Internal Revenue
bulletin

Bulletin No. 2005-32
August 8, 2005

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. 2005–47, page 261.

ATM surcharge fees. This ruling holds that, for federal income tax purposes, a credit card issuer treats third-party ATM surcharge fees incurred by its cardholders as additional amounts loaned to those cardholders. Further, this is so whether the credit card issuer reflects the ATM surcharge fee on the cardholder's account as part of the amount of the cardholder's cash advance (as in Situation 1) or as a separately stated amount (as in Situation 2).

Rev. Rul. 2005–48, page 259.

Restricted property received for services; securities law. This ruling clarifies that, except as otherwise provided by section 83 of the Code, transfer restrictions on restricted stock or other section 83 property do not prevent the property from being substantially vested for purposes of section 83.

Notice 2005–53, page 263.

This notice provides supplemental guidance for foreign banks concerning interest expense allocation. The notice also indicates that the Treasury Department and the IRS are evaluating foreign banking industry data to determine whether the 93-percent fixed ratio in step 2 of the interest expense allocation formula under regulations section 1.882–5 should be increased, and whether the fair market value election for valuing U.S. assets should require the use of the actual ratio in step 2. The notice also permits taxpayers who use the adjusted U.S. book liability method to calculate excess interest by reference to a published LIBOR rate rather than the taxpayer's actual non-U.S.-based dollar borrowing rate.

Notice 2005–55, page 265.

2005 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 2005 calendar year.

Notice 2005–56, page 266.

2005 enhanced oil recovery credit. The enhanced oil recovery credit for taxable years beginning in the 2005 calendar year is determined without regard to the phase-out for crude oil price increases provided in section 43(b) of the Code.

Notice 2005–57, page 267.

Tobacco quota termination payments. This notice provides guidance in a Q&A format regarding the tax treatment of payments made to eligible tobacco quota holders for the termination of tobacco marketing quotas and related price support programs under the American Jobs Creation Act of 2004. Notice 2005–51 modified and superseded.

Rev. Proc. 2005–47, page 269.

This procedure provides automatic consent procedures for certain taxpayers to change their method of accounting for credit card cash advance fees to treat these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to these fees. The procedure also sets forth the conditions under which the Commissioner will not challenge a taxpayer's treatment of such fees. Rev. Proc. 2002–9 modified and amplified.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 275.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2005–54, page 283.
American Islamic College, Inc., of Chicago, IL; Athena Sports of Arvada, CO; National Consumer Council, Inc., of Las Vegas, NV; National Consumer Council, Inc., of Los Angeles, CA; Northern Services Group, Inc., of Monsey, NY; Project Homestead, Inc., of High Point, NC; and University of Baltimore Athletic Foundation, Inc., of Baltimore, MD, no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

EXCISE TAX

Announcement 2005–51, page 283.
The Service will not assert the penalty under section 6715 of the Code with respect to dyed diesel fuel that is sold for use or used for highway use in Florida counties west of the Apalachicola River during the period July 8, 2005, through July 18, 2005.

TAX CONVENTIONS

Notice 2005–53, page 263.
This notice provides supplemental guidance for foreign banks concerning interest expense allocation. The notice also indicates that the Treasury Department and the IRS are evaluating foreign banking industry data to determine whether the 93-percent fixed ratio in step 2 of the interest expense allocation formula under regulations section 1.882–5 should be increased, and whether the fair market value election for valuing U.S. assets should require the use of the actual ratio in step 2. The notice also permits taxpayers who use the adjusted U.S. book liability method to calculate excess interest by reference to a published LIBOR rate rather than the taxpayer's actual non-U.S.-based dollar borrowing rate.

ADMINISTRATIVE

Notice 2005–53, page 263.
This notice provides supplemental guidance for foreign banks concerning interest expense allocation. The notice also indicates that the Treasury Department and the IRS are evaluating foreign banking industry data to determine whether the 93-percent fixed ratio in step 2 of the interest expense allocation formula under regulations section 1.882–5 should be increased, and whether the fair market value election for valuing U.S. assets should require the use of the actual ratio in step 2. The notice also permits taxpayers who use the adjusted U.S. book liability method to calculate excess interest by reference to a published LIBOR rate rather than the taxpayer's actual non-U.S.-based dollar borrowing rate.

Rev. Proc. 2005–48, page 271.
This procedure provides the maximum vehicle values using the special valuation rules under sections 1.61–21(d) and (e) of the regulations. These values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index (CPI).

Rev. Proc. 2005–50, page 272.
This procedure prescribes how an eligible educational institution may obtain automatic consent from the Service to change its method of reporting under section 6050S of the Code and section 1.6050S–1 of the regulations. For calendar years beginning after December 31, 2003, an eligible educational institution must elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified expenses during the calendar year for students enrolled for any academic period. Section 1.6050S–1(b)(1) provides that once an eligible educational institution elects to report either amounts billed, or payments received, it must continue to use the same method of reporting for all subsequent calendar years for which it is required to file information returns, and furnish information statements, unless permission is granted to change its reporting method. An eligible educational institution that complies with all of the conditions and procedures of this revenue procedure has obtained consent to change its method of reporting as required by section 1.6050S–1(b)(1).

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 83.—Property Transferred in Connection With Performance of Services

26 CFR 1.83–3: Meaning and use of certain terms — substantially vested.

Restricted property received for services; securities law. This ruling clarifies that, except as otherwise provided by section 83 of the Code, transfer restrictions on restricted stock or other section 83 property do not prevent the property from being substantially vested for purposes of section 83.

Rev. Rul. 2005–48

ISSUE

If an employee exercises a nonstatutory option more than six months after grant, but is subject to restrictions on his ability to sell the stock obtained through exercise of the option under rule 10b–5 under the Securities Exchange Act of 1934 and the contractual provisions described below, is the employee required to recognize income under section 83 of the Internal Revenue Code at the time of the exercise of the option?

FACTS

On January 2, 2005, Employee E, an employee of Company M, is granted a nonstatutory option to purchase M common stock. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Employee E has the right to purchase 100 shares of M stock for $10 per share, which is the fair market value of an M share on the date of grant of the option.

On May 1, 2005, M sells its common stock in an initial public offering. As required under the Underwriting Agreement, Employee E agrees not to sell, otherwise dispose of, or hedge any common shares, options, warrants, or convertible securities of M from May 1 through November 1 of 2005 ("the lock-up period").

Also on May 1, 2005, M adopts an Insider Trading Compliance Program, under which, as applied to 2005, insiders (such as Employee E) may trade M shares only between November 5 and November 30 of that year ("the trading window"). Under the Program, if Employee E trades M shares outside the trading window without M's permission, M has the right to terminate Employee E's employment. However, the exercise of nonstatutory options for M shares is not prohibited under the referenced agreements.

On August 15, 2005 (during the lock-up period and outside the trading window), M stock is trading on an established securities market at more than $10 per share. On that date, Employee E fully exercises the option, paying the exercise price in cash, and receives 100 M shares. Employee E's rights in the shares received as a result of the exercise are not conditioned upon the future performance of substantial services. As of that date, Employee E is in the possession of material nonpublic information concerning M that would subject him to liability under Rule 10b–5 under the Securities Exchange Act of 1934 ("Exchange Act"), 17 C.F.R. § 240.10b–5, if Employee E sold the M shares while in possession of such information.

LAW AND ANALYSIS

Section 83(a) provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of the property at the first time that the rights to the property are either transferable or not subject to a substantial risk of forfeiture ("substantially vested"), whichever occurs earlier, over the amount paid for the property is included in the gross income of the service provider in the first taxable year in which the rights to the property are substantially vested.

For purposes of section 83, a "transfer" of property occurs when a person acquires a beneficial ownership interest in the property (disregarding any "lapse restriction"). See section 1.83–3(a)(1) of the Income Tax Regulations.

Under section 1.83–3(h), a restriction which, by its terms, will never lapse (also referred to as a "nonlapse restriction") is a permanent limitation on the transferability of property that will require the transferee of the property to sell (or offer to sell) the property at a price determined under a formula and that will continue to apply and be enforced against the transferee or any subsequent holder (other than the transferor). An obligation to resell (or to offer to sell) the transferred property to a specific person or persons at its fair market value at the time of the sale is not a nonlapse restriction.

The term "lapse restriction" means a restriction other than a nonlapse restriction and includes (but is not limited to) a restriction that carries a substantial risk of forfeiture. See section 1.83–3(i).

For purposes of section 83, property is substantially nonvested when it is both subject to a "substantial risk of forfeiture" and is "nontransferable" within the meaning of sections 1.83–3(c) and (d), respectively. Property is substantially vested when it is either transferable or not subject to a substantial risk of forfeiture.

Whether a risk of forfeiture is substantial (or not) depends upon the facts and circumstances. A substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person or the occurrence of a condition related to the purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied. Property is not subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of the property to the employee upon the return of the property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, is not a substantial risk of forfeiture. See section 1.83–3(c)(1).

For purposes of section 83, the rights of a person in property are "transferable" if the person can transfer any interest in the property to any person other than the transferor of the property, but only if the transferee's rights in the property are not

subject to a substantial risk of forfeiture. Accordingly, property is transferable if the person performing the services or receiving the property can sell, assign, or pledge (as collateral for a loan, or as security for the performance of an obligation, or for any other purpose) his interest in the property to any person other than the transferor of the property, and if the transferee is not required to give up the property or its value in the event that the substantial risk of forfeiture materializes. See section 1.83–3(d).

Section 83(e)(3) provides that section 83(a) does not apply to the transfer of an option without a readily ascertainable fair market value. However, section 83(a) does apply to such an option at the time that it is exercised, sold, or otherwise disposed of. If the option is exercised, section 83(a) applies to the transfer of property pursuant to the exercise. If the option is sold or otherwise disposed of in an arm's length transaction, section 83(a) applies to the transfer of money or other property received in the same manner as it would have applied to the transfer of property pursuant to an exercise of the option. See section 1.83–7(a) of the regulations.

Under section 83(c)(3) of the Code and section 1.83–3(j) of the regulations, if the sale of property at a profit within six months after the purchase of the property could subject a person to suit under section 16(b) of the Exchange Act, 15 U.S.C. § 78p(b), the person's rights in the property are treated as subject to a substantial risk of forfeiture, and as not transferable, until the earlier of (1) the expiration of such six-month period, or (2) the first day on which the sale of the property at a profit will not subject the person to suit under section 16(b). Because, when enacting section 83(c)(3), Congress decided that the only provision of the securities law that would delay taxation under that section would be section 16(b), potential liability for insider trading under Rule 10b–5, for example, does not cause rights in property taxable under section 83 to be substantially nonvested.

Section 16(b) liability is triggered by either a "purchase and sale" or a "sale and purchase" of a security registered under section 12 of the Exchange Act, 15 U.S.C. § 78l, within a period of less than six months by an officer, director, or greater-than-10-percent owner of the corporation that issued the security. 15 U.S.C. §§ 78p(a) and (b). The combination of a purchase and a sale event (in either order) within a six-month period is what triggers section 16(b) liability.

Before May 1, 1991, the acquisition of stock as the result of the exercise of an option was viewed as a "purchase" for section 16(b) purposes. Thus, the six-month period under section 16(b) was measured from the date an option was exercised.

However, effective May 1, 1991, the Securities and Exchange Commission ("SEC") adopted new rules under section 16; thereafter, for purposes of that section, derivative securities, including options, generally were treated as the functional equivalents of stock ownership. Ownership Reports and Trading by Officers, Directors and Principal Security Holders, SEC Release No. 34–28869, 56 Fed. Reg. 7242, 7248 (Feb. 21, 1991). Stated another way, the SEC recognized "that holding derivative securities is functionally equivalent to holding the underlying equity securities for purposes of Section 16, since the value of the derivative securities is a function of or related to the value of the underlying equity security." *Id*. Accordingly, the SEC determined that the acquisition of an option should be deemed the significant event for purposes of section 16(b), not the exercise. *Id*.

In implementing this change, the SEC provided that any acquisition or disposition of an option involves either a "purchase" or "sale" for section 16(b) purposes. 17 C.F.R. §§ 240.16b–6(a), 240.16a–1(c), and 240.16a–1(b). The SEC exempted from section 16(b) exercises and conversions of options that (like Employee E's) have a fixed exercise price due at the exercise or conversion, other than options that are out-of-the-money at the time of exercise. 17 C.F.R. § 240.16b–6(b). In other words, after May 1, 1991, the six-month holding period under section 16(b) is measured from the date an option is granted, not when it is exercised (with exceptions not applicable here). Thus, after May 1, 1991, section 16(b) interacts with section 83 as follows: if, for example, shares are acquired through the exercise of a nonstatutory option in a transfer taxable under the rules of section 83, the holder of the shares would not be subject to section 16(b) liability as a result of an immediate sale of the shares unless the sale occurred during the six-month period beginning with the date of grant of the option. Even if an optionee exercises an option and sells the underlying shares within six months of the date of grant of the option, an exemption from liability under section 16(b) may be available under other provisions of the SEC rules. *See* 17 C.F.R. §§ 240.16b–3(d)(1) and (2). If such an exemption is available within six months of the date of grant, the compensation income attributable to the employee's exercise of the option is includable in the employee's gross income on the later of the date of exercise and the date the exemption becomes available. If such an exemption is not available within six months from the date of grant, the compensation income attributable to the employee's exercise of the option would be includable in the employee's gross income on the later of the date of exercise or the date that is six months from the date of grant.

Applying the above rules, because the option is granted to Employee E on January 2, 2005, the section 16(b) period applicable to the option expires on July 2 of that year. Accordingly, the section 16(b) period expires *before* the date that Employee E exercises the option and the M shares are transferred to Employee E (on August 15). Thus, the shares are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). Moreover, neither the Underwriting Agreement nor the Insider Trading Compliance Program imposes a substantial risk of forfeiture, because the provisions of those agreements do not condition Employee E's rights in the shares upon anyone's "future performance (or refraining from performance) of substantial services" or on a "condition related to a purpose of the transfer" of the shares to Employee E. Accordingly, neither section 83(c)(3) nor the provisions of those agreements preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Employee E. These conclusions are consistent with the court's decision in *Tanner v. Comm'r.*, 117 T.C. 237 (2001), *aff'd*, No. 02–60463 (5th Cir. Mar. 26, 2003); but see *Robinson v. Comm'r.*, 805 F.2d 38 (1st Cir. 1986), *rev'g*, 82 T.C. 444 (1984).

Additionally, the restrictions imposed by the referenced agreements and Rule

10b–5 on Employee E's sales (or other trading) of the M shares are "lapse restrictions," because the restrictions imposed by the Underwriter's Agreement and Rule 10b–5 are temporary and the restrictions imposed by the Insider Trading Compliance Program are inapplicable during the window period. Accordingly, these restrictions are ignored when valuing the shares. *See* section 83(a).

The Department of the Treasury and the Internal Revenue Service intend to amend the § 83 regulations to explicitly set forth the holdings in this revenue ruling.

HOLDING

Under section 83, the compensation income attributable to Employee E's exercise of the option for M shares is includible in Employee E's gross income when the shares obtained through exercise of the option are transferred to Employee E, and the amount of compensation income is determined without regard to the share-transfer restrictions imposed by the Underwriter's Agreement and the Insider Trading Compliance Program.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Hughes of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Mr. Hughes or Robert Misner at (202) 622–6030 (not a toll-free number).

Section 446.—General Rule for Methods of Accounting

Rev. Proc. 2005–47, 2005–32 I.R.B. dated August 8, 2005, provides automatic consent procedures for certain taxpayers to change their method of accounting for credit card cash advance fees to treat these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to these fees. This revenue procedure also sets forth the conditions under which the Commissioner will not challenge a taxpayer's treatment of these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to the fees. See Rev. Proc. 2005-47, page 269.

Section 1272.—Current Inclusion in Income of Original Issue Discount

Rev. Proc. 2005–47, 2005–32 I.R.B. dated August 8, 2005, provides automatic consent procedures for certain taxpayers to change their method of accounting for credit card cash advance fees to treat these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to these fees. This revenue procedure also sets forth the conditions under which the Commissioner will not challenge a taxpayer's treatment of these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to the fees. See Rev. Proc. 2005-47, page 269.

Section 1273.—Determination of Amount of Original Issue Discount

Rev. Proc. 2005–47, 2005–32 I.R.B. dated August 8, 2005, provides automatic consent procedures for certain taxpayers to change their method of accounting for credit card cash advance fees to treat these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to these fees. This revenue procedure also sets forth the conditions under which the Commissioner will not challenge a taxpayer's treatment of these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to the fees. See Rev. Proc. 2005-47, page 269.

26 CFR 1.1273–2: Determination of issue price and issue date.

ATM surcharge fees. This ruling holds that, for federal income tax purposes, a credit card issuer treats third-party ATM surcharge fees incurred by its cardholders as additional amounts loaned to those cardholders. Further, this is so whether the credit card issuer reflects the ATM surcharge fee on the cardholder's account as part of the amount of the cardholder's cash advance (as in Situation 1) or as a separately stated amount (as in Situation 2).

Rev. Rul. 2005–47

ISSUE

If a credit card holder uses the credit card to obtain a cash advance from an ATM and, as a result, incurs a liability for an ATM surcharge fee, how does the credit card issuer treat for federal income tax purposes the amount that it remits to the owner or operator of the ATM in satisfaction of the cardholder's liability?

FACTS

X issues credit cards. Each credit card allows the cardholder to access a revolving line of credit to make purchases of goods and services and to obtain cash advances. Cardholders may obtain cash advances, for example, by using their credit cards to obtain cash from an automated teller machine (ATM). *X* does not own or operate any ATMs and does not impose any ATM transaction fees on its cardholders under its cardholder agreements.

Situation 1: *X* issues a credit card to cardholder *A*, and *A* uses the credit card to obtain a cash advance of $100 at an ATM owned by *Y*. After *A* initiates the transaction requesting $100, *A* is informed that, if the transaction is completed, an ATM surcharge fee of $5 will be deducted from the $100 cash advance requested by *A*. *A* accepts liability for the $5 ATM surcharge fee, and the transaction, in which $95 of funds are disbursed to *A*, is completed. Upon *Y*'s request to *X* for reimbursement for *A*'s ATM cash advance transaction, *X* remits $100 to *Y* and reflects a $100 cash advance on *A*'s account.

Situation 2: The facts are the same as in *Situation 1* except that *A* uses an ATM operated by *Z* to obtain a cash advance of $125 and that the transaction is handled as follows. After *A* initiates the transaction requesting $125, *A* is informed that, if *A* completes the transaction, a $5 ATM surcharge fee will be charged to *A*'s credit card in addition to the $125 cash advance requested by *A*. *A* accepts liability for the $5 ATM surcharge fee, and the transaction, in which $125 of funds are disbursed to *A*, is completed. Upon *Z*'s request for reimbursement for *A*'s ATM cash advance transaction, which includes a $5 ATM surcharge fee, *X* remits $130 to *Z* and reflects on *A*'s account both a $125 cash advance and a $5 ATM surcharge fee.

LAW AND ANALYSIS

Section 1.1273–2(g) of the Income Tax Regulations provides rules for determining the treatment of certain cash payments made incident to lending transactions. Section 1.1273–2(g)(4) provides rules for determining the treatment of these payments when made between the lender and a person other than the borrower (the "third party"). If, as part of a lending

transaction, the lender makes a payment to a third party, that payment is treated in appropriate circumstances as an additional amount loaned to the borrower and then paid by the borrower to the third party.

In both *Situations 1* and *2*, the $5 ATM surcharge fee is imposed on *A* by the third party owner or operator of the ATM, not by *X*. When *X* remits an amount inclusive of the ATM surcharge fee to *Y* in *Situation 1* and to *Z* in *Situation 2*, *X* is making those payments on behalf of *A*. Therefore, in both *Situations 1* and *2*, the $5 ATM surcharge fee is appropriately treated under § 1.1273–2(g)(4) as an additional amount loaned by *X* to *A* and then paid by *A* to *Y* or *Z*. This is so whether *X* reflects the $5 ATM surcharge fee on *A*'s account as part of the amount of *A*'s cash advance (as in *Situation 1*) or as a separately stated amount (as in *Situation 2*).

HOLDING

In both *Situations 1* and *2*, for federal income tax purposes the credit card issuer treats third-party ATM surcharge fees incurred by its cardholders as additional amounts loaned to those cardholders.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Jonathan Silver and Tina Jannotta of the Office of Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact the principal authors at (202) 622–3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Foreign Bank Interest Expense Allocation to Effectively Connected Income

Notice 2005–53

SECTION 1. OVERVIEW

On March 8, 1996, final regulations were published in the Federal Register (T.D. 8658, 1996–1 C.B. 161 [61 FR 9326]; Treas. Dec. Int. Rev. 8658), under section 1.882–5 regarding the determination of the interest expense deduction of a foreign corporation engaged in a U.S. trade or business. The Treasury Department and the Internal Revenue Service have monitored these provisions to ensure that they continue to produce results that are consistent with the policies underlying the regulations, in light of current economic circumstances. The Treasury Department and the IRS believe that, in the context of the banking industry, certain changes to the regulations will facilitate compliance. This notice describes such changes, which will apply to determine the interest expense deduction of a foreign corporation that is a bank, within the meaning of section 585(a)(2)(B) without regard to the second sentence thereof (hereafter "foreign bank"). The Treasury Department and IRS intend to issue regulations consistent with this notice.

The remainder of this notice is divided into seven sections. Section 2 provides relevant legal background. Section 3 provides guidance on the coordination of section 1.882–5 with treaties. Section 4 invites the submission of data and other information relevant to the consideration of a revised fixed ratio available for purposes of determination of U.S.-connected liabilities in Step 2 of section 1.882–5. Section 5 provides guidance on the determination of the applicable rate for excess interest under the adjusted U.S.-booked liabilities method in Step 3 of section 1.882–5. Section 6 solicits comments on coordination of Step 1 determination of U.S. assets on the adjusted or fair market value basis with Step 2 determination of U.S.-connected liabilities using the fixed or actual ratio. Section 7 provides information on submitting comments. Finally, section 8 provides drafting information.

SECTION 2. LEGAL BACKGROUND

Section 1.882–5 generally requires a foreign corporation to determine the amount of interest expense that is allocable under section 882(c) to income effectively connected (or treated as effectively connected) with the conduct of the foreign corporation's trade or business in the United States by a three step calculation.

Step 1 determines the total value of the U.S. assets of the foreign corporation, generally the assets that produce (or would produce) income effectively connected with the conduct of the U.S. trade or business of the foreign corporation. The value of the U.S. assets is their adjusted basis, unless the taxpayer makes an election to value the assets on the basis of their fair market value.

Step 2 determines the U.S.-connected liabilities of the foreign corporation as the product of the U.S. assets multiplied either by the actual ratio of worldwide liabilities to worldwide assets or, if the taxpayer makes an election, by a fixed ratio, currently 93-percent. If the taxpayer has elected to value U.S. assets on the basis of fair market value for purposes of Step 1, then the taxpayer must value worldwide assets on a fair market value basis for purposes of Step 2.

Step 3 determines the allocable amount of interest expense under the adjusted U.S. booked liabilities ("AUSBL") method, or, if the taxpayer makes an election, under the separate currency pools method. Under the AUSBL method, the foreign corporation's interest expense is based on the interest expense on the foreign corporation's U.S. books. If the U.S. booked liabilities exceed the U.S.-connected liabilities, then the foreign bank's U.S. booked interest expense is scaled down. If the U.S.-connected liabilities exceed the U.S.-booked liabilities, interest expense in addition to the U.S. booked interest expense is allocated by reference to the foreign U.S. dollar borrowing rate multiplied by the excess U.S.-connected liabilities. Under the separate currency pools method, the worldwide interest expense is allocated to effectively connected income based on the U.S.-connected liabilities in each currency multiplied by the foreign bank's worldwide rate for liabilities in such currency.

Rules on the time and manner of making and changing the various elections are provided in sections 1.882–5(a)(7) and 1.882–5(b)(2).

SECTION 3. COORDINATION OF THE DETERMINATION OF THE INTEREST EXPENSE DEDUCTION FOR FOREIGN BANKS AND TREATIES

Section 1.882–5(a)(2) currently states that "[t]he provisions of this section provide the exclusive rules for determining the interest expense attributable to the business profits of a permanent establishment under a U.S. income tax treaty." This statement is no longer accurate in light of the income tax treaties entered into with the United Kingdom and Japan,[1] and, therefore, will be eliminated by the amendments to the regulations.

The Exchange of Notes to the current United States-United Kingdom and United States-Japan income tax treaties adopt the principles of Article 9(1) for determining the profits attributable to a permanent establishment.[2] Both Notes address the allocation of the capital of financial institutions to their permanent establishments, stating in pertinent part that the Contracting States may treat the permanent establishment

> as having the same amount of capital that it would need to support its activities if it were a distinct and separate enterprise engaged in the same or similar activities. With respect to financial institutions other than insurance companies, a Contracting State may determine the amount of capital to be attributed to a permanent establishment by allocating the institution's total equity between its various offices on the basis of the proportion of the financial institu-

[1] See *United States-United Kingdom Income Tax Treaty*, Article 7 (July 24, 2001); *United States-Japan Income Tax Treaty*, Article 7 (November 6, 2003) and accompanying Exchange of Notes.

[2] Exchange of Notes, United States-Japan Income Tax Treaty, para. 2 (July 24, 2001) and United States-United Kingdom Income Tax Treaty (July 24, 2001).

tion's risk-weighted assets attributable to each of them.[3]

The Treasury Technical Explanations of the United Kingdom and Japan treaties acknowledge that the allocation method provided by section 1.882–5 does not take into account the relative riskiness of assets that are attributable to a permanent establishment and that equal weighting of risk, in some cases, "may require a taxpayer to allocate more capital to the United States (and therefore would reduce the taxpayer's interest expense deduction) than is appropriate."[4]

Accordingly, the two treaties permit United Kingdom and Japanese resident financial institutions the use of an alternative approach to the determination of their taxable income, without the section 1.882–5 determination of interest expense, for purposes of establishing the upper limit with respect to the amount of tax that may be imposed on a U.S. permanent establishment of a foreign bank. Such an alternative approach under the treaties would incorporate risk-weighting of the foreign bank's assets as well as other consequential deviations from the rules of section 1.882–5 in line with the arm's length principles of Articles 7 and 9(1) of those treaties.

As reflected in the Notes and Technical Explanations, the two treaties require an allocation of sufficient equity capital in determining the profits attributable to a permanent establishment. The amount of equity capital shown on a taxpayer's book's is not determinative. Therefore, it will be acceptable only to the extent such allotment is sufficient to support the assets and risks attributable to the permanent establishment.

The Treasury Department and IRS continue to believe that application of section 1.882–5 also results in a sufficient allocation of equity capital to a permanent establishment, and is simpler to apply than an alternative approach under the treaties. As stated in both Technical Explanations, taxpayers are not required to use the risk-weighted approach for allocating equity capital provided by the treaties. Rather, taxpayers may continue to use section 1.882–5 in lieu of an alternative approach under the treaties.

SECTION 4. DETERMINATION OF U.S.-CONNECTED LIABILITIES UNDER THE FIXED RATIO FOR FOREIGN BANKS

As noted, Step 2 of the calculation is used to determine the amount of U.S.-connected liabilities. Section 1.882–5(c)(1) provides that "[t]he amount of U.S.-connected liabilities for the taxable year equals the total value of U.S. assets for the taxable year (as determined under paragraph (b)(3) of this section) multiplied by the actual ratio for the taxable year (as determined under paragraph (c)(2) of this section) or, if the taxpayer has made an election in accordance with paragraph (c)(4) of this section, by the fixed ratio." In 1996, the final regulations established the fixed ratio for foreign banks at 93 percent.

The Treasury Department and IRS have considered data from more recent years to determine whether the 93 percent fixed ratio continues to be appropriate. Based on that examination, it appears that a fixed ratio of between 94 and 96 percent may be more appropriate. The Treasury Department and IRS invite the submission of data and other information relevant to the consideration of a revised fixed ratio, including information about the nature of the assets and risks related to the U.S. trade or business as compared to the business conducted outside the United States.

It is expected that taxpayers will be permitted to make new elections with respect to section 1.882–5 to take into account these changes.

SECTION 5. DETERMINATION OF EXCESS INTEREST OF BANKS UNDER THE ADJUSTED U.S.-BOOK LIABILITY METHOD

Under the Adjusted U.S. Booked Liabilities ("AUSBL") method taxpayers may be required under certain facts and circumstances to calculate a portion of their interest expense allocation by reference to the average U.S. dollar borrowing rate incurred outside the United States. Section 1.882–5(d)(5) provides that where the U.S.-connected liabilities exceed the taxpayer's U.S. booked liabilities (as defined for banks in section 1.882–5(d)(2)(iii)), the excess U.S.-connected liabilities are multiplied by the taxpayer's average U.S. dollar borrowing rate with respect to interest expense and liabilities shown on the books of the taxpayer's offices or branches outside the United States. This portion of the Step 3 allocation is referred to as the "excess interest."

In prior regulations ("the 1980 regulations"), section 1.882–5 provided that where information necessary to compute the actual foreign U.S. dollar borrowing rate could not "be reasonably obtained," then "any method that reasonably approximates the actual rate" could be substituted so long as it was consistently applied from year to year.[5] The 1980 regulations provided that the 30-day LIBOR rate may constitute an appropriate proxy for an actual foreign borrowing rate but did not specify that the use of the published LIBOR rate could be used outright if the actual foreign borrowing rate was capable of being proved. Where the total foreign U.S. dollar borrowings were *de minimis*, the prior regulations substituted the actual average borrowing rate of the foreign corporation's trade or business within the United States.

Where a foreign corporation elects both the fixed ratio under Step 2 and the AUSBL method under Step 3, it is possible for the taxpayer's entire interest expense allocation to be determined by reference to the books and records of its trade or business within the United States. This may be true under the current regulations if the allocation for the taxpayer does not result in excess interest but, instead, is subject to the scale-down rule under section 1.882–5(d)(4). Otherwise, when these elections are made together, resort may still be necessary to information typically maintained outside the United States. In many cases, the information would be collected only for purposes of computing the taxpayer's excess interest.

To facilitate administrability both for foreign bank taxpayers and the IRS, the amendments to the regulations will provide that such taxpayers who are already

[3] *Id*.

[4] Technical Explanation of the United States-United Kingdom Income Tax Treaty, Art. 7, para. 3, CCH, p. 201,301; United States-Japan Income Tax Treaty, Art. 7, para. 3, CCH, p. 113,320.

[5] §1.882–5(b)(2)(i)(B), T.D. 7749, 1981–1 C.B. 390, 394.

eligible to use the AUSBL method for a particular year may make a binding annual election to calculate excess interest under the AUSBL method by reference to the published 30-day average LIBOR rate for such year, rather than the actual foreign U.S. dollar borrowing rate prescribed in §1.882–5(d)(5), by using such rate to calculate its interest expense deduction on a timely filed original Federal income tax return for such year. The election provisions of §1.882–5(a)(7) shall apply on an annual basis without regard to the binding 5-year minimum period. Such taxpayers may begin using such rate for tax years ending on or after the date on which this notice is published.

SECTION 6. COORDINATION OF DETERMINATION OF U.S. ASSETS ON AN ADJUSTED OR FAIR MARKET VALUE BASIS WITH DETERMINATION OF U.S.-CONNECTED LIABILITIES USING THE FIXED OR ACTUAL RATIO

The Treasury Department and the IRS recognize that an increase in the fixed ratio, as contemplated by section 3 of this notice, will render the fixed ratio relatively more attractive as compared to the actual ratio for purposes of the Step 2 determination of the U.S.-connected liabilities of foreign banks. Pursuant to the existing regulations, foreign banks may combine an election of the fixed ratio for the Step 2 determination of U.S.-connected liabilities with an election of the fair market value basis for the Step 1 determination of U.S. assets.

The Treasury Department and the IRS are reconsidering whether combining these elections is consistent with the policies underlying the regulations. In particular, it is unclear that such a combination of elections would produce an appropriate result in light of the prevalence and significance of intangibles in the banking industry. The Step 2 determination of U.S.-connected liabilities using an actual ratio determined on a fair market value basis reflects in a balanced manner the effect of intangibles because such intangibles would be taken into account at their fair market in both steps. The Step 2 determination of U.S.-connected liabilities using the fixed ratio in conjunction with a fair market value election in Step 1 may not similarly reflect in a balanced manner the effect of intangibles. The Treasury Department and the IRS are concerned, therefore, that the current ability to apply a fair market value election in conjunction with a fixed ratio election may distort the Step 2 determination of U.S.-connected liabilities. The Treasury Department and the IRS solicit comments to assist them in their review of this matter.

SECTION 7. SUBMISSION OF COMMENTS

Taxpayers may submit comments to: CC:ITA:RU (PGP–125111–02), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (PGP–125111–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.htm*.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Paul S. Epstein of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Paul S. Epstein and Gregory Spring at (202) 622–3870 (not a toll-free call).

2005 Marginal Production Rates

Notice 2005–55

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 2004 calendar year is $36.75.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2005.

Notice 2005–55 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
2005	15 percent

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

2005 Section 43 Inflation Adjustment

Notice 2005–56

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 2004 calendar year ($36.75) does not exceed $28 multiplied by the inflation adjustment factor for the 2005 calendar year, the enhanced oil recovery credit for qualified costs paid or incurred in 2005 is determined without regard to the phase-out for crude oil price increases.

Table 1 contains the GNP implicit price deflator used for the 2005 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2004 calendar years.

Notice 2005–56 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)
2004	108.23 (used for 2005)

* 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.

**** Beginning in 2003, the GNP implicit price deflator was rebased relative to 2000. The 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.59.

Notice 2005–56 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
2005	1.3266	0

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2005 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in 1991 through 2004 calendar years.

DRAFTING INFORMATION

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

Termination of Tobacco Quotas and Price Support Programs

Notice 2005–57

INTRODUCTION

This notice modifies and supersedes Notice 2005–51, 2005–28 I.R.B. 74, dated July 11, 2005. The modifications to Notice 2005–51 are effective as of June 21, 2005, the date Notice 2005–51 was released.

PURPOSE

This notice provides answers to frequently asked questions regarding the tax treatment of federal payments made pursuant to § 622 of the Fair and Equitable Tobacco Reform Act of 2004, Title VI of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418, 1521–36 (2004) (the Act).

BACKGROUND

Sections 611 and 612 of the Act terminate the tobacco marketing quota program and the tobacco price support program. Section 622 of the Act provides that the United States Department of Agriculture (USDA) will offer to enter into a contract with an eligible tobacco quota holder (Owner) under which the Owner may receive total payments of $7 per pound of quota in 10 equal annual payments in fiscal years 2005 through 2014 (Owner Payments) in exchange for the termination of the tobacco marketing quotas and related price support. Section 622 does not provide for stated interest on payments due under the contracts.

For federal income tax purposes, Owner Payments are the proceeds from a sale of an Owner's tobacco quota as of the date on which the Owner and USDA enter into a contract for Owner Payments with respect to the quota (Sale Date). See Q & A–12 for a special rule regarding when a transfer of a quota is deemed to

occur, under certain circumstances, for purposes of § 1031 of the Internal Revenue Code.

QUESTIONS AND ANSWERS

Q–1. Are Owner Payments received under the Act subject to federal income tax?

A–1. Yes, Owner Payments are subject to federal income tax. If the amounts received by the Owner are more than the Owner's adjusted basis in the quota, the Owner has a taxable gain; if the Owner receives less than the Owner's adjusted basis, the Owner has a loss that may be deductible for tax purposes if the requirements for deduction under § 165 are satisfied. In determining an Owner's gain or loss, the amount received for the quota does not include any amount treated as interest for federal tax purposes. See Q & A–7 for help in determining whether any portion of an Owner Payment is treated as interest for federal tax purposes.

Q–2. How does an Owner determine the adjusted basis of a quota?

A–2. The adjusted basis of a quota is determined differently depending upon how the Owner acquired the quota.

- An Owner who holds a quota that is derived from an original grant by the federal government has a basis of zero in the quota.

- The basis of a purchased quota is the price the Owner paid for it.

- Generally an Owner who received a quota as a gift has the same basis in the quota as the person who gave the quota to the Owner. Under certain circumstances, the basis is increased by an amount related to the amount of gift tax paid. If the basis is greater than the fair market value of the quota at the time of the gift, the basis for determining loss is that fair market value.

- The basis of a quota that an Owner inherited generally is the fair market value of the quota at the time of the decedent's death.

The basis of a tobacco quota is not subject to adjustment through amortization, depletion, or depreciation. However, if an Owner improperly has deducted any amount for these purposes, the Owner must reduce the basis by the amount deducted before determining the Owner's gain or loss. A similar reduction in the basis of a quota must be made for any amount previously deducted as a loss because of a reduction in the number of pounds of tobacco allowable under the quota. If an Owner purchased a quota and deducted the entire cost in the year of purchase, then the Owner's basis in the quota is zero.

Q–3. If an Owner has a gain and reports Owner Payments under the installment method, when must the gain be included in income?

A–3. The installment method may be used to report gain if an Owner receives at least one Owner Payment after the close of the Owner's taxable year that includes the Sale Date. The amount of the gain is the excess of the total amount of Owner Payments to be received, reduced by any amount treated as interest, over the Owner's adjusted basis in the quota. Under the installment method, a proportionate amount of the gain is taken into account in each year in which an Owner Payment is received. See the instructions for Form 6252, *Installment Sale Income*.

Q–4. If an Owner has a gain and elects not to report Owner Payments under the installment method, when must the gain be included in income?

A–4. The Owner must report the entire gain on the Owner's federal income tax return for the taxable year that includes the Sale Date.

Q–5. Is the gain or loss with respect to a quota ordinary or capital gain or loss?

A–5. Whether the gain or loss with respect to a quota is ordinary or capital depends on how the Owner used the quota.

- If an Owner used a quota in the trade or business of farming and, on the Sale Date, the Owner's holding period for the quota was more than one year, then the transaction is reported under § 1231 on Form 4797, *Sales of Business Property*. If an Owner has no other § 1231 transactions reportable on Form 4797, any gain is treated as long-term capital gain and any loss is treated as ordinary loss. Even if an Owner has other reportable § 1231 transactions, the net result of all § 1231 transactions reported generally is either long-term capital gain or ordinary loss. See the instructions for Form 4797 for more detailed information.

- If an Owner held a quota for investment purposes, or for the production of income, but did not use the quota in a trade or business, any gain or loss is capital gain or loss.

Under certain circumstances, some or all of the gain must be recharacterized and reported as ordinary income. If an Owner previously deducted (1) the cost of acquiring a quota, (2) amounts for amortization, depletion, or depreciation, or (3) amounts to reflect a reduction in the quota pounds, any gain is taxed as ordinary income up to the amount previously deducted. The Owner must report this amount of ordinary income on the Owner's return for the taxable year that includes the Sale Date, even if the Owner uses the installment method to report the remainder of the gain.

Q–6. Are Owner Payments received under the Act subject to Self-Employment Contributions Act (SECA) tax (see § 1402)?

A–6. No.

Q–7. Is any portion of an Owner Payment treated as interest for federal tax purposes?

A–7. (a) If the total amount to be paid under a contract does not exceed $3,000, no portion of an Owner Payment is treated as interest for federal tax purposes.

(b) If § 483 applies to a contract, a portion of each Owner Payment (other than an Owner Payment due within six months of the Sale Date) is treated as interest for federal tax purposes. For example, § 483 generally applies to a contract if the total amount to be paid under the contract does not exceed $250,000 or if a cash method election is made under §§ 1274A and 1.1274A–1(c). A contract is eligible for the cash method election only if the total amount to be paid under the contract does not exceed the inflation-adjusted amount for a cash method debt instrument ($3,202,100 for 2005).

(c) In all situations not described in (a) or (b) above, a portion of each Owner Payment is treated as interest for federal tax purposes under § 1274.

(d) In general, to determine the amount of an Owner Payment that is treated as interest, see § 483 or § 1274, whichever is applicable, and the regulations thereunder. You may wish to consult a tax advisor for

assistance in determining the portion of an Owner Payment that is treated as interest and the taxable year in which the interest is includible in income.

Q–8. Does an individual Owner's gain or loss from Owner Payments qualify for farm income averaging?

A–8. No. A tobacco quota is considered an interest in land, and farm income averaging is not available for gain or loss arising from the sale or other disposition of land.

Q–9. Are Owner Payments subject to information reporting?

A–9. Yes. Because a tobacco quota is considered an interest in land, the total amount received under a contract by an owner in a taxable year generally will be reported by USDA on Form 1099–S, *Proceeds From Real Estate Transactions*, if the amount is $600 or more. In addition, any portion of an Owner Payment treated as interest for federal tax purposes generally will be reported by USDA on Form 1099–INT, *Interest Income*, if the total amount of interest received in a taxable year is $600 or more.

Q–10. Is the termination of a tobacco quota under the Act an involuntary conversion of the quota?

A–10. No.

Q–11. May an Owner enter into a like-kind exchange of a quota?

A–11. Yes. An Owner may postpone reporting the gain or loss from the termination of a quota by entering into a like-kind exchange pursuant to § 1031 and the regulations thereunder. The date on which an Owner and USDA enter into a contract for Owner Payments with respect to a quota is treated as the date on which the quota is transferred for purposes of § 1031. An intermediary is treated as satisfying the requirements of § 1.1031(k)–1(g)(4)(iii)(B) (relating to the exchange agreement required to be entered into by a qualified intermediary) if the intermediary enters into a written agreement with the Owner (the exchange agreement) before the date on which the quota is transferred and under the exchange agreement the intermediary—

(a) is assigned the right to receive all Owner Payments under the contract made after the date of the exchange agreement;

(b) acquires the replacement property; and

(c) transfers the replacement property to the Owner.

Q–12. Is transitional relief available for purposes of § 1031 for an Owner who could not make timely arrangements for a like-kind exchange under Notice 2005–51?

A–12. Yes, transitional relief is available to an Owner who applied by June 17, 2005, to enter into a contract with USDA for Owner Payments. In determining whether such Owner has entered into a like-kind exchange pursuant to § 1031 and the regulations thereunder, the date on which the Owner transfers a quota is deemed to be September 16, 2005. To qualify for this transitional relief, an Owner who receives an Owner Payment must remit the amount of the Owner Payment to the qualified intermediary within 5 business days of the later of the date the exchange agreement is entered into or the date the Owner Payment is received by the Owner; in such case the Owner Payment is treated as being received by the qualified intermediary.

SUBSEQUENT GUIDANCE

Section 623 of the Act provides that USDA will offer to enter into a contract with an eligible tobacco producer (Grower) under which the Grower may receive total payments of up to $3 per pound of quota in 10 equal annual payments in fiscal years 2005 through 2014 (Grower Payments) in exchange for the termination of the tobacco marketing quotas and related price support. Grower Payments are determined by reference to the amount of quota under which the Grower produced (or planted) tobacco during the 2002, 2003, and 2004 tobacco marketing years and are prorated based on the number of years that the Grower produced (or planted) quota tobacco during those years. The federal tax treatment of Grower Payments is expected to be addressed in subsequent guidance.

EFFECT ON OTHER DOCUMENTS

Notice 2005–51 is modified and, as modified, is superseded.

DRAFTING INFORMATION

The principal author of this notice is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding Q & A–7 of this notice, contact Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 622–3950 (not a toll-free call). For further information regarding the remainder of this notice, contact Ms. Myers at (202) 622–4920 (not a toll-free call).

---

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 446, 1272, 1273.)

Rev. Proc. 2005–47

SECTION 1. PURPOSE

This revenue procedure describes conditions under which the Commissioner will allow a taxpayer to treat credit card cash advance fees as creating or increasing original issue discount (OID) on a pool of credit card loans that includes the cash advances that give rise to these fees. This revenue procedure also provides the exclusive procedure by which a taxpayer within the scope of this revenue procedure may obtain the Commissioner's consent to change its method of accounting for credit card cash advance fees to a method that treats these fees as creating or increasing OID on a pool of credit card loans that includes the cash advances that give rise to the fees.

SECTION 2. BACKGROUND

.01 Certain taxpayers issue credit cards that allow cardholders to access a revolving line of credit to purchase goods and services ("credit card purchase transactions") and to obtain cash advances ("cash advance transactions"). The credit card agreement between the credit card issuer and the cardholder sets forth the terms and conditions that govern the cardholder's use of the credit card, including identification of which credit card transactions are treated as cash advance transactions.

.02 Under many credit card agreements, the credit card issuer imposes a fee (a "credit card cash advance fee") on the cardholder when the cardholder uses the credit card to conduct a cash advance transaction. Although the terms of credit card agreements may vary, a credit card

cash advance fee is generally a flat fee or a percentage of the face amount of the cash advance (often subject to minimum and maximum limits). Credit card cash advance fees are generally imposed in addition to any stated periodic interest rate charges.

.03 Under § 1273(a)(1) of the Internal Revenue Code, OID is the excess of the stated redemption price at maturity (SRPM) of a debt instrument over the issue price of that instrument. Under § 1.1273–1(b) of the Income Tax Regulations, the SRPM is the sum of all payments provided by the debt instrument other than payments of qualified stated interest (QSI). Under § 1.1273–1(c), QSI is stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) or that will be constructively received under § 451 at least annually at a single fixed rate. See § 1.1273–2 for rules to determine the issue price of a debt instrument.

.04 Section 1272(a)(6) provides rules for determining the daily portions of OID on certain debt instruments. The instruments covered include REMIC regular interests and qualified mortgages held by REMICs, debt instruments the payments under which may be accelerated by reason of prepayments of other obligations securing the debt instruments, and any pool of debt instruments the yield on which may be affected by reason of prepayments.

.05 Rev. Proc. 2004–33, 2004–1 C.B. 989, describes conditions under which the Commissioner will allow a taxpayer within the scope of that procedure to treat credit card late fees as creating or increasing the amount of OID on a pool of credit card loans to which those fees relate. Under Rev. Proc. 2004–33, a credit card late fee that is a one-time charge or a flat sum imposed in addition to a stated periodic interest charge may be treated as creating or increasing OID if that fee otherwise satisfies the revenue procedure's requirements.

.06 Any change in the taxpayer's treatment of credit card cash advance fees that affects when income is recognized is a change in method of accounting to which the provisions of §§ 446 and 481, and the regulations thereunder, apply. Under § 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.

.07 Rev. Proc. 2002–9, 2002–1 C.B. 327 (as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432), provides procedures by which taxpayers may obtain automatic consent to change to the methods of accounting described in the Appendix of Rev. Proc. 2002–9. Section 5.03 of Rev. Proc. 2002–9 provides that, unless otherwise provided, a taxpayer making a change in method of accounting under the revenue procedure must take into account a section 481(a) adjustment in the manner provided in section 5.04 of Rev. Proc. 2002–9.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer if—

.01 The taxpayer issues credit cards allowing cardholders to access a revolving line of credit established by the taxpayer both to make credit card purchase transactions and to obtain cash advances; and

.02 For federal income tax purposes, the taxpayer does not treat the credit card purchase transactions of its cardholders as creating debt that is given in consideration for the sale or exchange of property.

SECTION 4. APPLICATION

.01 Subject to subsection .02 of this section 4, if a taxpayer is within the scope of this revenue procedure, the Commissioner will not challenge the taxpayer's treatment of credit card cash advance fees as creating or increasing the amount of OID on a pool of credit card loans that includes the cash advances that give rise to those fees.

.02 Subsection .01 of section 4 of this revenue procedure applies only if the taxpayer satisfies all of the requirements of section 5 of this revenue procedure and, if the taxpayer is changing its method of accounting, all of the requirements of section 6 of this revenue procedure.

SECTION 5. REQUIREMENTS

A taxpayer must be able to demonstrate the following:

.01 The amount of any credit card cash advance fee charged to a cardholder by the taxpayer is separately stated on the cardholder's account when that fee is imposed; and

.02 Under the credit card agreement, no amount identified as a credit card cash advance fee is charged for property or for specific services performed by the taxpayer for the benefit of the cardholder.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

If a taxpayer within the scope of this revenue procedure wants to change its method of accounting for credit card cash advance fees and if, under the method to which the taxpayer is changing, these fees are treated as creating or increasing the amount of OID on a pool of credit card loans that includes the cash advances that give rise to those fees, the taxpayer must follow the provisions of Rev. Proc. 2002–9 (or its successor), with the following modifications:

.01 The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply to a taxpayer that makes the change for either its first or second taxable year ending on or after December 31, 2004; and

.02 The taxpayer must prepare and file a Form 3115 in accordance with section 6 of Rev. Proc. 2002–9 and enter the designated number ("94") for this automatic change in method in Line 1a of Form 3115.

SECTION 7. AUDIT PROTECTION

.01 If a taxpayer within the scope of this revenue procedure currently uses a method of accounting that treats credit card cash advance fees as creating or increasing the amount of OID on a pool of credit card loans that includes the cash advances that give rise to those fees, the issue of whether that treatment is proper will not be raised by the Commissioner for a taxable year that ends before December 31, 2004.

.02 If a taxpayer within the scope of this revenue procedure currently uses a method of accounting that treats credit card cash advance fees as creating or increasing the amount of OID on a pool of credit card

loans that includes the cash advances that give rise to those fees 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, 2004, that issue will not be further pursued by the Service.

.03 Neither the audit protection provided in connection with a change in a taxpayer's method of accounting for credit card cash advance fees that is properly made under section 6 of this revenue procedure nor the audit protection provided under sections 7.01 and 7.02 of this revenue procedure is a determination by the Commissioner that the taxpayer is properly accounting for any OID income on that pool of credit card loans. Thus, for example, the Service is not precluded from pursuing the issue of whether, under § 1272(a)(6), a taxpayer is correctly accounting for its OID income (including any OID attributable to credit card cash advance fees) on its pool of credit card loans.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is modified and amplified to include this automatic change in the APPENDIX.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2004.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Jonathan Silver and Tina Jannotta of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact the principal authors at (202) 622–3930 (not a toll-free call).

---

26 CFR 601.201: Rulings and determination letters. (Also: Part I, §§ 61, 280F; 1.61–21.)

Rev. Proc. 2005–48

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2005 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable is $14,800 for a passenger automobile and $16,300 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2005 for which the fleet-average valuation rule provided under section 1.61–21(d) of the regulations may be applicable is $19,600 for a passenger automobile and $21,300 for a truck or van.

SECTION 2. BACKGROUND

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

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

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

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

SECTION 3. PROCEDURE

.01 Maximum Automobile Value for Using the Cents-per-mile Valuation Rule. An employer providing a passenger automobile for the first time in calendar year 2005 for the personal use of any employee may determine the value of the personal use by using the vehicle cents-per-mile valuation rule in section 1.61–21(e) of the regulations if its fair market value on the date it is first made available does not exceed $14,800 for a passenger automobile other than a truck or van, or $16,300 for a truck or van. If the fair market value of the passenger automobile exceeds this amount, the employer may determine the value of the personal use under the general valuation rules of regulations section 1.61–21(b) or under the special valuation rules of section 1.61–21(d) (Automobile lease valuation) or section 1.61–21(f) (Commuting valuation) if the applicable requirements are met. See Rev. Proc. 2003–75 for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2003, and Rev. Proc. 2004–20 for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2004.

.02 Maximum Automobile Value for Using the Fleet-Average Valuation Rule. An employer with a fleet of 20 or more automobiles providing an automobile for the first time in calendar year 2005 for the personal use of any employee for an entire year may determine the value of the personal use by using the fleet-average valuation rule in regulations section 1.61–21(d)(5)(v) to calculate the Annual Lease Values of the automobiles in the fleet. The fleet-average valuation rule may not be used to determine the Annual Lease Value of any automobile if its fair market value on the date it is first made available exceeds $19,600 for a passenger automobile other than a truck or van, or $21,300 for a truck or van. If all other applicable requirements are met, an employer with a fleet of 20 or more vehicles consisting of passenger automobiles other than trucks or vans as well as trucks and vans may use the fleet-average valuation rule as long as none exceeds its respective maximum allowable value. If the fair market value of any passenger automobile in the fleet exceeds these amounts, the employer may determine the value of the personal use under regulations section 1.61–21(f) (Commuting valuation) or the general valuation rules of section 1.61–21(b), or may determine the Annual Lease Value of such automobile separately under the automobile lease valuation rule of section 1.61–21(d)(2) if the applicable requirements are met.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to employer-provided passenger automobiles, trucks or vans first made available to employees for personal use in calendar year 2005.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Frederick L. Wesner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure, contact Frederick L. Wesner at (202) 622–6040 (not a toll-free call).

---

26 CFR 1.6050S–1: Information reporting for qualified tuition and related expenses.

Rev. Proc. 2005–50

SECTION 1. PURPOSE

This revenue procedure prescribes how an eligible educational institution may obtain automatic consent from the Service to change its method of reporting under section 6050S of the Code and section 1.6050S–1 of the Income Tax Regulations. An eligible educational institution that complies with all of the conditions and procedures of this revenue procedure has obtained consent to change its method of reporting as required by section 1.6050S–1(b)(1).

SECTION 2. BACKGROUND

In general, section 6050S requires any eligible educational institution (as defined in section 25A(f)(2)) to file information returns and to furnish information statements to assist students and the Service in determining the amount of qualified tuition and related expenses (qualified expenses) for which an education tax credit is allowable under section 25A (as well as other tax benefits for higher education expenses). For calendar years beginning after December 31, 2003, an eligible educational institution must elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified expenses during the calendar year for students enrolled for any academic period. Section 1.6050S–1(b)(1) of the regulations provides that once an eligible educational institution elects to report either amounts billed, or payments received, it must continue to use the same method of reporting for all subsequent calendar years for which it is required to file information returns, and furnish information statements, unless permission is granted to change its reporting method.

Section 25A(f)(2) of the Code defines an "eligible educational institution" to mean an institution: (1) that is described in 20 U.S.C. 1088 of the Higher Education Act of 1965 (Education Act) as in effect on the date of enactment of section 25A (August 5, 1997); and (2) that is eligible to participate in federal financial aid programs described in Title IV of the Education Act. As of August 5, 1997, 20 U.S.C. 1088(a)(1) generally defined an "institution of higher education" as: (1) an accredited postsecondary educational institution (as defined in 20 U.S.C. 1141(a) (a public or nonprofit institution of higher education)); (2) a proprietary institution of higher education; and (3) a postsecondary vocational institution.

To establish eligibility to participate in financial aid programs under the Education Act, an institution generally must apply to the Secretary of Education for a determination that it qualifies as an eligible institution, and may request a certification that it is eligible to participate in financial aid programs under Title IV. See 34 C.F.R. 600.20(a). If the Secretary of Education determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements, then the eligibility determination extends to all educational programs and locations identified on the institution's application. See 34 C.F.R. 600.10(b)(1). If, however, only certain educational programs or locations satisfy the applicable requirements, then the eligibil-

ity determination extends only to those educational programs and locations as identified by the Secretary of Education. See 34 C.F.R. 600.10(b) (2); see also 34 C.F.R. 600.20(c).

The Secretary of Education issues an eligibility determination at the institution level, and the determination may extend to some or all programs, locations, and branch campuses of the institution. Similarly, an "eligible educational institution" for purposes of section 25A(f)(2) of the Code is determined at the institution level and the "eligible educational institution" may extend to some or all programs, locations, and branch campuses of the institution consistent with the Secretary of Education's eligibility determination.

SECTION 3. CONDITIONS FOR AUTOMATIC CONSENT

For section 6050S purposes, the eligible educational institution at the institution level must elect one method of reporting, and the method extends to all locations and branch campuses of the institution to which the Secretary of Education's eligibility determination extends. Therefore, if an eligible educational institution changes its reporting method under this revenue procedure, all locations and branch campuses of the institution to which the eligibility determination extends must use the method to which the eligible educational institution changes (new method), beginning with the calendar year for which the change in reporting method is effective (year of change). Because the Service has not previously announced in published guidance that locations and branch campuses of an eligible educational institution to which the eligibility determination extends must use the same method of reporting, the Service will not require locations or branch campuses of an eligible educational institution that elected (before the effective date of this revenue procedure) to use different methods of reporting to change to the same method of reporting. If, however, an eligible educational institution changes its method of reporting under this revenue procedure, then all locations and branch campuses of the eligible educational institution to which the eligibility determination extends not already using the new method of reporting must also change to the new method of reporting under this revenue procedure, beginning with the year of the change.

An eligible educational institution may not change its method of reporting more frequently than once every five years under this revenue procedure, except upon a showing of extraordinary circumstances, such as significant hardship to the eligible educational institution.

An eligible educational institution, including all its locations and branch campuses to which the eligibility determination extends, must include a notification of the change in reporting method to the students with, or on, the information statements required to be furnished to the students for the year of the change.

SECTION 4. AUTOMATIC CONSENT PROCEDURES

An eligible educational institution must notify the Service of its change in reporting method under this revenue procedure by submitting a written statement to:

Internal Revenue Service
Enterprise Computing Center —
Martinsburg (ECC—MTB)
Information Reporting Program
230 Murall Drive
Kearneysville, WV 25430

The written statement must be filed no later than three months before the due date of the information returns for the year of the change. The Service will not acknowledge receipt of a written statement submitted under this revenue procedure.

The written statement must include a prominent reference to this revenue procedure and must contain the following information:

1. The eligible educational institution's name and Employer Identification Number (EIN);

2. All locations and branch campuses included in the eligible educational institution (and their EINs);

3. The method of reporting under section 6050S and the regulations to which the eligible educational institution, including all its locations and branch campuses, is changing;

4. The calendar year for which the change in reporting is effective;

5. A statement as to whether the eligible educational institution, or any of its locations and branch campuses, has changed its method of reporting within the four year period preceding the year of the change, and if so: (a) the calendar year of the previous change, and (b) an explanation of extraordinary circumstances.

The written statement must be signed by an officer of the eligible educational institution authorized to sign tax returns. The written request must be signed under penalties of perjury that, to the best of the person's knowledge and belief, the information contained in the statement is true, correct, and complete.

SECTION 5. AUTOMATIC CONSENT

Pursuant to section 1.6050S–1(b)(1) of the regulations, the consent of the Service is granted to an eligible educational institution, including all its locations and branch campuses to which the eligibility determination extends, to change its method of reporting under section 6050S and the regulations for the calendar year in which the institution timely submits the written statement required by section 4 of this revenue procedure. This consent is granted only if the eligible educational institution complies with all the conditions and procedures of this revenue procedure.

If the Service determines that the eligible educational institution has not complied with the conditions and procedures of this revenue procedure (for example, the eligible educational institution has not demonstrated extraordinary circumstances for changing a method of reporting within 5 years of a previous change in reporting method), the Service will notify the eligible educational institution that consent to change its method of reporting under section 6050S and the regulations for the specified calendar year is not granted.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective August 8, 2005.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act

(44 U.S.C. 3507) under control number 1545–1952.

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

The collection of information in this revenue procedure is in section 4. The information is required in order for an eligible educational institution to obtain permission to change its reporting method under section 6050S and the regulations. The collection of information is voluntary to obtain a benefit. The likely respondents are nonprofit institutions.

The estimated total annual recordkeeping and reporting burden is 300 hours.

The estimated annual recordkeeping and reporting burden per respondent is 10 hours. The estimated number of annual respondents is 30.

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

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Donna Welch of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice). For further information regarding this revenue procedure, contact Donna Welch at 202–622–4910 (not a toll-free call); and for further information regarding submitting a change, contact the Enterprise Computing Center, Information Reporting Program Customer Service Section at 1–866–455–7438 (a toll-free call).

Part IV. Items of General Interest

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

Announcement 2005-48

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

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Harrison, John S.	Oakland, CA	Attorney	Indefinite from January 25, 2005
Newkirk, Stephon	Winterville, NC	CPA	Indefinite from February 8, 2005
Goldman, Mark L.	East Meadow, NY	Attorney	Indefinite from February 18, 2005
Johnston, H. James	Knoxville, TN	CPA	Indefinite from March 16, 2005
Gapp, Edward J.	Greenwich, CT	CPA	Indefinite from March 28, 2005

Name	Address	Designation	Date of Suspension
Rowland, Mark C.	Westlake, OH	CPA	Indefinite from April 11, 2005
French Jr., Paul C.	Bangor, MI	CPA	Indefinite from April 25, 2005
Mynsberge, Richard C.	Mishawaka, IN	CPA	Indefinite from May 1, 2005
Specht Jr., Henry F.	N. Myrtle Beach, SC	CPA	Indefinite from May 1, 2005
Sostarich, Mark E.	S. Milwaukee, WI	Attorney	Indefinite from May 1, 2005
Gasa, William M.	Winfield, IL	Enrolled Agent	Indefinite from June 1, 2005
Leisure, Sally R.	Portland, OR	Attorney	Indefinite from June 9, 2005
Tuerk Jr., Carl E.	Annapolis, MD	Attorney	Indefinite from July 1, 2005

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Hawkins, Nicholas G.	Harrods Creek, KY	Attorney	Indefinite from February 11, 2005
Richey, Michael L.	Girardeau, MO	Attorney	Indefinite from February 11, 2005
Brown, Calvin D.	Dallas, TX	CPA	Indefinite from February 16, 2005

Name	Address	Designation	Date of Suspension
Bell, James M.	Bandera, TX	CPA	Indefinite from February 23, 2005
Fedynshyn, Michael P.	Broomfield, CO	Attorney	Indefinite from February 23, 2005
Harris, Ross	Pikeville, KY	Attorney	Indefinite from February 23, 2005
Tehin Jr., Nikolai	San Francisco, CA	Attorney	Indefinite from March 7, 2005
Ballance, Frank W.	Warrenton, NC	Attorney	Indefinite from March 7, 2005
Jacob, Arthur F.	Sykesville, MD	Attorney	Indefinite from March 8, 2005
Hefley, Lee D.	Burleson, TX	CPA	Indefinite from March 8, 2005
Beswick, Robert H.	Encino, CA	Attorney	Indefinite from March 8, 2005
Scarpello, Joseph R.	Tustin, CA	CPA	Indefinite from March 8, 2005
Machado, Lazaro J.	Santa Ana, CA	Attorney	Indefinite from March 8, 2005
McKnew, Donna K.	Ashland, KY	Attorney	Indefinite from March 8, 2005
Yarno Jr., William	Lafayette, LA	Attorney	Indefinite from March 8, 2005
Walker, Frank O.	Bay City, TX	CPA	Indefinite from March 8, 2005
Kafkas, Demetrios G.	Tewksbury, MA	Attorney	Indefinite from March 8, 2005
Scott, Bertram A.	Brooklyn, NY	Attorney	Indefinite from March 8, 2005

Name	Address	Designation	Date of Suspension
Templeton, Robert L.	Ashland, KY	Attorney	Indefinite from March 8, 2005
Christopher, Nathan H.	Salisbury, MD	Attorney	Indefinite from March 8, 2005
Willingham, Nathaniel J.	Jacksonville, NC	Attorney	Indefinite from March 8, 2005
Anderson, Brett I.	Des Moines, IA	Attorney	Indefinite from March 8, 2005
Broderick, Thomas F.	Somerville, MA	Attorney	Indefinite from March 14, 2005
Peoples, Brendan K.	Ft. Worth, TX	CPA	Indefinite from March 15, 2005
Tidmore, J. Todd	Addison, TX	CPA	Indefinite from March 15, 2005
Cox, Patricia A.	Victoria, TX	CPA	Indefinite from March 15, 2005
Rogers, Fred	Mansfield, LA	CPA	Indefinite from March 15, 2005
Bridgeforth, Wyvonnia	Oak Park, IL	Attorney	Indefinite from March 15, 2005
Bruce, Donna M.	Athens, AL	CPA	Indefinite from March 18, 2005
Teske, David S.	Seattle, WA	Attorney	Indefinite from March 18, 2005
Cobb Jr., Wayne H.	Kaufman, TX	Attorney	Indefinite from March 18, 2005
Swindell IV, Lewis H.	Avondale, AZ	Attorney	Indefinite from March 18, 2005
Murr, Mark D.	Houston, TX	Attorney	Indefinite from March 18, 2005
Nip, Raymond A.C.	Honolulu, HI	CPA	Indefinite from March 18, 2005

Name	Address	Designation	Date of Suspension
Asbury, Lloyd T.	Jacksonville, FL	Attorney	Indefinite from March 18, 2005
Lowell, Melinda E.	New York, NY	Attorney	Indefinite from March 18, 2005
Rub, Lawrence P.	Glenwood, MD	CPA	Indefinite from March, 18, 2005
Fagan, Charles G.	Severna Park, MD	CPA	Indefinite from March 21, 2005
Lewis, Larry L.	Woodbridge, VA	Attorney	Indefinite from March 28, 2005
Mpi, Afoma M.	Peoria, IL	Attorney	Indefinite from March 30, 2005
Gross, Hyath B.	Schenectady, NY	Attorney	Indefinite from April 1, 2005
Zick, Terry T.	Wrightville Beach, NC	Attorney	Indefinite from April 1, 2005
Atlas, Joan M.	Philadelphia, PA	Attorney	Indefinite from April 4, 2005
Rider, Lawrence C.	Boulder, CO	Attorney	Indefinite from April 5, 2005
Eller, Scott D.	Frisco, TX	CPA	Indefinite from April 6, 2005
Brenton, Robert O.	Overland Park, KS	CPA	Indefinite from April 6, 2005
Folks, Lloyd C.	Kinston, NC	CPA	Indefinite from April 6, 2005
Suckling, John R.	San Marcos, CA	CPA	Indefinite from April 6, 2005
Pulito, James P.	Phoenix, AZ	CPA	Indefinite from April 6, 2005
Garcia, Felix D.	Auroa, CO	Attorney	Indefinite from April 6, 2005

Name	Address	Designation	Date of Suspension
Wentzel, Gerald L.	Bloomingdale, IL	CPA	Indefinite from April 14, 2005
Williams, David W.	Simpsonville, KY	Attorney	Indefinite from April 19, 2005
Sykes III, Bernard G.	Riviera Beach, FL	Attorney	Indefinite from April 19, 2005
Hambrick Jr., J. C.	Branson, MO	Attorney	Indefinite from April 19, 2005
Adams, David M.	Charleston, SC	Attorney	Indefinite from April 19, 2005
Richardson, Jon M.	Danville, IL	Attorney	Indefinite from April 19, 2005
Rose, Shaun H.	Baltimore, MD	Attorney	Indefinite from April 19, 2005
Tanner, Fred L.	Bowling Green, KY	Attorney	Indefinite from April 19, 2005
Perry, David W.	Reading, MA	Attorney	Indefinite from April 19, 2005
Fleming, Bruce D.	Council Bluffs, IA	Attorney	Indefinite from April 19, 2005
Healy, Paul J.	Pembroke, MA	Attorney	Indefinite from April 19, 2005
Kaczynski, Ronald C.	Andover, MA	Attorney	Indefinite from April 19, 2005
Whalley, Lester F.	Yorba Linda, CA	Attorney	Indefinite from April 27, 2005
Tanner, Max	Las Vegas, NV	Attorney	Indefinite from May 3, 2005
Blackwell, Johnny L.	Fayetteville, NC	CPA	Indefinite from May 3, 2005
Szer, Steven	Fort Mill, SC	CPA	Indefinite from May 3, 2005

Name	Address	Designation	Date of Suspension
Chinn, David P.	Louisville, KY	Attorney	Indefinite from May 9, 2005
Bille, Anthony J.	Hopkinton, MA	Attorney	Indefinite from May 16, 2005
Dotson, Lewis S.	Mattoon, IL	Attorney	Indefinite from May 16, 2005
Palmer, Philip B.	Chubbuck, ID	Attorney	Indefinite from May 16, 2005
Wolterbeek, Mark E.	Rindge, NH	Attorney	Indefinite from May 31, 2005
James III., Charles M.	Cheverly, MD	Attorney	Indefinite from May 31, 2005
Jorgensen, Allen C.	Redlands, CA	Attorney	Indefinite from June 2, 2005
Brisbon, Brenda C.	Baltimore, MD	Attorney	Indefinite from June 7, 2005
Gilroy, John M.	Waterloo, NE	Attorney	Indefinite from June 7, 2005
Relphorde, Colin B.	Homewood, IL	Attorney	Indefinite from June 7, 2005
Pomeroy, John S.	Dedham, MA	Attorney	Indefinite from June 7, 2005
Gonick, Richard S.	Ipswich, MA	Attorney	Indefinite from June 7, 2005
Curran, Martin J.	Manchester, NH	Attorney	Indefinite from June 7, 2005
Koenigsdorf, Keith B.	Overland Park, KS	Attorney	Indefinite from June 7, 2005
Jambor, Daniel F.	St. Paul, MN	Attorney	Indefinite from June 7, 2005
LaFont Jr., Henry J.	Lockport, LA	Attorney	Indefinite from June 7, 2005

Name	Address	Designation	Date of Suspension
Janosik, Dennis M.	Parma, OH	CPA	Indefinite from June 9, 2005
Carter, Evalyn R.	Calera, OK	CPA	Indefinite from June 9, 2005
Chasnoff, Joel	Gaithersburg, MD	Attorney	Indefinite from June 9, 2005
O'Keefe, Michael E.	Oak Park, CA	Attorney	Indefinite from June 9, 2005
Wilkes, Richard C.	Bowbells, ND	Attorney	Indefinite from June 9, 2005
Rogers, Reginald J.	Bowie, MD	Attorney	Indefinite from June 9, 2005
Hindley, Charles T.	Colton, CA	Attorney	Indefinite from June 9, 2005
Morgan, Wendy B.	Scotts Valley, CA	Attorney	Indefinite from June 9, 2005

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cahill, Gary	Shelton, CT	Attorney	January 27, 2005 to January 26, 2008
Banks, Jean R.	Van Nuys, CA	Enrolled Agent	March 8, 2005 to December 7, 2006

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

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

Name	Address	Designation	Date of Censure
Borden Kathleen	Bluffton, SC	Attorney	May 11, 2005
Williamson, Debra	Long Beach, CA	CPA	June 3, 2005

Penalty Relief Under Section 6715

Announcement 2005–51

The Internal Revenue Service will not assert the penalty under § 6715 of the Internal Revenue Code with respect to dyed diesel fuel that, due to shortages of undyed diesel fuel in Florida counties located west of the Apalachicola River caused by Hurricane Dennis, has been sold for use or used for highway use in those counties. This relief from the § 6715 penalty will apply only to dyed diesel fuel that is sold for use or used for highway use in the Florida counties located west of the Apalachicola River during the period July 8, 2005, through July 18, 2005. This penalty relief is available to any person that sells or uses the dyed fuel for highway use. In the case of the operator of the vehicle in which the dyed fuel is used, however, the relief is available only if the operator or the person selling the fuel to the operator pays the $.244 per gallon tax on the dyed fuel. The return and payment will be due on October 31, 2005, and the Service will not assert penalties for failure to make semimonthly deposits of the tax. See Publication 510, *Excise Taxes for 2005*, for information on the proper method for reporting and paying this tax.

The principal author of this announcement is Celia Gabrysh of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement, contact Ms. Gabrysh at (202) 622–3130 (not a toll-free call).

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

Announcement 2005–54

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on August 8, 2005, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

American Islamic College, Inc.
Chicago, IL

Athena Sports,
Arvada, CO

National Consumer Council, Inc.
Las Vegas, NV

National Consumer Council, Inc.
Los Angeles, CA

Northern Services Group, Inc.
Monsey, NY

Project Homestead, Inc.
High Point, NC

University of Baltimore
Athletic Foundation, Inc.
Baltimore, MD

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2005–27 through 2005–32

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Revenue Rulings— Continued:

Tax Conventions:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

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

Bulletins 2005–27 through 2005–32

Notices:

2005-51
Modified and superseded by
Notice 2005-57, 2005-32 I.R.B. *267*

Revenue Procedures:

64-54
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

66-33
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

69-13
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

70-8
Modified by
Rev. Proc. 2005-46, 2005-30 I.R.B. *142*

71-1
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

72-22
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

87-8
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

87-9
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

90–11
Modified by
Rev. Proc. 2005-40, 2005-28 I.R.B. *83*

93-22
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

98-18
Obsoleted by
Rev. Proc. 2005-45, 2005-30 I.R.B. *141*

2000-49
Superseded by
Rev. Proc. 2005-41, 2005-29 I.R.B. *90*

2001-16
Superseded by
Rev. Proc. 2005-42, 2005-30 I.R.B. *128*

Revenue Procedures— Continued:

2002-9
Modified and amplified by
Rev. Rul. 2005-42, 2005-28 I.R.B. *67*
Rev. Proc. 2005-35, 2005-28 I.R.B. *76*
Rev. Proc. 2005-43, 2005-29 I.R.B. *107*
Rev. Proc. 2005-47, 2005-32 I.R.B. *269*

2004-50
Superseded by
Rev. Proc. 2005-49, 2005-31 I.R.B. *165*

Revenue Rulings:

65-109
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

68-549
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

82-29
Modified and clarified by
Rev. Proc. 2005-39, 2005-28 I.R.B. *82*

2005-41
Corrected by
Ann. 2005-50, 2005-30 I.R.B. *152*

Treasury Decisions:

9186
Corrected by
Ann. 2005-53, 2005-31 I.R.B. *258*

9206
Corrected by
Ann. 2005-49, 2005-29 I.R.B. *119*

9207
Corrected by
Ann. 2005-52, 2005-31 I.R.B. *257*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.