Internal Revenue
bulletin

Bulletin No. 2004-30
July 26, 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. 2004–71, page 74.

Offsets under section 6402; Arizona and Wisconsin law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Arizona or Wisconsin. Arizona and Wisconsin are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–72, page 77.

Offsets under section 6402; California, Idaho, and Louisiana law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in California, Idaho, or Louisiana. California, Idaho, and Louisiana are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–73, page 80.

Offsets under section 6402; Nevada, New Mexico, and Washington law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Nevada, New Mexico, and Washington. Nevada, New Mexico, and Washington are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–74, page 84.

Offsets under section 6402; Texas law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Texas. Texas is a community property state and, under the state law, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

T.D. 9135, page 69.

Final regulations under section 61 of the Code amend section 1.61–8(b) of the regulations to authorize the Commissioner of Internal Revenue to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt.

Notice 2004–48, page 88.

2004 marginal production rates. This notice announces the applicable percentage under section 613A of the Code to be used in determining percentage depletion for marginal properties for the 2004 calendar year.

Notice 2004–49, page 88.

2004 enhanced oil recovery credit. The enhanced oil recovery credit for taxable years beginning in the 2004 calendar year is determined without regard to the phase-out for crude oil price increases provided in section 43(b) of the Code.

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Finding Lists begin on page ii.
Index for July begins on page iv.

Department of the Treasury
Internal Revenue Service

EMPLOYEE PLANS

Notice 2004–51, page 89.

Weighted average interest rate update; corporate bond indexes; 30-year Treasury securities. The weighted average interest rate for July 2004 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

EXEMPT ORGANIZATIONS

Announcement 2004–62, page 103.

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

EXCISE TAX

T.D. 9134, page 70.

Final regulations, primarily under section 5891 of the Code, provide the manner and method of paying and reporting the excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction if the transfer of the rights is not approved in advance in a qualified order.

ADMINISTRATIVE

Rev. Rul. 2004–71, page 74.

Offsets under section 6402; Arizona and Wisconsin law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Arizona or Wisconsin. Arizona and Wisconsin are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

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Rev. Proc. 2004–41, page 90.

This procedure describes circumstances under which an insurance company that makes incentive payments to health care providers will be permitted to deduct those payments without regard to section 404 of the Code. The procedure also provides automatic consent procedures for a taxpayer to change its method of accounting for such payments. Rev. Proc. 2002–9 modified and amplified.

Announcement 2004–59, page 94.

This announcement contains the annual report concerning the Pre-Filing Agreement program of the Large and Mid-Size Business Division of the Service for Calendar Year 2003.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61–8: Rents and royalties.

T.D. 9135

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Rents and Royalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the inclusion in gross income of advance rentals. The regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property and computer software) to be designated by the Commissioner.

DATES: *Effective Date*: These regulations are effective July 8, 2004.

Applicability Date: The amendments made by these regulations apply after December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 2002, the IRS published a notice of proposed rulemaking (REG–151043–02, 2003–1 C.B. 300) in the **Federal Register** (67 FR 77450), proposing amendments to 26 CFR part 1 under section 61 of the Internal Revenue Code (Code) regarding the inclusion in gross income of advance rentals. The notice of proposed rulemaking invited comments and requests for a public hearing, but no comments were received and no public hearing was requested or held.

Contemporaneously with the publication of the notice of proposed rulemaking, the IRS published a proposed revenue procedure in Notice 2002–79, 2002–2 C.B. 964, that, when final, implements the amendments made by these final regulations. The proposed revenue procedure was finalized, with modifications, as Rev. Proc. 2004–34, 2004–22 I.R.B. 991. Comments received in connection with the proposed revenue procedure, including comments concerning the proposed treatment of advance rentals, are addressed in Announcement 2004–48, 2004–22 I.R.B. 998, which accompanies Rev. Proc. 2004–34.

Explanation of Provisions

This document contains amendments to 26 CFR part 1 relating to the inclusion in gross income of advance rentals under section 61 of the Code. Prior to amendment, §1.61–8(b) provided that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This amendment ensures that the Commissioner, in modifying Rev. Proc. 71–21, 1971–2 C.B. 549, may provide deferral rules for the use of intellectual property and computer software.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the 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 this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

Drafting Information

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

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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 * * *

§1.61–8 [Amended]

Par. 2. The first sentence of §1.61–8(b) is amended by adding the language "and except as otherwise provided by the Commissioner in published guidance (see §601.601(d)(2) of this chapter)," immediately after "thereunder,".

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

Approved June 30, 2004.

Gregory Jenner,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 7, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 8, 2004, 69 F.R. 41192)

Section 404.—Deduction for Contributions of an Employer to an Employees' Trust or Annuity Plan and Compensation Under a Deferred-Payment Plan

26 CFR 1.404(b)–1T: Method or arrangement of contributions, etc., deferring the receipt of compensation or providing for deferred benefits (Temporary).
26 CFR 1.404(d)–1T: Questions and answers relating to deductibility of deferred compensation and deferred benefits for independent contractors (Temporary).

Circumstances under which an insurance company that makes incentive payments to health care providers will be permitted to include those payments in discounted unpaid losses without regard to section 404. See Rev. Proc. 2004-41, page 90.

Section 446.—General Rule for Methods of Accounting

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

Procedures under which an insurance company that makes incentive payments to health care providers may obtain automatic consent of the Commissioner to change its method of accounting for such payments. See Rev. Proc. 2004-41, page 90.

Section 832.—Insurance Company Taxable Income

26 CFR 1.832–4: Gross income.

Circumstances under which an insurance company that makes incentive payments to health care providers will be permitted to include those payments in discounted unpaid losses without regard to section 404. See Rev. Proc. 2004-41, page 90.

Section 846.—Discounted Unpaid Losses Defined

Circumstances under which an insurance company that makes incentive payments to health care providers will be permitted to include those payments in discounted unpaid losses without regard to section 404. See Rev. Proc. 2004-41, page 90.

Section 5891.—Structured Settlement Factoring Transactions

26 CFR 157.5891–1: Imposition of excise tax on structured settlement factoring transactions.

T.D. 9134

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 157and 602

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the manner and method of reporting and paying the nondeductible 40 percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The regulations provide the guidance necessary to comply with the reporting requirements of the excise tax.

DATES: *Effective Date*: These regulations are effective July 8, 2004.

Applicability Dates: For dates of applicability, see §157.5891–1(e).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax and Accounting) at 202–622–4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1824. The collections of information in these final regulations are in §§157.6001–1, 157.6011–1, 157.6081–1, and 157.6161–1. This information is required by the IRS to verify that the excise tax imposed under section 5891 is properly reported on Form 8876 and timely paid. This information will be used for that purpose.

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

The burden is reflected in the burden estimate on Form 8876. Suggestions for reducing the burden of the collection of information in these regulations should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books 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.

Background

This document contains final regulations that replace the temporary regulations in 26 CFR part 157. The regulations provide guidance on the proper manner and method of reporting and paying the 40 percent excise tax imposed under section 5891. The regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107–134, (115 Stat. 2427, 2436–2439). On February 19, 2003, temporary regulations (T.D. 9042, 2003–1 C.B. 564) adding a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations were published in the **Federal Register** (68 FR 7922). A notice of proposed rulemaking (REG–139768–02, 2003–1 C.B. 583) cross-referencing the temporary regulations was also published in the **Federal Register** (68 FR 7956). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received in which the writer commended the issuance of the temporary and proposed regulations and urged that they be finalized without change. The proposed regulations are adopted by this Treasury decision without any substantive changes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5), does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the expectation that the excise tax imposed by section 5891 will apply to few structured settlement factoring transactions. 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 Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, title 26 CFR parts 157 and 602 are amended as follows:

Paragraph 1. Part 157 is revised to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A — Tax on Structured Settlement Factoring Transactions

Sec.

157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

Subpart B — Procedure and Administration

157.6001–1 Records, statements, and special returns.

157.6011–1 General requirement of return, statement, or list.

157.6061–1 Signing of returns and other documents.

157.6065–1 Verification of returns.

157.6071–1 Time for filing returns.

157.6081–1 Extension of time for filing the return.

157.6091–1 Place for filing returns.

157.6151–1 Time and place for paying of tax shown on returns.

157.6161–1 Extension of time for paying tax.

157.6165–1 Bonds where time to pay tax has been extended.

Authority: 26 U.S.C. 7805.

Section 157.6001–1 also issued under 26 U.S.C. 6001.

Section 157.6011–1 also issued under 26 U.S.C. 6011.

Section 157.6061–1 also issued under 26 U.S.C. 6061.

Section 157.6071–1 also issued under 26 U.S.C. 6071.

Section 157.6091–1 also issued under 26 U.S.C. 6091.

Section 157.6161–1 also issued under 26 U.S.C. 6161.

Subpart A — Tax on Structured Settlement Factoring Transactions

§157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transaction.

(b) *Exceptions for certain approved transactions*—(1) *In general.* The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions*—(1) *Applicable state statute* means—

(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that—

(A) Is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business; and

(B) Provides for the entry of such an order, judgment, or decree.

(2) *Applicable state court* means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) *Factoring discount* means an amount equal to the excess of—

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) *Qualified order* means a final order, judgment, or decree that—

(i) Finds that the transfer of structured settlement payment rights does not contravene any Federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement—

(i) that is established by—

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are—

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than—

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general*. If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax*. The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates*. This section applies to structured settlement factoring transactions entered into on or after July 8, 2004. For structured settlement factoring transactions entered into before July 8, 2004, see §157.5891–1T of this chapter (2003–1 C.B. 564. See §601.601(d)(2) of this chapter.), as it appeared in the April 1, 2003, edition of 26 CFR part 157.

Subpart B — Procedure and Administration

§157.6001–1 Records, statements, and special returns.

(a) *In general*. Any person subject to tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55.

(b) *Notice by the IRS requiring returns, statements, or the keeping of records*. The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records*. The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§157.6011–1 General requirement of return, statement, or list.

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

§157.6061–1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code or the regulations under chapter 55 must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be *prima facie* evidence that the individual is authorized to sign the return, statement, or other document.

§157.6065–1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 55 (Structured Settlement Factoring Transactions) or of subtitle F of the Internal Revenue Code, or the regulations under those provisions with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 55 or subtitle F, or the regulations under those provisions, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that it is made under the penalties of perjury.

§157.6071–1 Time for filing returns.

(a) *In general*. Except as provided in paragraph (b) of this section, returns required by §157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003*. Returns required by §157.6011–1 that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

§157.6081–1 Extension of time for filing the return.

(a) *Application for extension*. An application for an extension of time for filing the return required by §157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return*. If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

§157.6091–1 Place for filing returns.

The return required by §157.6011–1 (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

§157.6151–1 Time and place for paying of tax shown on returns.

The tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the Internal Revenue Service. For provisions relating to the time and place for filing such return, see §157.6071–1 and §157.6091–1. For provisions relating to the extension of time for paying the tax, see §157.6161–1.

§157.6161–1 Extension of time for paying tax.

(a) *In general*—(1) *Tax shown or required to be shown on return*. The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code and shown or required to be shown on any return. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished*. The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply*. The provisions of §1.6161–1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 55 of the Code.

§157.6165–1 Bonds where time to pay tax has been extended.

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 contained in part 301 (Regulations on Procedure and Administration) of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 2. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 3. In §602.101, paragraph (b) is amended by removing the entries for "157.6001–1T," "157.6011–1T," "157.6081–1T," and "157.6161–1T" and adding entries in numerical order to the table to read, in part, as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
157.6001–1 . . .	1545–1824
157.6011–1 . . .	1545–1824
157.6081–1 . . .	1545–1824
157.6161–1 . . .	1545–1824
* * * * *	

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

Approved June 23, 2004.

Gregory Jenner,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 7, 2004, 8:45 a. m., and published in the issue of the Federal Register for July 8, 2004, 69 F.R. 41192)

Section 6402.—Authority to Make Credits or Refunds

26 CFR 301.6402–1: Authority to make credits or refunds.

Offsets under section 6402; Arizona and Wisconsin law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Arizona or Wisconsin. Arizona and Wisconsin are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–71

ISSUE

What amount of an overpayment reported on a joint return may the Internal Revenue Service apply against one spouse's separate tax liability if the spouses are domiciled in Arizona or Wisconsin?

This ruling addresses how offsets apply for taxpayers filing joint returns and domiciled in Arizona or Wisconsin. Because these states have similar community property laws, Arizona and Wisconsin are addressed in one ruling. This ruling makes assumptions about the operation of state community property laws which are highly dependent on facts and circumstances. Therefore, taxpayers are cautioned to check current state law and apply it to their particular facts. Taxpayers domiciled in California, Idaho, or Louisiana should refer to Rev. Rul. 2004–72; taxpayers domiciled in Nevada, New Mexico or Washington should refer to Rev. Rul. 2004–73; and taxpayers domiciled in Texas should refer to Rev. Rul. 2004–74.

FACTS

Situation 1, Arizona. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Arizona at all relevant times. The tax liability incurred by Liable Spouse for Year 1 is a separate debt under Arizona law. Applying Rev. Rul. 80–7, 1980–1 C.B. 296, the Service determines that $750 of the overpayment is attributable to income taxes withheld from Liable Spouse's wages, and $250 of the overpayment is attributable to income taxes withheld from Non-Liable Spouse's wages.

Arizona law provides that community property is all property acquired during marriage, except for property acquired by a spouse by gift, devise, or descent. *See* Ariz. Rev. Stat. section 25–211 (2003). There is a rebuttable presumption under Arizona law that all property acquired during marriage is community property. *See Mitchell v. Mitchell*, 732 P.2d 208, 212 (Ariz. 1987) (en banc). Arizona law defines separate property as property owned by a spouse before marriage and property acquired during marriage by a spouse by gift, devise, or descent. *See* Ariz. Rev. Stat. section 25–213 (2003). In addition, separate property includes any profits or income derived from separate property during marriage. *See* Ariz. Rev. Stat. section 25–213 (2003).

Arizona law provides that a creditor may reach all of the liable spouse's separate property and all of the community property to satisfy a community debt. *See* Ariz. Rev. Stat. section 25–215(D) (2003). In addition, a creditor may reach all community property that would have been the liable spouse's separate property but for marriage and all of the liable spouse's separate property to satisfy a separate debt. *See* Ariz. Rev. Stat. section 25–215(B) (2003). Further, the Service may reach the liable spouse's interest in any community property that would have been the non-liable spouse's separate property but for marriage to satisfy a separate debt of the liable spouse. *In re Ackerman*, 424 F.2d 1148 (9th Cir. 1970). However, a creditor may not reach any of the non-liable spouse's separate property to satisfy the liable spouse's separate debt. *See* Ariz. Rev. Stat. section 25–215(A) (2003).

Under Arizona law, community debts are debts incurred during marriage for the benefit of the community. *See* Ariz. Rev. Stat. section 25–215(D) (2003); *Johnson v. Johnson*, 638 P.2d 705, 711–712 (Ariz. 1981). Arizona law presumes that a debt incurred by a spouse during marriage is a community debt. *See In re Marriage of Hrudka*, 919 P.2d 179, 186–187 (Ariz. Ct. App. 1995). If a debt is not a community debt, then it is a separate debt. *See id.* at 187.

Situation 2, Wisconsin. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Wisconsin at all relevant times. The tax liability incurred by Liable Spouse for Year 1 is a liability incurred before marriage that is attributable to action or inaction before marriage under Wisconsin law. Applying Rev. Rul. 80–7, 1980–1 C.B. 296, the Service determines that $750 of the overpayment is attributable to income taxes withheld from Liable Spouse's wages, and $250 of the overpayment is attributable to income taxes withheld from Non-Liable Spouse's wages.

Wisconsin law classifies property owned by a spouse as either marital property or individual property. *See* Wis. Stat. section 766.31 (2002). Marital property is a form of community property, and each spouse has a 50 percent interest in the marital property. *See* Wis. Stat. section 766.31(3) (2002); Rev. Rul. 87–13, 1987–1 C.B. 20. Marital property includes all property that is not individual property and that was acquired after the determination date. *See* Wis. Stat. section 766.31 (2002). The determination date is the latest of either: (1) the date of marriage; (2) the date both spouses are domiciled in Wisconsin; or (3) January 1, 1986. *See* Wis. Stat. section 766.01(5) (2002). Wisconsin law presumes that all property owned by a spouse is marital property. *See* Wis. Stat. section 766.31(2) (2002). This presumption may be rebutted. *See Lloyd v. Lloyd*, 487 N.W.2d 647, 652 (Wis. Ct. App. 1992).

Wisconsin law defines individual property as property owned by a spouse before the determination date. *See* Wis. Stat. section 766.31(9) (2002). In addition, individual property includes property acquired during marriage and after the determination date if the property is: (1) received by gift, bequest, or devise to one spouse; (2) income paid to one spouse from a trust, unless the trust provides otherwise; (3) received in exchange for or obtained with the proceeds of other individual property; (4) designated as individual property by decree, marital property agreement, or reclassification pursuant to Wis. Stat. section 766.31(10); or (5) recovered for personal injury. *See* Wis. Stat. section 766.31(7) (2002).

Wisconsin law classifies debts incurred by a spouse into three separate categories: (1) debts incurred before or during marriage that are attributable to action or inaction before marriage; (2) debts incurred during marriage for the benefit of the marriage or family; and (3) debts incurred during marriage that are not for the benefit of marriage or family. *See* Wis. Stat. section 766.55 (2002). Wisconsin law presumes that a debt incurred during marriage is for the benefit of the marriage or the family. *See* Wis. Stat. section 766.55(1) (2002). If a spouse before marriage or during marriage incurs a debt that is attributable to action or inaction before marriage, Wisconsin law allows that spouse's creditor to reach all marital property that would have been that spouse's individual property but for the marriage and all individual property of that spouse. *See* Wis. Stat. section 766.55(2)(c)(1) (2002). Further, Wisconsin law allows the Service to reach the liable spouse's interest in any marital property that would have been the non-liable spouse's individual property but for marriage. *Vorhies v. Z. Management*, Civil No. 86-C695-S (W.D. Wis. 1987). If a spouse incurs a debt for the benefit of the marriage or the family, Wisconsin law allows a creditor to reach all marital property and all individual property of that spouse. *See* Wis. Stat. section 766.55(2)(b) (2002); *Sokaogon Gaming Ent. v. Curda-Derickson*, 668 N.W.2d 736 (Wis. Ct. App. 2003). If a debt incurred by a spouse was not for the benefit of the marriage or the family, Wisconsin law allows a creditor to reach that spouse's individual property and interest in marital property. *See* Wis. Stat. section 766.55(2)(d) (2002).

Situation 3, Wisconsin. Liable Spouse and Non-Liable Spouse are domiciled in Wisconsin at all relevant times. In Year 1, Liable Spouse and Non-Liable spouse are single and have no outstanding tax liabilities. In Year 2, Liable Spouse and Non-Liable Spouse marry. For Year 2, Liable Spouse incurs a tax liability, that, under Wisconsin law, is a liability incurred during marriage but is not for the benefit of marriage or family. Non-Liable Spouse is not liable for this tax liability under Wisconsin law.

In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment resulted from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Applying Rev. Rul. 80–7, the Service determines that $750 of the overpayment is attributable to income taxes withheld from Liable Spouse's wages, and $250 of the overpayment is attributable to income taxes withheld from Non-Liable Spouse's wages. Wisconsin community property laws are the same as in *Situation 2*.

Situation 4, Wisconsin. Same as *Situation 3*, except that under Wisconsin law, Liable Spouse's Year 2 tax liability is a liability for the benefit of marriage or family.

LAW

Section 6402(a) of the Internal Revenue Code provides that, in the case of any overpayment, the Service may credit the amount of the overpayment, including interest, against any internal revenue tax liability on the part of the person who made the overpayment and shall refund the balance to the person.

Revenue Ruling 74–611, 1974–2 C.B. 399, holds that if a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. However, filing a joint return does not create a new property interest for the husband or the wife. *Id*.

Revenue Ruling 80–7, 1980–1 C.B. 296, holds that if a husband and wife file a joint return showing an overpayment, the Service may credit one spouse's interest in the overpayment against that spouse's separate tax liability. The amount of the spouse's interest in the overpayment is calculated by subtracting the spouse's share of the joint tax liability, determined under a separate tax formula, from the spouse's contribution towards the joint tax liability. Under the separate tax formula, a spouse's share of the joint tax liability is calculated as follows:

$$\frac{\text{Spouse's Separate Tax}}{\text{Total of Both Spouses' Separate Tax}} \times \text{Joint Tax Liability Reported on Return}$$

Revenue Ruling 85–70, 1985–1 C.B. 361, provides a two-step process to determine the amount of a joint overpayment that the Service may offset against one spouse's separate tax liability if the spouses are domiciled in a community property state. First, if the joint overpayment is from wages that are community property income, then each spouse is considered to be the recipient of one-half of the aggregated wages regardless of whether the spouses may have earned different amounts of wages (the one-half rule). Accordingly, each spouse has a one-half interest in the overpayment, and the Service may offset the liable spouse's one-half interest in the overpayment against the liable spouse's separate federal tax liability regardless of whether state law provides that creditors may reach community property to satisfy the separate debts of a spouse. *Id*. Rev. Rul. 85–70 does not specifically address what portion of each spouse's actual wages is treated as having been offset as a result of applying the one-half rule. Under the facts of Rev. Rul. 85–70, and specifically the assumed state laws, that analysis was not necessary. However, applying the second step of Rev. Rul. 85–70 in other cases may require a determination of the amount of each spouse's actual wages that were offset after applying the one-half rule. For that purpose, each spouse under the first step of Rev. Rul. 85–70 is treated as receiving one half of the wages from each community property source (or, collectively, one-half of the aggregated wages) and as such being entitled to receive one-half of the income tax withheld from each community property source.

Second, Rev. Rul. 85–70 provides that state law may enable the Service to offset an additional portion of the joint overpayment from community property sources to satisfy a spouse's separate federal tax liability. This additional right of offset is available if state law provides that creditors may reach community property to satisfy the separate debts of a spouse. (The amount potentially available to be offset under the second step of Rev. Rul. 85–70 is the amount remaining after application of the first step of that revenue ruling.) However, if state law provides that community property may not be reached to satisfy the premarital or other separate debts of either spouse, then the Service may not offset any portion of the non-liable spouse's share of the overpayment from community property sources against the liable spouse's separate tax liability. *Id*.

Five-step process to determine amount of joint overpayment that the Service may offset against separate federal tax liability of one spouse.

A five-step process is required to determine the amount of a joint overpayment that the Service may, pursuant to section 6402(a), offset against the separate federal tax liability of one spouse.

The first step is to identify the underlying source of the overpayment. The Service looks to the tax payments made by the spouses, including income tax withholding and estimated tax payments and other credits, such as the earned income tax credit, that gave rise to the overpayment. If the earned income tax credit is a source of the overpayment, *see* Rev. Rul. 87–52, 1987–1 C.B. 347, for guidance.

The second step is to characterize the underlying source of the overpayment as either separate or community property. Because an overpayment will be characterized in the same manner as the source of the overpayment, an overpayment will be characterized as community property, separate property, or as part community property and part separate property, depending on the character of the source of the overpayment. If the overpayment is part community property and part separate property, the portion of the overpayment attributable to a separate property source must be subtracted from the remainder of the overpayment. The portion of the overpayment attributable to a separate property source is calculated as follows:

$$\frac{\text{Tax Payment From a Separate Property Source}}{\text{Total Tax Payments}} \times \text{Overpayment}$$

The third step is to offset the liable spouse's share of the overpayment from a community property source against the liable spouse's separate tax liability. Under Rev. Rul. 85–70, the Service may offset the liable spouse's 50-percent interest in the overpayment from a community property source to satisfy the liable spouse's separate tax liability.

The fourth step is to determine whether, under state law, the Service may reach the non-liable spouse's share of the overpayment from a community property source. *See* Rev. Rul. 85–70.

The fifth step is to determine whether the Service may, under state law, reach a portion of the overpayment from a separate property source of the liable spouse or the non-liable spouse.

ANALYSIS

Apply the five-step process to each situation.

(1) *Step 1*.

In *Situation 1*, *Situation 2*, *Situation 3*, and *Situation 4*, the overpayment is from income taxes withheld in Year 3 from Liable Spouse's and Non-Liable Spouse's wages.

(2) *Step 2*.

Arizona and Wisconsin law presume that all property acquired during marriage by either spouse or both spouses, including wages, is community property. In *Situation 1*, *Situation 2*, *Situation 3*, and *Situation 4*, the overpayment results from income tax withholding from Liable Spouse's and Non-Liable Spouse's wages. Because state law presumes that wages are community property, the entire overpayment in *Situation 1*, *Situation 2*, *Situation*

3, and *Situation 4* is assumed to be from a community property source.

(3) *Step 3*.

Under Arizona and Wisconsin law, each spouse has a present and equal interest in all community property. In *Situation 1*, *Situation 2*, *Situation 3*, and *Situation 4*, $750 of the overpayment is from income tax withholding from Liable Spouse's wages, and $250 of the overpayment is from income tax withholding from Non-Liable Spouse's Year 3 wages. Applying Rev. Rul. 85–70, the Service may offset $375 of the income tax withholding attributable to Liable Spouse's wages and $125 of the income tax withholding attributable to Non-Liable Spouse's wages. Therefore, in *Situation 1*, *Situation 2*, *Situation 3*, and *Situation 4*, the Service may offset $500 of the overpayment against Liable Spouse's separate tax liability.

(4) *Step 4*.

Under Arizona and Wisconsin law, the amount of community property that a creditor may reach depends on the character of the debt.

In *Situation 1*, Liable Spouse's Year 1 tax liability is a separate debt under Arizona law. To satisfy a separate debt, Arizona law provides that a creditor may reach all community property that would have been Liable Spouse's separate property but for marriage. Under Arizona law, Liable Spouse's wages and income tax withholdings would have been Liable Spouse's separate property had Liable Spouse and Non-Liable Spouse not married. Therefore, a creditor may reach all of Liable Spouse's wages and income tax withholdings to satisfy Liable Spouse's separate debt. Applying Arizona law in Step 4, and in addition to the amount offset in Step 3, the Service may offset the remaining $375 of the overpayment that is attributable to Liable Spouse's wages and income tax withholdings.

In *Situation 2*, Liable Spouse's Year 1 federal tax liability is a liability incurred before marriage that is attributable to action or inaction before marriage under Wisconsin law. In this situation, Wisconsin law provides that a creditor may reach all marital property that would have been Liable Spouse's individual property but for marriage. Under Wisconsin law, Liable Spouse's wages and income tax withholding would have been Liable Spouse's separate property had Liable Spouse and Non-Liable Spouse not married. Therefore, a creditor may reach all of Liable Spouse's wages and income tax withholding to satisfy Liable Spouse's Year 1 tax liability. Applying Wisconsin law in Step 4, and in addition to the amount offset in Step 3, the Service may offset the remaining $375 of the overpayment that is attributable to Liable Spouse's wages and income tax withholdings.

In *Situation 3*, Liable Spouse's Year 2 tax liability is a liability that was incurred during marriage but was not for the benefit of the marriage or the family under Wisconsin law. In this situation, Wisconsin law provides that a creditor may reach Liable Spouse's interest in marital property. However, because the debt was not for the benefit of the marriage or family, applying Wisconsin law in this Step 4, the Service may reach only Liable Spouse's individual property and interest in marital property, and therefore may not offset any amount of the overpayment in addition to the amount offset in Step 3, from a community property source. Accordingly, the additional amount the Service may offset under Step 4 is zero.

In *Situation 4*, Liable Spouse's Year 2 tax liability is a liability that was incurred during marriage and was for the benefit of the marriage or the family under Wisconsin law. In this situation, Wisconsin law provides that a creditor may reach all marital property. Accordingly, the Service may offset the remaining $500 of the overpayment against Liable Spouse's Year 2 tax liability.

(5) *Step 5*.

Under both Arizona and Wisconsin law, a creditor may reach 100 percent of Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. A creditor may not, however, reach any of Non-Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. In *Situation 1*, *Situation 2*, *Situation 3*, and *Situation 4*, no part of the overpayment is from a separate property source. Accordingly, there is no separate property that the Service may offset against the Liable Spouse's separate tax liability.

HOLDING

Situation 1. The Service may offset $875 of the overpayment against Liable Spouse's separate Year 1 tax liability.

Situation 2. The Service may offset $875 of the overpayment against Liable Spouse's separate Year 1 tax liability.

Situation 3. The Service may offset $500 of the overpayment against Liable Spouse's separate Year 2 tax liability.

Situation 4. The Service may offset $1,000 of the overpayment against Liable Spouse's separate Year 2 tax liability.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 80–7 and Rev. Rul. 85–70 are amplified and clarified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael A. Skeen of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Michael A. Skeen at (202) 622–4910 (not a toll-free call).

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26 CFR 301.6402–1: Authority to make credits or refunds.

Offsets under section 6402; California, Idaho, and Louisiana law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in California, Idaho, or Louisiana. California, Idaho, and Louisiana are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–72

ISSUE

What amount of an overpayment reported on a joint return may the Internal Revenue Service apply against one spouse's separate tax liability if the spouses are domiciled in California, Idaho, or Louisiana?

This ruling addresses how offsets apply for taxpayers filing joint returns and domiciled in California, Idaho, or Louisiana. Because these states have similar community property laws, California, Idaho, and Louisiana are addressed in one ruling. This ruling makes assumptions about the operation of state community property laws which are highly dependent on facts and circumstances. Therefore, taxpayers are cautioned to check current state law and apply it to their particular facts. Taxpayers domiciled in Arizona or Wisconsin should refer to Rev. Rul. 2004–71; taxpayers domiciled in Nevada, New Mexico or Washington should refer to Rev. Rul. 2004–73; and taxpayers domiciled in Texas should refer to Rev. Rul. 2004–74.

FACTS

Situation 1, California. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in California at all relevant times.

Except as otherwise provided by statute, California law provides that all property, either real or personal, that is acquired during marriage is community property, and each spouse has a 50 percent interest in the community property. *See* Cal. Fam. Code sections 760, 751 (2003). There is a rebuttable presumption under California law that all property acquired by a spouse during marriage is community property. *See In re Marriage of Haines*, 39 Cal. Rptr. 2d 673, 681 (1995).

California law defines separate property as all property owned by a spouse prior to marriage, and all property acquired by a spouse by gift, bequest, devise, or descent. *See* Cal. Fam. Code section 770(a)(1), (a)(2) (2003). In addition, California law provides that all rents, issues, and profits from separate property are separate property. *See* Cal. Fam. Code section 770(a)(3) (2003).

California law provides that a creditor may reach all of the community property to satisfy a debt incurred by a spouse before or during marriage. *See* Cal. Fam. Code section 910(a) (2003). A creditor may also reach all of the liable spouse's separate property to satisfy a debt incurred by the liable spouse; however, a creditor may not reach any of the non-liable spouse's separate property. *See* Cal. Fam. Code section 913 (2003).

Situation 2, Idaho. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Idaho at all relevant times.

Idaho law defines separate property as all property owned by a spouse before marriage, and all property acquired by a spouse during marriage by gift, bequest, devise or descent, or property acquired with the proceeds of his or her separate property. *See* Idaho Code section 32–903 (2003). Idaho law defines community property as all other property acquired by either spouse during marriage. *See* Idaho Code section 32–906(1) (2003). Idaho law provides a rebuttable presumption that property acquired during marriage is community property, and the burden of proof is on the party asserting that the property is separate property. *See Worzala v. Worzala*, 913 P.2d 1178, 1182 (Idaho 1996).

Idaho law provides that income generated during marriage from any property, regardless of whether the property is separate or community property, is generally community property, unless: (1) the conveyance by which the property is acquired specifically identifies this property as the separate property of one spouse; or (2) both spouses agree in writing that the property, and any income related to this property, is the separate property of one spouse. *See* Idaho Code section 32–906(1) (2003).

Idaho law provides that a creditor may reach all of the community property; both real and personal, to satisfy a spouse's separate debt. *Bliss v. Bliss*, 898 P.2d 1081, 1084 (Idaho 1995). If the husband incurs a debt, a creditor may not reach the wife's separate property to satisfy this debt. *See* Idaho Code section 32–911 (2003). Further, if the wife incurs a debt before marriage, a creditor may not reach the husband's separate property to satisfy this debt. *See* Idaho Code section 32–910 (2003).

Situation 3, Louisiana. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Louisiana at all relevant times, and Liable Spouse's tax liability is a separate obligation as defined by Louisiana law.

Louisiana law defines separate property as including property acquired by a spouse prior to marriage, property acquired with that spouse's separate property, property acquired by a spouse through inheritance or donation to that spouse individually, damages awarded to a spouse in connection with the management of that spouse's separate property, and property acquired by a spouse from a voluntary partition of the community during marriage. *See* La. Civ. Code Ann. art. 2341 (2003). Louisiana law defines community property as property acquired by a spouse during marriage that is not separate property. *See* La. Civ. Code Ann. art. 2338 (2003). Louisiana law provides a rebuttable presumption that all property in the possession of either spouse is community property. *See* La. Civ. Code Ann. art. 2340 (2003). Each spouse has a 50 percent interest in community property. *See* La. Civ. Code Ann. art. 2336 (2003).

Louisiana law provides that a creditor may reach all of the community property to satisfy separate and community obligations. *See* La. Civ. Code Ann. art. 2345 (2003). In addition, a creditor may reach all of the liable spouse's separate property to satisfy separate and community obligations. *See Id*.

Under Louisiana law, obligations incurred by a spouse are either community obligations or separate obligations. *See* La. Civ. Code Ann. art. 2359 (2003). A community obligation is defined as an obligation incurred during marriage for either the common interest of both spouses or for the interest of the other spouse. *See*

La. Civ. Code Ann. art. 2360 (2003). A separate obligation is defined as an obligation that was incurred before marriage, after marriage has terminated, or during marriage, though not for the benefit of the community. *See* La. Civ. Code Ann. art. 2363 (2003). Louisiana law provides a rebuttable presumption that all obligations incurred during marriage are community obligations. *See* La. Civ. Code Ann. art. 2361 (2003).

LAW

Section 6402(a) of the Internal Revenue Code provides that, in the case of any overpayment, the Service may credit the amount of the overpayment, including interest, against any internal revenue tax liability on the part of the person who made the overpayment and shall refund the balance to the person.

Revenue Ruling 74–611, 1974–2 C.B. 399, holds that if a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. However, filing a joint return does not create a new property interest for the husband or the wife. *Id*.

Revenue Ruling 80–7, 1980–1 C.B. 296, holds that if a husband and wife file a joint return showing an overpayment, the Service may credit one spouse's interest in the overpayment against that spouse's separate tax liability. The amount of the spouse's interest in the overpayment is calculated by subtracting the spouse's share of the joint tax liability, determined under a separate tax formula, from the spouse's contribution towards the joint tax liability. Under the separate tax formula, a spouse's share of the joint tax liability is calculated as follows:

$$\frac{\text{Spouse's Separate Tax}}{\text{Total of Both Spouses' Separate Tax}} \times \text{Joint Tax Liability Reported on Return}$$

Revenue Ruling 85–70, 1985–1 C.B. 361, provides a two-step process to determine the amount of a joint overpayment that the Service may offset against one spouse's separate tax liability if the spouses are domiciled in a community property state. First, if the joint overpayment is from wages that are community property income, then each spouse is considered to be the recipient of one-half of the aggregated wages regardless of whether the spouses may have earned different amounts of wages (the one-half rule). Accordingly, each spouse has a one-half interest in the overpayment, and the Service may offset the liable spouse's one-half interest in the overpayment against the liable spouse's separate federal tax liability regardless of whether state law provides that creditors may reach community property to satisfy the separate debts of a spouse. *Id*. Rev. Rul. 85–70 does not specifically address what portion of each spouse's actual wages is treated as having been offset as a result of applying the one-half rule. Under the facts of Rev. Rul. 85–70, and specifically the assumed state laws, that analysis was not necessary. However, applying the second step of Rev. Rul. 85–70 in other cases may require a determination of the amount of each spouse's actual wages that were offset after applying the one-half rule. For that purpose, each spouse under the first step of Rev. Rul. 85–70 is treated as receiving one half of the wages from each community property source (or, collectively, one-half of the aggregated wages) and as such being entitled to receive one-half of the income tax withheld from each community property source.

Second, Rev. Rul. 85–70 provides that state law may enable the Service to offset an additional portion of the joint overpayment from community property sources to satisfy a spouse's separate federal tax liability. This additional right of offset is available if state law provides that creditors may reach community property to satisfy the separate debts of a spouse. (The amount potentially available to be offset under the second step of Rev. Rul. 85–70 is the amount remaining after application of the first step of that revenue ruling.) However, if state law provides that community property may not be reached to satisfy the premarital or other separate debts of either spouse, then the Service may not offset any portion of the non-liable spouse's share of the overpayment from community property sources against the liable spouse's separate tax liability. *Id*.

Five-step process to determine amount of joint overpayment that the Service may offset against separate federal tax liability of one spouse.

A five-step process is required to determine the amount of a joint overpayment that the Service may, pursuant to section 6402(a), offset against the separate federal tax liability of one spouse.

The first step is to identify the underlying source of the overpayment. The Service looks to the tax payments made by the spouses, including income tax withholding and estimated tax payments and other credits, such as the earned income tax credit, that gave rise to the overpayment. If the earned income tax credit is a source of the overpayment, *see* Rev. Rul. 87–52, 1987–1 C.B. 347, for guidance.

The second step is to characterize the underlying source of the overpayment as either separate or community property. Because an overpayment will be characterized in the same manner as the source of the overpayment, an overpayment will be characterized as community property, separate property, or as part community property and part separate property, depending on the character of the source of the overpayment. If the overpayment is part community property and part separate property, the portion of the overpayment attributable to a separate property source must be subtracted from the remainder of the overpayment. The portion of the overpayment attributable to a separate property source is calculated as follows:

$$\frac{\text{Tax Payment From a Separate Property Source}}{\text{Total Tax Payments}} \quad \text{x} \quad \text{Overpayment}$$

The third step is to offset the liable spouse's share of the joint overpayment from a community property source against the liable spouse's separate tax liability. Under Rev. Rul. 85–70, the Service may offset the liable spouse's 50-percent interest in the overpayment from a community property source to satisfy the liable spouse's separate tax liability.

The fourth step is to determine whether, under state law, the Service may reach the non-liable spouse's share of the overpayment from a community property source. *See* Rev. Rul. 85–70.

The fifth step is to determine whether the Service may, under state law, reach a portion of the overpayment from a separate property source of the liable spouse or the non-liable spouse.

ANALYSIS

Apply the five-step process to each situation.

(1) *Step 1.*

In *Situation 1*, *Situation 2*, and *Situation 3*, the overpayment is from income taxes withheld in Year 3 from Liable Spouse's and Non-Liable Spouse's wages.

(2) *Step 2.*

California, Idaho, and Louisiana law presume that all property acquired during marriage by either spouse or both spouses, including wages, is community property. In *Situation 1*, *Situation 2*, and *Situation 3*, the overpayment results from income tax withholding from Liable Spouse's and Non-Liable Spouse's wages. Because state law presumes that wages are community property, the entire overpayment in *Situation 1*, *Situation 2*, and *Situation 3* is assumed to be from a community property source.

(3) *Step 3.*

Under California, Idaho, and Louisiana law, each spouse has a present and equal interest in all community property. In *Situation 1*, *Situation 2*, and *Situation 3*, the Service may offset Liable Spouse's $500 share of the overpayment, which is from a community property source against Liable Spouse's separate tax liability.

(4) *Step 4.*

In *Situation 1* and *Situation 2*, under California and Idaho law respectively, a creditor may reach all of the community property to satisfy a debt incurred by Liable Spouse, regardless of whether the debt was incurred before or after marriage. In *Situation 3*, under Louisiana law, a creditor may reach all of the community property to satisfy a debt, regardless of whether the debt is a separate or community debt. Accordingly, in *Situation 1*, *Situation 2*, and *Situation 3*, the Service may offset the remaining $500 of the overpayment.

(5) *Step 5.*

Under California, Idaho, and Louisiana law, a creditor may reach all of Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. A creditor may not, however, reach any of Non-Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. In *Situation 1*, *Situation 2*, and *Situation 3*, no part of the overpayment is from a separate property source. Accordingly, there is no separate property that the Service may offset against the Liable Spouse's separate tax liability.

HOLDING

Situation 1. The Service may offset $1,000 of the overpayment against Liable Spouse's separate tax liability.

Situation 2. The Service may offset $1,000 of the overpayment against Liable Spouse's separate tax liability.

Situation 3. The Service may offset $1,000 of the overpayment against Liable Spouse's separate tax liability.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 80–7 and Rev. Rul. 85–70 are amplified and clarified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael A. Skeen of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Michael A. Skeen at (202) 622–4910 (not a toll-free call).

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26 CFR 301.6402–1: Authority to make credits or refunds.

Offsets under section 6402; Nevada, New Mexico, and Washington law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Nevada, New Mexico, and Washington. Nevada, New Mexico, and Washington are community property states and, under the respective state laws, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–73

ISSUE

What amount of an overpayment reported on a joint return may the Internal Revenue Service apply against one spouse's separate tax liability if the spouses are domiciled in Nevada, New Mexico, or Washington?

This ruling addresses how offsets apply for taxpayers filing joint returns and domiciled in Nevada, New Mexico, or Washington. Because these states have similar community property laws, Nevada, New Mexico, and Washington are addressed in one ruling. This ruling makes assumptions about the operation of state community property laws which are highly dependent on facts and circumstances. Therefore, taxpayers are cautioned to check current state law and apply it to their particular facts. Taxpayers domiciled in Arizona or Wisconsin should refer to Rev. Rul. 2004–71; taxpayers domiciled in California, Idaho, or Louisiana should refer to Rev. Rul. 2004–72; and taxpayers domiciled in Texas should refer to Rev. Rul. 2004–74.

FACTS

Situation 1, Nevada. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Nevada at all relevant times.

Nevada law presumes that property acquired during marriage by either husband, wife, or both, is community property, subject to limited exceptions. *See* Nev. Rev. Stat. section 123.220 (2003). This presumption may be rebutted. *Forrest v. Forrest*, 668 P.2d 275, 277 (Nev. 1983). Further, during marriage, each spouse has a 50 percent interest in the community property. *See* Nev. Rev. Stat. section 123.225 (2003). Generally, property owned by one spouse before marriage, or acquired during marriage by gift, bequest, devise, descent, or an award for personal damages, is separate property, and each spouse has a 100 percent interest in his or her separate property. *See* Nev. Rev. Stat. section 123.130 (2003).

Nevada law provides that a creditor may reach all of a liable spouse's separate property and all of the community property to satisfy the liable spouse's debts that arose during the marriage. *See Hardy v. United States*, Civil No. CV–N–94–0824 (D. Nev. 1997); *Nelson v. United States*, Civil No. CV–N–89–659 (D. Nev. 1993), *aff'd*, 53 F.3d 339 (9th Cir. 1995); *United States v. ITT Consumer Financial Corp*, 816 F.2d 487, n. 12 (9th Cir. 1987). However, a creditor may not reach any of the non-liable spouse's separate property to satisfy the liable spouse's debt that arose during the marriage. *See Hardy v. United States*, Civil No. CV-N–94–0824 (D. Nev. 1997). In addition, Nevada law provides that a creditor may not reach the non-liable spouse's separate property or the non-liable spouse's share of the community property to satisfy the liable spouse's separate debts incurred or contracted prior to marriage. *See* Nev. Rev. Stat. section 123.050 (2003).

Situation 2, New Mexico. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in New Mexico at all relevant times, and Liable Spouse's tax liability is a separate debt as defined by New Mexico law.

New Mexico law provides that property acquired during marriage by the husband, wife, or both is presumed to be community property, and each spouse has a 50 percent interest in community property. *See* N.M. Stat. Ann. section 40–3–12(A)(2002); *Central Adjustment Bureau, Inc. v. Thevenet*, 686 P.2d 954, 957–958 (N.M. 1984). This presumption may be rebutted. *C & L Lumber and Supply, Inc. v. Texas American Bank/Galeria*, 795 P.2d 502, 505 (N.M. 1990). Generally, property owned by a spouse before marriage is separate property, and each spouse has a 100 percent interest in all of his or her separate property. *See* N.M. Stat. Ann. section 40–3–8 (2002).

New Mexico law provides that a creditor may reach all of the separate property of the spouse or spouses who contracted or incurred the debt, and all of the community property to satisfy a community debt. *See* N.M. Stat. Ann. section 40–3–11(A) (2002). However, a creditor may not reach any of one spouse's separate property to satisfy a community debt incurred by the other spouse. *See Id.* New Mexico law provides that a creditor may reach all of the liable spouse's separate property and all of the liable spouse's share of community property to satisfy a separate debt. *See* N.M. Stat. Ann. section 40–3–10(A) (2002). However, a creditor may not reach any of the non-liable spouse's separate property to satisfy the liable spouse's separate debt. *See Id.*

Under New Mexico law, a separate debt is defined as: (1) a debt contracted or incurred either before marriage or after entry of a decree of dissolution of marriage; (2) a debt contracted or incurred after a court has entered a decree pursuant to N.M. Stat. Ann. section 40–4–3 (proceeding for division of property, disposition of children or alimony without dissolution of marriage); (3) a debt designated by a court as a separate debt; (4) a debt contracted by a spouse during marriage which, at the time of creation, is identified to the creditor in writing as the separate debt of the contracting spouse; (5) a debt that arises from a tort committed either before marriage or after entry of a decree of dissolution of marriage; or (6) a debt declared unreasonable pursuant to N.M. Stat. Ann. section 40–3–10.1 (certain debts that did not contribute to the benefit of both spouses or their dependents). *See* N.M. Stat. Ann. section 40–3–9(A)(1) through (6) (2002). Community debt is defined as a debt, which is not a separate debt, contracted or incurred by one or both spouses during the marriage. *See* N.M. Stat. Ann. section 40–3–9(B) (2002). New Mexico law presumes that a debt incurred during marriage is community debt. *See In re Fingado*, 113 B.R. 37, 42 (Bankr. D.N.M. 1990), *aff'd*, 995 F.2d 175 (10th Cir. 1993).

Situation 3, Washington. In Year 1, Liable Spouse, who is single, incurs a tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, reporting an overpayment of $1,000. The overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Washington state at all relevant times, and Liable Spouse's tax liability is a separate debt as defined by Washington state law.

Washington state law defines community property as any property acquired during marriage, by one or both spouses, that is not separate property. *See* Wash. Rev. Code section 26.16.030 (2003). There is a rebuttable presumption under Washington state law that all property acquired during marriage is community property. *See Dean v. Lehman*, 18 P.3d 523, 528 (Wash. 2001)(en banc). Each spouse has an undivided 50-percent interest in all community property. *See In re Towey's Estate,* 155 P.2d 273, 275 (Wash. 1945). Washington state law defines separate property as property owned by a spouse before marriage and property acquired during marriage by a spouse by gift, bequest, devise, or descent. *See* Wash. Rev. Code sections 26.16.010, 26.16.020 (2003). In addition, Washington state law defines as separate property any profits or income derived from separate property during marriage. *See* Wash. Rev. Code sections 26.16.010, 26.16.020 (2003).

Under Washington state law, a creditor may reach all of the community property, including the earnings of both spouses, to satisfy a community debt. *See Pacific Gamble Robinson Co. v. Lapp*, 622 P.2d 850, 854 (Wash. 1980). A creditor may reach all of a spouse's separate property to satisfy a community debt incurred by that spouse; however, a creditor of a community debt may not reach the other spouse's separate property. *See* Wash. Rev. Code sections 6.15.040, 26.16.010, 26.16.020 (2003). In general, under Washington state law, a creditor may not reach any of the community property to satisfy a separate debt. *See* Wash. Rev. Code section 26.16.200 (2003); *Pacific Gamble Robinson Co.*, 622 P.2d at 854. However, under *United States v. Overman*, 424 F.2d 1142 (9th Cir. 1970), the Service may reach the liable spouse's 50-percent interest in the community property to satisfy a separate tax liability of the liable spouse. *See also Draper v. United States*, 243 F. Supp. 563 (W.D. Wash. 1965).

Under Washington state law, a debt incurred during marriage, for the benefit of the community, is a community debt. *See In re Marriage of Hurd*, 848 P.2d 185, 195–196 (Wash. App. 1993). Washington state law presumes that a debt is a community debt. *See Pacific Gamble Robinson Co.*, 622 P.2d at 854. If a debt is not a community debt, then it is a separate debt. *See Id.*

LAW

Section 6402(a) of the Internal Revenue Code provides that, in the case of any overpayment, the Service may credit the amount of the overpayment, including interest, against any internal revenue tax liability on the part of the person who made the overpayment and shall refund the balance to the person.

Revenue Ruling 74–611, 1974–2 C.B. 399, holds that if a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. However, filing a joint return does not create a new property interest for the husband or the wife. *Id.*

Revenue Ruling 80–7, 1980–1 C.B. 296, holds that if a husband and wife file a joint return showing an overpayment, the Service may credit one spouse's interest in the overpayment against that spouse's separate tax liability. The amount of the spouse's interest in the overpayment is calculated by subtracting the spouse's share of the joint tax liability, determined under a separate tax formula, from the spouse's contribution towards the joint tax liability. Under the separate tax formula, a spouse's share of the joint tax liability is calculated as follows:

$$\frac{\text{Spouse's Separate Tax}}{\text{Total of Both Spouses' Separate Tax}} \times \text{Joint Tax Liability Reported on Return}$$

Revenue Ruling 85–70, 1985–1 C.B. 361, provides a two-step process to determine the amount of a joint overpayment that the Service may offset against one spouse's separate tax liability if the spouses are domiciled in a community property state. First, if the joint overpayment is from wages that are community property income, then each spouse is considered to be the recipient of one-half of the aggregated wages regardless of whether the spouses may have earned different amounts of wages (the one-half rule). Accordingly, each spouse has a one-half interest in the overpayment, and the Service may offset the liable spouse's one-half interest in the overpayment against the liable spouse's separate federal tax liability regardless of whether state law provides that creditors may reach community property to satisfy the separate debts of a spouse. *Id.* Rev. Rul. 85–70 does not specifically address what portion of each spouse's actual wages is treated as having been offset as a result of applying the one-half rule. Under the facts of Rev. Rul. 85–70, and specifically the assumed state laws, that analysis was not necessary. However, applying the second step of Rev. Rul. 85–70 in other cases may require a determination of the amount of each spouse's actual wages that were offset after applying the one-half rule. For that purpose, each spouse under the first step of Rev. Rul. 85–70 is treated as receiving one half of the wages from each community property source (or, collectively, one-half of the aggregated wages) and as such being entitled to receive one-half of the income tax withheld from each community property source.

Second, Rev. Rul. 85–70 provides that state law may enable the Service to offset an additional portion of the joint overpayment from community property sources to satisfy a spouse's separate federal tax liability. This additional right of offset is available if state law provides that creditors may reach community property to satisfy the separate debts of a spouse. (The amount potentially available to be offset under the second step of Rev. Rul. 85–70 is the amount remaining after application of the first step of that revenue ruling.) However, if state law provides that community property may not be reached to satisfy the premarital or other separate debts of either spouse, then the Service may not offset any portion of the non-liable spouse's share of the overpayment from community property sources against the liable spouse's separate tax liability. *Id.*

Five-step process to determine amount of joint overpayment that the Service may offset against separate federal tax liability of one spouse.

A five-step process is required to determine the amount of a joint overpayment that the Service may, pursuant to section 6402(a), offset against the separate federal tax liability of one spouse.

The first step is to identify the underlying source of the overpayment. The Service looks to the tax payments made by the spouses, including income tax withholding and estimated tax payments and other credits, such as the earned income tax credit, that gave rise to the overpayment. If the earned income tax credit is a source of the overpayment, *see* Rev. Rul. 87–52, 1987–1 C.B. 347, for guidance.

The second step is to characterize the underlying source of the overpayment as either separate or community property. Because an overpayment will be characterized in the same manner as the source of the overpayment, an overpayment will be characterized as community property, separate property, or as part community property and part separate property, depending on the character of the source of the overpayment. If the overpayment is part community property and part separate property, the portion of the overpayment attributable to a separate property source must be subtracted from the remainder of the overpayment. The portion of the overpayment attributable to a separate property source is calculated as follows:

$$\frac{\text{Tax Payment From a Separate Property Source}}{\text{Total Tax Payments}} \times \text{Overpayment}$$

The third step is to offset the liable spouse's share of the overpayment from a community property source against the liable spouse's separate tax liability. Under Rev. Rul. 85–70, the Service may offset the liable spouse's 50-percent interest in the overpayment from a community property source to satisfy the liable spouse's separate tax liability.

The fourth step is to determine whether, under state law, the Service may reach the non-liable spouse's share of the overpayment from a community property source. *See* Rev. Rul. 85–70.

The fifth step is to determine whether the Service may, under state law, reach a portion of the overpayment from a separate property source of the liable spouse or the non-liable spouse.

ANALYSIS

Apply the five-step process to each situation.

(1) *Step 1.*

In *Situation 1*, *Situation 2*, and *Situation 3*, the overpayment is from income taxes withheld in Year 3 from Liable Spouse's and Non-Liable Spouse's wages.

(2) *Step 2.*

Nevada, New Mexico, and Washington state law presume that all property acquired during marriage by either spouse or both spouses, including wages, is community property. In *Situation 1*, *Situation 2*, and *Situation 3*, the overpayment results from income tax withholding from Liable Spouse's and Non-Liable Spouse's wages. Because state law presumes that wages are community property, the entire overpayment in *Situation 1*, *Situation 2*, and *Situation 3* is assumed to be from a community property source.

(3) *Step 3.*

Under Nevada, New Mexico, and Washington state law, each spouse has a present and equal interest in all community property. In *Situation 1*, *Situation 2*, and *Situation 3*, the Service may offset Liable Spouse's $500 share of the overpayment against Liable Spouse's separate tax liability.

(4) *Step 4.*

Under Nevada, New Mexico, and Washington state law, the amount of community property that a creditor may reach depends on the character of the debt. In *Situation 1*, Liable Spouse's tax liability arose before marriage. Nevada law distinguishes between debts that arose before or during the marriage. For debts that arose before marriage, a creditor may not reach either Non-Liable Spouse's portion of community property or Non-Liable Spouse's separate property. Accordingly, the Service may not offset any portion of Non-Liable Spouse's share of the overpayment against Liable Spouse's tax liability.

In *Situation 2*, Liable Spouse's tax liability is a separate debt under New Mexico law. In Situation 3, Liable Spouse's tax liability is a separate debt under Washington state law. New Mexico and Washington state law distinguish between community debts and separate debts. For a community debt (*e.g.*, a tax liability of one spouse that arose during the marriage by filing separate returns), a creditor may reach Liable Spouse's and Non-Liable Spouse's share of community property to satisfy the Liable Spouse's separate tax liability. However, if the debt is a separate debt (*e.g.*, a tax liability of one spouse that arose before marriage), a creditor may reach Liable Spouse's share of community property, but a creditor may not reach Non-Liable Spouse's share of community property. Because Liable Spouse's tax liability is a separate debt in *Situation 2* and *Situation 3*, the Service may not offset any portion of Non-Liable Spouse's share of the overpayment against Liable Spouse's separate tax liability.

(5) *Step 5.*

Under Nevada, New Mexico, and Washington state law, a creditor may reach all of Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. A creditor may not, however, reach any of Non-Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. In *Situation 1*, *Situation 2*, and *Situation 3*, no part of the overpayment is from a separate property source. Accordingly, there is no separate property that the Service may offset against the Liable Spouse's separate tax liability.

HOLDING

Situation 1. The Service may offset $500 of the overpayment against Liable Spouse's separate tax liability.

Situation 2. The Service may offset $500 of the overpayment against Liable Spouse's separate tax liability.

Situation 3. The Service may offset $500 of the overpayment against Liable Spouse's separate tax liability.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 80–7 and Rev. Rul. 85–70 are amplified and clarified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael A. Skeen of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Michael A. Skeen at (202) 622–4910 (not a toll-free call).

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26 CFR 301.6402–1: Authority to make credits or refunds.

Offsets under section 6402; Texas law. This ruling provides guidance regarding the amount of an overpayment from a joint tax return that the IRS may offset against a spouse's separate tax liability for taxpayers domiciled in Texas. Texas is a community property state and, under the state law, each spouse has an undivided 50–percent interest in all community property. Rev. Ruls. 80–7 and 85–70 amplified and clarified.

Rev. Rul. 2004–74

ISSUE

What amount of an overpayment reported on a joint return may the Internal Revenue Service apply against one spouse's separate tax liability if the spouses are domiciled in Texas?

This ruling addresses how offsets apply for taxpayers filing joint returns and domiciled in Texas. This ruling makes assumptions about the operation of Texas community property laws which are highly dependent on facts and circumstances. Therefore, taxpayers are cautioned to check current state law and apply it to their particular facts. Taxpayers domiciled in Arizona or Wisconsin should refer to Rev. Rul. 2004–71; taxpayers domiciled in California, Idaho, or Louisiana should refer to Rev. Rul. 2004–72; and taxpayers domiciled in Nevada, New Mexico or Washington should refer to Rev. Rul. 2004–73.

FACTS

Situation 1. In Year 1, Liable Spouse, who is single, incurs a federal tax liability of $20,000. Liable Spouse does not pay this tax liability. In Year 2, Liable Spouse and Non-Liable Spouse marry. In Year 4, Liable Spouse and Non-Liable Spouse file a joint return for Year 3, claiming an overpayment of $1,000. This overpayment results from income taxes withheld from Liable Spouse's and Non-Liable Spouse's wages during Year 3. Liable Spouse and Non-Liable Spouse are domiciled in Texas at all relevant times.

Applying Rev. Rul. 80–7, 1980–1 C.B. 296, the Service determines that $750 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition, and $250 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition.

Texas law defines separate property as property owned by a spouse before marriage; property acquired by spouse during marriage by gift, devise or descent; and any damages recovered by a spouse for personal injuries that do not represent loss of earning capacity during marriage. *See* Tex. Fam. Code Ann. section 3.001 (2002). Texas law defines community property as property, other than separate property, acquired by either spouse during marriage. *See* Tex. Fam. Code Ann. section 3.002 (2002). Each spouse has a 50-percent interest in community property. *See Broday v. United States*, 455 F.2d 1097 (5th Cir. 1972). There is a rebuttable presumption under Texas law that all property acquired during marriage is community property. *See* Tex. Fam. Code Ann. section 3.003 (2002).

Texas law distinguishes between community property subject to the joint management, control, and disposition of both spouses, and community property subject to one spouse's sole management, control, and disposition. *See* Tex. Fam. Code Ann. section 3.102 (2002). A spouse has sole management, control, and disposition over community property that spouse would have owned if that spouse were single. *See* Tex. Fam. Code Ann. section 3.102(a) (2002). This community property includes personal earnings; revenue from separate property; damages recovered from personal injuries; and the increase in value, mutations and revenue of all property subject to a spouse's sole management, control, and disposition. *See* Tex. Fam. Code Ann. section 3.102(a)(1) through (4) (2002). Texas law defines community property subject to joint management, control, and disposition as all community property that is not subject to a spouse's sole management, control, and disposition, and is not otherwise subject to an agreement of the spouses. *See* Tex. Fam. Code Ann. section 3.102(c) (2002).

Although each spouse has a 50 percent interest in the community property, Texas law limits the types of community property that a creditor may reach to satisfy a spouse's separate liability. *See* Tex. Fam. Code Ann. section 3.202 (2002). Texas law allows a creditor to reach all of the community property subject to the liable spouse's sole management, control, and disposition to satisfy the spouse's separate liability. *See* Tex. Fam. Code Ann. section 3.202(c) (2002). In addition, a creditor may reach all community property subject to the spouses' joint management, control, and disposition, and all of the liable spouse's separate property, whether the debt was incurred before or during marriage. *See* Tex. Fam. Code Ann. section 3.202(c) (2002). A creditor may not reach any portion of the community property subject to the non-liable spouse's sole management, control, and disposition, or the non-liable spouse's separate property. *See* Tex. Fam. Code Ann. section 3.202(c) (2002). However, under *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989), the Service may reach the liable spouse's 50-percent interest in the non-liable spouse's sole management community property to satisfy a separate federal tax liability of the liable spouse.

Situation 2. Same facts as *Situation 1*, except that $250 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition, and $750 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition.

Situation 3. Same facts as *Situation 1*, except that the entire overpayment resulted solely from income tax withholding from Non-Liable Spouse's wages, and the entire overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition.

LAW

Section 6402(a) of the Internal Revenue Code provides that, in the case of any overpayment, the Service may credit the amount of the overpayment, including interest, against any internal revenue tax liability on the part of the person who made the overpayment and shall refund the balance to the person.

Revenue Ruling 74–611, 1974–2 C.B. 399, holds that if a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. However, filing a joint return does not create a new property interest for the husband or the wife. *Id*.

Revenue Ruling 80–7, 1980–1 C.B. 296, holds that if a husband and wife file a joint return showing an overpayment, the Service may credit one spouse's interest in the overpayment against that spouse's separate tax liability. The amount of the spouse's interest in the overpayment is calculated by subtracting the spouse's share of the joint tax liability, determined under a separate tax formula, from the spouse's contribution towards the joint tax liability. Under the separate tax formula, a spouse's share of the joint tax liability is calculated as follows:

$$\frac{\text{Spouse's Separate Tax}}{\text{Total of Both Spouses' Separate Tax}} \quad \text{x} \quad \text{Joint Tax Liability Reported on Return}$$

Revenue Ruling 85–70, 1985–1 C.B. 361, provides a two-step process to determine the amount of a joint overpayment that the Service may offset against one spouse's separate tax liability if the spouses are domiciled in a community property state. First, if the joint overpayment is from wages that are community property income, then each spouse is considered to be the recipient of one-half of the aggregated wages regardless of whether the spouses may have earned different amounts of wages (the one-half rule). Accordingly, each spouse has a one-half interest in the overpayment, and the Service may offset the liable spouse's one-half interest in the overpayment against the liable spouse's separate federal tax liability regardless of whether state law provides that creditors may reach community property to satisfy the separate debts of a spouse. *Id*. Rev. Rul. 85–70 does not specifically address what portion of each spouse's actual wages is treated as having been offset as a result of applying the one-half rule. Under the facts of Rev. Rul. 85–70, and specifically the assumed state laws, that analysis was not necessary. However, applying the second step of Rev. Rul. 85–70 in other cases may require a determination of the amount of each spouse's actual wages that were offset after applying the one-half rule. For that purpose, each spouse under the first step of Rev. Rul. 85–70 is treated as receiving one half of the wages from each community property source (or, collectively, one-half of the aggregated wages) and as such being entitled to receive one-half of the income tax withheld from each community property source.

Second, Rev. Rul. 85–70 provides that state law may enable the Service to offset an additional portion of the joint overpayment from community property sources to satisfy a spouse's separate federal tax liability. This additional right of offset is available if state law provides that creditors may reach community property to satisfy the separate debts of a spouse. (The amount potentially available to be offset under the second step of Rev. Rul. 85–70 is the amount remaining after application of the first step of that revenue ruling.) However, if state law provides that community property may not be reached to satisfy the premarital or other separate debts of either spouse, then the Service may not offset any portion of the non-liable spouse's share of the overpayment from community property sources against the liable spouse's separate tax liability. *Id*.

Five-step process to determine amount of joint overpayment that the Service may offset against separate federal tax liability of one spouse.

A five-step process is required to determine the amount of a joint overpayment that the Service may, pursuant to section 6402(a), offset against the separate federal tax liability of one spouse.

The first step is to identify the underlying source of the overpayment. The Service looks to the tax payments made by the spouses, including income tax withholding and estimated tax payments and other credits. If the earned income tax credit is a source of the overpayment, *see* Rev. Rul. 87–52, 1987–1 C.B. 347, for guidance.

The second step is to characterize the underlying source of the overpayment as either separate or community property. Because an overpayment will be characterized in the same manner as the source of the overpayment, an overpayment will be characterized as community property, separate property, or as part community property and part separate property, depending on the character of the source of the overpayment. If the overpayment is part community property and part separate property, the portion of the overpayment attributable to a separate property source must be subtracted from the remainder of the overpayment. The portion of the overpayment attributable to a separate property source is calculated as follows:

$$\frac{\text{Tax Payment From a Separate Property Source}}{\text{Total Tax Payments}} \quad \text{x} \quad \text{Overpayment}$$

The third step is to offset the liable spouse's share of the overpayment from a community property source against the liable spouse's separate tax liability. Under Rev. Rul. 85–70, the Service may offset the liable spouse's 50-percent interest in the overpayment from a community property source to satisfy the liable spouse's separate tax liability.

The fourth step is to determine whether, under state law, the Service may reach any other portion of the overpayment from a community property source. *See* Rev. Rul. 85–70.

The fifth step is to determine whether the Service may, under state law, reach any portion of the overpayment from a separate property source of the liable spouse or the non-liable spouse.

ANALYSIS

Apply the five-step process to each situation.

(1) *Step 1*.

In *Situation 1*, *Situation 2*, and *Situation 3*, the Year 3 joint overpayment is from income taxes withheld in Year 3 from Liable Spouse's and Non-Liable Spouse's wages.

(2) *Step 2*.

Texas law presumes that all property acquired during marriage by either spouse or both spouses, including wages, is community property. In *Situation 1*, *Situation 2*, and *Situation 3*, the overpayment results from income tax withholding from Liable Spouse's and Non-Liable Spouse's wages. Because Texas law presumes that wages are community property, the entire overpayment in *Situation 1*, *Situation 2*, and *Situation 3* is assumed to be from a community property source.

(3) *Step 3*.

Under Texas law, each spouse has a present and equal interest in all community property. In *Situation 1*, the Service applies Rev. Rul. 80–7 and determines that $750 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition, and $250 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition. Applying Rev. Rul. 85–70 and *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989), the Service may offset $375 of the income tax withholding attributable to Liable Spouse's wages and $125 of the income tax withholding attributable to Non-Liable Spouse's wages. Accordingly, in *Situation 1*, the Service may offset $500 of the overpayment against Liable Spouse's Year 1 tax liability.

In *Situation 2*, the Service applies Rev. Rul. 80–7 and determines that $250 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition, and $750 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition. Applying Rev. Rul. 85–70 and *Medaris*, the Service may offset $125 of the income tax withholding attributable to Liable Spouse's wages and $375 of the income tax withholding attributable to Non-Liable Spouse's wages. Accordingly, in *Situation 2*, the Service may offset $500 of the overpayment against Liable Spouse's Year 1 tax liability.

In *Situation 3*, the Service applies Rev. Rul. 80–7 and determines that none of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition, and $1,000 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition. Applying Rev. Rul. 85–70 and *Medaris*, the Service may offset $500 of the income tax withholding attributable to Non-Liable Spouse's wages. Accordingly, in *Situation 3*, the Service may offset $500 of the overpayment against Liable Spouse's Year 1 tax liability.

(4) *Step 4*.

Under Texas law, the amount of community property that a creditor may reach depends on the nature of the property. In *Situation 1*, *Situation 2*, and *Situation 3*, under Texas law, the Service may reach all community property subject to Liable Spouse's sole management, control, and disposition, and all community property subject to Liable Spouse's and Non-Liable Spouse's joint management, control, and disposition.

In *Situation 1*, $750 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition. Applying Texas law in Step 4, and in addition to the amount offset in Step 3, the Service may offset the remaining $375 of the $750 overpayment that is attributable to community property subject to Liable Spouse's sole management, control, and disposition.

Further, $250 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition. Applying Texas law in Step 4, in addition to the amount offset in Step 3, the Service may not offset the remaining portion of the overpayment from community property sources subject to Non-Liable Spouse's sole management, control, and disposition.

In *Situation 2*, $250 of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition. Applying Texas law in Step 4, and in addition to the amount offset in Step 3, the Service may offset the remaining $125 of the $250 overpayment that is attributable to community property subject to Liable Spouse's sole management, control, and disposition.

Further, $750 of the overpayment is attributable to community property subject to Non-Liable Spouse's sole management, control, and disposition. Applying Texas law in Step 4, in addition to the amount offset in Step 3, the Service may not offset the remaining portion of the overpayment from community property sources subject to Non-Liable Spouse's sole management, control, and disposition.

In *Situation 3*, none of the overpayment is attributable to community property subject to Liable Spouse's sole management, control, and disposition. Applying Texas law in Step 4, in addition to the amount offset in Step 3, the Service may not offset the remaining portion of the overpayment from community property sources.

(5) *Step 5*.

Under Texas state law, a creditor may reach 100 percent of Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. A creditor may not, however, reach any of Non-Liable Spouse's separate property to satisfy Liable Spouse's separate tax liability. In *Situation 1*, *Situation 2*, and *Situation 3*, no part of the overpayment is from a separate property source. Accordingly, there is no separate property that the Service may offset against the Liable Spouse's separate tax liability.

HOLDING

Situation 1. The Service may offset $875 of the overpayment against Liable Spouse's separate tax liability.

Situation 2. The Service may offset $625 of the overpayment against Liable Spouse's separate tax liability.

Situation 3. The Service may offset $500 of the overpayment against Liable Spouse's separate tax liability.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 80–7 and Rev. Rul. 85–70 are amplified and clarified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael A. Skeen of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Michael A. Skeen at (202) 622–4910 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

2004 Marginal Production Rates

Notice 2004–48

Section 613A(c)(6)(C) of the Internal Revenue Code defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under § 29(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 29(d)(2)(C) for the 2003 calendar year is $27.56.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2004.

Notice 2004–48 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

Calendar Year	*Applicable Percentage*
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent

The principal author of this notice is Eric B. Lee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Lee at (202) 622–3120 (not a toll-free call).

2004 Section 43 Inflation Adjustment

Notice 2004–49

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 29(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins, is greater than $28 multiplied by the inflation adjustment factor for that year.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2003 calendar year ($27.56) does not exceed $28 multiplied by the inflation adjustment factor for the 2004 calendar year, the enhanced oil recovery credit for qualified costs paid or incurred in 2004 is determined without regard to the phase-out for crude oil price increases.

Table 1 contains the GNP implicit price deflator used for the 2004 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2003 calendar years.

Notice 2004–49 TABLE 1

GNP IMPLICIT PRICE DEFLATORS

Calendar Year	*GNP Implicit Price Deflator*
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2004 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in 1991 through 2003 calendar years.

Notice 2004–49 TABLE 2

INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS

Calendar Year	*Inflation Adjustment Factor*	*Phase-out Amount*
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0

DRAFTING INFORMATION

The principal author of this notice is Eric B. Lee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Lee at (202) 622–3120 (not a toll-free call).

Weighted Average Interest Rates Update

Notice 2004–51

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–18 I.R.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices.

The composite corporate bond rate for June 2004 is 6.18 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in: Month	Year	Corporate Bond Weighted Average	90% to 110% Permissible Range
July	2004	6.32	5.69 to 6.32

30-YEAR TREASURY SECURITIES WEIGHTED AVERAGE INTEREST RATE

Section 417(e)(3)(A)(ii)(II) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

Section 404(a)(1) of the Code, as amended by the Pension Funding Equity Act of 2004, permits an employer to elect to disregard subclause (II) of § 412(b)(5)(B)(ii) to determine the maximum amount of the deduction allowed under § 404(a)(1).

The rate of interest on 30-year Treasury securities for June 2004 is 5.41 percent. Pursuant to Notice 2002–26, 2002–1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

For Plan Years Beginning in: Month	Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
July	2004	5.17	4.65 to 5.43	4.65 to 5.69

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1–202–283–9703. Mr. Montanaro may be reached at 1–202–283–9714. The telephone numbers in the preceding sentences are not toll-free.

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also: Part I, §§ 404, 832, 846; 1.404(b)–1T, 1.404(d)–1T, 1.832–4.)

Rev. Proc. 2004–41

SECTION 1. PURPOSE

This revenue procedure sets forth circumstances under which an insurance company that makes incentive payments to health care providers will be permitted to include those payments in discounted unpaid losses without regard to § 404 of the Internal Revenue Code. The revenue procedure also provides procedures under which a taxpayer may obtain automatic consent of the Commissioner to change its method of accounting for such payments.

SECTION 2. BACKGROUND

.01 Section 404(a) provides that if compensation is paid or accrued on account of any employee under a plan deferring the receipt of compensation, the compensation is not deductible under chapter 1 of subtitle A (§§ 1 through 1400L), but if the compensation would otherwise be deductible, it is deductible under § 404, subject to the limitations imposed by § 404 as to the amounts deductible in any year.

.02 Section 404(a)(5) provides the general rule that compensation paid under a nonqualified plan (contributions to which are not deductible under §§ 404(a)(1), (2), or (3)) of deferred compensation is deductible in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan.

.03 Section 404(b) provides that if there is no plan, but there is a method or arrangement that has the effect of a plan deferring the receipt of compensation, § 404(a) shall apply as if there were a plan.

.04 Section 404(d) extends the application of § 404(a) to benefits or compensation paid to nonemployees by providing that if a plan would be covered by § 404(a) (as modified by § 404(b)) but for the fact that no employer-employee relationship exists, the contributions or compensation (if otherwise deductible under chapter 1 of subtitle A) shall be deductible for the taxable year in which an amount attributable to the compensation is includible in the gross income of the persons participating in the plan.

.05 Section 1.404(b)–1T, Q&A–1, of the temporary Income Tax Regulations provides, in part, that section 404(a) and (d) govern the deduction of compensation paid or incurred with respect to plans, or methods or arrangements, however denominated, that defer the receipt of any amount of compensation or benefit, including fees and other payments. Under §§ 404(a) and (b), if otherwise deductible, a contribution paid or incurred with respect to a nonqualified plan, or method or arrangement, is deductible in the taxable year of the employer in which or with which ends the taxable year of the employee in which the amount attributable to the contribution is includible in the gross income of the employee (without regard to any applicable exclusions under chapter 1, Subtitle A).

.06 Section 1.404(d)–1T provides, in part, that in the case of deferred benefits or compensation for service providers with respect to which there is no employer-employee relationship, §§ 404(a) and (b) and the regulations thereunder apply as if the person providing the services were the employee and the person to whom the services are provided were the employer.

.07 Section 1.404(b)–1T, Q&A–2(a), provides that a plan, or method or arrangement, defers the receipt of compensation or benefits to the extent an employee receives compensation or benefits thereunder more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. The determination whether a plan, or method or arrangement, defers the receipt of compensation or benefits is made separately with respect to each employee and each amount of compensation or benefit.

.08 Section 1.404(b)–1T, Q&A–2(b)(1), provides that a plan, or method or arrangement, is presumed to be one that defers the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the third month after the end of the employer's taxable year in which the services are rendered (the 2½ month period).

.09 Under § 1.404(b)–1T, Q&A–2(b)(2), the taxpayer may rebut this presumption only by demonstrating that it was impracticable to avoid the deferral of the receipt by an employee of the amount of compensation or benefits beyond the applicable 2½ month period and that, as of the end of the employer's taxable year, such impracticability was unforeseeable.

.10 Section 832(a) defines the taxable income of an insurance company subject to tax under § 831 as the gross income defined in § 832(b)(1), less the deductions authorized by § 832(c).

.11 Section 832(b)(1) provides that the gross income of an insurance company subject to tax under § 831 includes the combined gross amount earned during the taxable year from investment income and from underwriting income, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners.

.12 Section 832(b)(3) defines underwriting income as the premiums earned on insurance contracts during the taxable year, less losses incurred and expenses incurred.

.13 Section 832(c)(4) authorizes a deduction for "losses incurred" on insurance contracts during the taxable year, as defined in § 832(b)(5).

.14 Section 832(b)(5) defines losses incurred during the taxable year on insurance contracts as follows: (1) from losses paid during the taxable year, deduct salvage and reinsurance recovered; (2) to the results so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in § 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year; (3) to the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

.15 Section 1.832–4(b) provides, in part, that the part of the deduction for losses incurred that represents unpaid losses must comprise only actual unpaid losses. These losses must be stated in amounts that, based on the facts of each case and the company's experience with similar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses that, in the opinion of the director, are in excess of a fair and reasonable estimate will be disallowed as a deduction. The director may require any insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

.16 Section 846 provides that the amount of discounted unpaid losses as of the end of the taxable year attributable to any accident year is equal to the present value of the losses, determined by using the amount of undiscounted unpaid losses at such time, the applicable interest rate, and the applicable loss payment pattern. Section 846(b)(1) provides, in general, that the term "undiscounted unpaid losses" means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer. For purposes of determining discounted unpaid losses attributable to accident and health insurance contracts (other than certain disability insurance contracts), § 846(f)(6)(B) provides that the unpaid losses are considered to be paid in the middle of the taxable year following the accident year.

.17 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. 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 a taxpayer may obtain automatic consent to change to a method of accounting described in the Appendix of Rev. Proc. 2002–9.

.18 Many taxpayers that are taxable under Part II of subchapter L of Chapter 1, including both health insurance companies and health maintenance organizations (HMOs), have developed arrangements with physicians and other health care providers that encourage participating providers to provide quality health care to subscribers in a cost-efficient manner. Under one such arrangement, a portion of the provider's fees is held back and paid after the end of the insurer's taxable year if certain objectives are met. Under another such arrangement, the provider is entitled to a bonus payment if specified objectives are met. The objectives set by the insurer often relate to cost savings, profitability, number of claims, quality of care, or preventive medicine. The terms of these incentive programs are not negotiated between the taxpayers and the health care providers and the taxpayers do not offer providers the alternative of not participating in these arrangements.

.19 The incentive payments described in Section 2.18 often are based on data for a performance period that can only be collected after the end of the taxpayer's taxable year. As a result, the payments often are made to providers more than 2½ months after the end of the taxpayer's taxable year.

.20 For purposes of the annual statements filed with their state insurance commissioners, health insurers and HMOs treat the amount of incentive payments made to health care providers during the year as part of claims paid. The taxpayers also are required to include estimates of the liability for incentive payments incurred during the year as part of their total incurred but not paid claims reserves. The taxpayers usually determine the liability for incentive payments on the basis of an actuarial calculation, taking into account the relevant contractual arrangements with health care providers, the contractually defined experience outcomes by which the incentive payments will become payable to the health care providers, and an analysis of the taxpayers' aggregate health care costs through the valuation date.

.21 Applying § 404 and the regulations thereunder to incentive payments made by the taxpayers would create a substantial administrative burden for the taxpayers and the Service, since the liabilities for incentive payments shown on the annual statements filed by health insurance companies and HMOs generally are not broken down into amounts that will be owed to specific health care providers. In light of existing rules and limitations placed on the deductibility of loss reserves under subchapter L, and in order to reduce controversy regarding the treatment of these incentive payments, the Service has decided that it will not apply § 404 to provider incentive payments described in section 4 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers using or changing to the method of accounting for provider incentive payments set forth in section 5 of this revenue procedure.

SECTION 4. PROVIDER INCENTIVE PAYMENTS

A payment by a taxpayer to a health care provider is a "provider incentive payment" within the meaning of this revenue procedure if—

.01 the taxpayer is taxable as an insurance company under Part II of subchapter L;

.02 the payment is made pursuant to a written arrangement the purpose of which is to encourage participating health care providers to provide quality health care to the taxpayer's subscribers in a cost-efficient manner;

.03 the taxpayer's liability for the payment is dependent on the attainment of one or more preestablished goals during a performance period consisting of not more than 12 consecutive months;

.04 the terms of the arrangement pursuant to which the payment is made are established unilaterally by the taxpayer, and are not negotiated with the health care providers;

.05 the taxpayer normally makes payments to health care providers under the arrangement within 12 months after the close of the performance period referred to in section 4.03 of this revenue procedure;

.06 deferring the receipt of income by the health care provider or otherwise providing a tax benefit to the provider is not a principal purpose of the arrangement;

.07 the taxpayer records a liability for the payment on its annual statement filed for state regulatory purposes, and includes this liability in the determination of discounted unpaid losses under § 846; and

.08 the health care provider is not an employee, and is not providing health care as an agent, of the taxpayer.

SECTION 5. APPLICATION

A taxpayer that makes provider incentive payments within the meaning of this revenue procedure is permitted to include those payments in discounted unpaid losses without regard to § 404.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING AND AUDIT PROTECTION

.01 *Change in method of accounting*. A change in an insurance company's method of deducting provider incentive payments to the method provided in section 5 of this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481 apply. If a taxpayer within the scope of this revenue procedure wants to change its method of deducting the liability for provider incentive payments to the method provided in section 5 of this revenue procedure, the taxpayer must follow the automatic change in method of accounting provisions of Rev. Proc. 2002–9, with 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 either its first or second taxable year ending on or after December 31, 2003.

(2) A taxpayer that wants to make the change for its first taxable year ending on or after December 31, 2003, and that on or before September 24, 2004, files its original federal income tax return for that year, and that did not change to the method described in section 5 of this revenue procedure on that return is not required to comply with the filing requirement in section 6.02(3)(a) of Rev. Proc. 2002–9, provided the taxpayer complies with the following filing requirements. The taxpayer must instead complete and file the Form 3115, *Application for Change in Accounting Method*, in duplicate. The original Form 3115 must be attached to an amended federal income tax return for the taxpayer's first taxable year ending on or after December 31, 2003. This amended return must be filed no later than January 24, 2005. The copy of the Form 3115 must be filed with the national office (see section 6.02(6) of Rev. Proc. 2002–9 for the address) no later than when the taxpayer's amended return is filed; and

(3) For purposes of Line 1a of Form 3115, the designated number for the automatic accounting method change is "90".

.02 *Audit protection*. If a taxpayer within the scope of this revenue procedure currently uses a method consistent with the method described in section 5 of this revenue procedure, the method of accounting for the taxpayer's provider incentive payments will not be raised as an issue by the Service in a taxable year that ends before December 31, 2003. Also, if a taxpayer currently uses a method consistent with the method described in section 5 of this revenue procedure, and its use of that method is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002–9) in examination, before an appeals office, or before the U.S. Tax Court for any taxable year that ends before December 31, 2003, that issue will not be further pursued by the Service.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2003.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is modified and amplified to include this automatic change in method of accounting in section 4B of the APPENDIX.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Gary E. Geisler of the Office of Associate Chief Counsel (Financial Institutions & Products) and William C. Schmidt of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure, contact Mr. Geisler at (202) 622–3970 (not a toll-free call) or Mr. Schmidt at (202) 622–6030 (not a toll-free call).

Part IV. Items of General Interest

Announcement and Report Concerning Pre-Filing Agreements

Announcement 2004–59

Introduction

This Announcement is issued pursuant to the Conference Report to H.R. 4577 (Pub. L. 106–554), *The Community Renewal Tax Relief Act of 2000*, which requires that the Secretary of the Treasury make publicly available an annual report relating to the Pre-Filing Agreement ("PFA") program operations for the preceding calendar year. The Conference Report states that the report is to include: (1) the number of pre-filing agreements completed, (2) the number of applications received, (3) the number of applications withdrawn, (4) the types of issues which are resolved by completed agreements, (5) whether the program is being utilized by taxpayers who were previously subject to audit, (6) the average length of time required to complete an agreement, (7) the number, if any, and subject of technical advice and Chief Counsel advice memoranda issued to address issues arising in connection with any pre-filing agreement, (8) any model agreements, and (9) any other information the Secretary deems appropriate. This is the fourth annual report. It provides information concerning activity under the permanent PFA program (Rev. Proc. 2001–22, 2001–1 C.B. 745), during calendar year 2003.

Background

The Large and Mid-Size Business Division ("LMSB") within the Internal Revenue Service serves corporations and partnerships with assets greater than $10 million. In 2003, approximately 150,000 corporations and partnerships filed returns reporting assets in this range. The returns filed by these taxpayers present a wide variety of complex issues. The largest of these taxpayers deal with the IRS on a continuous basis.

One of LMSB's strategic initiatives is issue management. Through effective issue management, LMSB seeks to resolve issues of tax controversy on a more current basis. This includes, but is not limited to, increasing the efficiency of the examination process and seeking alternative issue resolution tools. The Pre-Filing Agreement program was designed to support LMSB's issue management strategy. LMSB believes the Pre-Filing Agreement program reduces taxpayer burden and makes more effective use of IRS resources by resolving or eliminating tax controversy before the tax return is filed.

The PFA program is designed to permit a taxpayer to resolve, before the filing of a return, the treatment of an issue that otherwise would likely be disputed in a post-filing examination. The PFA program is intended to produce agreement on factual issues and apply settled legal principles to those facts. A PFA is a specific matter closing agreement under § 7121 of the Internal Revenue Code and resolves the subject of the PFA for a specified taxable period. Execution of a PFA that resolves issues prior to filing permits taxpayers to avoid costs, burdens and delays that are frequently incident to post-filing examination disputes between taxpayers and the IRS.

PFA Program

As a result of the success of a pilot program, the IRS established a permanent PFA Program with the issuance of Rev. Proc. 2001–22. Although many of the procedures remained the same, there were some significant changes, including:

1. All taxpayers, both Coordinated Issue and Industry cases, within the jurisdiction of LMSB are eligible to participate;

2. More issues are considered appropriate;

3. There are fewer excludible circumstances;

4. Certain international issues are now considered appropriate; and

5. A user fee was implemented for those taxpayers accepted into the program.

PFA Process

The PFA process is managed and conducted by LMSB Industry Directors and field staff, with support from the Office of Pre-Filing and Technical Guidance in LMSB Headquarters. The PFA Program Manager receives all applications and, with the assistance of the Technical Advisors and the Office of Chief Counsel, ensures that the issues presented are appropriate for inclusion in the PFA program.

The Industry Director with jurisdiction over the taxpayer makes the final decision whether to accept a taxpayer's request for participation in the PFA program. The criteria for selecting a request include:

a. The suitability of the issue presented by the taxpayer;

b. The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;

c. The availability of IRS resources;

d. The ability and willingness of the taxpayer to dedicate sufficient resources to the process;

e. The likelihood that the PFA may result in contrary positions with respect to an item or transaction ("whipsaw"); and

f. The probability of completing the examination of the issue and entering into a PFA by the target date.

For the cases selected, a mandatory orientation session for the examination team and the taxpayer is conducted. Subsequently, the taxpayer and examination team convene a joint planning meeting to reach agreement on a proposed timeframe, to identify and arrange for IRS access to relevant records and testimony, and to define the potential scope and nature of the PFA.

The examination team conducts the factual determination and issue development consistent with IRS auditing standards. Based upon an examination of the issue, the Team Manager prepares a PFA recommendation for the Industry Director. The Industry Director's decision to execute a PFA Closing Agreement is based on the

Team Manager's recommendation and discussions with the PFA Program Manager, Chief Counsel attorneys, appropriate Technical Advisors and the taxpayer. Following Chief Counsel review to ensure that the proposed PFA conforms with guidance provided in Rev. Proc. 68–16 (regarding closing agreements), the Industry Director could execute a PFA if he or she determines that:

a. Entering into the PFA is consistent with the goals of the PFA program as stated in Rev. Proc. 2001–22;

b. The resolution in the PFA reflects settled legal principles and correctly applies those principles (or positions authorized under Delegation Order Nos. 4–24 or 4–25) to facts found by the examination team; and

c. There appears to be an advantage in having the issue(s) permanently and conclusively closed for the taxable period covered by the PFA, or that the taxpayer shows good and sufficient reasons for desiring a closing agreement and that the United States would sustain no disadvantage through consummation of such an agreement (see § 301.7121–1(a) of the Procedure and Administration Regulations).

Program Oversight

A designated PFA Program Manager assigned to the Office of Pre-Filing and Technical Guidance in LMSB Headquarters provides oversight for the PFA program. The PFA Program Manager provides assistance to taxpayers, Industry Directors and Team Managers throughout the process.

Pre-Filing Agreement Program Accomplishments

Statistical Overview of PFA Program — Calendar Year 2003

The table below reflects activity concerning those PFA requests which were received in calendar year 2002 or prior and carried over into calendar year 2003.

Overview of PFA Applications Received Prior to Calendar Year 2003	**Totals**
Applications Pending Acceptance/Rejection on January 1, 2003	3
Applications In-Process on January 1, 2003	20
Applications Rejected in 2003	0
Applications Withdrawn in 2003	6
Applications for Which There Were Closing Agreements in 2003	9
Applications Pending Acceptance/Rejection on December 31, 2003	0
Applications In-Process on December 31, 2003	8

The table below reflects the status of PFA requests received in calendar year 2003.

Overview of PFA Applications Received in Calendar Year 2003	**Totals**
Applications Received in 2003	42
Applications Accepted in 2003	29
Applications Rejected in 2003	5
Applications Withdrawn before Acceptance/Rejection in 2003	1
Applications Withdrawn after Acceptance in 2003	1
Applications for Which There Were Closing Agreements in 2003	9
Applications Pending Acceptance/Rejection on December 31, 2003	7
Applications in-Process on December 31, 2003	19

Description of Applications Received in Calendar Year 2003

The 42 applications that were received for the PFA program in calendar year 2003 came from taxpayers in each LMSB industry segment and involved a variety of issues as provided in the tables below.

Number of Requests Received and Accepted by Industry Segment

Industry Segment	*Received*	*Accepted*
Financial Services (FS)	4	2
Retailers, Food, Pharmaceuticals & Healthcare (RFP&H)	13	10
Natural Resources & Construction (NR&C)	6	3
Communications, Technology & Media (CT&M)	10	7
Heavy Manufacturing & Transportation (HM&T)	9	7
Total	42	29

Types of Issues Received

Issue	**Received**
Utilization of Net Operating Loss	2
Fair Market Value of Donated Intangibles	6
Gain or Loss on Sale of Stock	1
Research and Experimental Credit	10
Automatic Waiver of Reconsolidation	1
Corporate Restructuring	1
Sale of Assets — Ordinary vs. Capital Loss	2
Worthless Securities and Bad Debts	5
Start-up Costs and Operating Expenses	1
Inventory Write Down	1
Real Property Contribution	2
Method of Accounting for Delay Rental Payments — Capital vs. Expense	1
Fair Market Value of Stock Contributed to Pension Plan	1
Asset Class Life	1
Conversion of C Corp to S Corp — Fair Market Value of Stock	1
Synthetic Fuel Credit	1
Computation of Original Issue Discount	1
Sale vs. Lease Treatment	1
Section 481 Adjustment — Change in Method of Accounting	1
Transfer Pricing — Allocation to Home Office	1
Fair Market Value of Shares Exchanged	1
Total	42

Reasons Why Applications Received in Calendar Year 2003 Were Not Accepted

Five of the applications received in 2003 were not considered appropriate for the PFA program.

Reasons for Non-acceptance	Applications
Not Well-Settled Law	3
Interrelated Transactions	1
Issue Not Suitable or Ineligible	1
Total	5

Taxpayer Withdrawals (4)

In accordance with procedures set forth in Section 8 of Rev. Proc. 2001–22, 4 taxpayers withdrew from the PFA process — three after their requests had been accepted and one prior to acceptance. Due to tax legislation enacted in 2003 regarding dividends, one taxpayer withdrew its PFA request regarding a conversion from a C corporation to a partnership. Another case concerning the fair market value of a qualified conservation contribution was withdrawn because the taxpayer could not reach an agreement as to fair market value. In another case, regarding the accounting method to be used for qualified research expenses, the taxpayer could not reach an agreement regarding the appropriate project accounting methodology to be used. In another case, concerning the research and experimental credit, after an initial informal meeting with the examination team, the taxpayer determined that its facts were not appropriate and withdrew its PFA request before the Industry Director made a decision to accept the request.

IRS Withdrawal (2)

The Service withdrew from the PFA process in two cases. In one case, the existence of an open regulations project within the Office of Chief Counsel relating to IRC § 4271 indicated that the legal issue to be addressed by the PFA was not well settled. In another case, the taxpayer and the Service could not agree to the facts regarding products held for sale that were subject to excise taxes.

Mutual Withdrawal (2)

The Service and the taxpayer mutually agreed to terminate the PFA process in 2 cases. In the first instance, the taxpayer and the Service were unable to agree on the methodology for computing the net operating loss carryover relating to stock acquisitions. In the other case, the taxpayer and the Service were unable to reach an agreement regarding the fair market value of contributed patents and intellectual property.

PFAs Executed (18)

Eighteen PFAs were completed in calendar year 2003, resulting in the execution of closing agreements.

The Office of Chief Counsel provided advice to the examination teams and assisted in the drafting and review of the PFA closing agreements. No Technical Advice or Chief Counsel Advice Memoranda were issued for issues addressed in the PFA process. The executed PFAs involved the following issues:

PFAs Executed by Issue

Year Application Received	Issue	Number
2001	Fair Market Value of Assets for Purposes of determining Built-in Gain	1
2002 2003	Fair Market Value of Donated Intangibles	1 2
2002 2003	Amount of Qualified Research Expenditure and Credit	2 1
2002	Fair Market Value of Assets Exchanged for Stock in a Tax-Free Exchange Pursuant to a Plan of Reorganization	2
2002	Deductibility of Fees Incurred in connection with a Reorganization	1
2002	Bad Debt Deduction for Intercompany Advances	1
2002	Abandonment Losses	1
2003	Utilization of Net Operating Loss	2
2003	Gain or Loss on Sale of Stock	1
2003	Start-up costs and Operating Expenses	1
2003	Worthless Securities and Bad Debts	1
2003	Fair Market Value of Stock Contributed to Pension Plan	1
	Total	18

Fair Market Value of Assets for Purposes of Determining Built-in Gain

The taxpayer requested a factual determination regarding the fair market value of the taxpayer's assets for purposes of computing built-in gain pursuant to IRC § 1374. Prior to the taxpayer's election to be treated as a small business corporation under IRC § 1362, the taxpayer was taxed as a C corporation. IRC § 1374 imposes a tax on an S corporation that has a net recognized built-in gain during the recognition period. A closing agreement was executed specifying the fair market value of the property identified in the agreement.

Donation of Intangibles (3)

In each of these unrelated cases, the taxpayers sought an agreement as to the fair market value of certain patented technology donated to qualified organizations. In each of the cases, a closing agreement was executed specifying the fair market value of the property contributed.

Amount of Qualified Research Expenditure and Credit (3)

Three taxpayers requested an agreement regarding the proper amount, if any, of qualified research expenses and the research credit under IRC § 41 as well as the amount of experimental expenditures under IRC § 174. Closing agreements were executed with all three taxpayers. The closing agreements did not address the methodology to be used for subsequent years.

Fair Market Value of Assets Exchanged for Stock in a Tax-Free Exchange (2)

The taxpayer requested agreements concerning two separate transactions intended to qualify as tax-free transfers of assets and stock under IRC § 351. A closing agreement was executed for each transaction that specified the taxable status of each transfer and the fair market value of the transferred stock and assets.

Deductibility of Fees Incurred in connection with a Reorganization

The taxpayer requested an agreement regarding the tax treatment of fees and other expenditures incurred in connection with the following transactions: (1) an acquisition of stock in a reverse triangular merger; (2) an acquisition of separately acquired businesses for cash; and (3) a disposition of a portion of the acquired businesses in response to antitrust concerns. A closing agreement was executed specifying the nature and treatment of the fees and expenditures and whether such costs were currently deductible under IRC § 162, amortizable under IRC § 195 or capitalized under IRC § 263.

Bad Debt Deduction for Intercompany Advances

The taxpayer requested an agreement concerning whether certain advances made to the taxpayer's wholly owned foreign subsidiary and treated as loans were worthless during the taxable year. A closing agreement was executed specifying the amount of *bona fide* indebtedness and the amount considered a bad debt and allowable under IRC § 166.

Abandonment Losses

The taxpayer requested an agreement regarding the existence, amount and deductibility under IRC § 165 of abandonment losses incurred. A closing agreement was executed specifying the amount of abandonment loss.

Utilization of Net Operating Loss (2)

The taxpayer requested an agreement concerning the potential application of IRC § 382 with respect to prior-year net operating loss carryforwards in the case of an ownership change of greater than 50 percent occurring over a three-year period. A closing agreement was executed specifying that an ownership change did not occur and that the taxpayer was not subject to the limitation. In an unrelated request, the taxpayer requested an agreement regarding the number of ownership changes. A closing agreement was executed specifying the number of ownership changes.

Gain or Loss on Sale of Stock

The taxpayer requested an agreement concerning the tax consequences of the sale of the taxpayer's entire interest in a foreign subsidiary for cash along with a discharge of various liabilities. A closing agreement was executed specifying the amount of the capital loss under IRC § 165 and the amount of ordinary and necessary business expense deductible under IRC § 162.

Start-up Costs and Operating Expenses

The taxpayer requested an agreement regarding the proper treatment of start-up costs and operating expenses. A closing agreement was executed specifying the amounts amortizable under IRC §§ 195 and 709, the amounts depreciable under IRC § 167 and the amounts deductible under IRC § 162.

Worthless Securities and Bad Debts

The taxpayer, the parent of a consolidated group, requested an agreement regarding amounts deductible as ordinary losses on the worthlessness of stock and notes in its foreign subsidiary. A closing agreement was executed specifying that the stock and notes of the subsidiary were worthless, the amount of loss on the stock deductible under IRC § 165 and the amount of bad debt expense deductible under IRC § 166.

Fair Market Value of Stock Contributed to Pension Plan

A taxpayer requested an agreement regarding the fair market value and deductibility of stock contributed to pension plans administered by the taxpayer. A closing agreement was executed specifying the value to be used for purposes of IRC §§ 162 and 404.

Closing Agreements

A *pro forma* or model agreement does not exist for a PFA Closing Agreement. A PFA represents a specific matter closing agreement under § 7121. The closing agreements entered into under this program were prepared with assistance from the Office of Chief Counsel and conform to the guidance provided in Rev. Proc. 68–16.

PFA Program Utilization

The PFA Program is available to all taxpayers under the jurisdiction of LMSB.

During calendar year 2003, 42 taxpayers submitted PFA requests. These taxpayers included both Coordinated Industry Case (CIC) taxpayers that are typically subject to examination on a continuing basis and Industry Case (IC) taxpayers that are subject to examination on a less frequent basis. Of the 42 requests, 34 were from CIC taxpayers and eight were from IC taxpayers. Of the 18 cases that resulted in closing agreements during calendar year 2003, 13 were with CIC taxpayers and five were with IC taxpayers.

Processing Statistics

The average elapsed time to resolve the 18 cases that resulted in closing agreements in calendar year 2003 (the applications for which were received in 2001, 2002 and 2003) was 299.4 days.

Average Processing Time for Eighteen Closing Agreements Executed in 2003	Range (Elapsed Days)	Average (Elapsed Days)
Phase I — Application Screening Process	26–116	59.1
Phase II — PFA Evaluation Process	41–716	240.3
Total Time to Close a PFA Case	100–808	299.4

Phase I — Application Screening Process

Phase I is the screening process to determine if an application is appropriate for inclusion in the PFA program. This screening process includes obtaining comments from various LMSB functions and Chief Counsel, the review of these comments and the acceptance or rejection of an application by the Industry Director. Of the 42 applications received during the calendar year 2003, 34 applications completed the Phase I Application Screening Process. Of these 34 applications, the average time from the date an application was received by the IRS until the Industry Director rendered a decision to accept or reject an application was 65.8 days. For the 18 cases that resulted in closing agreements in 2003, the average time for completing the Phase I process was 59.1 days.

Phase II — PFA Evaluation Process

The second (and final) phase in the PFA program process is the evaluation phase. This phase begins when the Industry Director accepts an application into the PFA program and ends when a PFA closing agreement is executed or the process terminates as a result of a withdrawal. The average elapsed time during the Phase II Evaluation Process for the 18 cases that resulted in closing agreements in calendar year 2003 was 240.3 days.

Program Evaluation

The PFA Program Manager ensures that an evaluation of all of the PFA program cases, based on feedback from LMSB employees and taxpayer participants, is solicited. As a part of this program evaluation, LMSB and taxpayer participants were asked to provide the direct examination time expended to complete the PFA and an estimate of the direct examination time it would have taken to resolve the issue in a post-filing context. The table below indicates the results for those that provided a response.

Cumulative Hours (Executed PFAs)	Taxpayer (Hours)	LMSB (Hours)
Actual Hours Expended — PFA Process	19,655	14,881
Estimated Hours Required To Be Expended — Post-Filing Process	37,755	21,298
Time Savings — Actual PFA Process vs. Estimated Post-Filing	18,100	6,417
Percentage Savings — Actual PFA Process vs. Estimated Post-Filing (Average)	47.9%	30.1%
Estimated Time Savings Percentage Range	(20%)–66.7%	10.2%–66.7%

Comparative Analysis — Processing Statistics

The average total time to conclude the 18 cases that resulted in closing agreements in calendar year 2003 was 299.4 days. The range was from 100 to 808 days. Illustrated below are the average elapsed time (in days) processing statistics for the 11 cases that resulted in closing agreements under the pilot program, the seven cases that resulted in closing agreements in calendar year 2001, the 12 cases that resulted in closing agreements in calendar year 2002 and the 18 cases that resulted in closing agreements in calendar year 2003.

Average Processing Time for PFAs (Days)	Overall Pilot (11 cases)	Program CY 2001 (7 cases)	Program CY 2002 (12 cases)	Program CY 2003 (18 cases)
Phase I — Application Screening Process	38.3	46.6	52.8	59.1
Phase II — PFA Evaluation Process	242.2	126.1	182.6	240.3
Total Time to Complete a PFA	280.5	172.7	235.4	299.4

The increased processing time for 2003 can be attributed to the greater degree of complexity of the issues and the time necessary to develop the factual background. Generally, the more complex and fact intensive the issue is, the greater the time necessary to complete the process.

Taxpayer Satisfaction Survey

An additional aspect of the evaluation process is soliciting responses from taxpayers regarding satisfaction with the PFA process in a questionnaire. Responses to the questionnaire were received from 14 of the 18 taxpayers who executed closing agreements for calendar year 2003. These responses were converted to mathematical equivalents based on the level of satisfaction, were arrayed and a mean average to each question was calculated. The responses received are summarized below.

1 Overall level of satisfaction with the PFA process.

	Very Dissatisfied	Dissatisfied	Neither	Satisfied	Very Satisfied	Does Not Apply
Count	0	0	0	6	8	0
Percent	0.00%	0.00%	0.00%	42.86%	57.14%	0.00%

Mean Average: **4.57**

2 Likelihood of taxpayer recommending the PFA Process to others.

	Very Unlikely	Unlikely	Perhaps	Likely	Very Likely	Does not Apply
Count	0	0	0	5	9	0
Percent	0.00%	0.00%	0.00%	35.71%	64.29%	0.00%

Mean Average: **4.64**

3 The PFA process was clearly communicated during the orientation session.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply
Count	0	0	0	7	7	0
Percent	0.00%	0.00%	0.00%	50.00%	50.00%	0.00%

Mean Average: **4.50**

4 During the orientation session, questions regarding the PFA process were completely addressed.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	0	0	0	6	8	0
Percent	0.00%	0.00%	0.00%	42.86%	57.14%	0.00%

Mean Average: **4.57**

5 The PFA audit plan was developed with input from both the IRS and the taxpayer.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	0	2	2	4	6	0
Percent	0.00%	14.29%	14.29%	28.57%	42.86%	0.00%

Mean Average: **4.00**

6 The IRS requests for information were relevant to resolve the PFA issue.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	0	0	0	6	8	0
Percent	0.00%	0.00%	0.00%	42.86%	57.14%	0.00%

Mean Average: **4.57**

7 The time taken by the IRS to review information during the entire "Factual Development" stage of the PFA process was appropriate.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	0	1	0	7	6	0
Percent	0.00%	7.14%	0.00%	50.00%	42.86%	0.00%

Mean Average: **4.29**

8 The time taken by the IRS to complete the "Closing Agreement" stage of the PFA process was appropriate.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	1	3	3	3	4	0
Percent	7.14%	21.43%	21.43%	21.43%	28.57%	0.00%

Mean Average: **3.43**

9 IRS team members were accessible during the process to resolve the PFA issue.

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree	Does Not Apply Nor Known
Count	0	0	0	2	12	0
Percent	0.00%	0.00%	0.00%	14.29%	85.71%	0.00%

Mean Average: **4.86**

10 The total number of staff days or hours actually expended as compared to the expected staff days or hours.

	Significantly More	More	About the Same	Less	Significantly Less	Does Not Apply Nor Known
Count	0	1	3	4	6	0
Percent	0.00%	7.14%	21.43%	28.57%	42.86%	0.00%

Mean Average: **4.07**

11 The total elapsed time to complete the PFA process as compared to the expected time to complete the process.

	Significantly More	More	About the Same	Less	Significantly Less	Does Not Apply Nor Known
Count	0	2	1	3	8	0
Percent	0.00%	14.29%	7.14%	21.43%	57.14%	0.00%

Mean Average: **4.21**

12 The spirit of cooperation between IRS and the company as a result of the PFA process.

	Significantly Less	Less	About the Same	Improved	Significantly Improved	Does Not Apply Nor Known
Count	0	0	3	9	2	0
Percent	0.00%	0.00%	21.43%	64.29%	14.29%	0.00%

Mean Average: **3.93**

13 The ability to reach agreement at the lowest (managerial) level.

	Significantly Less	Less	About the Same	Greater	Significantly Greater	Does Not Apply Nor Known
Count	0	1	2	7	4	0
Percent	0.00%	7.14%	14.29%	50.00%	28.57%	0.00%

Mean Average: **4.00**

14 The ease of effort in reaching agreement as compared to the expected ease on post-filing.

	Significantly Less	Less	About the Same	Greater	Significantly Greater	Does Not Apply Nor Known
Count	0	0	3	7	4	0
Percent	0.00%	0.00%	21.43%	50.00%	28.57%	0.00%

Mean Average: **4.07**

15 Monetary costs incurred to resolve the issue compared to expected cost to resolve issues through the post-filing process.

	Significantly More	More	About the Same	Less	Significantly Less	Does Not Apply Nor Known
Count	0	0	6	4	4	0
Percent	0.00%	0.00%	42.86%	28.57%	28.57%	0.00%

Mean Average: **3.86**

16 The ability to present an accurate tax return for financial statement purposes as a result of the pre-filing process.

	Significantly Less	Less	About the Same	Improved	Significantly Improved	Does Not Apply Nor Known
Count	0	0	3	4	7	0
Percent	0.00%	0.00%	21.43%	28.57%	50.00%	0.00%

Mean Average: **4.29**

Pre-Filing Agreement Program Summary

Overall, the PFA program is meeting the LMSB strategic program objectives as provided in its issue management strategic initiative. The following benchmarks reflect the overall progress of the PFA Program:

- The increasing number of issues resolved through the PFA Program, which has grown steadily since the program became fully operational;

- The high degree of overall satisfaction of taxpayers participating in the PFA Program and the likelihood that those participants would recommend this process to other taxpayers.

Although the number of cases resolved in the PFA Program increased in 2003, the total processing time has also increased, particularly in the Phase II PFA Evaluation Process. This trend, which is due in part to the increasing complexity of issues presented by taxpayers for PFA consideration, has continued since the PFA Program became fully operational in 2001. LMSB is assessing how it might reduce the total amount of time elapsed during the PFA process and improve the efficacy of the PFA process in general.

The principal author of this announcement is J. Michael Mann, in the Office of Pre-Filing and Technical Guidance, Large and Mid-Size Business Division. For further information regarding this announcement, contact Mr. Mann at (202) 283–8424 (not a toll-free call).

Foundations Status of Certain Organizations

Announcement 2004–62

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:

Achondroplasia Information Source, Hubbard, TX
African Communities Sustainable Development Foundation, Inc., St. Mountain, GA
Aging Well Foundation, Inc., New York, NY
Alumni of Hammond LA Black Schools, Hammond, LA
American Cabin Girls, Saylorsburg, PA
American Foundation Researching International Conservation of Anim, Slaughter, LA
American Friends of the Shakespeare Birthplace Trust, Inc., Alexandria, VA
American Lhasa Apso Health & Education Trust Fund, Reston, VA
Anani Cultural Healing Arts Center, Compton, CA
Angel of Grace Ministry, Inc., Johnstown, PA
Animal Haven, Inc., Yuma, AZ
Aquakids, Inc., Conway, AR
Art for All, Purcellville, VA
Association for Deaf Children, Inc., Draper, UT
Beacon Foundation, Brentwood, TN
Buffalos Green Gold Development Corporation, Buffalo, NY
Building Kitsap Families, Silverdale, WA
Bush Street Synagogue Cultural Center, San Francisco, CA
Canaan Corporation, Victorville, CA
Caribbean Unity Fund, New York, NY
Carl & Sandie Spann Ministries, Kilgore, TX
Center for God, Terrytown, LA
Center for Orhtotic & Prosthetic Rehabilitation Institute, Inc., Louisville, KY
Center for Research on the Origins of Art and Religion, Richmond, ME
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Community Addiction Services, Chicago, IL
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Divine Angels Daycare, Inc., Bronx, NY
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Eagle Life Christian Academy, Waldorf, MD
Eatonville Lion's Club Holliday Memorial Park, Puyallup, WA
Economic Housing Resources, Inc., Conway, SC
Elite Counseling Services, Inc., San Antonio, TX
Elizabethtown Christian Academy, Elizabethtown, KY
Emsor 3/4, Inc., Elkview, WV
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Save Haven Hill, West Bloomfield, MI
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Somali American Development Agency, Minneapolis, MN
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Supportive Home Management, Inc., New Orleans, LA
Swiss Villa Living Center, Inc., Orlando, FL
Talbot Lacrosse Association, Inc., Eaton, MD
Teen Expressions and Acceptance Movement, Nashville, TN
Tibetan Medical Foundation, Inc., Weslaco, TX
Times of Refreshing Community Development Corporation, Southfield, MI
Transafrican Education Network, Edina, MN
Transitional Services, Inc., Secretary, MD
Tri-County Affordable Housing, Inc., N. Lauderdale, FL
Tri-County Native American Substance Abuse Program, Bakersfield, CA
Trinity Foundation, Inc., Montgomery Village, MD
Trinity Housing Development, Inc., Atlanta, GA
Two Shores Cultural Institute, Palo Alto, CA
Up-N-Coming Sports, Inc., Los Angeles, CA
USA Tennis Classic, San Bruno, CA
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Vishva Gayatri, A Not for Profit Corporation, Mt. Prospect, IL
Vision Christian Community Services, Silvercreek, MS
Vision Street Outreach Ministries, Inc., Iron City, GA
Vocational Support Services, Inc., Wallace, ID
VSP Foundation, Chesnee, SC
Wactor Gardens, Inc., Washington, NC
Waimanalo Canoe Club, Waimanalo, HI
Wealthsmart Institute, Inc., White Plains, NY
Wesley African Methodist Episcopal Charities, Pittsburgh, PA
West Columbus Development Corp., Cerro Gordo, NC
Western Area Tennis Association, Inc., Fairfield, AL
Wildrose Retreat Center, Inc., Council, ID
World Care, Inc., Grand Junction, CO
World Concern With Compassion, Inc., Mineola, NY

Young Mother of Today Maternity Home – Shelter, Wichita, KS
Young-Sanders Center Foundation, Baton Rouge, LA
Youth Cultural Arts Foundation, Bellflower, CA
Youth Resources, Inc., Salome, AZ

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.

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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