Internal Revenue
bulletin

Bulletin No. 2006-13
March 27, 2006

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

Ct. D. 2081, page 656.

IRA assets; bankruptcy estate. The Supreme Court holds that a taxpayer can exempt IRA assets from the bankruptcy estate because the IRAs fulfill both of the Bankruptcy Code section 522(d)(10)(E) requirements at issue here—they confer a right to receive payment on account of age, and they are similar plans or contracts to those enumerated in section 522(d)(10)(E). **Rousey, *et ux.*, *v.* Jacoway.**

Rev. Rul. 2006–13, page 656.

Fringe benefits aircraft valuation formula. The Standard Industry Fare Level (SIFL) cent-per-mile rates and terminal charges in effect for the first half of 2006 are set forth for purposes of determining the value of noncommercial flights on employer-provided aircraft under section 1.61–21(g) of the regulations.

Rev. Rul. 2006–15, page 661.

LIFO; price indexes; department stores. The January 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 2006.

T.D. 9254, page 662.

Final regulations under section 1502 of the Code apply when a member of a consolidated group sells subsidiary stock at a loss. They also apply when a member holds loss shares of subsidiary stock and the subsidiary ceases to be a member of the group. The regulations generally limit duplicated losses by redetermining stock basis, suspending stock loss, or adjusting inside loss. These regulations finalize section 1.1502–35T without substantive change.

Rev. Proc. 2006–19, page 677.

Specifications are set forth for the private printing of paper and laser-printed substitutes for the January 2006 revisions of Form W-2c, *Corrected Wage and Tax Statement*, and Form W-3c, *Transmittal of Corrected Wage and Tax Statements*. Rev. Proc. 2003–31 superseded.

EMPLOYEE PLANS

Notice 2006–32, page 677.

Weighted average interest rate update; 30-year Treasury securities. The weighted average interest rate for March 2006 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

EMPLOYMENT TAX

Rev. Proc. 2006–19, page 677.

Specifications are set forth for the private printing of paper and laser-printed substitutes for the January 2006 revisions of Form W-2c, *Corrected Wage and Tax Statement*, and Form W-3c, *Transmittal of Corrected Wage and Tax Statements*. Rev. Proc. 2003–31 superseded.

(Continued on the next page)

Finding Lists begin on page ii.
Index for January through March begins on page iv.

Department of the Treasury
Internal Revenue Service

TAX CONVENTIONS

Announcement 2006–19, page 674.
U.S.-Ireland income tax treaty and protocol. This announcement provides a copy of the Mutual Agreement, entered into on February 9, 2006, by the Competent Authorities of the United States and Ireland, regarding the treatment of common contractual funds under the U.S.-Ireland income tax treaty and protocol.

Announcement 2006–20, page 675.
U.S.-Japan Investment Bank list. This announcement provides a copy of the first publication, dated March 3, 2006, regarding notification of self-certification of United States and Japanese resident investment banks, pursuant to section E of the U.S.-Japan Investment Bank MOU entered into on December 27, 2005 (Ann. 2006–6, 2006–4 I.R.B. 340) by the Competent Authorities of the United States and Japan.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. The Standard Industry Fare Level (SIFL) cent-per-mile rates and terminal charges in effect for the first half of 2006 are set forth for purposes of determining the value of noncommercial flights on employer-provided aircraft under section 1.61–21(g) of the regulations.

Rev. Rul. 2006–13

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61–21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61–21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61–21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charges and SIFL mileage rates:

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
1/1/06 - 6/30/06	$37.00	Up to 500 miles = $.2024 per mile
		501–1500 miles = $.1543 per mile
		Over 1500 miles = $.1484 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt/Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 622–0047 (not a toll-free call).

Section 408.—Individual Retirement Accounts

Ct. D. 2081

SUPREME COURT OF THE UNITED STATES

No. 03-1407

ROUSEY ET UX. *v.* JACOWAY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

April 4, 2005

Syllabus

Several years after petitioners deposited distributions from their pension plans into Individual Retirement Accounts (IRAs), they filed a joint petition under Chapter 7 of the Bankruptcy Code. They sought to shield portions of their IRAs from their creditors by claiming them as exempt from the bankruptcy estate under 11 U. S. C. §522(d)(10)(E), which provides, *inter alia*, that a debtor may withdraw from the estate his "right to receive . . . a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of . . . age." Respondent Jacoway, the Bankruptcy Trustee, objected to the Rouseys' exemption and moved for turnover of the IRAs to her. The Bankruptcy Court sustained her objection and granted her motion, and the Bankruptcy Appellate Panel (BAP) agreed. The Eighth Circuit affirmed, concluding that, even if the Rouseys' IRAs were "similar plans or contracts" to the plans specified in §522(d)(10)(E), their IRAs gave them no right to receive payment "on account of age," but were instead savings accounts readily accessible at any time for any purpose.

Held: The Rouseys can exempt IRA assets from the bankruptcy estate because the IRAs fulfill both of the §522(d)(10)(E) requirements at issue here—they confer a right to receive payment on account of age and they are similar plans or contracts to those enumerated in §522(d)(10)(E). Pp. 4–14.

(a) The Court reaffirms its suggestion in *Patterson* v. *Shumate*, 504 U. S. 753, 762–763, that IRAs like the Rouseys' can be exempted from the bankruptcy estate pursuant to §522(d)(10)(E). Pp. 4–5.

(b) The Rouseys' IRAs provide a right to payment "on account of . . . age" within §522(d)(10)(E)'s meaning. The quoted phrase requires that the right to receive payment be "because of" age. *Bank of America Nat. Trust and Sav. Assn. v. 203 North LaSalle Street Partnership*, 526 U. S. 434, 450–451. This meaning comports with the common, dictionary understanding of "on account of," and §522(d)(10)(E)'s context does not suggest another meaning. The statutes governing IRAs persuade the Court that Jacoway is mistaken in arguing that there is no causal connection between that right and age or any other factor because the Rouseys' IRAs provide a right to payment on demand. Their right to receive payment of the entire balance is not in dispute. Because their accounts qualify as IRAs under 26 U. S. C. §408(a), they have a nonforfeitable right to the balance held in those accounts, §408(a)(4). That right is restricted by a 10 percent tax penalty on any withdrawal made before age 59$^1/_2$, §72(t). Contrary to Jacoway's contention, this 10 percent penalty is substantial. It applies proportionally to any amounts withdrawn and prevents access to the 10 percent that the Rouseys would forfeit should they withdraw early. It therefore effectively prevents access to the entire balance in their IRAs and limits their right to "payment" of the balance. And because this condition is removed when the accountholder turns age 59$^1/_2$, the Rouseys' right to the balance of their IRAs is a right to payment "on account of" age. Pp. 5–8.

(c) The Rouseys' IRAs are "similar plan[s] or contract[s]" to the "stock bonus, pension, profit sharing, [or] annuity . . . plan[s]" listed in §522(d)(10)(E). To be "similar," an IRA must be like, though not identical to, the listed plans or contracts, and consequently must share characteristics common to them. Because the Bankruptcy Code does not define the listed plans, the Court looks to their ordinary meaning. *E.g.*, *United States* v. *LaBonte*, 520 U. S. 751, 757. Dictionary definitions reveal that, although the listed plans are dissimilar to each other in some respects, their common feature is that they provide income that substitutes for wages earned as salary or hourly compensation. That the income the Rouseys will derive from their IRAs is likewise income that substitutes for wages lost upon retirement is demonstrated by the facts that (1) regulations require distribution to begin no later than the calendar year after the year the accountholder turns 70$^1/_2$; (2) taxation of IRA money is deferred until the year in which it is distributed; (3) withdrawals before age 59$^1/_2$ are subject to the 10 percent penalty; and (4) failure to take the requisite minimum distributions results in a 50 percent tax penalty on funds improperly remaining in the account. The Court rejects Jacoway's argument that IRAs cannot be similar plans or contracts because the Rouseys have complete access to them. This argument is premised on her view that the 10 percent penalty is modest, a premise with which the Court does not agree. The Court also rejects Jacoway's contention that the availability of IRA withdrawals exempt from the early withdrawal penalty renders the Rouseys' IRAs more like savings accounts. Sections 522(d)(10)(E)(i) through (iii)—which preclude the debtor from using the §522(d)(10)(E) exemption if an insider established his plan or contract; the right to receive payment is on account of age or length of service; and the plan does not qualify under specified Internal Revenue Code sections, including the section governing IRAs—not only suggest generally that the Rouseys' IRAs are exempt, but also support the Court's conclusion that they are "similar plan[s] or contract[s]" under §522(d)(10)(E). Pp. 8–14.

347 F. 3d 689, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 03-1407

RICHARD GERALD ROUSEY, ET UX., PETITIONERS *v.* JILL R. JACOWAY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

April 4, 2005

JUSTICE THOMAS delivered the opinion of the Court.

The Bankruptcy Code permits debtors to exempt certain property from the bankruptcy estate, allowing them to retain those assets rather than divide them among their creditors. 11 U. S. C. §522. The question in this case is whether debtors can exempt assets in their Individual Retirement Accounts (IRAs) from the bankruptcy estate pursuant to §522(d)(10)(E). We hold that IRAs can be so exempted.

I

Petitioners Richard and Betty Jo Rousey were formerly employed at Northrup Grumman Corp. At the termination of their employment, Northrup Grumman required them to take lump-sum distributions from their employer-sponsored pension plans. *In re Rousey*, 283 B. R. 265, 268 (Bkrtcy. App. Panel CA8 2002); Brief for Petitioners 2. The Rouseys deposited the lump sums into two IRAs, one in each of their names. 283 B. R., at 268.

The Rouseys' accounts qualify as IRAs under a number of requirements imposed by the Internal Revenue Code. Each account is "a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries." 26 U. S. C. §408(a) (2000 ed. and Supp. II). The Internal Revenue Code limits the types of assets in which IRA-holders may invest their accounts, §§408(a)(3), (a)(5), and provides that the balance in IRAs is nonforfeitable, §408(a)(4). It also caps yearly contributions to IRAs. §408(*o*)(2). Withdrawals made before the accountholder turns 59$^1/_2$ are, with limited exceptions, subject to a 10 percent tax penalty. §72(t).

IRA contributions receive favorable tax treatment. In particular, the Internal Revenue Code generally defers taxation of the money placed in IRAs and the income earned from those sums until the assets are withdrawn. See §219(a) (contributions to IRAs are tax deductible); §408(e)(1) (IRA is tax exempt). Moreover, within a certain timeframe accountholders can, as the Rouseys did here, roll over distributions received from other retirement plans. §408(a)(1). The Internal Revenue Code encourages such rollovers by making them nontaxable. §§408(d)(3), 402(c)(1), 403(b)(8), and 457(e)(16).

The Rouseys' IRA agreements, as well as relevant regulations, provide that their "entire interest in the custodial account must be, or begin to be, distributed by" April 1 following the calendar yearend in which they reach age 70$^1/_2$. *In re Rousey*, 275 B. R. 307, 310 (Bkrtcy. Ct. WD Ark. 2002). The IRA agreements permit withdrawal prior to age 59$^1/_2$, but note the federal tax penalties applicable to such distributions. *Id.*, at 311.

Several years after establishing their IRAs, the Rouseys filed a joint Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Arkansas. In the schedules and statements accompanying their petition, the Rouseys sought to shield portions of their IRAs from their creditors by claiming them as exempt from the bankruptcy estate pursuant to 11 U. S. C. §522(d)(10)(E). This exemption provides that a debtor may withdraw from the bankruptcy estate his "right to receive—

. . . . .

> "(E) a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor . . . ."

The Bankruptcy Court appointed respondent Jill R. Jacoway as the Chapter 7 Trustee. As Trustee, Jacoway is responsible for overseeing the liquidation of the bankruptcy estate and the distribution of the proceeds. She objected to the Rouseys' claim for the exemption of their IRAs and moved for turnover of those sums to her. The Bankruptcy Court sustained Jacoway's objection and granted her motion. 275 B. R., at 309.

The Rouseys appealed. The Bankruptcy Appellate Panel (BAP) agreed with the Bankruptcy Court that the Rouseys could not exempt their IRAs under §522(d)(10)(E). It concluded that the IRAs were not " 'similar plan[s] or contract[s]' " to stock bonus, pension, profitsharing, or annuity plans, because, by contrast to the limited access permitted in such plans, the Rouseys had "unlimited access" to the funds held in their IRAs. 283 B. R., at 272. That access also meant, the BAP reasoned, that the Rouseys had complete control over the funds in their IRAs, "subject only to a ten percent tax penalty." *Id.*, at 273. Because they had such control, the payments from the IRAs were not "on account of any factor listed in 11 U. S. C. §522(d)(10)(E)." *Ibid.*

The Rouseys again appealed and the Court of Appeals for the Eighth Circuit affirmed. The Court of Appeals concluded that, even if the Rouseys' IRAs were "'similar plans or contracts' " to stock bonus, pension, profitsharing, or annuity plans, their IRAs gave them no right to receive payment " 'on account of age.' " *In re Rousey*, 347 F. 3d 689, 693 (2003). Like the BAP, the Court of Appeals reasoned that the Rouseys' right to payment was conditioned neither on age nor on any of the other statutory factors. Their IRAs were instead "readily accessible savings accounts of which the debtors may easily avail themselves (albeit with some discouraging tax consequences) at any time for any purpose." *Ibid.* The Court of Appeals recognized that several of its sister Circuits had reached a contrary result. *Ibid.* See *In re Brucher*, 243 F. 3d 242, 243–244 (CA6 2001); *In re McKown*, 203 F. 3d 1188, 1190 (CA9 2000); *In re Dubroff*, 119 F. 3d 75, 78 (CA2 1997); *In re Carmichael*, 100 F. 3d 375, 378 (CA5 1996).

We granted certiorari to resolve this division among the Courts of Appeals regarding whether debtors can exempt IRAs from the bankruptcy estate under 11 U. S. C. §522(d)(10)(E). 541 U. S. 1085 (2004).

II

As a general matter, upon the filing of a petition for bankruptcy, "all legal or equitable interests of the debtor in property" become the property of the bankruptcy estate and will be distributed to the debtor's creditors. §541(a)(1). To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values. See, *e.g.*, §522(d); *United States v. Security Industrial Bank*, 459 U. S. 70, 72, n. 1 (1982). In this case, the Rouseys claimed their IRAs as exempt under §522(d)(10)(E). Under the terms of the statute, see *supra*, at 3, the Rouseys' right to receive payment under their IRAs must meet three requirements to be exempted under this provision: (1) the right to receive payment must be from "a stock bonus, pension, profitsharing, annuity, or similar plan or contract"; (2) the right to receive payment must be "on account of illness, disability, death, age, or length of service"; and (3) even then, the right to receive payment may be exempted only "to the extent" that it is "reasonably necessary to support" the accountholder or his dependents. §522(d)(10)(E).

The dispute in this case is whether the Rouseys' IRAs fulfill the first and second requirements. This Court implied that IRAs like the Rouseys' satisfy both elements in *Patterson v. Shumate*, 504 U. S. 753 (1992). There, in construing another section of the Bankruptcy Code, this Court stated that IRAs could be exempted pursuant to §522(d)(10)(E). *Id.*, at 762–763 ("Although a debtor's interest [in an IRA] could not be excluded under §541(c)(2) . . . , that interest nevertheless could be exempted under §522(d)(10)(E)" (footnote omitted)). We now reaffirm that statement and conclude that IRAs can be exempted from the bankruptcy estate pursuant to §522(d)(10)(E).

A

We turn first to the requirement that the payment be "on account of illness, disability, death, age, or length of service." *Ibid*. We have interpreted the phrase "on account of" elsewhere within the Bankruptcy Code to mean "because of," thereby requiring a causal connection between the term that the phrase "on account of" modifies and the factor specified in the statute at issue. *Bank of America Nat. Trust and Sav. Assn. v. 203 North LaSalle Street Partnership*, 526 U. S. 434, 450–451 (1999). In reaching that conclusion, we noted that "because of" was "certainly the usage meant for the phrase at other places in the [bankruptcy] statute," including the provision at issue here—§522(d)(10)(E). *Ibid*. This meaning comports with the common understanding of "on account of." See, *e.g.*, Random House Dictionary of the English Language 13 (2d ed. 1987) (listing as definitions "by reason of," "because of"); Webster's Third New International Dictionary 13 (1981) (hereinafter Webster's 3d) (same). The context of this provision does not suggest that Congress deviated from the term's ordinary meaning. Thus, "on account of" in §522(d)(10)(E) requires that the right to receive payment be "because of" illness, disability, death, age, or length of service.

Jacoway argues that the Rouseys' right to receive payment from their IRAs is not "because of" these listed factors. In particular, she asserts that the Rouseys can withdraw funds from their IRAs for any reason at all, so long as they are willing to pay a 10 percent penalty. Thus, Jacoway maintains that there is no causal connection between the Rouseys' right to payment and age (or any other factor), because their IRAs provide a right to payment on demand.

We disagree. The statutes governing IRAs persuade us that the Rouseys' right to payment from IRAs is causally connected to their age. Their right to receive payment of the entire balance is not in dispute. Because their accounts qualify as IRAs under 26 U. S. C. §408(a) (2000 ed. and Supp. II), the Rouseys have a nonforfeitable right to the balance held in those accounts, §408(a)(4). That right is restricted by a 10 percent tax penalty that applies to withdrawals from IRAs made before the accountholder turns 59½. Contrary to Jacoway's contention, this tax penalty is substantial. The deterrent to early withdrawal it creates suggests that Congress designed it to preclude early access to IRAs. The low rates of early withdrawals are consistent with the notion that this penalty substantially deters early withdrawals from such accounts.[1]

Because the 10 percent penalty applies proportionally to any amounts withdrawn, it prevents access to the 10 percent that the Rouseys would forfeit should they withdraw early, and thus it effectively prevents access to the entire balance in their IRAs.[2] It therefore limits the Rouseys' right to "payment" of the balance of their IRAs. And because this condition is removed when the accountholder turns age 59½, the Rouseys' right to the balance of their IRAs is a right to payment "on account of" age.[3] The Rouseys no more have an unrestricted right to payment of the balance in their IRAs than a contracting party has an unrestricted right to breach a contract simply because the price of doing so is the payment of damages.[4] Accordingly, we concluded that the Rouseys IRAs provide a right to payment on account of age.

B

In addition to requiring that the IRAs provide a right to payment "on account of" age or one of the other factors listed in the statute, 11 U. S. C. §522(d)(10)(E) also requires the Rouseys' IRAs to be "stock bonus, pension, profitsharing, annuity, or similar plan[s] or contract[s]." No party contends that the Rouseys' IRAs are stock bonus, pension, profitsharing, or annuity plans or contracts. The issue, then, is whether the Rouseys' IRAs are "similar plan[s] or contract[s]" within the meaning of §522(d)(10)(E). To be "similar," an IRA must be like, though not identical to, the specific plans or contracts listed in §522(d)(10)(E), and consequently must share characteristics common to the listed plans or contracts. See American Heritage Dictionary of the English Language 1206 (1981) (hereinafter Am. Hert.); Webster's 3d 2120.

The Rouseys contend that IRAs are "similar" to stock bonus, pension, profitsharing, or annuity plans or contracts, in that they have the same "primary purpose," namely, "enabl[ing] Americans to save for their retirement." Repy Brief for Petitioners 13. Jacoway counters that IRAs are unlike the listed plans because those plans provide "deferred compensation," Brief for Respondent 22, whereas IRAs allow complete access to deposited funds and are therefore not deferred at all, *id.*, at 22–24. We agree with the Rouseys that IRAs are similar to the plans specified in the statute. Those plans, like the Rouseys' IRAs, provide a substitute for wages (by wages, for present purposes, we mean compensation earned as hourly or salary income), and are not mere savings accounts. The Rouseys' IRAs are therefore "similar plan[s] or contract[s]" within the meaning of §522(d)(10)(E).

We turn first to the characteristics the specific plans and contracts listed in §522(d)(10)(E) share. The Bankruptcy Code does not define the terms "profitsharing," "stock bonus," "pension," or "annuity." Accordingly, we look to the ordinary meaning of these terms. *United States* v. *LaBonte*, 520 U. S. 751, 757 (1997); *Perrin* v. *United States*, 444 U. S. 37, 42 (1979). A "profitsharing" plan, of course, is "[a] system by which employees receive a share of the profits of a business enterprise." Am. Hert. 1045.[5] Profitsharing plans may provide deferred compensation, but they may also be "cash plans" in which a predetermined percentage of the profits is distributed to employees at set intervals. J. Langbein & B. Wolk, Pension and Employee Benefit Law 48 (3d ed. 2000). A stock bonus plan is like a profitsharing plan, except that it distributes company stock rather than cash from profits. *Id.*, at 49.[6] A pension is defined as "a fixed sum . . . paid under given conditions to a person following his retirement from service (as due to age or disability) or to the surviving dependents of a person entitled to such a pension." Webster's 3d 1671.[7] Finally, an annuity is "an amount payable yearly or at other regular intervals . . . for a certain or un-

[1] See Amromin & Smith, What Explains Early Withdrawals from Retirement Accounts? Evidence From a Panel of Taxpayers, 56 National Tax Journal 595, 602 (Sept. 2003) (Table 1) (3.4 percent of IRA holders took penalized withdrawals in 1996); *In re Cilek*, 115 B. R. 974, 988, n. 15 (Bkrtcy. Ct. WD Wis. 1990) ("[O]f the $6,457,306,674 deposited in IRAs in the nation's credit unions, only 1.2% was withdrawn early and suffered a tax penalty during 1987, and only 1.27% was withdrawn during 1988"); see also Sabelhaus, Projecting IRA Balances and Withdrawals, 20 Employee Benefit Research Institute Notes 1, 3 (May 1999) (finding that "[t]he pattern in both [1993 and 1996] suggests infrequent withdrawals from IRAs" by those under 59½ and noting the consistency of this pattern with the view that the penalty "has a big impact on withdrawal behavior").

[2] We need not and do not reach the question whether penalties of less than 10 percent or of a fixed amount would also be a sufficient barrier to early withdrawal.

[3] The Rouseys are entitled to penalty-free distributions because of factors apart from age in certain circumstances. See 26 U. S. C. §§72(t)(2)(A)(ii)–(iv) (permitting penalty-free distributions due to the death of or disability of the IRA-holder, or as substantially equal periodic payments for the life expectancy of the accountholder); 72(t)(2)(B) (medical expenses); 72(t)(2)(D)–(F) (health insurance premiums, certain higher education expenses, and first-time home purchase). But these circumstances are confined to specific and narrow uses. See *infra*, at 12–13. Thus, that there are other circumstances in which the Rouseys can receive payment does not change our conclusion that they have a right to payment on account of age, for these exceptions do not undermine the fact that they cannot obtain unrestricted use of their funds until age 59½. Moreover, §522(d)(10)(E) requires that the right to payment be on account of age—not that it be solely on account of this factor.

[4] *O'Gilvie* v. *United States*, 519 U. S. 79 (1996), and *Commissioner* v. *Schleier*, 515 U. S. 323 (1995), upon which Jacoway relies, Brief for Respondent 17–19, are consistent with our conclusion that petitioners' IRAs satisfy the statute's "on account of" requirement. Those cases involved the meaning of the phrase "on account of" in a tax provision that permitted the exclusion from income of damages received " 'on account' of personal injuries." *O'Gilvie*, *supra*, at 81 (emphasis deleted); *Schleier*, *supra*, at 329. In both cases, we rejected the claim that damages that were punitive in nature were on account of personal injuries, since such damages did not compensate for the personal injuries. *O'Gilvie*, *supra*, at 83–84; *Schleier*, *supra*, at 331–332. In so holding in *O'Gilvie*, we expressly rejected a "but for" causation reading of the statute. See 519 U. S., at 82–83. We instead concluded, as we have here, that the phrase "on account of" means "'by reason of [, or] because of.'" *Id.*, at 83.

[5] See also 12 Oxford English Dictionary 580 (2d ed. 1989) (OED) ("[T]he sharing of profits, *spec.* between employer and employed"); Webster's 3d 1811 ("[A] system or process under which employees receive a part of the profits of an industrial or commercial enterprise").

[6] See also *id.*, at 2247 (defining "stock bonus" as "a bonus paid to corporation executives and employees in shares of stock").

[7] See also Am. Hert. 970 ("sum of money paid regularly as a retirement benefit or by way of patronage").

certain period (as for years, for life, or in perpetuity)." *Id.*, at 88.[8]

The common feature of all of these plans is that they provide income that substitutes for wages earned as salary or hourly compensation. This understanding of the plans' similarities comports with the other types of payments that a debtor may exempt under §522(d)(10)—all of which concern income that substitutes for wages. See, *e.g.*, §522(d)(10)(A) ("social security benefit, unemployment compensation, or a local public assistance benefit"); §522(d)(10)(B) ("a veterans' benefit"); §522(d)(10)(C) ("disability, illness, or unemployment benefit"); §522(d)(10)(D) ("alimony, support, or separate maintenance"). But the plans are dissimilar in other respects: Employers establish and contribute to stock bonus, profitsharing, and pension plans or contracts, whereas an individual can establish and contribute to an annuity on terms and conditions he selects. Moreover, pension plans and annuities provide deferred payment, whereas profitsharing or stock bonus plans may or may not provide deferred payment. And while a pension provides retirement income, none of these other plans necessarily provides retirement income. What all of these plans have in common is that they provide income that substitutes for wages.

Several considerations convince us that the income the Rouseys will derive from their IRAs is likewise income that substitutes for wages. First, the minimum distribution requirements, as discussed above, require distribution to begin at the latest in the calendar year after the year in which the accountholder turns 70½. Thus, accountholders must begin to withdraw funds when they are likely to be retired and lack wage income. Second, the Internal Revenue Code defers taxation of money held in accounts qualifying as IRAs under 26 U. S. C. §408(a) (2000 ed. and Supp. II) until the year in which it is distributed, treating it as income only in such years. §§219, 408(e) (2000 ed. and Supp. II). This tax treatment further encourages accountholders to wait until retirement to withdraw the funds: The later withdrawal occurs, the longer the taxes on the amounts are deferred. Third, absent the applicability of other exceptions discussed above, withdrawals before age 59½ are subject to a tax penalty, restricting pre-retirement access to the funds. Finally, to ensure that the beneficiary uses the IRA in his retirement years, an accountholder's failure to take the requisite minimum distributions results in a 50-percent tax penalty on funds improperly remaining in the account. §4974(a). All of these features show that IRA income substitutes for wages lost upon retirement and distinguish IRAs from typical savings accounts.

We find unpersuasive Jacoway's contention that the IRAs cannot be similar plans or contracts because the Rouseys have complete access to them. At bottom, this contention rests, as did her "on account of" argument, on the premise that the tax penalty imposed for early withdrawal is modest and hence not a true limit on the withdrawal of funds. As explained above, however, that penalty erects a substantial barrier to early withdrawal. *Supra*, at 6–7. Funds in a typical savings account, by contrast, can be withdrawn without age-based penalty.

We also reject Jacoway's argument that the availability of IRA withdrawals exempt from the 10 percent penalty renders the Rouseys' IRAs more like savings accounts. While Jacoway is correct that the Internal Revenue Code permits penalty-free early withdrawals in certain limited circumstances, 26 U. S. C. §72(t)(2), these exceptions do not reduce the IRAs to savings accounts.

The exceptions are narrow. For example, penalty-free early distributions for health insurance premiums are limited to unemployed individuals who have received unemployment compensation for at least 12 consecutive weeks and have taken those distributions during the same year in which the unemployment compensation is made. §72(t)(2)(D). These payments are further limited to the actual amount paid for insurance for the accountholder, his spouse, and his dependents. §72(t)(2)(D)(iii). The Internal Revenue Code likewise caps the amount of, and sets qualifications for, both the higher education expenses and first-time home purchases for which penalty-free early distributions can be taken. §§72(t)(2)(E), 72(t)(7) (higher education expenses); §§72(t)(2)(F), 72(t)(8) (home purchases). The Internal Revenue Code also permits penalty-free distributions to a beneficiary on the death of the accountholder or in the event that the accountholder becomes disabled. §§72(t)(2)(A)(ii)–(iii).[9]

These exceptions are limited in amount and scope. Even with these carveouts, an early withdrawal without penalty remains the exception, rather than the rule. And as we explained in discussing the "on account of" requirement, withdrawals from other retirement plans receive similar tax treatment.

Our conclusion that the Rouseys' IRAs can be exempt under 11 U. S. C. §522(d)(10)(E) finds support in clauses (i)–(iii) of §522(d)(10)(E). These clauses bring into the estate certain rights to payment that otherwise would be exempt under §522(d)(10)(E). They provide that a right to receive payment cannot be exempt if:

> "(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;"
> "(ii) such payment is on account of age or length of service;" and
> "(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b) or 408 of the Internal Revenue Code of 1986."

Thus, clauses (i)–(iii) preclude the debtor from using this exemption if an insider established his plan or contract; the right to receive payment is on account of age or length of service; and the plan does not qualify under the specified Internal Revenue Code sections, including the section

[8] See also *id.*, at 54 ("[T]he annual payment of an allowance or income"; "[t]he interest or dividends paid annually on an investment of money"); 1 OED 488 ("[a] yearly grant, allowance, or income," or "[a]n investment of money, whereby the investor becomes entitled to receive a series of equal annual payments, which, except in the case of perpetual annuities, includes the ultimate return of both principal and interest").

[9] The statute also permits penalty-free early withdrawal in the form of substantially equal periodic payments made for the life expectancy of the accountholder. 26 U. S. C. §72(t)(2)(iv). This exception is likewise limited. If these payments are modified before the accountholder turns 59½ or within five years of the start of those payments, the accountholder must pay not only the taxes that would have been imposed on those previous payments, including the 10 percent penalty, but also interest for the period in which the tax payment was deferred. §72(q)(3). As a result, if an accountholder uses this exception, he must use only this form of early withdrawal, lest he pay the penalty, taxes, and interest. The statute permits penalty-free withdrawals for medical expenses, which is likewise limited. §72(t)(2)(B). The amount that can be withdrawn is capped by the amount that can be deducted in a given year. *Ibid.*

that governs IRAs, 26 U. S. C. §408 (2000 ed. and Supp. II).

As a general matter, it makes little sense to exclude from the exemption plans that fail to qualify under §408, unless all plans that do qualify under §408, including IRAs, are generally within the exemption. If IRAs were not within 11 U. S. C. §522(d)(10)(E), Congress would not have referred to them in its exception. *McKown*, 203 F. 3d, at 1190. More specifically, clause (iii) suggests that plans qualifying under 26 U. S. C. §408 (2000 ed. and Supp. II), including IRAs are similar plans or contracts. The other sections of the Internal Revenue Code cited in clause (iii)—§§401(a), 403(a), and 403(b)—all establish requirements for tax-qualified retirement plans that take the form of, among other things, annuities, profitsharing plans, and stock bonus plans. By grouping §408 with these other plans that are of the specific types listed in subparagraph (E), clause (iii) suggests that IRAs are similar to them. Thus, the text of these clauses not only suggests generally that the Rouseys' IRAs are exempt, but also supports our conclusion that they are "similar plan[s] or contract[s]" under 11 U. S. C. §522(d)(10)(E).

* * *

In sum, the Rouseys' IRAs fulfill both of §522(d)(10)(E)'s requirements at issue here—they confer a right to receive payment on account of age and they are similar plans or contracts to those enumerated in §522(d)(10)(E). The judgment of the Court of Appeals is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

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

LIFO; price indexes; department stores. The January 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 2006.

Rev. Rul. 2006–15

The following Department Store Inventory Price Indexes for January 2006 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, January 31, 2006.

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

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

	Groups	Jan. 2005	Jan. 2006	Percent Change from Jan. 2005 to Jan. 2006[1]
1.	Piece Goods	494.0	436.7	-11.6
2.	Domestics and Draperies	536.5	506.9	-5.5
3.	Women's and Children's Shoes	643.3	671.3	4.4
4.	Men's Shoes	840.6	868.1	3.3
5.	Infants' Wear	578.4	555.2	-4.0
6.	Women's Underwear	515.2	545.6	5.9
7.	Women's Hosiery	338.9	341.3	0.7
8.	Women's and Girls' Accessories	560.4	555.4	-0.9
9.	Women's Outerwear and Girls' Wear	333.3	325.7	-2.3
10.	Men's Clothing	534.9	516.8	-3.4
11.	Men's Furnishings	561.9	555.5	-1.1
12.	Boys' Clothing and Furnishings	414.9	396.5	-4.4
13.	Jewelry	879.0	868.9	-1.1
14.	Notions	784.4	794.2	1.2
15.	Toilet Articles and Drugs	994.7	1010.7	1.6
16.	Furniture and Bedding	604.9	603.9	-0.2
17.	Floor Coverings	598.2	611.0	2.1
18.	Housewares	711.8	699.4	-1.7
19.	Major Appliances	202.6	204.3	0.8
20.	Radio and Television	40.0	37.4	-6.5
21.	Recreation and Education[2]	78.3	77.3	-1.3
22.	Home Improvements[2]	135.6	138.0	1.8
23.	Automotive Accessories[2]	113.8	117.2	3.0

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

Groups	Jan. 2005	Jan. 2006	Percent Change from Jan. 2005 to Jan. 2006[1]
Groups 1–15: Soft Goods	546.2	540.9	-1.0
Groups 16–20: Durable Goods	380.7	375.6	-1.3
Groups 21–23: Misc. Goods[2]	92.8	93.1	0.3
Store Total[3]	487.2	482.8	-0.9

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

[2]Indexes on a January 1986 = 100 base.

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

DRAFTING INFORMATION

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

Section 1502.—Regulations

26 CFR 1.1502–21: New operating losses.

T.D. 9254

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code of 1986. The regulations apply when a member of a consolidated group transfers subsidiary stock at a loss. They also apply when a member holds loss shares of subsidiary stock and the subsidiary ceases to be a member of the group. These regulations finalize §1.1502–35T without substantive change.

DATES: *Effective Date:* These regulations are effective on March 9, 2006.

Applicability Date: For dates of applicability, see §§1.1502–21(h)(8), 1.1502–32(h)(6), 1.1502–35(f), and 1.1502–35(j).

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622–7700 or Martin Huck (202) 622–7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1828.

The collection of information in these regulations is in §§1.1502–35(c), 1.1502–35(c)(5)(iii), and 1.1502–35(g)(3). This information is required by the IRS to verify compliance with section 1502 of the Code. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

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

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

Background

On September 19, 1991, the IRS and Treasury Department published §1.1502–20 (the loss disallowance rule, or LDR). See T.D. 8364, 1991–2 C.B. 43 [56 FR 47379]. The LDR addressed two problems arising in the consolidated return context: the circumvention of *General Utilities* repeal and the duplication of loss.

On July 6, 2001, in *Rite Aid Corp. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit held that the duplicated loss provisions of the LDR were an invalid exercise of regulatory authority. In response to the court's decision, the IRS and Treasury Department promulgated two regulations to replace the LDR. The first, §1.337(d)–2T (temporary *General Utilities* regulation), was published on March 12, 2002, to address the circumvention of *General Utilities* repeal. See T.D. 8984, 2002–1 C.B. 668 [67 FR 11034]. The second, §1.1502–35T, was published on March 14, 2003, to address the inappropriate duplication of loss. See T.D. 9048, 2003–1 C.B. 644 [68 FR 12287]. T.D. 9048 also included certain related provisions promulgated under §§1.1502–21T and 1.1502–32T.

Comments and Explanation of Revisions

On March 3, 2005, the temporary *General Utilities* regulation was adopted without substantive change as final regulation §1.337(d)–2. See T.D. 9187, 2005–13 I.R.B. 778 [70 FR 10319]. The preamble in T.D. 9187 states that the IRS and Treasury Department are continuing to study the issues and intend to publish proposed regulations adopting an alternative approach to addressing the circumvention of *General Utilities* repeal.

In response to the promulgation of §1.337(d)–2 (in both its temporary and final form) and §1.1502–35T, practitioners have provided many comments on the operation and effect of the rules contained therein. The IRS and Treasury Department have studied, and continue to study, the comments and the issues addressed in both regulations. As a result, the IRS and Treasury Department intend to publish proposed regulations that address both the circumvention of *General Utilities* repeal and the inappropriate duplication of loss in a single integrated regulation. The IRS and Treasury Department intend to publish the proposed regulations in the near term.

Until those proposed regulations are published as final or temporary regulations, however, the circumvention of *General Utilities* repeal will continue to be addressed by §1.337(d)–2 and the duplication of loss will continue to be addressed by the rules of §1.1502–35T. Accordingly, this Treasury decision adopts the rules of §1.1502–35T (as in effect on February 1, 2006) as final regulation §1.1502–35. The final regulations do not change the rules of the temporary regulations substantively. They do, however, modify certain examples in the temporary regulations to reflect the enactment of section 362(e)(2). These modifications do not change the operation of the regulations or address the application of section 362(e)(2) to transactions between members of a consolidated group. The final regulations also correct an error in Example 2 in paragraph (g)(5) of the proposed regulations. This Treasury decision also adopts, without substantive change, the related provisions in §§1.1502–21T and 1.1502–32T as final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the NPRM and the temporary regulation preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Theresa Abell and Martin Huck of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.1502–21(b)(1) and (b)(3)(v) also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32(a)(2), (b)(3)(iii)(C), (b)(3)(iii)(D), and (b)(4)(vi) also issued under 26 U.S.C. 1502. * * *

Section 1.1502–35 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–21 is amended by:

1. Removing the language "§1.1502–21T" from paragraph (b)(1) and adding the language "§1.1502–21" in its place.

2. Revising paragraphs (b)(3)(v) and (h)(8). The revisions read as follows.

§1.1502–21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(v) *Losses treated as expired under §1.1502–35(f)(1).* No loss treated as expired by §1.1502–35(f) may be carried over to any consolidated return year of the group.

* * * * *

(h) * * *

(8) *Losses treated as expired under §1.1502–35(f)(1).* Paragraph (b)(3)(v) of this section is effective for losses treated as expired under §1.1502–35(f) on and after March 10, 2006. For rules regarding losses treated as expired before March 10, 2006, see §1.1502–21T(h)(8) as contained in 26 CFR part 1 in effect on January 1, 2006.

§1.1502–21T [Amended]

Par. 3. Section 1.1502–21T is amended by removing paragraphs (b)(3)(v) and (h)(8).

Par. 4. Section 1.1502–32 is amended by revising paragraphs (a)(2), (b)(3)(iii)(C) and (D), (b)(4)(vi), and (h)(6) to read as follows:

§1.1502–32—Investment adjustments.

(a) * * * (1) * * *

(2) *Application of other rules of law*. The rules of this section are in addition to other rules of law. See, *e.g.*, section 358 (basis determinations for distributees), section 1016 (adjustments to basis), §1.1502–11(b) (limitations on the use of losses), §1.1502–19 (treatment of excess loss accounts), §1.1502–31 (basis after a group structure change), and §1.1502–35 (additional rules relating to stock loss, including losses attributable to worthlessness and certain dispositions not followed by a separate return year). P's basis in S's stock must not be adjusted under this section and other rules of law in a manner that has the effect of duplicating an adjustment. For example, if pursuant to §1.1502–35(c)(3) and paragraph (b)(3)(iii)(C) of this section the basis in stock is reduced to take into account a loss suspended under §1.1502–35(c)(1), such basis shall not be further reduced to take into account such loss, or a portion of such loss, if any, that is later allowed pursuant to §1.1502–35(c)(5). See also paragraph (h)(5) of this section for basis reductions applicable to certain former subsidiaries.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) *Loss suspended under §1.1502–35(c)*. Any loss suspended pursuant to §1.1502–35(c) is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the date of the disposition to which such section applies. See §1.1502–35(c)(3). Consequently, the basis of a higher-tier member's stock of P is reduced by the suspended loss in the year it is suspended.

(D) *Loss disallowed under §1.1502–35(g)(3)(iii)*. Any loss or deduction the use of which is disallowed pursuant to §1.1502–35(g)(3)(iii) (other than a loss or deduction described in §1.1502–35(g)(3)(i)(B)(*11*)), and with respect to which no waiver described in paragraph (b)(4) of this section is filed, is treated as a noncapital, nondeductible expense incurred during the taxable year that such loss would otherwise be absorbed. See §1.1502–35(g)(3)(iv).

* * * * *

(4) * * *

(vi) *Special rules in the case of certain transactions subject to §1.1502–35*. If a member of a consolidated group transfers stock of a subsidiary and such stock has a basis that exceeds its value immediately before such transfer or a subsidiary is deconsolidated and any stock of such subsidiary owned by members of the group immediately before such deconsolidation has a basis that exceeds its value, all members of the group are subject to the provisions of §1.1502–35(b), which generally require a redetermination of members' basis in all shares of subsidiary stock.

* * * * *

(h) * * *

(6) *Loss suspended under §1.1502–35(c) or disallowed under §1.1502–35(g)(3)(iii)*. Paragraphs (a)(2), (b)(3)(iii)(C), (b)(3)(iii)(D) and (b)(4)(vi) of this section are applicable on and after March 10, 2006. For rules applicable before March 10, 2006, see §1.1502–32T(h)(6) as contained in 26 CFR part 1 in effect on January 1, 2006.

* * * * *

§1.1502–32T [Removed]

Par. 5. Section 1.1502–32T is removed.

Par. 6. Section 1.1502–35 is added to read as follows:

§1.1502–35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

(a) *Purpose*. The purpose of this section is to prevent a group from obtaining more than one tax benefit from a single economic loss. The provisions of this section shall be construed in a manner consistent with that purpose and in a manner that reasonably carries out that purpose.

(b) *Redetermination of basis on certain nondeconsolidating transfers of subsidiary stock and on certain deconsolidations of subsidiaries*—(1) *Redetermination of basis on certain nondeconsolidating transfers of subsidiary stock*. Except as provided in paragraph (b)(3)(i) of this section, if, immediately after a transfer of stock of a subsidiary that has a basis that exceeds its value, the subsidiary remains a member of the group, then the basis in each share of subsidiary stock owned by each member of the group shall be redetermined in accordance with the provisions of this paragraph (b)(1) immediately before such transfer. All of the members' bases in the shares of subsidiary stock immediately before such transfer shall be aggregated. Such aggregated basis shall be allocated first to the shares of the subsidiary's preferred stock that are owned by the members of the group immediately before such transfer, in proportion to, but not in excess of, the value of those shares at such time. After allocation of the aggregated basis to all shares of the preferred stock of the subsidiary pursuant to the preceding sentence, any remaining basis shall be allocated among all common shares of subsidiary stock held by members of the group immediately before the transfer, in proportion to the value of such shares at such time.

(2) *Redetermination of basis on certain deconsolidations of subsidiaries*—(i) *Allocation of reallocable basis amount*. Except as provided in paragraph (b)(3)(ii) of this section, if, immediately before a deconsolidation of a subsidiary, any share of stock of such subsidiary owned by a member of the group has a basis that exceeds its value, then the basis in each share of the subsidiary's stock owned by each member of the group shall be redetermined in accordance with the provisions of this paragraph (b)(2) immediately before such deconsolidation. The basis in each share of the subsidiary's stock held by members of the group immediately before the deconsolidation that has a basis in excess of value at such time shall be reduced, but not below such share's value, in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same; provided, however, that the aggregate amount of such reduction shall not exceed the reallocable basis amount (as computed pursuant to paragraph (b)(2)(ii) of this section). Then, to the extent of the reallocable basis amount, the basis of each share of the preferred stock of the subsidiary that are held by members of the group immediately before the deconsolidation shall be increased, but not above such share's value, in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same. Then, to the extent that the reallocable basis amount does not increase the basis of shares of preferred stock of the subsidiary pursuant to the third sentence of

this paragraph (b)(2)(i), such amount shall increase the basis of all common shares of the subsidiary's stock held by members of the group immediately before the deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same.

(ii) *Calculation of reallocable basis amount*. The reallocable basis amount shall equal the lesser of—

(A) The aggregate of all amounts by which, immediately before the deconsolidation, the basis exceeds the value of a share of subsidiary stock owned by any member of the group at such time; and

(B) The total of the subsidiary's (and any predecessor's) items of deduction and loss, and the subsidiary's (and any predecessor's) allocable share of items of deduction and loss of all lower-tier subsidiaries, that were taken into account in computing the adjustment under §1.1502–32 to the bases of shares of stock of the subsidiary (and any predecessor) held by members of the group immediately before the deconsolidation, other than shares that have bases in excess of value immediately before the deconsolidation.

(3) *Exceptions to application of redetermination rules*. (i) Paragraph (b)(1) of this section shall not apply to a transfer of subsidiary stock if—

(A) During the taxable year of such transfer, in one or more fully taxable transactions, the members of the group dispose of all of the shares of the subsidiary stock that they own immediately before the transfer, other than the shares the transfer of which would otherwise trigger the application of paragraph (b)(1) of this section, to a person or persons that are not members of the group;

(B) During the taxable year of such transfer, the members of the group are allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502–80(c)) with respect to all of the shares of subsidiary stock that they own immediately before the transfer, other than the shares the transfer of which would otherwise trigger the application of paragraph (b)(1) of this section; or

(C) Such transfer is to a member of the group and section 332 (provided the stock is transferred to an 80-percent distributee), section 351, section 354, or section 361 applies to such transfer.

(ii) Paragraph (b)(2) of this section shall not apply to a deconsolidation of a subsidiary if—

(A) During the taxable year of such deconsolidation, in one or more fully taxable transactions, the members of the group dispose of all of the shares of the subsidiary stock that they own immediately before the deconsolidation to a person or persons that are not members of the group;

(B) Such deconsolidation results from a fully taxable disposition, to a person or persons that are not members of the group, of some of the shares of the subsidiary, and, during the taxable year of such deconsolidation, the members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of the subsidiary stock that they own immediately after the deconsolidation;

(C) The members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of the subsidiary stock that they own immediately before the deconsolidation;

(D) The deconsolidation of the subsidiary results from the deconsolidation of a higher-tier subsidiary and, immediately after the deconsolidation of the subsidiary, none of the stock of the subsidiary is owned by a group member; or

(E) The deconsolidation of the subsidiary results from a termination of the group.

(4) *Special rule for lower-tier subsidiaries*. If, immediately after a transfer of subsidiary stock or a deconsolidation of a subsidiary, a lower-tier subsidiary some of the stock of which is owned by the subsidiary is a member of the group, then, for purposes of applying this paragraph (b), the subsidiary shall be treated as having transferred its stock of the lower-tier subsidiary. This principle shall apply to stock of subsidiaries that are owned by such lower-tier subsidiary.

(5) *Stock basis adjustments for higher-tier stock*. The basis adjustments required under this paragraph (b) result in basis adjustments to higher-tier member stock. The adjustments are applied in the order of the tiers, from the lowest to highest. For example, if a common parent owns stock of a subsidiary that owns stock of a lower-tier subsidiary and the subsidiary recognizes a loss on the disposition of a portion of its shares of the lower-tier subsidiary stock, the common parent must adjust its basis in its subsidiary stock under the principles of §1.1502–32 to reflect the adjustments that the subsidiary must make to its basis in its stock of the lower-tier subsidiary.

(6) *Ordering rules*. (i) The rules of this paragraph (b) apply after the rules of §1.1502–32 are applied.

(ii) The rules of this paragraph (b) apply before the rules of §1.337(d)–2 and paragraphs (c) and (f) of this section are applied.

(iii) This paragraph (b) (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(5) of this section) applies to redetermine the basis of stock of a lower-tier subsidiary before this paragraph (b) applies to a higher-tier member of such lower-tier subsidiary.

(c) *Loss suspension*—(1) *General rule*. Any loss recognized by a member of a consolidated group with respect to the disposition of a share of subsidiary stock shall be suspended to the extent of the duplicated loss with respect to such share of stock if, immediately after the disposition, the subsidiary is a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group).

(2) *Special rule for lower-tier subsidiaries*. This paragraph (c)(2) applies if neither paragraph (c)(1) nor (f) of this section applies to a member's disposition of a share of stock of a subsidiary (the departing member), a loss is recognized on the disposition of such share, and the departing member owns stock of one or more other subsidiaries (a remaining member) that is a member of such group immediately after the disposition. In that case, such loss shall be suspended to the extent the duplicated loss with respect to the departing member stock disposed of is attributable to the remaining member or members.

(3) *Treatment of suspended loss*. For purposes of the rules of §1.1502–32, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section is treated as a noncapital, nondeductible expense of the member that disposes of subsidiary stock, incurred during the taxable year that includes the date of the disposition of stock to which paragraph (c)(1) or (c)(2) of this section applies. See §1.1502–32(b)(3)(iii)(C). Consequently,

the basis of a higher-tier member's stock of the member that disposes of subsidiary stock is reduced by the suspended loss in the year it is suspended.

(4) *Reduction of suspended loss*—(i) *General rule*. The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of this section shall be reduced, but not below zero, by the subsidiary's (and any successor's) items of deduction and loss, and the subsidiary's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiaries, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary (or any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary (or any successor) is not a member of such group; provided, however, that such reduction shall not exceed the excess of the amount of such items over the amount of such items that are taken into account in determining the basis adjustments made under §1.1502–32 to stock of the subsidiary (or any successor) owned by members of the group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary on the date of the disposition of stock that gave rise to the suspended loss.

(ii) *Operating rules*—(A) *Year in which deduction or loss is taken into account*. For purposes of paragraph (c)(4)(i) of this section, a subsidiary's (or any successor's) deductions and losses are treated as taken into account when and to the extent they are absorbed by the subsidiary (or any successor) or any other member. To the extent that the subsidiary's (or any successor's) deduction or loss is absorbed in the year it arises or is carried forward and absorbed in a subsequent year (*e.g.*, under section 172, 465, or 1212), the deduction is treated as taken into account in the year in which it is absorbed. To the extent that a subsidiary's (or any successor's) deduction or loss is carried back and absorbed in a prior year (whether consolidated or separate), the deduction or loss is treated as taken into account in the year in which it arises and not in the year in which it is absorbed.

(B) *Determination of items that are allocable to the post-disposition, pre-deconsolidation period*. For purposes of paragraph (c)(4)(i) of this section, the determination of whether a subsidiary's (or any successor's) items of deduction and loss and allocable share of items of deduction and loss of all lower-tier subsidiaries are allocable to the period beginning on the date of the disposition of subsidiary stock that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary (or any successor) is not a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group) is determined pursuant to the rules of §1.1502–76(b)(2), without regard to §1.1502–76(b)(2)(ii)(D), as if the subsidiary ceased to be a member of the group at the end of the day before the disposition and filed separate returns for the period beginning on the date of the disposition and ending on the day before the first date on which it is not a member of such group.

(5) *Allowable loss*—(i) *General rule*. To the extent not reduced under paragraph (c)(4) of this section, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section shall be allowed, to the extent otherwise allowable under applicable provisions of the Internal Revenue Code and regulations thereunder, on a return filed by the group of which the subsidiary was a member on the date of the disposition of subsidiary stock that gave rise to the suspended loss (or any successor group) for the taxable year that includes the day before the first date on which the subsidiary (and any successor) is not a member of such group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502–80(c)) with respect to all of the subsidiary stock owned by members.

(ii) *No tiering up of certain adjustments*. No adjustments shall be made to a member's basis of stock of a subsidiary (or any successor) for a suspended loss that is taken into account under paragraph (c)(5)(i) of this section. See §1.1502–32(a)(2).

(iii) *Statement of allowed loss*. Paragraph (c)(5)(i) of this section applies only if the separate statement required under this paragraph (c)(5)(iii) is filed with, or as part of, the taxpayer's return for the year in which the loss is allowable. The statement must be entitled "ALLOWED LOSS UNDER §1.1502–35(c)(5)" and must contain the name and employer identification number of the subsidiary the stock of which gave rise to the loss.

(6) *Special rule for dispositions of certain carryover basis assets*. If—

(i) A member of a group recognizes a loss on the disposition of an asset other than stock of a subsidiary;

(ii) Such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary and, at the time of the determination of the member's basis in the asset disposed of, there was a duplicated loss with respect to such stock of the subsidiary; and

(iii) Immediately after the disposition, the subsidiary is a member of such group, then such loss shall be suspended pursuant to the principles of paragraphs (c)(1) and (c)(2) of this section to the extent of the duplicated loss with respect to such stock at the time of the determination of basis of the asset disposed of. Principles similar to those set forth in paragraphs (c)(3), (c)(4), and (c)(5) of this section shall apply to a loss suspended pursuant to this paragraph (c)(6).

(7) *Coordination with loss deferral, loss disallowance, and other rules*—(i) *In general*. Loss recognized on the disposition of subsidiary stock or another asset is subject to redetermination, deferral, or disallowance under other applicable provisions of the Internal Revenue Code and regulations thereunder, including sections 267(f) and 482. Paragraphs (c)(1), (c)(2), and (c)(6) of this section do not apply to a loss that is disallowed under any other provision. If loss is deferred under any other provision, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply when the loss would otherwise be taken into account under such other provision. However, if an overriding event described in paragraph (c)(7)(ii) of this section occurs before the deferred loss is taken into account, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply to the loss immediately before

the event occurs, even though the loss may not be taken into account until a later time.

(ii) *Overriding events*. For purposes of paragraph (c)(7)(i) of this section, the following are overriding events—

(A) The stock ceases to be owned by a member of the consolidated group;

(B) The stock is canceled or redeemed (regardless of whether it is retired or held as treasury stock); or

(C) The stock is treated as disposed of under §1.1502–19(c)(1)(ii)(B) or (c)(1)(iii).

(8) *Application*. This paragraph (c) shall not be applied in a manner that permanently disallows a deduction for an economic loss, provided that such deduction is otherwise allowable. If the application of any provision of this paragraph (c) results in such a disallowance, proper adjustment may be made to prevent such a disallowance. Whether a provision of this paragraph (c) has resulted in such a disallowance is determined on the date on which the subsidiary (or any successor) the disposition of the stock of which gave rise to a suspended stock loss is not a member of the group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502–80(c)) with respect to all of such subsidiary stock owned by members. Proper adjustment in such cases shall be made by restoring the suspended stock loss immediately before the subsidiary ceases to be a member of the group or the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502–80(c)) with respect to all of such subsidiary stock owned by members, to the extent that its reduction pursuant to paragraph (c)(4) of this section had the result of permanently disallowing a deduction for an economic loss.

(9) *Ordering rule*. The rules of this paragraph (c) apply after the rules of paragraph (b) of this section and §1.337(d)–2 are applied.

(d) *Definitions*—(1) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(2) *Deconsolidation* means any event that causes a subsidiary to no longer be a member of the consolidated group.

(3) *Value* means fair market value.

(4) *Duplicated loss*—(i) *In general*. Duplicated loss is determined immediately after a disposition and equals the excess, if any, of—

(A) The sum of—

(*1*) The aggregate adjusted basis of the subsidiary's assets other than any stock that subsidiary owns in another subsidiary;

(*2*) Any losses attributable to the subsidiary and carried to the subsidiary's first taxable year following the disposition; and

(*3*) Any deductions of the subsidiary that have been recognized but are deferred under a provision of the Internal Revenue Code (such as deductions deferred under section 469); over

(B) The sum of—

(*1*) The value of the subsidiary's stock; and

(*2*) Any liabilities of the subsidiary that have been taken account for tax purposes.

(ii) *Special rules*. (A) The amounts determined under paragraph (d)(4)(i) (other than amounts described in paragraph (d)(4)(i)(B)(*1*)) of this section with respect to a subsidiary include its allocable share of corresponding amounts with respect to all lower-tier subsidiaries. If 80 percent or more in value of the stock of a subsidiary is acquired by purchase in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary's stock may not exceed the purchase price of the stock divided by the percentage of the stock (by value) so purchased. For this purpose, stock is acquired by purchase if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), using the language "'10 percent"' instead of "'50 percent"' each place that it appears, and the transferee's basis in the stock is determined wholly by reference to the consideration paid for such stock.

(B) The amounts determined under paragraph (d)(4)(i) of this section are not applied more than once to suspend a loss under this section.

(5) *Predecessor and successor*. A predecessor is a transferor of assets to a transferee (the successor) in a transaction—

(i) To which section 381(a) applies;

(ii) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(iii) In which the successor's basis in assets is determined (directly or indirectly, in whole or in part) by reference to the transferor's basis in such assets, but the transferee is a successor only with respect to the assets the basis of which is so determined; or

(iv) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(6) *Successor group*. A surviving group is treated as a successor group of a consolidated group (the terminating group) that ceases to exist as a result of—

(i) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(ii) The application of the principles of §1.1502–75(d)(2) or (3).

(7) *Preferred stock, common stock*. Preferred stock and common stock shall have the meanings set forth in §1.1502–32(d)(2) and (3), respectively.

(8) *Higher-tier*. A subsidiary is *higher-tier* with respect to a member if or to the extent investment basis adjustments under §1.1502–32 with respect to the stock of the latter member would affect investment basis adjustments with respect to the stock of the former member.

(9) *Lower-tier*. A subsidiary is *lower-tier* with respect to a member if or to the extent investment basis adjustments under §1.1502–32 with respect to the stock of the former member would affect investment basis adjustments with respect to the stock of the latter member.

(e) *Examples*. For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. In addition, all transactions described in section 362(a) are completed before October 22, 2004, and therefore are not subject to section 362(e)(2). The principles of paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. Nondeconsolidating sale of preferred stock of lower-tier subsidiary—(i) *Facts*. P owns 100 percent of the common stock of each of S1 and S2. S1 and S2 each have only one class of stock outstanding. P's basis in the stock of S1 is $100 and the value of such stock is $130. P's basis in the stock of S2 is $120 and the value of such stock is $90. P, S1, and S2 are all members of the P group. S1 and S2 form S3. In Year 1, in transfers to which section 351 applies, S1 contributes $100 to S3 in exchange for all of the common stock of S3 and S2 contributes an asset with a basis of $50 and a value of $20 to S3 in exchange for all of the preferred stock of S3. S3 becomes a member of the P group. In Year 3, in a transaction that is not part of the plan that includes the contributions to S3, S2 sells the preferred stock of S3 for $20. Immediately after the sale, S3 is a member of the P group.

(ii) *Application of basis redetermination rule*. Because S2's basis in the preferred stock of S3 exceeds its value immediately prior to the sale and S3 is a member of the P group immediately after the sale, all of the P group members' bases in the stock of S3 is redetermined pursuant to paragraph (b)(1) of this section. Of the group members' total basis of $150 in the S3 stock, $20 is allocated to the preferred stock, the fair market value of the preferred stock on the date of the sale, and $130 is allocated to the common stock. S2's sale of the preferred stock results in the recognition of $0 of gain/loss. Pursuant to paragraph (b)(5) of this section, the redetermination of S1's and S2's bases in the stock of S3 results in adjustments to P's basis in the stock of S1 and S2. In particular, P's basis in the stock of S1 is increased by $30 to $130 and its basis in the stock of S2 is decreased by $30 to $90.

Example 2. *Deconsolidating sale of common stock*—(i) *Facts*. In Year 1, in a transfer to which section 351 applies, P contributes Asset A with a basis of $900 and a value of $200 to S in exchange for one share of S common stock (CS1). In Years 2 and 3, in successive but unrelated transfers to which section 351 applies, P transfers $200 to S in exchange for one share of S common stock (CS2), Asset B with a basis of $300 and a value of $200 in exchange for one share of S common stock (CS3), and Asset C with a basis of $1000 and a value of $200 in exchange for one share of S common stock (CS4). In Year 4, S sells Asset A for $200, recognizing $700 of loss that is used to offset income of P recognized during Year 4. As a result of the sale of Asset A, the basis of each of P's four shares of S common stock is reduced by $175. Therefore, the basis of CS1 is $725. The basis of CS2 is $25. The basis of CS3 is $125, and the basis of CS4 is $825. In Year 5 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells CS4 for $200. Immediately after the sale of CS4, S is not a member of the P group.

(ii) *Application of basis redetermination rule*. Because P's basis in each of CS1 and CS4 exceeds its value immediately prior to the deconsolidation of S, P's basis in its shares of S common stock is redetermined pursuant to paragraph (b)(2) of this section. Pursuant to paragraph (b)(2)(ii) of this section, the reallocable basis amount is $350 (the lesser of $1150, the gross loss inherent in the stock of S owned by P immediately before the sale, and $350, the aggregate amount of S's items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the stock of S that P did not hold at a loss immediately before the deconsolidation). Pursuant to paragraph (b)(2)(i) of this section, first, P's basis in CS1 is reduced from $725 to $600 and P's basis in CS4 is reduced from $825 to $600. Then, the reallocable basis amount increases P's basis in CS2 from $25 to $250 and P's basis in CS3 from $125 to $250. P recognizes $400 of loss on the sale of CS4. The loss suspension rule does not apply because S is no longer a member of the P group. Thus, the loss is allowable at that time.

Example 3. *Nondeconsolidating sale of common stock*—(i) *Facts*. In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of the common stock of S, which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S in a transfer to which section 351 applies. In Year 4, in a transaction that is not part of the plan that includes the Year 2 contribution, P sells the 20 shares of the common stock of S that it acquired in Year 2 for $20. Immediately after the Year 4 stock sale, S is a member of the P group. At the time of the Year 4 stock sale, S has $80 and Asset A. In Year 5, S sells Asset A, the basis and value of which have not changed since its contribution to S. On the sale of Asset A for $20, S recognizes a $30 loss. The P group cannot establish that all or a portion of the $30 loss was not reflected in the calculation of the duplicated loss of S on the date of the Year 4 stock sale. The $30 loss is used on the P group return to offset income of P. In Year 6, P sells its remaining S common stock for $80.

(ii) *Application of basis redetermination and loss suspension rules*. Because P's basis in the common stock sold exceeds its value immediately prior to the sale and S is a member of the P group immediately after the sale, P's basis in all of the stock of S is redetermined pursuant to paragraph (b)(1) of this section. Of P's total basis of $130 in the S common stock, a proportionate amount is allocated to each of the 100 shares of S common stock. Accordingly, $26 is allocated to the common stock of S that is sold and $104 is allocated to the common stock of S that is retained. On P's sale of the 20 shares of the common stock of S for $20, P recognizes a loss of $6. Because the sale of the 20 shares of common stock of S does not result in the deconsolidation of S, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended.

(iii) *Effect of subsequent asset sale on stock basis*. Of the $30 loss recognized on the sale of Asset A, $24 is taken into account in determining the basis adjustments made under §1.1502–32 to the stock of S owned by P. Accordingly, P's basis in its S stock is reduced by $24 from $104 to $80.

(iv) *Effect of subsequent asset sale on suspended loss*. Because P cannot establish that all or a portion of the loss recognized on the sale of Asset A was not reflected in the calculation of the duplicated loss of S on the date of the Year 4 stock sale and such loss is allocable to the period beginning on the date of the Year 4 disposition of the S stock and ending on the day before the first date on which S is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 4 disposition and before the first date on which S is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed $6, the excess of the amount of such loss, $30, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S owned by P, $24. Therefore, the suspended loss is reduced to zero.

(v) *Effect of subsequent stock sale*. P recognizes $0 gain/loss on the Year 5 sale of its remaining S common stock. No amount of suspended loss remains to be allowed under paragraph (c)(5) of this section.

Example 4. *Nondeconsolidating sale of common stock of lower-tier subsidiary*—(i) *Facts*. In Year 1, P forms S1 with a contribution of $200 in exchange for all of the common stock of S1, which represents all of the outstanding stock of S1. In the same year, S1 forms S2 with a contribution of $80 in exchange for 80 shares of the common stock of S2, which at that time represents all of the outstanding stock of S2. S1 and S2 become members of the P group. In the same year, S2 purchases Asset A for $80. In Year 2, S1 contributes Asset B with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S2 in a transfer to which section 351 applies. In Year 4, S1 sells the 20 shares of the common stock of S2 that it acquired in Year 2 for $20. Immediately after the Year 4 stock sale, S2 is a member of the P group. At the time of the Year 4 stock sale, the bases and values of Asset A and Asset B are unchanged. In Year 5, S2 sells Asset B for $45, recognizing a $5 loss. The P group cannot establish that all or a portion of the $5 loss was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 4 stock sale. The $5 loss is used on the P group return to offset income of P. In Year 6, S1 sells its remaining S2 common stock for $100.

(ii) *Application of basis redetermination and loss suspension rules*. Because S1's basis in the S2 common stock sold exceeds its value immediately prior to the sale and S2 is a member of the P group immediately after the sale, S1's basis in all of the stock of S2 is redetermined pursuant to paragraph (b)(1) of this section. Of S1's total basis of $130 in the S2 common stock, a proportionate amount is allocated to each of the 100 shares of S2 common stock. Accordingly, a total of $26 is allocated to the common stock of S2 that is sold and $104 is allocated to the common stock of S2 that is retained. On S1's sale of the 20 shares of the common stock of S2 for $20, S1 recognizes a loss of $6. Because the sale of the 20 shares of common stock of S2 does not result in the deconsolidation of S2, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended. Pursuant to paragraph (c)(3) of this section and §1.1502–32(b)(3)(iii)(C), the suspended loss is treated as a noncapital, nondeductible expense incurred by S1 during the tax year that includes the date of the disposition of stock to which paragraph (c)(1) of this section applies. Accordingly, P's basis in its S1 stock is reduced from $200 to $194.

(iii) *Effect of subsequent asset sale on stock basis*. Of the $5 loss recognized on the sale of Asset B, $4 is taken into account in determining the basis adjustments made under §1.1502–32 to the stock of S2 owned by S1. Accordingly, S1's basis in its S2 stock is reduced by $4 from $104 to $100 and P's basis in its S1 stock is reduced by $4 from $194 to $190.

(iv) *Effect of subsequent asset sale on suspended loss*. Because P cannot establish that all or a portion of the loss recognized on the sale of Asset B was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 4 stock sale and such loss is allocable to the period beginning on the date of the Year 4 disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed $1, the excess of the amount of such loss, $5, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S2 owned by members of the P group, $4. Therefore, the suspended loss is reduced to $5.

(v) *Effect of subsequent stock sale*. In Year 6, when S1 sells its remaining S2 stock for $100, it recognizes $0 gain/loss. Pursuant to paragraph (c)(5) of this section, the remaining $5 of the suspended loss is allowed on the P group's return for Year 5 when S1 sells its remaining S2 stock.

Example 5. Deconsolidating sale of subsidiary owning stock of another subsidiary that remains in group—(i) *Facts*. In Year 1, P forms S1 with a contribution of Asset A with a basis of $50 and a value of $20 in exchange for 100 shares of common stock of S1 in a transfer to which section 351 applies. Also in Year 1, P and S1 form S2. P contributes $80 to S2 in exchange for 80 shares of common stock of S2. S1 contributes Asset A to S2 in exchange for 20 shares of common stock of S2 in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 contributions, P sells its 100 shares of S1 common stock for $20. Immediately after the Year 3 stock sale, S2 is a member of the P group. At the time of the Year 3 stock sale, S1 owns 20 shares of common stock of S2, and S2 has $80 and Asset A. In Year 4, S2 sells Asset A, the basis and value of which have not changed since its contribution to S2. On the sale of Asset A for $20, S2 recognizes a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, P sells its S2 common stock for $80.

(ii) *Application of basis redetermination and loss suspension rules*. Pursuant to paragraph (b)(4) of this section, because immediately before P's transfer of S1 stock S1 owns stock of S2 (another subsidiary of the same group) that has a basis that exceeds its value, paragraph (b) of this section applies as if S1 had transferred its stock of S2. Because S2 is a member of the group immediately after the transfer of the S1 stock, the group member's basis in the S2 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S1 stock. Of the group members' total basis of $130 in the S2 stock, $26 is allocated to S1's 20 shares of S2 common stock and $104 is allocated to P's 80 shares of S2 common stock. Pursuant to paragraph (b)(5) of this section, the redetermination of S1's basis in the stock of S2 results in an adjustment to P's basis in the stock of S1. In particular, P's basis in the stock of S1 is decreased by $24 to $26. On P's sale of its 100 shares of S1 common stock for $20, P recognizes a loss of $6. Because S1 is not a member of the P group immediately after P's sale of the S1 stock, paragraph (c)(1) of this section does not apply to suspend such loss. However, because P recognizes a loss with respect to the disposition of the S1 stock and S1 owns stock of S2 (which is a member of the P group immediately after the disposition), paragraph (c)(2) of this section does apply to suspend up to $6 of that loss, an amount equal to the amount by which the duplicated loss with respect to the stock of S1 sold is attributable to S2's adjusted basis in its assets, loss carryforwards, and deferred deductions.

(iii) *Effect of subsequent asset sale on stock basis*. Of the $30 loss recognized on the sale of Asset A, $24 is taken into account in determining the basis adjustments made under §1.1502–32 to the stock of S2 owned by P. Accordingly, P's basis in its S2 stock is reduced by $24 from $104 to $80.

(iv) *Effect of subsequent asset sale on suspended loss*. Because P cannot establish that all or a portion of the loss recognized on the sale of Asset A was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 3 stock sale and such loss is allocable to the period beginning on the date of the Year 3 deemed disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 3 deemed disposition and before the first date on which S2 is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed $6, the excess of the amount of such loss, $30, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S2 owned by P, $24. Therefore, the suspended loss is reduced to zero.

(v) *Effect of subsequent stock sale*. P recognizes $0 gain/loss on the Year 5 sale of its remaining S2 common stock. No amount of suspended loss remains to be allowed under paragraph (c)(5) of this section.

Example 6. Loss recognized on asset with basis determined by reference to stock basis of subsidiary—(i) *Facts*. In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of common stock of S in a transfer to which section 351 applies. In Year 4, in a transaction that is not part of a plan that includes the Year 1 and Year 2 contributions, P contributes the 20 shares of S common stock it acquired in Year 2 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. Immediately after the contribution to PS, S is a member of the P group. In Year 5, P sells its interest in PS for $20, recognizing a $30 loss.

(ii) *Application of basis redetermination rule upon nonrecognition transfer*. Because P's basis in the S common stock contributed to PS exceeds its value immediately prior to the transfer and S is a member of the P group immediately after the transfer, P's basis in all of the S stock is redetermined pursuant to paragraph (b)(1) of this section. Of P's total basis of $130 in the common stock of S, a proportionate amount is allocated to each share of S common stock. Accordingly, $26 is allocated to the S common stock that is contributed to PS and, under section 722, P's basis in its interest in PS is $26.

(iii) *Application of loss suspension rule on disposition of asset with basis determined by reference to stock basis of subsidiary*. P recognizes a $6 loss on its disposition of its interest in PS. Because P's basis in its interest in PS was determined by reference to the basis of S stock and at the time of the determination of P's basis in its interest in PS such S stock had a duplicated loss of $6, and, immediately after the disposition, S is a member of the P group, such loss is suspended to the extent of such duplicated loss. Principles similar to those of paragraphs (c)(3), (c)(4), and (c)(5) of this section shall apply to such suspended loss.

(f) *Worthlessness not followed by separate return years*. Notwithstanding any other provision in the regulations under section 1502, if a member of a group (the claiming group) treats stock of a subsidiary as worthless under section 165 (taking into account the provisions of §1.1502–80(c)) and, on the day following the last day of the claiming group's taxable year in which the worthless stock deduction is claimed, the subsidiary (or its successor, determined without regard to paragraphs (d)(5)(iii) and (iv) of this section) is a member of a group that includes any corporation that, during that taxable year, was a member of the claiming group (other than a lower-tier subsidiary of the subsidiary) or is a successor (determined without regard to paragraphs (d)(5)(iii) and (iv) of this section) of such a member, then all losses treated as attributable to the subsidiary under the principles of §1.1502–21(b)(2)(iv) shall be treated as expired as of the beginning of the day following the last day of the claiming group's taxable year in which the worthless stock deduction is claimed. In addition, notwithstanding any other provision in the regulations under section 1502, if a member recognizes a loss with respect to subsidiary stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then all losses treated as attributable to the subsidiary under the principles of §1.1502–21(b)(2)(iv) shall be treated as expired as of the beginning of the day following the last day of the group's taxable year in which the stock loss is claimed. For purposes of this paragraph (f), the determination of the losses attributable to the subsidiary shall be made after computing the taxable income of the group for the taxable year in which the group treats the stock of the subsidiary as worthless or the subsidiary liquidates and after computing the taxable income for any taxable year to which such losses may be carried back. The loss treated as expired under this paragraph (f) shall not be treated as a noncapital, nondeductible expense under §1.1502–32(b)(2)(iii). This paragraph (f) applies to worthlessness determinations and liquidations that occur on or after March 10, 2006. For rules applicable to worthless determinations and liquidations before March 10, 2006, see §1.1502–35T(f)(1) and (2) as contained in 26 CFR part 1 in effect on January 1, 2006.

(g) *Anti-avoidance rules*—(1) *Transfer of share without a loss in avoidance*. If a share of subsidiary stock has a basis that does not exceed its value and the share is transferred with a view to avoiding application of the rules of paragraph (b) of this section prior to the transfer of a share of subsidiary stock that has a basis that does exceed its value or a deconsolidation of a subsidiary, the rules of paragraph (b) of this section shall apply immediately prior to the transfer of stock that has a basis that does not exceed its value.

(2) *Transfers of loss property in avoidance*. If a member of a consolidated group contributes an asset with a basis that exceeds its value to a partnership in a transaction described in section 721 or a corporation that is not a member of such group in a transfer described in section 351, such partnership or corporation contributes such asset to a subsidiary in a transfer described in section 351, and such contributions are undertaken with a view to avoiding the rules of paragraph (b) or (c) of this section, adjustments must be made to carry out the purposes of this section.

(3) *Anti-loss reimportation*—(i) *Application*. This paragraph (g)(3) applies if—

(A) A member of a group recognizes and is allowed a loss on the disposition of a share of stock of a subsidiary with respect to which there is a duplicated loss; and

(B) Within the 10-year period beginning on the date the subsidiary (or any successor) ceases to be a member of such group—

(*1*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) owns any asset that has a basis in excess of value at such time and that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date;

(*2*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) owns any asset that has a basis in excess of value at such time and that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date;

(*3*) In a transaction described in section 381 or section 351, any member of such group (or any successor group) acquires any asset of the subsidiary (or any successor) that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of its value on such date, or any asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of its value on such date, and, immediately after the acquisition of such asset, such asset has a basis in excess of its value;

(*4*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) has a liability (within the meaning of section 358(h)(3)) that it had on the date of a disposition of stock of such subsidiary (or any successor) and such liability will give rise to a deduction;

(*5*) In a transaction described in section 381 or section 351, any member of such group (or any successor group) assumes a liability (within the meaning of section 358(h)(3)) that was a liability of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor);

(*6*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) has any losses or deferred deductions that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor);

(*7*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) has any losses or deferred deductions that are attributable to any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date;

(*8*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) has any losses or deferred deductions that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date;

(*9*) The subsidiary (or any successor) again becomes a member of such group (or any successor group) when the subsidiary (or any successor) has any losses or deferred deductions that are attributable to a liability (within the meaning of section 358(h)(3)) that it had on the date of a disposition of stock of such subsidiary (or any successor);

(*10*) Any member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary (or any successor) that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor), that are attributable to any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, or that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor); or

(*11*) Any losses or deferred deductions of the subsidiary (or any successor) that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor), that are attributable to any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, or that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) are carried back to a pre-disposition taxable year of the subsidiary.

(ii) *Operating rules*. (A) For purposes of paragraph (g)(3)(i)(B) of this section, assets shall include stock and securities and the subsidiary (or any successor) shall be treated as having its allocable share of losses and deferred deductions of all lower-tier subsidiaries and as owning its allocable share of each asset of all lower-tier subsidiaries.

(B) For purposes of paragraphs (g)(3)(i)(B)(*6*), (*7*), (*8*), and (*9*) of this section, unless the group can establish otherwise, if the subsidiary (or any successor) again becomes a member of such group (or any successor group) at a time when the subsidiary (or any successor) has any losses or deferred deductions, such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor), losses or deferred deductions that are attributable to assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had bases in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had bases in excess of value on such date, or losses or deferred deductions attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor).

(C) For purposes of paragraph (g)(3)(i)(B)(*10*) of this section, unless the group can establish otherwise, if a member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary (or any successor), such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor), losses or deferred deductions that are attributable to assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had bases in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had bases in excess of value on such date, or losses or deferred deductions attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor).

(D) For purposes of paragraph (g)(3)(i)(B)(*11*) of this section, unless the group can establish otherwise, if any losses or deferred deductions of the subsidiary (or any successor) are carried back to a pre-disposition taxable year of the subsidiary, such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor), losses or deferred deductions that are attributable to assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, or losses or deferred deductions that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor).

(iii) *Loss disallowance*. If this paragraph (g)(3) applies, then, to the extent that the aggregate amount of loss recognized by members of the group (and any successor group) on dispositions of the subsidiary stock was attributable to a duplicated loss of such subsidiary that was allowed, such group (or any successor group) will be denied the use of—

(A) Any loss recognized that is attributable to, directly or indirectly, an asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of value on such date, to the extent of the lesser of the loss inherent in such asset on the date of a disposition of the stock of the subsidiary (or any successor) and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(B) of this section that gives rise to the application of this paragraph (g)(3);

(B) Any loss recognized that is attributable to, directly or indirectly, an asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) and that had a basis in excess of its value on such date, to the extent of the lesser of the loss inherent in the asset that was owned by the subsidiary (or any successor) on the date of a disposition of stock of such subsidiary (or any successor) the basis of which is reflected, directly or indirectly, in whole or in part, in the basis of such asset on the date of the disposition and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(B) of this section that gives rise to the application of this paragraph (g)(3);

(C) Any loss or deduction that is attributable to a liability described in paragraph (g)(3)(i)(B)(*4*) or (*5*) of this section; and

(D) Any loss or deduction described in paragraph (g)(3)(i)(B)(*6*), (*7*), (*8*), (*9*), (*10*), or (*11*) of this section, provided that a loss or deferred deduction described in paragraph (g)(3)(i)(B)(*11*) of this section shall be allowed to be carried forward to a post-disposition taxable year of the subsidiary.

(iv) *Treatment of disallowed loss*. For purposes of §1.1502–32(b)(3)(iii), any loss or deduction the use of which is disallowed pursuant to paragraph (g)(3)(iii) of this section (other than a loss or deduction described in paragraph (g)(3)(i)(B)(*11*) of this section), and with respect to which no waiver described in §1.1502–32(b)(4) is filed, is treated as a noncapital, nondeductible expense incurred during the taxable year that such loss would otherwise be absorbed.

(4) *Avoidance of recognition of gain*. (i) If a transaction is structured with a view to, and has the effect of, deferring or avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b)(1) of this section to redetermine the basis of stock of a subsidiary, and the stock loss that gives rise to the application of paragraph (b)(1) of this section is not significant, paragraphs (b) and (c) of this section shall not apply.

(ii) If a transaction is structured with a view to, and has the effect of, deferring or avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b)(2) of this section to redetermine the basis of stock of a subsidiary, and the duplicated loss of the subsidiary that is reflected in stock of the subsidiary owned by members of the group immediately before the deconsolidation is not significant, paragraphs (b) and (c) of this section shall not apply.

(5) *Examples*. For purposes of the examples in this section, all transactions described in section 362(a) are completed before October 22, 2004, and therefore are not subject to section 362(e)(2). The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Transfers of property in avoidance of basis redetermination rule—(i) *Facts*. In Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 3, P contributes Asset A with a basis of $50 and a value of $20 to PS in exchange for an additional capital and profits interest in PS in a transaction described in section 721. Also in Year 3, PS contributes Asset A to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells Asset A for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. In Year 5, P sells its entire interest in PS for $40, recognizing a loss of $30.

(ii) *Analysis*. Pursuant to paragraph (g)(2) of this section, if P's contributions of S stock and Asset A to PS were undertaken with a view to avoiding the application of the basis redetermination or the loss suspension rule, adjustments must be made such that the group does not obtain more than one tax benefit from the $30 loss inherent in Asset A.

Example 2. Transfers effecting a reimportation of loss—(i) *Facts*. In Year 1, P forms S with a contribution of Asset A with a value of $100 and a basis of $120, Asset B with a value of $50 and a basis of $70, Asset C with a value of $90 and a basis of $100 in exchange for all of the common stock of S and S becomes a member of the P group. In Year 2, in a transaction that is not part of a plan that includes the contribution, P sells the stock of S for $240, recognizing a loss of $50. At such time, the bases and values of Assets A, B, and C have not changed since their contribution to S. In Year 3, S sells Asset A, recognizing a $20 loss. In Year 3, S merges into M in a reorganization described in section 368(a)(1)(A). In Year 8, P purchases all of the stock of M for $300. At that time, M has a $10 net operating loss. In addition, M owns Asset D, which was acquired in an exchange described in section 1031 in connection with the surrender of Asset B. Asset C has a value of $80 and a basis of $100. Asset D has a value of $60 and a basis of $70. In Year 9, P has operating income of $100 and M recognizes $20 of loss on the sale of Asset C. In Year 10, P has operating income of $50 and M recognizes $50 of loss on the sale of Asset D.

(ii) *Analysis*. P's $50 loss on the sale of S stock is entirely attributable to duplicated loss. Therefore, pursuant to paragraph (g)(3) of this section, assuming the P group cannot establish otherwise, M's $10 net operating loss is treated as attributable to assets that were owned by S on the date of the disposition and that had bases in excess of value on such date. Without regard to any other limitations on the group's use of M's net operating loss, the P group cannot use M's $10 net operating loss pursuant to paragraph (g)(3)(iii)(D) of this section. Pursuant to paragraph (g)(3)(iv) of this section and §1.1502–32(b)(3)(iii)(D), such loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that it would otherwise be absorbed, namely in Year 9. In addition, the P group is denied the use of $10 of the loss recognized on the sale of Asset C. Finally, the P group is denied the use of $10 of the loss recognized on the sale of Asset D. Pursuant to paragraph (g)(3)(iv) of this section and §1.1502–32(b)(3)(iii)(D), each such disallowed loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the date of the disposition of the asset with respect to which such loss was recognized.

Example 3. Transfers to avoid recognition of gain—(i) *Facts*. P owns all of the stock of S1 and S2. The S2 stock has a basis of $400 and a value of $500. S1 owns 50% of the stock of the S3 common stock with a basis of $150. S2 owns the remaining 50% of the S3 common stock with a basis of $100 and a value of $200 and one share of S3 preferred stock with a basis of $10 and a value of $9. P intends to sell all of its S2 stock to an unrelated buyer. P, therefore, engages in the following steps to dispose of S2 without recognizing a substantial portion of the built-in gain in S2. First, P causes a recapitalization of S3 in which S2's S3 common stock is exchanged for new S3 preferred shares. P then sells all of its S2 stock. Immediately after the sale of the S2 stock, S3 is a member of the P group.

(ii) *Analysis*. Pursuant to paragraph (b)(4) of this section, because S2 owns stock of S3 (another subsidiary of the same group) and, immediately after the sale of the S2 stock, S3 is a member of the group, then for purposes of applying paragraph (b) of this section, S2 is deemed to have transferred its S3 stock. Because S3 is a member of the group immediately after the transfer of the S2 stock and the S3 stock deemed transferred has a basis in excess of value, the group member's basis in the S3 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S2 stock. Pursuant to paragraph (b)(1) of this section, the total basis of S3 stock held by members of the P group is allocated first to the S3 preferred shares, up to their value of $209, and then to the remaining shares of S3 common held by S1. S2's aggregate basis in the S3 preferred stock is increased from $110 to $209. This increase tiers up and increases P's basis in the S2 stock from $400 to $499. Accordingly, P will recognize only $1 of gain on the sale of its S2 stock. However, because the recapitalization of S3 was structured with a view to, and has the effect of, avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b) of this section, paragraph (g)(4)(i) of this section applies. Accordingly, paragraph (b) of this section does not apply upon P's disposition of the S2 stock and P recognizes $100 of gain on the disposition of the S2 stock.

(h) *Application of other anti-abuse rules*. The rules of this section do not preclude the application of anti-abuse rules under other provisions of the Internal Revenue Code and regulations thereunder.

(i) [Reserved].

(j) *Effective date*. This section, except for paragraph (g)(3) of this section, applies with respect to stock transfers, deconsolidations of subsidiaries, determinations of worthlessness, and stock dispositions on or after March 10, 2006. For rules applicable before March 10, 2006, see §1.1502–35T(j) as contained in 26 CFR part 1 in effect on January 1, 2006.

§1.1502–35T [Removed]

Par. 7. Section 1.1502–35T is removed.

Par. 8. For each section listed in the table remove the language in the "Remove" column and add in its place the language in the "Add" column as set forth below:

Section	Remove	Add
§1.267(f)–1(k)	§1.1502–35T	§1.1502–35
§1.597–4(g)(2)(v)	§1.1502–35T	§1.1502–35
§1.1502–11(b)(3)(ii)(c)	§1.1502–35T	§1.1502–35
§1.1502–12(r)	§1.1502–35T	§1.1502–35
§1.1502–15(b)(2)(iii)	§1.1502–35T	§1.1502–35
§1.1502–21(b)(1)	§1.1502–35T(f)(1)	§1.1502–35(f)
§1.1502–32(b)(3)(iii)(B)	§1.1502–35T	§1.1502–35
§1.1502–80(c)	§1.1502–35T	§1.1502–35
§1.1502–80T(c)	§1.1502–35T	§1.1502–35
§1.1502–91(h)(2)	§1.1502–35T	§1.1502–35

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In §602.101, paragraph (b) is amended by removing the entry for §1.1502–35T and adding an entry to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–35	1545–1828
* * * * *	

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

Approved March 7, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 9, 2006, 11:31 a.m., and published in the issue of the Federal Register for March 14, 2006, 71 F.R. 13008)

Part II. Treaties and Tax Legislation

Subpart A.—Tax Conventions and Other Related Items

Irish Common Contractual Funds MAP

Announcement 2006–19

The following is a copy of the Mutual Agreement entered into on February 9, 2006, by the Competent Authorities of the United States and Ireland, regarding the treatment of common contractual funds under the U.S.-Ireland income tax treaty and protocol.

The text of the Agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the United States and Ireland enter into the following agreement ("Agreement") concerning the treatment of Common Contractual Funds under the Convention Between the Government of the United States of America and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Dublin on July 28, 1997 (the "Treaty") and the Protocol, also signed at Dublin on July 28, 1997 (the "Protocol"). The Agreement is entered into under paragraph 3 of Article 26 (Mutual Agreement Procedure).

It has come to the attention of the Competent Authorities that difficulties have arisen as to the application of the Treaty to income received by Irish unit holders in a Common Contractual Fund ("CCF"). This results from the provisions of Subparagraph 1(d) of Article 4 of the Treaty and Article 1 of the Protocol.

The CCF was introduced into law in Ireland after the Treaty entered into force. Legislation for the establishment in Ireland of a UCITS CCF was enacted under the UCITS (Undertakings for Collective Investment in Transferable Securities) Regulations (S.I. 211 of 2003 as amended). More recently, legislation allowing for the formation of a non-UCITS CCF in Ireland was passed in June 2005, entitled the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (the "2005 Act").

Taxation provisions governing the UCITS CCF were introduced in Ireland in the Finance Act 2003. Anticipating of the passing into law of the 2005 Act, those provisions were amended by Section 44 of the Finance Act 2005 to cover both UCITS and non-UCITS CCFs. Section 44 provides, inter alia, for a new Section 739I in the Taxes Consolidation Act 1997 (TCA). Under section 739I of the TCA the income and gains of a CCF are treated as arising or, as the case may be, accruing, to each unit holder of the CCF in proportion to the value of the units beneficially owned by the unit holder, as if the relevant income and relevant gains had arisen or, as the case may be, accrued, to the unit holders in the CCF without passing through the hands of the CCF.

The first sentence of Article 1 of the Protocol provides that for the purposes of the Treaty where a resident of a Contracting State is entitled to income or gains in respect of an interest in a person that derives income or gains from the other Contracting State, any income or gains so derived by such person shall be considered to be income or gains of such resident to the extent it is treated as such under the taxation laws of the first-mentioned State. Thus, under the first sentence it would appear that income received by a unit holder that is a resident of Ireland in respect of an interest in a CCF should be considered to be income of the unit holder for purposes of the Treaty.

However, under the second sentence of Article 1 of the Protocol, the income will not be treated as the income of the unit holder for purposes of the Treaty if the CCF is a resident of Ireland within the meaning of subparagraph 1(d) of Article 4 (Residence) of the Treaty. Subparagraph 1(d) of Article 4 provides that, in the case of Ireland, a "resident" includes a Collective Investment Undertaking ("CIU"). The term "Collective Investment Undertaking" is not however defined in the Treaty. Under Irish law, a CCF is treated as a CIU. Therefore, a question has arisen as to whether Irish unit holders in a CCF are entitled to benefits under the Treaty.

Paragraph 2 of Article 3 (General Definitions) of the Treaty provides that any term not defined in the Treaty shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 26 (Mutual Agreement Procedure), be defined by reference to the law of the Contracting States in effect at the time the Treaty is being applied. The technical explanation of the Treaty prepared by the Department of the Treasury of the United States explains that the reference to the "context otherwise requiring" a definition different from the internal law definition of the Contracting State whose tax is being imposed refers to a circumstance where the result intended by the negotiators or by the Contracting States is different from the result that would obtain under the statutory definition.

The Competent Authorities agree that in order to reach the result intended by the Contracting States, a CCF will not be treated as a resident of Ireland pursuant to paragraph 1(d) of Article 4. Accordingly, under the first sentence of Article 1 of the Protocol, a unit holder in a CCF will be entitled to benefits under the Treaty, provided the unit holder is a resident of Ireland that satisfies the requirements of Article 23 (Limitation on Benefits). In addition, a CCF will not be entitled to benefits in its own right because it will not be a resident of Ireland.

Frank Y. Ng Acting United States Competent Authority	P. F. Mullen Irish Competent Authority
Date: ______________________	Date: ______________________

First Publication—U.S.-Japan Investment Bank MOU

Announcement 2006–20

The following is a copy of the first publication, dated March 3, 2006, regarding notification of self-certification of United Sates and Japanese resident investment banks, pursuant to section E of the U.S.-Japan Investment Bank MOU entered into on December 27, 2005 (Ann. 2006–6, 2006–4 I.R.B. 340) by the Competent Authorities of the United States and Japan.

The text of the first publication is as follows:

Memorandum of Understanding (MOU) under Article 11(3)(c)(1) of the United States-Japan Income Tax Treaty: First publication, dated March 3, 2006, under the MOU, Section E, by the Competent Authorities of the United States and Japan concerning notification of self-certification of United States and Japanese resident investment banks

Japanese Resident Entities

Pursuant to section E (Confirmation of Benefits) of the MOU between the United States and Japan dated December 27, 2005, the named Japanese resident entities in this publication have self-certified that they meet the conditions provided in the Guidelines of the MOU for entitlement to treaty benefits under Article 11(3)(c)(i). The Japanese Competent Authority has been properly notified of the following self-certifications in accordance with its domestic procedures and has provided the named Japanese resident entities to the United States Competent Authority:

- Nomura Holdings Inc.
- Daiwa Securities Group Inc.

U. S. Resident Entities

Pursuant to section E (Confirmation of Benefits) of the MOU between the United States and Japan dated December 27, 2005, the named U.S. resident entities in this publication have self-certified that they meet the conditions provided in the Guidelines of the MOU for entitlement to treaty benefits under Article 11(3)(c)(i). The United States Competent Authority has been properly notified of the following self-certifications in accordance with its domestic procedures and has provided the named U.S. resident entities to the Japanese Competent Authority:

Bear Stearns

- The Bear Stearns Companies Inc.
- Bear Stearns Corporate Lending Inc.
- Bear Stearns Investment Products Inc.
- Bear Stearns Forex Inc.

Citigroup

- Citigroup Financial Products Inc.
- Citigroup Global Markets Holdings Inc.
- Citigroup Overseas Investment Corporation
- Citigroup Funding Inc.

Credit Suisse First Boston

- Credit Suisse Holdings (USA), Inc.
- Credit Suisse (USA), Inc.
- Credit Suisse Financial Corporation
- Column Financial, Inc.
- DLJ Mortgage Capital, Inc.
- DLJ Real Estate Capital Partners, Inc.
- Credit Suisse Premium Finance LLC

Goldman Sachs

- The Goldman Sachs Group, Inc.
- Goldman, Sachs & Co.
- Goldman Sachs Mortgage Company
- William Street Commitment Corporation
- William Street Credit Corporation
- William Street Funding Corporation
- Goldman Sachs Credit Partners L.P.
- Goldman Sachs Capital Markets, L.P.

JPMorgan Chase

- JPMorgan Chase & Co.
- J.P. Morgan International Finance Limited

Lehman Brothers

- Lehman Brothers Holdings Inc.

Merrill Lynch

- Merrill Lynch & Co., Inc.
- Merrill Lynch, Pierce, Fenner & Smith Inc.
- Merrill Lynch Capital Corporation
- Merrill Lynch Capital Services, Inc.
- Merrill Lynch Government Securities, Inc.
- Merrill Lynch Mortgage Capital, Inc.
- Merrill Lynch Professional Clearing Corporation
- Merrill Lynch International, Inc.
- Merrill Lynch International Holdings, Inc.
- Merrill Lynch Group, Inc.

Morgan Stanley

- Morgan Stanley
- Morgan Stanley International Inc.
- Morgan Stanley International Holdings Inc.

- Morgan Stanley Senior Funding Inc.
- Morgan Stanley Asset Funding Inc.
- Morgan Stanley Capital Group Inc.
- Morgan Stanley Capital Services Inc.
- Morgan Stanley Investment Management Inc.
- Morgan Stanley Principle Funding Inc.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2006–32

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code generally provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

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

The rate of interest on 30-year Treasury securities for February 2006 is 4.58 percent. The Service has determined this rate as the average of the yield on the 30-year Treasury bond maturing in February 2031 determined each day through February 8, 2006, and the yield on the 30-year Treasury bond maturing in February 2036 determined each day for the balance of the month.

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

For Plan Years Beginning in: Month	Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
March	2006	4.83	4.34 to 5.07	4.34 to 5.31

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1–202–283–9703. Mr. Montanaro may be reached at 1–202–283–9714. The telephone numbers in the preceding sentences are not toll-free.

Note. This revenue procedure will be reproduced as the next revision of IRS Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Rev. Proc. 2006-19

TABLE OF CONTENTS

Section 1 - Purpose

.01 The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2c, Corrected Wage and Tax Statement, and Form W-3c, Transmittal of Corrected Wage and Tax Statements.

.02 The official IRS Form W-2c is a six-part form and the official IRS Form W-3c is a one-part form. Paper substitutes conforming to the specifications contained in this document may be privately-printed without the prior approval of the IRS or the SSA.

Note. Both paper substitute forms filed with the SSA, and those furnished to employees, that do not totally conform to these specifications are not acceptable. Forms W-2c (Copy A) and Forms W-3c that do not conform may be returned. In addition, penalties may be assessed.

.03 Substitute forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

(1) Submit a letter to the appropriate address below citing the specification.

(2) State your understanding of the specification.

(3) Enclose an example (if appropriate) of how the form would appear if produced using your understanding.

(4) Be sure to include your name, complete address, phone number, and, if applicable, your email address with your correspondence.

.04 Any questions about the specifications, especially those for the red-ink Form W-2c (Copy A) and Form W-3c, should be emailed to **taxforms@irs.gov*. (The asterisk must be included in the address.) Please enter "Substitute Forms" on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6406
1111 Constitution Ave., NW
Washington, DC 20224

Any questions about the black-and-white laser-printed Form W-2c (Copy A) and Form W-3c should be emailed to *laser.forms@ssa.gov* or sent to:

Social Security Administration
Data Operations Center
Attn: Laser Forms Approval, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Note. You should receive a response from either the IRS or the SSA within 30 days.

.05 The IRS maintains a centralized Customer Service call site at its Enterprise Computing Center – Martinsburg (ECC) to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.). You can reach the call site at 304-263-8700 (not a toll-free number) or 1-866-455-7438 (toll-free). The Telecommunication Device for the Deaf (TDD) number is 304-267-3367 (not a toll-free number). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time. You may also send questions to the call site via the Internet at *mccirp@irs.gov*. IRS/ECC does not process information returns that are filed on paper forms.

.06 The following form instructions and publications provide more detailed filing procedures for certain information returns.

- Instructions for Forms W-2 and W-3.

- Instructions for Forms W-2c and W-3c (Rev. January 2006).

- Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

Section 2 - What's New

.01 We are revising this revenue procedure, which will be reproduced as Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c, because Forms W-2c and W-3c were revised in January 2006. Publication 1223 will only be available online at *www.irs.gov*. Several changes have been made to Forms W-2c and W-3c since they were previously revised in December 2002. The major changes include the following.

- The Social Security Administration (SSA) will not accept magnetic media submissions after December 31, 2006.

- The top margin of Form W-3c is now .5 inches from the top rule of the form to the top of the page, instead of .5 inches from the top wording (DO NOT CUT, FOLD OR STAPLE) to the top of the page.

- We added a separate entry field to box (e) (employee's name) on Form W-2c for employee suffix names such as "Jr." or "Sr."

- You can file Forms W-2c and W-3c electronically by visiting the SSA's Employer Reporting Instructions and Information website at *www.socialsecurity.gov/employer*, selecting "Electronically File Your W-2cs", and logging into "Business Services Online." SSA's "Create Forms W-2c Online" option allows you to create "fill-in" versions of Forms W-2c and Forms W-3c for filing with the SSA and to print out copies of the forms for filing with state or local governments, distribution to your employees, and for your records.

- Box (c) on Form W-2c is now "Corrected SSN and/or name" and must be checked if the SSN and/or name is being corrected.

- A checkbox in box (c) on Form W-3c for new Form 944 and Form 944-SS has been added. Form 944 and Form 944-SS are new forms that must be filed by certain employers instead of Form 941 or Form 941-SS beginning with calendar year 2006.

- The "Sec. 218" checkbox in box (c) on Form W-3c has been eliminated. State and local governments filing Forms W-2c to report Social Security coverage for employees under a section 218 agreement should write "Section 218 Agreement" in the lower-left corner of box (c) on Form W-3c.

- Form W-3c PR is 7.3 inches wide and should be printed on 8.5 x 11-inch paper with a .5-inch top margin and .6-inch left and right margins.

.02 The following changes have been made to Publication 1223 since the last revision (May 2003).

- Because magnetic media is being eliminated as a filing method, all references to magnetic media were deleted.

- For timeliness, to save printing expenses, and because users of Publication 1223 have access to the Internet and the IRS website, Publication 1223 will now only be released for downloading from the IRS website. However, this revenue procedure will continue to be released in printed form in the Internal Revenue Bulletin.

- We expanded the guidelines for the laser-print substitute Forms W-2c and W-3c by adding specifications to Section 5.03.

- We have included information about the IRS' Enterprise Computing Center's call site for answering questions relating to information returns.

- Corrected payee statements (Copies B, C, and 2 of Forms W-2c) may be furnished electronically if employees give their consent. See also Publication 15-A, Employer's Supplemental Tax Guide.

- We made editorial changes. Redundancies were eliminated as much as possible.

Section 3 - Filing Forms W-2c and W-3c Electronically

.01 Employers must file electronically with the SSA if they file 250 or more Forms W-2c (Copy A) during a calendar year unless the IRS granted you a waiver. For details, get the Instructions for Forms W-2c and W-3c. SSA publication MMREF-2, Magnetic Media Reporting and Electronic Filing of W-2c Information, contains specifications and procedures for filing Forms W-2c. Employers are cautioned to obtain the most recent revision of MMREF-2 (and supplements) due to any subsequent changes in specifications and procedures.

.02 You may obtain a copy of the MMREF-2 by:

- Accessing the SSA website at www.socialsecurity.gov/employer/pub.htm.

- Writing to:

  Social Security Administration
  OCO, DES; Attn: Employer Reporting Services Center
  300 North Greene Street
  Baltimore, MD 21290-0300

- Calling your local SSA Employer Services Liaison Officer (ESLO). Their phone numbers are available at www.socialsecurity.gov/employer/empcontacts.htm.

- Calling the SSA's Employer Reporting Services staff at 1-800-772-6270.

.03 Electronic filers do not file a paper Form W-3c. See the SSA publication MMREF-2 for guidance on transmitting Form W-2c (Copy A) information to the SSA electronically.

.04 Employers with fewer than 250 Forms W-2 to be corrected are encouraged to electronically file Forms W-2c (Copy A) with the SSA. Doing so will enhance the timeliness and accuracy of forms processing.

.05 Employers who do not comply with the electronic filing requirements for Form W-2c (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2c information with the SSA electronically must not send the same data to the SSA on paper Forms W-2c (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

Section 4 - Requirements for Substitute Paper Copies of Red-Ink Forms W-2c (Copy A) and W-3c That Will Be Filed With the SSA

.01 Include the OMB Number on Forms W-2c (Copy A) and Forms W-3c in the same location as on the official form.

.02 The words "For Privacy Act and Paperwork Reduction Act Notice, see separate instructions." must be printed on all Forms W-2c (Copy A) and Forms W-3c.

.03 The Government Printing Office (GPO) symbol must **not** be printed on substitute Forms W-2c (Copy A) and Forms W-3c.

.04 The Catalog Number (Cat. No.) shown on the forms is used for IRS distribution purposes and should not be printed on any substitute forms.

.05 The appropriate SSA addresses must be printed on the front of Form W-3c below the body of the form (see Exhibit B).

If you use the U.S. Postal Service, the address is:

Social Security Administration
Data Operations Center
P.O. Box 3333
Wilkes-Barre, PA 18767-3333.

If you use a carrier other than the U.S. Postal Service, the address is:

Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997.

.06 All printing of substitute Forms W-2c (Copy A) and W-3c must be in Flint red OCR dropout ink except as specified below. The following must be printed in nonreflective black ink.

- Identifying number "44444" or "55555" at the top of the forms.

- The four (4) corner register marks on the forms.

- All text including "Form W-3c" below the bottom two corner register marks of Form W-3c.

.07 The sequence for assembling the copies of Form W-2c is as follows.

- Copy A — For Social Security Administration

- Copy 1 — State, City, or Local Tax Department

- Copy B — To Be Filed with Employee's FEDERAL Tax Return
- Copy C — For EMPLOYEE's RECORDS
- Copy 2 — To Be Filed with Employee's State, City, or Local Income Tax Return
- Copy D — For Employer

.08 Substitute form printers are required to include their Employer Identification Numbers (EINs) to the left of "Department of the Treasury" in the lower right in place of "Cat. No." on Forms W-2c (Copy A) and W-3c.

.09 Employers may file privately-printed Forms W-2c (Copy A) and W-3c with the SSA. Any substitute form must be an exact replica of the IRS-printed form with respect to layout and content.

.10 The back of substitute Form W-2c (Copy A) and Form W-3c must be free of all printing.

.11 In addition:

- Hot wax and cold carbon spots are not permitted on any of the internal form plies.
- Color and paper quality for Copy A (cut sheets and continuous pinfed forms) and Form W-3c, as specified by JCP Code 0-25 dated November 29, 1978, must be white 100% bleached chemical wood, optical character recognition (OCR) bond.

  Note. Reclaimed fiber in any percentage is permitted provided the requirements of this standard are met.
- Chemical transfer paper is permitted for Copy A only if:

  (a) Chemically-backed;

  (b) You do not use carbon-coated forms; and

  (c) Chemically-transferred images are black.
- All copies must be clearly legible. Interleaved carbon should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.
- All copies should be legible and able to be photocopied.
- The contractor must initiate or have a quality control program to assure OCR ink density.

.12 Type must be substantially identical in size and shape to the official form. All rules are either 1/2-point or 3/4-point. Rules must be identical to those on the official IRS form.

Note. The identifying number (44444 or 55555) must be nonreflective carbon-based black ink in OCR-A font.

.13 One official Form W-2c or W-3c is contained on a single page that is 8.5 inches wide (exclusive of any snap stubs) by 11 inches deep. The width of a substitute form must be 7.5 inches. See Exhibits A and B.

.14 Forms W-2c (Copy A) of continuous, privately-printed substitute forms must be perforated at each 11-inch page depth.

Section 5 - Requirements for Laser-Printed Substitute Forms W-2c (Copy A) and W-3c That Will Be Filed With the SSA

.01 The SSA has developed laser-printed versions of Forms W-2c and W-3c. You may contact the SSA via email at *laser.forms@ssa.gov* for more information. After the forms are developed, you will obtain a template in pdf or Excel format and the SSA will provide further approval instructions. You may use the format of Copy A of the red-ink forms as an initial template. You may also contact the SSA at the following address.

Social Security Administration
Data Operations Center
Attn: Laser Forms Approval, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

You will be asked to send your sample forms via private mail carrier or certified mail in order to verify their receipt.

.02 You will be required to send one set of blank and one set of dummy-data, laser-printed substitute Forms W-2c (Copy A) and W-3c for approval. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

.03 Specifications for the laser-printed black-and-white Forms W-2c (Copy A) and W-3c should be similar to the red-ink forms (Section 4) except for certain items and actual form dimensions. Exhibits are samples only and must not be downloaded to meet tax obligations.

(1) Forms must be printed on 8.5 x 11-inch single-sheet paper only, not on continuous-feed using a laser printer.

(2) All forms and data must be printed in nonreflective black ink only.

(3) The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.

(4) The forms must not contain corner register marks.

(5) The forms must not contain any shaded areas including those boxes that are entirely shaded on the red-ink forms.

(6) Identifying numbers on both Form W-2c (“44444”) and Form W-3c (“55555”) must be preprinted in 14-point Arial bold font or a close approximation.

(7) The form numbers (“W-2c” and “W-3c”) must be in 18-point Arial font or a close approximation.

(8) No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.

(9) Do not print any information in the margins of the laser-printed forms (for example, **do not print** “DO NOT CUT, FOLD OR STAPLE” in the top margin of Form W-3c).

(10) The word “Code” must not appear in box 12 on Form W-2c (Copy A).

(11) A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/1234) must appear in 12-point Arial font, or a close approximation, in place of the Cat. No. on Form W-2c (Copy A) and in the bottom right corner of the “For Official Use Only” box at the bottom of Form W-3c. Do not display the form producer’s EIN to the left of “Department of the Treasury.” The vendor code will be used to identify the form producer.

(12) Do not print Catalog Numbers (Cat. No.) on either form.

(13) Do not print the checkboxes in:

- Box (c) of Form W-3c. The “X” should be programmed to be printed and centered directly below the applicable “Kind of Payer.”
- The “Yes/No” area above the signature on Form W-3c. The “X” should be programmed to be printed before “Yes” or “No.”
- The box in the upper right corner of box (c) of Form W-2c (Copy A). The “X” should be programmed to be printed in that corner.
- Box 13 of Form W-2c (Copy A). The “X” should be programmed to be printed and centered directly below the applicable box title.

(14) Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

.04 You will be asked to submit samples of your laser-printed substitute forms to the SSA. Only laser-printed, black-and-white substitute Forms W-2c (Copy A) and Form W-3c will be accepted for approval by the SSA.

.05 Forms not containing a 4-digit vendor code preceded by four zeros and a slash (0000/) will be rejected and will not be submitted for testing or approval. If you do not have a vendor code, you may contact the National Association of Computerized Tax Processors via email at *president@nactp.org*.

.06 If you use forms produced by a vendor and have questions concerning approval, do not send the forms to the SSA for approval. Instead, you may contact the software vendor to obtain a copy of the SSA’s dated approval notice supplied to that vendor.

.07 Questions regarding red-ink substitute Forms W-2, W-3, W-2c, and W-3c, and other red-ink substitute forms such as the 1099 series must be directed to the IRS. Also see IRS Publications 1141 and 1179.

Section 6 - Requirements for Substitute Privately-Printed Forms W-2c (Copies B, C, and 2) Furnished to Employees

.01 All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2c (three or more for employees required to file a state, city, or local income tax return).

Note. Although substitute Copy 1 of Form W-2c can be printed in black instead of the red dropout ink, it should conform as closely as possible to Copy A of the official IRS form in content, format, and layout in order to satisfy state and local reporting requirements.

.02 The paper for all copies must be white and printed in black ink. The substitute Copy B (or its equal), which employees are instructed to attach to their federal income tax returns, must be at least 9-pound paper (basis 17 x 22-500). Other copies furnished to employees should also be at least 9-pound paper (basis 17 x 22-500).

.03 Interleaved carbon and chemical transfer paper for employee copies must be clearly legible, have the capability to be photocopied, and not fade to such a degree as to preclude legibility and the ability to photocopy.

.04 Type must be substantially identical in size and shape to that on the official form.

.05 Substitute forms for employees need to contain only the payment boxes and captions that are applicable. These boxes, box numbers, and box titles must, when applicable, match the IRS-printed form. In all cases, the employee name, address, and SSN, as well as the employer name, address, and EIN, must be present.

.06 The dimensions of the boxes on these copies (Copies B, C, and 2), but not Copy A, may be adjusted to allow space for conveying additional information. This may permit the employer to eliminate other statements or notices that would otherwise be furnished to employees.

.07 The maximum allowable dimensions for employee copies of Form W-2c are no more than 11 inches deep by 8.5 inches wide. The minimum allowable dimensions for employee copies of Form W-2c are 2.67 inches deep by 4.25 inches wide.

Note. These maximum and minimum size specifications are subject to future change.

.08 Either horizontal or vertical format is permitted for substitute employee copies of Forms W-2c. That is, the width of the form may be either greater or less than the depth of the form.

.09 All copies of Form W-2c must clearly and prominently display the form number and the form title together in one area of the form. It is recommended (but not required) that this be located on the bottom left of Form W-2c. The reference to the "Department of the Treasury – Internal Revenue Service" must be on all copies of Form W-2c. It is recommended (but not required) that this be located on the bottom right of Form W-2c.

.10 If the substitute Forms W-2c are not labeled as to the disposition of the copies, then written notification must be provided to each employee as specified below.

- The first copy of Form W-2c (Copy B) is filed with the employee's federal tax return.
- The second copy of Form W-2c (Copy C) is for the employee's records.
- If applicable, the third copy (Copy 2) of Form W-2c is filed with the employee's state, city, or local income tax return.

If the substitute Forms W-2c are labeled, the forms must contain the applicable description as stated on the official form.

.11 Instructions similar to those on the back of Form W-2c (Copy C) of the official form must be provided to each employee.

Section 7 - Instructions for Employers

.01 Privately-printed substitute Forms W-2c are not required to contain a copy to be retained by employers (Copy D). However, employers must be prepared to verify or duplicate this information if the IRS or the SSA requests it. Paper filers who do not keep Copy D of Form W-2c should be able to generate a facsimile of Form W-2c (Copy A) in case of loss.

.02 If Copy D is provided for the employer, instructions contained on the back of Copy D of the official form must appear on the back of the substitute form. If Copy D is not provided, these instructions must be furnished to the employer on a separate statement.

.03 Only originals or compliant substitute copies of Forms W-2c (Copy A) and Forms W-3c may be filed with the SSA. Carbon copies and photocopies are unacceptable.

.04 Employers should type or machine print entries on non-laser generated forms whenever possible and provide good quality data entries by using a high quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images.

Note. 12-point Courier font is preferred by the SSA.

.05 Because employers must file a machine-scannable Form W-2c, they should meet the following requirements.

- Use 12-point Courier (SSA-preferred) font for data entries.
- Proportional-spaced fonts are unacceptable.
- Refrain from printing any data in the top margin of the forms.

.06 The employer must also furnish payee copies of Forms W-2c (Copies B, C, and 2) that are legible and capable of being photocopied (by the employee).

.07 When Forms W-2c or W-3c are typed, black ink must be used with no script type, inverted font, italics, or dual-case alpha characters.

.08 The filer's employer identification number (EIN) must be entered in box (d) of Form W-2c and box (e) of Form W-3c.
.09 The employer's name, address, EIN, and state ID number may be preprinted.

Section 8 - OMB Requirements for Both Red-Ink and Laser-Printed Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following.

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS forms and are also shown on the forms in the exhibits.)
- Each IRS form (or its instructions) states:
  (1) Why the IRS needs the information,
  (2) How it will be used, and
  (3) Whether or not the information is required to be furnished to the IRS.

.02 This information must be provided to any users of official or substitute IRS forms or instructions.
.03 The OMB requirements for substitute IRS forms are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Form W-3c and Form W-2c (Copy A), the OMB number (1545-0008) must appear exactly as shown on the official IRS form.
- For any copy of Form W-3c or Form W-2c, other than Copy A, the OMB number must use one of the following formats.
  (1) OMB No. 1545-0008 (preferred) or
  (2) OMB # 1545-0008 (acceptable).

.04 Any substitute Form W-3c and Form W-2c (Copy A) must state "For Privacy Act and Paperwork Reduction Act Notice, see separate instructions." If no instructions are provided to users of your forms, you must furnish them the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 9 - Reproducible Copies of Forms

.01 You can obtain official IRS forms and information copies of federal tax materials at local IRS offices or by calling the IRS Distribution Center at 1-800-829-3676. Other ways to get federal tax material include the following.

- The IRS website at *www.irs.gov*.
- The IRS' CD-ROM (Publication 1796).

Only contact the IRS, not the SSA, for forms.

Note. Many IRS forms are provided on the IRS website and on the Federal Tax Forms CD-ROM. But copies of Form W-2c (Copy A) and Form W-3c cannot be used for filing with the IRS or SSA when obtained by these methods because the forms do not meet the specific printing specifications as described in this publication. Copies of Forms W-2c and W-3c obtained from these sources are for information purposes only.

.02 The IRS also offers an alternative to downloading electronic files and provides current and prior-year access to tax forms and instructions through its Federal Tax Forms CD-ROM. Order Publication 1796, IRS Federal Tax Products CD-ROM, by using the IRS website at *www.irs.gov/cdorders* or by calling 1-877-CDFORMS (1-877-233-6767).

Section 10 - Effect on Other Documents

.01 Revenue Procedure 2003-31, 2003-1 C.B. 839 (reprinted as Publication 1223, Rev. 5-2003), is superseded.

Section 11 - Exhibits

Exhibit A

1.0"

7.5"

DO NOT CUT, FOLD, OR STAPLE THIS FORM

a Tax year/Form corrected ..../ **W-2**	44444	**For Official Use Only ▶** OMB No. 1545-0008
b Employee's correct SSN	**c** Corrected SSN and/or name (if checked, enter incorrect SSN and/or name in box **h** and/or box **i**) ☐	**d** Employer's Federal EIN
e Employee's first name and initial / Last name / Suff.		**g** Employer's name, address, and ZIP code
f Employee's address and ZIP code		
Complete boxes h and/or i only if incorrect on last form filed. ▶	**h** Employee's **incorrect** SSN	**i** Employee's name (as **incorrectly** shown on previous form)

.5" .5" 3.7"

Note: Only complete money fields that are being corrected (except MQGE).

Previously reported	**Correct information**	**Previously reported**	**Correct information**
1 Wages, tips, other compensation	**1** Wages, tips, other compensation	**2** Federal income tax withheld	**2** Federal income tax withheld
3 Social security wages	**3** Social security wages	**4** Social security tax withheld	**4** Social security tax withheld
5 Medicare wages and tips	**5** Medicare wages and tips	**6** Medicare tax withheld	**6** Medicare tax withheld
7 Social security tips	**7** Social security tips	**8** Allocated tips	**8** Allocated tips
9 Advance EIC payment	**9** Advance EIC payment	**10** Dependent care benefits	**10** Dependent care benefits
11 Nonqualified plans	**11** Nonqualified plans	**12a** See instructions for box 12 Code	**12a** See instructions for box 12 Code
13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	**13** Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	**12b** Code 1.9"	**12b** Code 1.8"
14 Other (see instructions) 1.9"	**14** Other (see instructions) 1.9"	**12c** Code	**12c** Code
		12d Code	**12d** Code

State Correction Information

Previously reported	**Correct information**	**Previously reported**	**Correct information**
15 State	**15** State	**15** State	**15** State
Employer's state ID number	Employer's state ID number	Employer's state ID number	Employer's state ID number
16 State wages, tips, etc.	**16** State wages, tips, etc.	**16** State wages, tips, etc.	**16** State wages, tips, etc.
17 State income tax	**17** State income tax	**17** State income tax	**17** State income tax

Locality Correction Information

18 Local wages, tips, etc.	**18** Local wages, tips, etc.	**18** Local wages, tips, etc.	**18** Local wages, tips, etc.
19 Local income tax	**19** Local income tax	**19** Local income tax	**19** Local income tax
20 Locality name	**20** Locality name	**20** Locality name	**20** Locality name

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. **Copy A—For Social Security Administration**

Form **W-2c** (Rev. 1-2006) **Corrected Wage and Tax Statement** Department of the Treasury Internal Revenue Service

Exhibit B

.5"

7.5"

DO NOT CUT, FOLD OR STAPLE

a Tax year/Form corrected .... / W-......	55555	**For Official Use Only** ► OMB No. 1545-0008

b Employer's name, address, and ZIP code 3.8"	**c** Kind of Payer ► ☐ 941/941-SS ☐ Military ☐ 943 ☐ 944/944-SS ☐ CT-1 ☐ Hshld. emp. ☐ Medicare govt. emp. ☐ **Third-party sick pay**

.5" .5"

d Number of Forms W-2c	**e** Employer's Federal EIN	**f** Establishment number	**g** Employer's state ID number
Complete boxes h, i, or j **only** if incorrect on last form filed.	**h** Employer's **incorrect** Federal EIN	**i** **Incorrect** establishment number	**j** Employer's **incorrect** state ID number
Total of amounts previously reported as shown on enclosed Forms W-2c.	**Total of corrected amounts as shown on enclosed Forms W-2c.**	**Total of amounts previously reported as shown on enclosed Forms W-2c.**	**Total of corrected amounts as shown on enclosed Forms W-2c.**
1 Wages, tips, other compensation	**1** Wages, tips, other compensation	**2** Federal income tax withheld	**2** Federal income tax withheld
3 Social security wages	**3** Social security wages	**4** Social security tax withheld	**4** Social security tax withheld
5 Medicare wages and tips 1.9"	**5** Medicare wages and tips 1.9"	**6** Medicare tax withheld	**6** Medicare tax withheld
7 Social security tips	**7** Social security tips	**8** Allocated tips	**8** Allocated tips
9 Advance EIC payments	**9** Advance EIC payments	**10** Dependent care benefits	**10** Dependent care benefits
11 Nonqualified plans	**11** Nonqualified plans	**12a-d** (Coded items) 1.9"	**12a-d** (Coded items) 1.8"
14 Inc. tax W/H by 3rd party sick pay payer	**14** Inc. tax W/H by 3rd party sick pay payer		
16 State wages, tips, etc.	**16** State wages, tips, etc.	**17** State income tax	**17** State income tax
18 Local wages, tips, etc.	**18** Local wages, tips, etc.	**19** Local income tax	**19** Local income tax

Explain decreases here:

Has an adjustment been made on an employment tax return filed with the Internal Revenue Service? ☐ Yes ☐ No

If "Yes," give date the return was filed ►

Under penalties of perjury, I declare that I have examined this return, including accompanying documents, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature ► Title ► Date ►

Contact person	Telephone number ( )	For Official Use Only
Email address	Fax number ( )	

Purpose of Form

Use this form to transmit Copy A of **Form(s) W-2c,** Corrected Wage and Tax Statement (Rev. 1-2006). Make a copy of Form W-3c and keep it with Copy D (For Employer) of Forms W-2c for your records. File Form W-3c even if only one Form W-2c is being filed or if those Forms W-2c are being filed only to correct an employee's name or social security number (SSN). See the separate Instructions for Forms W-2c and W-3c for information on completing this form.

When To File

File this form and Copy A of Form(s) W-2c with the Social Security Administration as soon as possible after you discover an error on Forms W-2, W-2AS, W-2GU, W-2CM, W-2VI, or W-2c. Provide Copies B, C, and 2 of Form W-2c to your employees as soon as possible.

Where To File

If you use the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

Social Security Administration
Data Operations Center
P.O. Box 3333
Wilkes-Barre, PA 18767-3333

If you use a carrier other than the U.S. Postal Service, send Forms W-2c and W-3c to the following address:

Social Security Administration
Data Operations Center
Attn: W-2c Process
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Form **W-3c** (Rev. 1-2006) **Transmittal of Corrected Wage and Tax Statements**

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Department of the Treasury
Internal Revenue Service

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

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Key to Abbreviations:

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

EMPLOYEE PLANS

EMPLOYEE PLANS—Cont.

EMPLOYMENT TAX

ESTATE TAX

SELF-EMPLOYMENT TAX

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