantor's estate with respect to any trust created before October 4, 2004.

DRAFTING INFORMATION

The principal author of this revenue ruling is Elizabeth Madigan of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Madigan at (202) 622–3090 (not a toll-free call).

Section 2512.—Valuation of Gifts

What are the gift tax consequences if the grantor of a trust with respect to which the grantor is treated as the owner of the trust under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), pays the income tax attributable to the inclusion of the trust's income in the grantor's taxable income, and what are the estate tax consequences if, pursuant to the governing instrument or applicable local law, the grantor may or must be reimbursed by the trust for that income tax? See Rev. Rul. 2004-64, page 7.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2004. See Rev. Rul. 2004-66, page 4.

Part III. Administrative, Procedural, and Miscellaneous

Health Savings Accounts—Transition Relief for State Mandates

Notice 2004–43

PURPOSE

This notice provides transition relief for individuals in states where high deductible health plans (HDHPs) as described in section 223(c)(2) are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of section 223(c)(2)(A)(i). The transition relief covers months before January 1, 2006, for state requirements in effect on January 1, 2004.

BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. An "eligible individual" under section 223(c)(1) must be covered by a "high deductible health plan" (HDHP). An HDHP under section 223(c)(2) must satisfy certain requirements with respect to minimum annual deductibles and maximum out-of-pocket expenses. However, section 223(c)(2)(C) permits a safe harbor for the absence of a preventive care deductible. An eligible individual may also have certain permitted insurance and permitted coverage under section 223(c)(1)(B).

Notice 2004–23, 2004–15 I.R.B. 725, describes a safe harbor for preventive care benefits that may be provided by an HDHP without a deductible or with a deductible below the minimum annual deductible for an HDHP. In addition, the notice indicates that whether health care required by state law without regard to a deductible is "preventive" will be based on the standards set forth in Notice 2004–23 and other guidance issued by the IRS, rather than on how the benefits are characterized by state law.

Several states currently require that health plans provide certain benefits without regard to a deductible or with a deductible below the minimum annual deductible requirements of section 223(c)(2) (*e.g.*, first-dollar coverage or coverage with a low deductible). These health plans are not HDHPs under section 223(c)(2) and individuals covered under these health plans are not eligible to contribute to HSAs. Because of the short period between the enactment of HSAs and the effective date of section 223, these states have had insufficient time to modify their laws to conform to the standards of section 223. Thus, it is appropriate to provide transition relief that treats HDHPs as qualifying under section 223(c)(2) when the sole reason the plans are not HDHPs is because of state-mandated benefits. During the transition period, otherwise eligible individuals covered under these plans will be treated as eligible individuals for purposes of section 223(c)(1) and may contribute to an HSA.

APPLICATION

For months before January 1, 2006, a health plan which would otherwise qualify as an HDHP under section 223(c)(2), except that it complies with state law requirements that certain benefits be provided without a deductible or below the minimum annual deductible of section 223(c)(2)(A)(i), will be treated as an HDHP for purposes of section 223(c)(2), if the disqualifying benefits are required by state law in effect on January 1, 2004.

DRAFTING INFORMATION

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

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42; 1.42–5.)

Rev. Proc. 2004–38

SECTION 1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects how to obtain the waiver from the Internal Revenue Service of the annual recertification of tenant income (waiver) provided in § 42(g)(8)(B) of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 1.42–5 of the Income Tax Regulations provides the minimum requirements that a housing credit agency's (Agency's) compliance monitoring procedure must contain to satisfy its compliance monitoring duties under § 42(m)(1)(B)(iii). Section 1.42–5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42–5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. Section 1.42–5(c)(1)(iii) provides that an Agency must require an owner to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant and documentation supporting that certification.

Section 42(g)(8)(B) provides that on application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of § 42(g) if the entire building is occupied by low-income tenants (a 100 percent low-income building). Low-income tenants are individuals occupying a rent-restricted unit in a qualified low-income housing project whose

combined income satisfies the § 42(g)(1) income limitation elected by the owner of the project.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects that consist entirely of 100 percent low-income buildings.

SECTION 4. PROCEDURE FOR OBTAINING A WAIVER UNDER § 42(g)(8)(B)

An owner applying for the waiver for its 100 percent low-income building must (1) complete and sign the applicable portions of the Form 8877, *Request for Waiver of Annual Recertification Requirement for the Low-Income Housing Credit*, (2) have the Agency responsible for monitoring the building for compliance with § 42 sign the applicable portion of the form, and (3) file the form with the Service pursuant to the instructions accompanying the form. A copy of the 2004 version of Form 8877 is included in the appendix to this revenue procedure. The Service will notify the owner whether the request for waiver has been approved or denied. See section 5.02 of this revenue procedure for the period the waiver is in effect.

SECTION 5. EFFECT OF OBTAINING A WAIVER UNDER § 42(g)(8)(B)

.01 If an owner of a 100 percent low-income building obtains a waiver of the annual income recertification from the Service, the owner will be exempt from the recertification requirements of § 1.42–5(b)(1)(vi) and (vii) and § 1.42–5(c)(1)(iii). As a result, the owner is not required under those sections to (1) keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; (2) maintain documentation to support that recertification; or (3) certify to the Agency responsible for monitoring the building for compliance with § 42 that it has received this information.

.02 The waiver takes effect on the date the Service approves the waiver. Once the waiver takes effect, it remains in effect until the end of the 15-year compliance period (defined in § 42(i)(1)), unless the waiver is revoked, in which case the waiver ceases to be in effect on the date of revocation. See sections 5.04 and 5.05 of this revenue procedure regarding revocations.

.03 Obtaining the waiver will not prevent an owner from having to produce documentation to verify the owner's compliance with § 42 upon an examination of the owner's federal income tax return. Thus, for example, the owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building. In addition, except as provided in section 5.01 of this revenue procedure, obtaining the waiver will not prevent an owner from having to satisfy the requirements of the compliance monitoring procedure adopted by the Agency responsible for monitoring the building for compliance with § 42.

.04 The Service may revoke the waiver if the building ceases to be a 100 percent low-income building or if the Service determines that an owner has violated § 42 in a manner that is sufficiently serious to warrant revocation. In any case, the Service will revoke the waiver if the Agency requests, in accordance with the instructions to Form 8877, that the Service revoke the waiver.

.05 A waiver will be automatically revoked if there is a change in the ownership for federal tax purposes of the 100 percent low-income building (including a change resulting from a termination of a partnership under § 708). In this case, the owner that received the waiver must notify the Service of the revocation in accordance with the instructions to Form 8877. The new owner may apply for a waiver.

.06 An Agency's compliance monitoring procedure will not fail to satisfy § 42(m)(1)(B)(iii) solely because the 100 percent low-income buildings to which the waiver applies have been exempted from the recertification requirements of § 1.42–5(b)(1)(vi) and (vii) and § 1.42–5(c)(1)(iii). Nonetheless, the Agency's compliance monitoring procedure must continue to require that an owner satisfy the requirements in § 1.42–5(b)(1)(vi) and (vii) and § 1.42–5(c)(1)(iii) upon a tenant's initial occupancy of any residential rental unit in the building.

.07 A 100 percent low-income building to which the waiver applies continues to be subject to the review requirements of § 1.42–5(c)(2).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 94–64, 1994–2 C.B. 797, is superseded. Waivers obtained under Rev. Proc. 94–64 are not affected by this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for applications filed on or after July 6, 2004.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Selig at (202) 622–3040 (not a toll-free call).

APPENDIX

2004 Version of Form 8877

Form **8877**
(July 2004)
Department of the Treasury
Internal Revenue Service

Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit

▶ **See instructions on back.**

Note: *To be used only for 100% low-income buildings.*

OMB No. 1545-1882

Part I **Certification (Note:** *The building owner must also complete Part II on page 3.)*

Name of building or project	Name of building owner
Street address of building or project	Street address of building owner
City, state, and ZIP code	City, state, and ZIP code
Building identification number (BIN)	Taxpayer identification number

As the building owner, I certify that:

- I am applying for the annual income recertification waiver provided for in section 42(g)(8)(B);
- Each building listed on this form, and in any attached statement, is a 100% low-income building (see **Who May File** on page 2 for the meaning of 100% low-income building); and
- I have read and understand the **Effects of Obtaining a Waiver** in the instructions on page 2.

Under penalties of perjury, I declare that the foregoing statements and information are true, correct, and complete to the best of my knowledge and belief.

Signature of building owner	Title	Date

Type or print name	Telephone number

Additional BINs (continue in same format on an attached statement if necessary)

Attestation and Exemption by Housing Credit Agency

As an authorized official of the housing credit agency named below, I certify that:

- The agency is responsible for the monitoring of each building to which this waiver request applies;
- Each building listed on this form, and in any attached statement, was a 100% low-income building at the end of the most recent credit year for the building; and
- The agency exempts the building owner from annual income recertifications as provided in Rev. Proc. 2004-38, effective on the date of IRS approval of the waiver.

Under penalties of perjury, I declare that the foregoing statements and information are true, correct, and complete to the best of my knowledge and belief.

Name of housing credit agency	Signature of authorized official
Date	Name (please type or print)

IRS APPROVAL—IRS Use Only

Signature of authorized official	Title	Effective date of waiver

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat. No. 32126P Form **8877** (7-2004)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Owners of certain low-income housing buildings use Form 8877 to request the annual income recertification waiver provided for in section 42(g)(8)(B). See Rev. Proc. 2004-38, 2004-27 I.R.B., for more information on obtaining the waiver. You can find Rev. Proc. 2004-38 at *www.irs.gov/pub/irs-irbs/irb04-27.pdf.*

Who May File

The owner of a 100% low-income building may request the waiver. A 100% low-income building is a building entirely occupied by low-income tenants, who are individuals occupying a rent-restricted unit in a qualified low-income housing project whose combined income satisfies the section 42(g)(1) income limitation elected by the owner.

How To File

Owners must complete and sign Part I, Certification, and have the housing credit agency responsible for monitoring the building(s) (compliance monitoring agency) sign that part. The owner must also complete, sign Part II, Consent of Disclosure to Monitoring Agency, and send the completed Form 8877 to the Internal Revenue Service (IRS). The IRS will not consider an owner's request unless both Parts I and II of Form 8877 are properly completed.

Where To File

File Form 8877 with:

Internal Revenue Service
P.O. Box 331
Attn: LIHC Unit, DP 607 South
Philadelphia Campus
Bensalem, PA 19020

Determination

The IRS will notify the owner by mail that the request for waiver has been approved or denied. If the request is approved, the IRS will mail the owner a copy of the approved Form 8877. The waiver takes effect on the date that the IRS approves the waiver.

Note: *Keep a copy of the approved Form 8877 for the building's records. It must remain a part of the building's records regardless of any ownership transfer.*

Effects of Obtaining a Waiver

The following apply to a building on which a waiver is in effect.

1. Records. While a waiver is in effect, the owner is exempt from the recertification requirements of Regulations sections 1.42-5(b)(1)(iv) and (vii) and 1.42-5(c)(1)(iii) for each building to which the waiver applies. Thus, the owner is not required to keep records that show an annual income recertification for all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; maintain documentation to support that recertification; or certify to the compliance monitoring agency that it has received this information. Having a waiver in effect, however, does not relieve the owner of having to produce documentation in support of the requirements of section 42, including keeping records and documentation that show each tenant's annual income upon the tenant's initial occupancy of any unit in the building and, except for the exempted recertification requirements, satisfying the compliance monitoring procedure adopted by the compliance monitoring agency.

2. Effective Period of Waiver. The waiver takes effect on the date the IRS approves the waiver. It remains in effect until the end of the 15-year compliance period (defined in section 42(i)(1)), unless the waiver is revoked, in which case it ceases to be in effect on the date of revocation.

3. Revocation. The IRS may revoke the waiver if the building ceases to be a 100% low-income building or if the IRS determines that the owner has violated section 42 in a manner that is sufficiently serious to warrant revocation.

The IRS will revoke the waiver if the compliance monitoring agency requests its revocation. To request revocation of a waiver, the compliance monitoring agency must send a letter to the IRS requesting that the waiver be revoked. The request must include the following information: (1) the name and address of the compliance monitoring agency; (2) the name and telephone number of the agency official familiar with the facts of the request whom the IRS may contact; (3) the name, address, and building identification number(s) of the building(s) or project; (4) the name, address, and taxpayer identification number of the building owner; and (5) a statement explaining why the waiver should be revoked. The request should be sent to the address for filing Form 8877 and a copy of the request must be provided to the building owner. The compliance monitoring agency and building owner will be notified by mail when the IRS revokes the waiver.

A change in the ownership of the building for federal tax purposes (including a change resulting from the termination of a partnership under section 708) will cause the waiver to be revoked automatically as of the change in ownership. The new owner may apply for a waiver. In the case of such an automatic revocation, the building owner that received the waiver must notify the IRS of the revocation no later than 60 days after the automatic revocation occurs. The notification should be sent to the address for filing Form 8877 and include the following information: (1) the name, address and building identification number(s) of the building(s) or project; (2) the name, address and taxpayer identification number of the building owner; (3) the date of the automatic revocation; and (4) an explanation of the event that caused the automatic revocation. After receiving the notification of an automatic revocation, the IRS will notify the compliance monitoring agency.

4. Consent of Disclosure. In applying for the waiver, the owner must consent to disclosure by the IRS to the compliance monitoring agency of any revocation of the waiver. This consent of disclosure is effective beginning on the date the waiver takes effect and ending on the date that the compliance period of the building(s) ends, unless the waiver is revoked, in which case the consent ends immediately following the disclosure by the IRS of the revocation to the compliance monitoring agency.

Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure you are complying with these laws and to allow us to figure and collect the right amount of tax. Sections 6001, 6011 and 6012(a) require you to provide the requested information for purposes of requesting the waiver of the annual income recertification under section 42(g)(8)(B). Section 6109 requires you to provide your social security number or other identifying number. Routine uses of this information include disclosing it to the Department of Justice for civil and criminal litigation and to other federal agencies, as provided by law. We may disclose the information to cities, states, the District of Columbia, and U.S. Commonwealths or possessions to administer their tax laws. We may also disclose this information to other countries under a tax treaty, or to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority. If you do not file this information, or provide incomplete or fraudulent information, you may not obtain the relief requested and may be subject to interest, penalties, and/or criminal prosecution.

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Part II Consent of Disclosure to Monitoring Agency

Name of building or project	Name of building owner
Street address of building or project	Street address of owner
City, state, and ZIP code	City, state, and ZIP code
Building identification number (BIN)	Taxpayer identification number

I am a building owner applying for the annual income recertification waiver provided for in section 42(g)(8)(B) for the building(s) with the building identification number(s) set forth in this consent. The waiver takes effect on the date that the waiver is approved by the IRS. If the IRS grants the waiver and then the waiver is revoked, I consent to the IRS disclosing the revocation to the compliance monitoring agency responsible for monitoring the building(s) (compliance monitoring agency). This consent is effective from the date the waiver takes effect to the date that the compliance period of the building(s) ends, unless the waiver is revoked, in which case the consent is terminated immediately following the disclosure by the IRS of the revocation to the compliance monitoring agency.

Signature of building owner | Title | Date

Type or print name | Telephone number

Additional BINs (continue in same format on an attached statement if necessary)

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2004–55

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 6, 2004, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Mid-South Transportation Management, Inc., Cincinnati, OH

Age-Discrimination Regulations

Announcement 2004–57

On December 11, 2002, Treasury and the IRS published proposed regulations under §§ 411(b)(1)(H) and 411(b)(2) of the Internal Revenue Code (the "Code"). 67 *Fed. Reg.* 76123. The proposed regulations would provide guidance under the statutory age-discrimination rules for all qualified plans, including cash balance pension plans. The proposed regulations set forth specific conditions under which cash balance plans and cash balance conversions would not be considered to violate these age-discrimination rules.[1]

Thousands of comment letters were submitted on the proposed regulations, including comments from older and longer-service employees who stated that they had been adversely affected by cash balance conversions. Other comments set forth employer concerns that the regulations would create issues for certain traditional defined benefit plans that had not previously been considered age-discriminatory.

Section 205 of the Consolidated Appropriations Act, 2004, Pub. L. 108–199, (the "Act") provides that none of the funds made available in the Act may be used to issue any rule or regulation that implements the proposed age-discrimination regulations or any regulations reaching similar results. Additionally, the Act requires the Secretary of the Treasury to propose legislation providing transition relief for older and longer-service participants affected by cash balance conversions.

The Administration's Budget for Fiscal Year 2005 includes a legislative proposal addressing cash balance plans and conversions to cash balance plans. The legislative proposal would require companies converting to cash balance plans to protect current employees through a five-year "hold harmless" period and would prohibit any benefit wear-away. The proposal also would provide rules under which cash balance formulas would not be considered age-discriminatory and rules regarding interest crediting rates. The proposal would provide similar rules for other types of hybrid plans and hybrid plan conversions.

Treasury and the IRS are withdrawing the proposed age-discrimination regulations issued in December 2002. This will provide Congress an opportunity to review and consider the Administration's legislative proposal and to address cash balance and other hybrid plan issues through legislation. Treasury and the IRS do not intend to issue guidance on compliance with the age-discrimination rules of §§ 411(b)(1)(H) and 411(b)(2) of the Code for cash balance plans, cash balance conversions, or other hybrid plans or hybrid plan conversions while these issues are under consideration by Congress.

Beginning September 15, 1999, cases in which an application for a determination letter or a plan under examination involved a cash balance conversion were required to be submitted to the Washington, D.C. office of the IRS for technical advice on the conversion's effect on the plan's qualified status. Many such cases were submitted and are still pending. Treasury and the IRS do not intend to process these technical advice cases while cash balance plan and cash balance conversion issues are under consideration by Congress.

[1] At the same time, Treasury and the IRS published proposed nondiscrimination regulations for cash balance plans under § 401(a)(4) of the Code. In Announcement 2003–22, 2003–1 C.B. 847, Treasury and the IRS announced that the proposed regulations under § 401(a)(4) would be withdrawn because they raised unintended obstacles for employers that wanted to provide transition relief in cash balance conversions.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletin 2004–27

Announcements:

Notices:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2004–1 through 2004–26 is in Internal Revenue Bulletin 2004–26, dated June 28, 2004.

Findings List of Current Actions on Previously Published Items[1]

Bulletin 2004–27

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Superseded by
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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2004–1 through 2004–26 is in Internal Revenue Bulletin 2004–26, dated June 28, 2004.

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