Internal Revenue
bulletin

Bulletin No. 2006-20
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2006–25, page 882.

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2005 and 2006. Rev. Rul. 92–19 supplemented in part.

T.D. 9258, page 886.
REG–133036–05, page 911.

Temporary and proposed regulations under section 1502 of the Code revise the tacking rule of the life-nonlife consolidated regulations by eliminating the requirement relating to the separation of profitable and loss activities.

Notice 2006–45, page 891.

This notice provides guidance to issuers of state and local bonds on "qualified highway or surface freight transfer facilities" under section 142(a)(15) of the Code. It provides that a project receiving an allocation from the Department of Transportation of a portion of the $15 billion national limitation for qualified highway or surface freight transfer facilities will be treated as meeting the definition of qualified highway or surface freight transfer facilities. It also provides guidance to issuers on how to meet the information reporting requirements.

Notice 2006–47, page 892.

This notice provides a brief description of various elections that were created by the American Jobs Creation Act of 2004 as well as the revocation of certain elections, and it includes information about the effective date, the deadline for making the election/revocation, and interim guidance where applicable. Rev. Proc. 2002–9 modified and amplified.

EMPLOYEE PLANS

Notice 2006–44, page 889.

Sample; discretionary amendment; Roth section 401(k) plan. This notice provides a sample plan amendment for sponsors, practitioners, and employers (plan sponsors) who want to provide for designated Roth contributions in their section 401(k) plans. The sample amendment will help those plan sponsors comply with the requirement to timely adopt a discretionary amendment by the end of the plan year in which the amendment is effective.

EXEMPT ORGANIZATIONS

Announcement 2006–33, page 914.

Parents & Friends for Better Education, Inc., of Houma, LA, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

ADMINISTRATIVE

Notice 2006–47, page 892.

This notice provides a brief description of various elections that were created by the American Jobs Creation Act of 2004 as well as the revocation of certain elections, and it includes information about the effective date, the deadline for making the election/revocation, and interim guidance where applicable. Rev. Proc. 2002–9 modified and amplified.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Rev. Proc. 2006–23, page 900.
This document updates the procedures for requesting assistance from the U.S. competent authority under the provisions of tax coordination agreements entered into between the IRS and the tax agencies of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico (collectively, the U.S. possessions). Rev. Proc. 89–8 superseded.

Announcement 2006–31, page 912.
This announcement contains corrections to T.D. 9244, 2006–8 I.R.B. 463, that provides guidance regarding the determination of the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions.

Announcement 2006–32, page 913.
This announcement contains a correction to final regulations (T.D. 9248, 2006–9 I.R.B. 524) under sections 881(b) and 937(a) of the Code that provide rules for determining *bona fide* residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 40.—Alcohol Used as Fuel

A notice describes an election, on an annual basis, allowing cooperatives to allocate the cooperative's small ethanol producer credit *pro rata* among its patrons on the basis of the quantity or value of business done with or for its patrons for the taxable year. See Notice 2006-47, page 892.

Section 45H.—Credit for Production of Low Sulfur Diesel Fuel

A notice describes an election, on an annual basis, allowing cooperatives to apportion any portion of the low sulfur diesel fuel production credit for the taxable year among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for those patrons for the taxable year. See Notice 2006-47, page 892.

Section 167.—Depreciation

A notice describes an election to either include participations and residuals expected to be paid before the end of the tenth taxable year following the taxable year in which the property is placed in service in the adjusted basis of property for which the income forecast method of depreciation is used, or exclude participations and residuals from the adjusted basis of property for which the income forecast method of depreciation is used and deduct the participations and residuals in the taxable year that the participations and residuals are paid. See Notice 2006-47, page 892.

Section 168.—Accelerated Cost Recovery System

A notice describes an election to treat any Alaska natural gas pipeline that is placed in service after December 31, 2004, and before January 1, 2014, as being placed in service on January 1, 2014. See Notice 2006-47, page 892.

Section 179B.—Deduction for Capital Costs Incurred in Complying With Environmental Protection Agency Sulfur Regulations

A notice describes an election allowing small business refiners to deduct 75 percent of the qualified capital costs that are paid or incurred by the taxpayer during the taxable year. See Notice 2006-47, page 892.

Section 181.—Treatment of Certain Qualified Film and Television Productions

A notice describes an election to treat the cost of any qualified film or television production (as defined in section 181(d)) as an expense that is not chargeable to capital account and to deduct it. See Notice 2006-47, page 892.

Section 194.—Treatment of Reforestation Expenditures

A notice describes an election to treat up to $10,000 of reforestation expenditures with respect to any qualified timber property as an expense that is not chargeable to capital account and to deduct those expenditures in the year paid or incurred. See Notice 2006-47, page 892.

Section 451.—General Rule for Taxable Year of Inclusion

A notice describes an election allowing taxpayers that realize qualified gain from a qualifying electric transmission transaction (QETT) to recognize all or part of the gain ratably over an 8-year period beginning with the year that includes the date of the QETT. See Notice 2006-47, page 892.

Section 631.—Gain or Loss in the Case of Timber, Coal, or Domestic Iron Ore

A notice describes the procedures to revoke an election to treat the cutting of timber as a sale or exchange. See Notice 2006-47, page 892.

Section 807.—Rules for Certain Reserves

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2005 and 2006. Rev. Rul. 92–19 supplemented in part.

Rev. Rul. 2006–25

For purposes of § 807(d)(4) of the Internal Revenue Code, for taxable years beginning after December 31, 2004, this ruling supplements the schedules of prevailing state assumed interest rates set forth in Rev. Rul. 92–19, 1992–1 C.B. 227. This information is to be used by insurance companies in computing their reserves for (1) life insurance and supplementary total and permanent disability benefits, (2) individual annuities and pure endowments, and (3) group annuities and pure endowments. As § 807(d)(2)(B) requires that the interest rate used to compute these reserves be the greater of (1) the applicable federal interest rate, or (2) the prevailing state assumed interest rate, the table of applicable federal interest rates in Rev. Rul. 92–19 is also supplemented.

Following are supplements to schedules A, B, C, and D to Part III of Rev. Rul. 92–19, providing prevailing state assumed interest rates for insurance products with different features issued in 2005 and 2006, and a supplement to the table in Part IV of Rev. Rul. 92–19, providing the applicable federal interest rates under § 807(d) for 2005 and 2006. This ruling does not supplement Parts I and II of Rev. Rul. 92–19.

This is the fourteenth supplement to the interest rates provided in Rev. Rul. 92–19. Earlier supplements were published in Rev. Rul. 93–58, 1993–2 C.B. 241 (interest rates for insurance products issued in 1992 and 1993); Rev. Rul. 94–11, 1994–1 C.B. 196 (1993 and 1994); Rev. Rul. 95–4, 1995–1 C.B. 141 (1994 and 1995); Rev. Rul. 96–2, 1996–1 C.B. 141 (1995 and 1996); Rev. Rul. 97–2, 1997–1 C.B. 134 (1996 and 1997); Rev. Rul. 98–2, 1998–2 C.B. 259 (1997 and 1998); Rev. Rul. 99–10, 1999–1 C.B. 671 (1998 and 1999); Rev. Rul. 2000–17, 2000–1 C.B. 842 (1999 and 2000); Rev. Rul. 2001–11, 2001–1 C.B. 780 (2000 and 2001); Rev. Rul. 2002–12, 2002–1 C.B. 624 (2001 and 2002); Rev. Rul. 2003–24, 2003–1 C.B. 557 (2002 and 2003); Rev. Rul. 2004–14, 2004–1 C.B. 511 (2003 and 2004); and Rev. Rul. 2005–29, 2005–1 C.B. 1080 (2004 and 2005).

Part III. Prevailing State Assumed Interest Rates — Products Issued in Years After 1982.*

Schedule A

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

A. Life insurance valuation:

Guarantee Duration (years)	Calendar Year of Issue 2006
10 or fewer	5.75**
More than 10 but not more than 20	5.25**
More than 20	5.00**

Source: Rates calculated from the monthly averages, ending June 30, 2005, of Moody's Composite Yield on Seasoned Corporate Bonds.

* The terms used in the schedules in this ruling and in Part III of Rev. Rul. 92–19 are those used in the Standard Valuation Law; the terms are defined in Rev. Rul. 92–19.

** As these rates exceed the applicable federal interest rate for 2006 of 3.98 percent, the interest rate to be used for this product under § 807 are those specified in this table.

Part III, Schedule B

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

B. Single premium immediate annuities and annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Calendar Year of Issue	Valuation Interest Rate
2005	5.25*

Source: Rates calculated from the monthly averages, ending June 30, 2005, of Moody's Composite Yield on Seasoned Corporate Bonds (formerly known as Moody's Corporate Bond Yield Average — Monthly Average Corporates). The terms used in this schedule are those used in the Standard Valuation Law as defined in Rev. Rul. 92–19.

*As this prevailing state assumed interest exceeds the applicable federal interest rate for 2005 of 4.44 percent, the valuation interest rate of 5.25 percent is to be used for this product under § 807.

Part III, Schedule C23 — 2005

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR **2005** CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

C. Valuation interest rates for other annuities and guaranteed interest contracts that are valued on an issue year basis:

Cash Settlement Options?	Future Interest Guarantee?	Guarantee Duration (years)	Valuation Interest Rate For Plan Type		
			A	B	C
Yes	Yes	5 or fewer	5.25	4.75	4.50
		More than 5, but not more than 10	5.00	4.75	4.50
		More than 10, but not more than 20	4.75	4.50	4.25*
		More than 20	4.25*	4.00*	4.00*
Yes	No	5 or fewer	5.25	4.75	4.50
		More than 5, but not more than 10	5.25	4.75	4.50
		More than 10, but not more than 20	5.00	4.50	4.50
		More than 20	4.50*	4.00*	4.00*
No	Yes or No	5 or fewer	5.25		
		More than 5, but not more than 10	5.00	NOT APPLICABLE	
		More than 10, but not more than 20	4.75		
		More than 20	4.25*		

Source: Rates calculated from the monthly averages, ending June 30, 2005, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As the applicable federal interest rate for 2005 of 4.44 percent exceeds this prevailing state assumed interest rate, the interest rate to be used for this product under § 807 is 4.44 percent.

Part III, Schedule D23 - 2005

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR **2005** CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

D. Valuation interest rates for other annuities and guaranteed interest contracts that are contracts with cash settlement options and that are valued on a change in fund basis:

Cash Settlement Options?	Future Interest Guarantee?	Guarantee Duration (years)	Valuation Interest Rate For Plan Type		
			A	B	C
Yes	Yes	5 or fewer	5.75	5.25	4.50
		More than 5, but not more than 10	5.50	5.25	4.50
		More than 10, but not more than 20	5.25	5.00	4.50
		More than 20	4.75	4.75	4.00*
Yes	No	5 or fewer	5.75	5.50	4.75
		More than 5, but not more than 10	5.75	5.50	4.75
		More than 10, but not more than 20	5.25	5.25	4.50
		More than 20	4.75	4.75	4.25*

Source: Rates calculated from the monthly averages, ending June 30, 2005, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As the applicable federal interest rate for 2005 of 4.44 percent is equal to or exceeds this prevailing state assumed interest rate, the interest rate to be used for this product under § 807 is 4.44 percent.

Part IV. Applicable Federal Interest Rates

TABLE OF
APPLICABLE FEDERAL INTEREST RATES
FOR PURPOSES OF § 807

Year	Interest Rate
2005	4.44
2006	3.98

Sources: Rev. Rul. 2004–106, 2004–2 C.B. 893, for the 2005 rate and Rev. Rul. 2005–77, 2005–2 C.B. 1071, for the 2006 rate.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 92–19 is supplemented by the addition to Part III of that ruling of prevailing state assumed interest rates under § 807 for certain insurance products issued in 2005 and 2006 and is further supplemented by an addition to the table in Part IV of Rev. Rul. 92–19 listing applicable federal interest rates. Parts I and II of Rev. Rul. 92–19 are not affected by this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Ann H. Logan of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622–3970 (not a toll-free call).

Section 864.—Definitions and Special Rules

A notice describes a one-time election allowing worldwide affiliated groups to allocate interest expense on a worldwide basis. See Notice 2006-47, page 892.

Section 904.—Limitation on Credit

A notice describes an election to treat foreign tax paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, on an amount that does not constitute income for U.S. tax purposes as imposed on general limitation income or financial services income. See Notice 2006-47, page 892.

Section 986.—Determination of Foreign Taxes and Foreign Corporation's Earnings and Profits

A notice describes an election allowing taxpayers that otherwise must translate foreign income tax payments at the average exchange rate to use the exchange rate in effect on the date the taxes are paid, provided the foreign taxes are denominated in nonfunctional currency. See Notice 2006-47, page 892.

Section 1502.—Regulations

26 CFR 1.1502–47: Consolidated returns by life-nonlife groups.

T.D. 9258

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance Under Section 1502; Amendment of Tacking Rule Requirements of Life-Nonlife Consolidated Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains temporary regulations concerning the requirements for including insurance companies in a life-nonlife consolidated return. These regulations affect corporations filing life-nonlife consolidated returns. The text of these temporary regulations also serves as the text of the proposed regulations (REG–133036–05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective April 25, 2006.

Applicability Date: For dates of applicability, *see* §1.1502–47T(b)(2).

FOR FURTHER INFORMATION CONTACT: Drafting Attorney, Ross Poulsen, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

In 1983, the IRS issued §1.1502–47 of the Income Tax Regulations governing life-nonlife consolidated returns. Section 1.1502–47 provides rules for determining whether a life insurance company meets the five-year affiliation requirement of section 1504(c) of the Internal Revenue Code of 1986. As a general rule, a newly-formed life insurance company must be affiliated with the group for a period of five taxable years before it joins in the filing of a consolidated return. However, §1.1502–47 sets forth an exception to the five-year affiliation requirement (the tacking rule). The tacking rule provides that, where an existing member of the group (the old corporation) transfers property to a new member of the group (the new corporation), the period during which the old corporation is affiliated with the group can be tacked onto the period for the new corporation if five conditions are met.

Of the five conditions, the third condition of the tacking rule requires, where both the old corporation and new corporation are life insurance companies, that the transfer from the old corporation to the new corporation not be reasonably expected to result in the separation of profitable activities from loss activities (the separation condition). The preamble to §1.1502–47 expressed concern that, under the so-called bottom-line method, life insurance companies could separate profitable activities from loss activities in order to reduce consolidated life insurance company taxable income. The bottom-line method required life insurance companies in a consolidated group to determine their treatment under the three-phase system, then applicable to life insurance companies, on a separate entity basis. To address the concern, the separation condition was included as a condition of the tacking rule.

In the Tax Reform Act of 1984, Public Law 98–369 (1984–3 C.B. 1), Congress substantially revised the rules for taxing life insurance companies, largely eliminating the three-phase system. Under current section 801, a life company is taxed at the generally applicable corporate rate on its life insurance company taxable income.

In the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), Congress suspended, during 2005 and 2006, the rules that impose a tax on direct or indirect distributions from a pre-1984 policyholders surplus account, the last significant remaining vestige of the former three-phase system.

In light of the changes to the taxation of life insurance companies, the IRS and Treasury Department believe that the separation condition should be eliminated because the rationale for adopting the separation condition is no longer relevant under current law.

Accordingly, these temporary regulations eliminate the separation condition of the tacking rule in §1.1502–47(d)(12). These regulations apply to taxable years for which the due date (without extensions) for filing returns is after April 25, 2006.

In addition, this document amends §1.1502–76 to reflect amendments to section 843.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined under 5 U.S.C. 553(b)(B) that notice and public procedure are unnecessary because this Treasury decision merely conforms the regulations to current law. In addition, it has been determined under 5 U.S.C. 553(d)(1) that a delayed effective date is not required because these regulations relieve affected taxpayers of regulatory restrictions. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and with a delayed effective date pursuant to 5 U.S.C. 553(d). For the applicability of the Regulatory Flexibility Act refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ross Poulsen, 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 part 1 is 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 1.1502–47T also issued under 26 U.S.C. 1502, 1503(c) and 1504(c). * * *

Section 1.1502–76T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–47 is amended by:

1. Revising paragraph (b).

2. Revising paragraph (d)(12)(v).

3. Removing paragraph (d)(14) *Example (10)* and *Example (11)*.

4. Redesignating paragraph (d)(14) *Example (12)* through *Example (16)* as paragraph (d)(14) *Example (10)* through *Example (14)*.

5. Revising paragraph (d)(14) newly-designated *Example (11)*, *Example (13)*, and *Example (14)*.

The revisions and additions read as follows:

§1.1502–47 Consolidated returns by life-nonlife groups.

* * * * *

(b) *Effective dates*—(1) *General rule*. This section is effective for taxable years for which the due date (without extensions) for filing returns is after March 14, 1983, except as provided in paragraph (b)(2) of this section.

(2) [Reserved]. For further guidance, see §1.1502–47T(b)(2).

* * * * *

(d) * * *

(12) * * *

(v) [Reserved]. For further guidance, see §1.1502–47T(d)(12)(v).

* * * * *

(14) * * *

Example (11). The facts are the same as in *Example (10)* except that X owns all of the stock of S_1, L_1, and S_2. In addition, on January 1, 1982, X transfers the stock of S_1 and S_2 to L_1. L_1 is eligible in 1982 under paragraph (d)(12)(iv) of this section. L_1 would still be eligible even if it owned a subsidiary during the base period but sold the subsidiary prior to January 1, 1982. S_1 and S_2 are ineligible in 1982.

* * * * *

Example (13). The facts are the same as in *Example (12)* except that S_2 (the first corporation in §1.1502–75(d)(3)) acquires the stock of S_1 in exchange for the stock of S_2. The result is that only S_2, S_1, and L_1 are eligible in 1982.

Example (14). Since 1974, S had owned all of the stock of L_1. L_1 is a large life company. On January 1, 1982, L_1 incorporates L_2 and transfers $40 million in cash and securities to L_2 in a transaction described in section 351(a). On March 1, 1982, L_2 purchases the assets of L_3, an unrelated life company. The purchased assets have a fair market value (without liabilities) of $ 30 million on March 1, 1982. L_2 is ineligible for 1982 because the tacking rule in §1.1502–47T(d)(12)(v) does not apply. L_2 experienced a disproportionate asset acquisition in 1982. See §1.1502–47T(d)(12)(v)(C).

* * * * *

Par. 3. Section 1.1502–47T is added to read as follows:

§1.1502–47T Consolidated returns by life-nonlife groups (temporary).

(a) through (b)(1) [Reserved]. For further guidance, see §1.1502–47(a) through (b)(1).

(2) *Tacking rule effective dates*. (i) *In general*. The provisions of paragraph (d)(12)(v) of this section apply to taxable years for which the due date (without extensions) for filing returns is after April 25, 2006.

(ii) *Prior law*. For taxable years for which the due date (without extensions) for filing returns is on or before April 25, 2006, see §1.1502–47 as contained in the 26 CFR part 1 edition revised as of April 1, 2006.

(c) through (d)(12)(iv) [Reserved]. For further guidance, see §1.1502–47(c) through (d)(12)(iv).

(v) *Tacking rule*. The period during which an old corporation is in existence and a member of the group engaged in active business is included in (or tacks onto) the period for the new corporation if the following four conditions listed in this paragraph (d)(12)(v) are met. For purposes of this paragraph (d)(12)(v) and §1.1502–47(d)(12), a new corporation is a corporation (whether or not newly organized) during the period its eligibility depends upon the tacking rule. The four conditions are as follows:

(A) The first condition is that, at any time, 80 percent or more of the new corporation's assets it acquired (other than in the ordinary course of its trade or business) were acquired from the old corporation in one or more transactions described in section 351(a) or 381(a). This asset test is applied by using the fair market values of assets on the date they were acquired and without regard to liabilities. Assets acquired in the ordinary course of business will be excluded from total assets only if they were acquired after the new corporation became a member of the group (determined without section 1504(b)(2)). In addition, assets that the old corporation acquired from outside the group in transactions not conducted in the ordinary course of its trade or business are not included in the 80 percent (but are included in total assets) if the old corporation acquired those assets within five calendar years before the date of their transfer to the new corporation.

(B) The second condition is that at the end of the taxable year during which the first condition is first met, the old corporation and the new corporation must both have the same tax character. For purposes of this paragraph (d)(12), a corporation's tax character is the section under which it would be taxed (*i.e.*, sections 11, 802, 821, or 831) if it filed a separate return. If the old corporation is not in existence (or adopts a plan of complete liquidation) at the end of that taxable year, this paragraph (d)(12)(v)(B) will apply to the old corporation's taxable year immediately preceding the beginning of the taxable year during which the first condition is first met.

(C) The third condition is that, at the end of the taxable year during which the first condition is first met, the new corporation does not undergo a disproportionate asset acquisition under §1.1502–47(d)(12)(viii).

(D) The fourth condition is that, if there is more than one old corporation, the first two conditions apply to all of the corporations. Thus, the second condition (tax character) must be met by all of the old corporations transferring assets taken into account in meeting the test in paragraph (d)(12)(v)(A) of this section.

(vi) through (s) [Reserved]. For further guidance, see §1.1502–47(d)(12)(vi) through (s).

Par. 4. Section 1.1502–76 is amended by revising paragraph (a) to read as follows:

§1.1502–76 Taxable year of members of group.

(a) [Reserved]. For further guidance, see §1.1502–76T(a).

* * * * *

Par. 5. Section 1.1502–76T is added to read as follows:

§1.1502–76T Taxable year of members of group (temporary).

(a) *Taxable year of members of group*. The consolidated return of a group must be filed on the basis of the common parent's taxable year, and each subsidiary must adopt the common parent's annual accounting period for the first consolidated return year for which the subsidiary's income is includible in the consolidated return. If any member is on a 52–53-week taxable year, the rule of the preceding sentence shall, with the advance consent of the Commissioner, be deemed satisfied if the taxable years of all members of the group end within the same 7-day period. Any request for such consent shall be filed with the Commissioner of Internal Revenue, Washington, DC 20224, not later than the 30th day before the due date (not including extensions of time) for the filing of the consolidated return.

(b) through (c)(3) [Reserved]. For further guidance, see §1.1502–76(b) through (c)(3).

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

Approved April 12, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on April 24, 2006, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2006, 71 F.R. 23856)

Part III. Administrative, Procedural, and Miscellaneous

Sample Amendment for Roth Elective Deferrals

Notice 2006–44

I. Purpose

This notice provides a sample plan amendment for sponsors, practitioners, and employers (plan sponsors) who want to provide for designated Roth contributions in their § 401(k) plans. The sample amendment will help those plan sponsors comply with the requirement to timely adopt a discretionary amendment by the end of the plan year in which the amendment is effective, as set forth in section 5.05(3) of Rev. Proc. 2005–66, 2005–37 I.R.B. 509.

II. Background

Section 402A was added to the Code by section 617 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA) to provide for the treatment of elective deferrals as designated Roth contributions, effective for taxable years beginning on or after January 1, 2006. Amendments to the final regulations under §§ 401(k) and 401(m) relating to designated Roth contributions were published in the *Federal Register* on January 3, 2006 (71 F.R. 6).

III. Sample Plan Amendment

In General. A sample plan amendment is provided in the Appendix that individual plan sponsors and sponsors of pre-approved plans can adopt or use in drafting individualized plan amendments. Because the amendment in the Appendix is a sample amendment plan sponsors are not required to adopt the amendment verbatim. In fact, it may be necessary for plan sponsors to modify the sample amendment to conform to their plan's terms. In addition, some plan sponsors may need to revise the sample amendment to conform the amendment to the administration of the plan. An issue not addressed in the sample amendment is the extent to which an employee can elect that a distribution (other than a corrective distribution of excess distributions) is to be made from either the designated Roth account or any other account of the employee under the plan. A plan sponsor is permitted to (and may find it necessary to conform the amendment to the plan's operation) revise the amendment in the Appendix (including the default provisions of the amendment) to address this issue.

Time and Manner of Adoption. Plan sponsors who want to provide for designated Roth contributions in their § 401(k) plans must adopt a discretionary amendment as provided in Notice 2005–95, 2005–51 I.R.B. 1172. The deadline to adopt a discretionary amendment is the end of the plan year in which the amendment is effective, as set forth in section 5.05(3) of Rev. Proc. 2005–66. The timely adoption of the amendment must be evidenced by a written document that is signed and dated by the employer (including an adopting employer of a pre-approved plan).

Maintaining the Pre-approved Status of a Pre-approved Plan. The Service will not treat the adoption of the sample plan amendment provided in the Appendix or an individualized plan amendment that reflects the qualification requirements of the regulations under §§ 401(k) and 401(m) relating to designated Roth contributions as affecting the pre-approved status of a master and prototype (M&P) or volume submitter plan. That is, such amendment to an M&P plan that is adopted by an employer will not cause the plan to fail to be an M&P plan. Similarly, such amendment to a volume submitter plan that is adopted by an employer will not cause the plan to fail to be a volume submitter plan. In either case, the amendment will not result in the loss of reliance on a favorable opinion, advisory, or determination letter. In the case where the amendment causes the plan to fail to satisfy § 401(a), the plan will not be disqualified if a remedial amendment that corrects the failure is adopted before the end of the remedial amendment period.

Format of the Sample Amendment. The format of the sample plan amendment generally follows the design of pre-approved plans, including all M&P plans, that employ a "basic plan document" and an "adoption agreement." Thus, the sample plan amendment includes language designed for inclusion in a basic plan document and language designed for inclusion in an adoption agreement to allow the employer to indicate whether, or when, the corresponding basic plan document provision will be effective in the employer's plan and to select among options related to the application of the basic plan document provision. Sponsors of plans that do not use an adoption agreement should modify the format of the amendment to incorporate the appropriate adoption agreement options in the terms of the amendment. In such case, the "notes" in the adoption agreement portion of the sample amendment should not be included in the amendment that will be signed and dated by the employer. Designated Roth contributions are referred to as Roth elective deferrals and designated Roth accounts are referred to as Roth elective deferral accounts in the sample amendment in the Appendix.

DRAFTING INFORMATION

The principal authors of this notice are Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division and Dana Barry of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). 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 (a toll-free call). Mr. Kuehnle may be reached at (202) 283–9888 and Ms. Barry may be reached at (202) 622–6060 (not toll-free numbers).

Appendix

Sample Plan Amendment

Article _____. ROTH ELECTIVE DEFERRALS

Section 1. General Application.

1.1 This article will apply to contributions beginning with the effective date specified in the adoption agreement but in no event before the first day of the first taxable year beginning on or after January 1, 2006.

1.2 As of the effective date under section 1.1, the plan will accept Roth elective deferrals made on behalf of participants. A participant's Roth elective deferrals will be allocated to a separate account maintained for such deferrals as described in section 2.

1.3 Unless specifically stated otherwise, Roth elective deferrals will be treated as elective deferrals for all purposes under the plan.

Section 2. Separate Accounting

2.1 Contributions and withdrawals of Roth elective deferrals will be credited and debited to the Roth elective deferral account maintained for each participant.

2.2 The plan will maintain a record of the amount of Roth elective deferrals in each participant's account.

2.3 Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each participant's Roth elective deferral account and the participant's other accounts under the plan.

2.4 No contributions other than Roth elective deferrals and properly attributable earnings will be credited to each participant's Roth elective deferral account.

Section 3. Direct Rollovers

3.1 Notwithstanding section ____, a direct rollover of a distribution from a Roth elective deferral account under the plan will only be made to another Roth elective deferral account under an applicable retirement plan described in § 402A(e)(1) or to a Roth IRA described in § 408A, and only to the extent the rollover is permitted under the rules of § 402(c).

3.2 Notwithstanding section ____, unless otherwise provided by the employer in the adoption agreement, the plan will accept a rollover contribution to a Roth elective deferral account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in § 402A(e)(1) and only to the extent the rollover is permitted under the rules of § 402(c).

3.3 The plan will not provide for a direct rollover (including an automatic rollover) for distributions from a participant's Roth elective deferral account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than $200 during a year. In addition, any distribution from a participant's Roth elective deferral account is not taken into account in determining whether distributions from a participant's other accounts are reasonably expected to total less than $200 during a year. However, eligible rollover distributions from a participant's Roth elective deferral account are taken into account in determining whether the total amount of the participant's account balances under the plan exceeds $1,000 for purposes of mandatory distributions from the plan.

3.4 The provisions of the plan that allow a participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least $500 is applied by treating any amount distributed from the participant's Roth elective deferral account as a separate distribution from any amount distributed from the participant's other accounts in the plan, even if the amounts are distributed at the same time.

Section 4. Correction of Excess Contributions

4.1 In the case of a distribution of excess contributions, a highly compensated employee may designate the extent to which the excess amount is composed of pre-tax elective deferrals and Roth elective deferrals but only to the extent such types of deferrals were made for the year.

4.2 If the highly compensated employee does not designate which type of elective deferrals are to be distributed, the plan will distribute pre-tax elective deferrals first.

Section 5. Definition

5.1 Roth Elective Deferrals. A Roth elective deferral is an elective deferral that is:

(a) Designated irrevocably by the participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax elective deferrals the participant is otherwise eligible to make under the plan; and

(b) Treated by the employer as includible in the participant's income at the time the participant would have received that amount in cash if the participant had not made a cash or deferred election.

(Adoption Agreement Provisions)

Article ____, Roth Elective Deferrals:
(Check and complete, if applicable.)

____ shall apply to contributions after January 1, 2006.

____ shall apply to contributions after ____. (Enter a date later than January 1, 2006.)

(Note: If neither option is chosen, the amendment will not be effective even if the amendment is signed and dated.)

Section ____, Direct Rollovers:
(Check, if applicable.)

The plan:

____ will not

accept a direct rollover from another Roth elective deferral account under an applicable retirement plan as described in § 402A(e)(1).

(Note: The default position is that the plan will accept a direct rollover of Roth elective deferrals from another Roth elective deferral account. The default position will apply unless this option is checked.)

Employer's signature and date

Exempt Facility Bonds for Qualified Highway or Surface Freight Transfer Facilities

Notice 2006–45

PURPOSE

This notice provides guidance relating to exempt facility bonds for qualified highway or surface freight transfer facilities under sections 142(a)(15) and 142(m) of the Internal Revenue Code (the Code).

INTRODUCTION

Section 11143 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or "SAFETEA-LU", Pub. L. No. 109–59 added sections 142(a)(15) and 142(m) to the Code. In general, sections 142(a)(15) and 142(m) authorize up to $15,000,000,000 of tax-exempt private activity bonds to be issued by State or local governments for a new type of exempt facility—qualified highway or surface freight transfer facilities.

BACKGROUND

Section 103(a) provides that, except as provided in section 103(b), gross income does not include interest on any State or local bond.

Section 103(b)(1) provides that the exclusion under section 103(a) does not apply to any private activity bond that is not a qualified bond (within the meaning of section 141).

Section 141(e) provides that the term "qualified bond" includes an exempt facility bond that meets certain requirements.

Section 142(a)(15) provides that the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified highway or surface freight transfer facilities.

Section 142(m)(1) defines the term "qualified highway or surface freight transfer facilities" as: (1) any surface transportation project that receives Federal assistance under title 23, United States Code (as in effect on August 10, 2005); (2) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and that receives Federal assistance under title 23, United States Code (as so in effect); or (3) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) that receives Federal assistance under either title 23 or title 49, United States Code (as so in effect). Examples of facilities for the transfer of freight from truck to rail or rail to truck include cranes, loading docks, and computer-controlled equipment that are integral to such freight transfers. Examples of facilities that are not freight transfer facilities include lodging, retail, industrial, or manufacturing facilities.

Section 142(m)(2)(A) provides a $15,000,000,000 national limitation on the aggregate face amount of tax-exempt financing for qualified highway

or surface freight transfer facilities (the $15,000,000,000 national limitation).

Section 142(m)(2)(B) provides that an issue is not treated as a qualified highway or surface freight transfer facility issue if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under section 142(m)(2)(C). Section 142(m)(2)(C) provides that the Secretary of Transportation shall allocate the $15,000,000,000 national limitation among qualified highway or surface freight transfer facilities in such a manner as the Secretary determines appropriate.

Sections 142(a)(15) and 142(m) apply to bonds issued after August 10, 2005.

ALLOCATIONS BY DEPARTMENT OF TRANSPORTATION

While sections 142(a)(15) and 142(m) are under the jurisdiction of the Internal Revenue Service, the allocation of the $15,000,000,000 national limitation is under the jurisdiction of the Department of Transportation. On January 5, 2006, the Department of Transportation published in the **Federal Register** a notice soliciting requests for allocations of the $15,000,000,000 national limitation (71 Fed. Reg. 642).

Except as otherwise provided in this notice, if the Secretary of Transportation allocates a portion of the $15,000,000,000 national limitation to a project or facility, the Internal Revenue Service shall treat the portion of that project or facility which is to be financed with the bonds, as represented in the request for the allocation, as meeting the definition of qualified highway or surface freight transfer facilities in section 142(m)(1). Thus, for example, the Internal Revenue Service will rely on the Secretary of Transportation's determination in allocating a portion of the national limitation to a project or facility that it receives the required Federal assistance under title 23 or title 49 of the United States Code for purposes of the eligible project or facility definition under section 142(m). Whether such representation accurately describes the portion of the project or facility to be financed by the bonds and whether such portion of the project or facility is actually financed by the bonds remains subject to verification upon examination by the Internal Revenue Service. A determination by the Secretary of Transportation that a project or portion thereof meets the definition of qualified highway or surface freight transfer facilities is not a determination that: (1) any amounts are chargeable to a facility's capital account or would be so chargeable either with a proper election by a taxpayer or but for a proper election by a taxpayer to deduct the amounts (see § 1.103–8(a)(1)(i) of the Income Tax Regulations); or (2) any other requirements that must be met in order for interest on the bonds to be excluded from gross income are satisfied.

INFORMATION REPORTING

An issuer of tax-exempt private activity bonds for qualified highway or surface freight transfer facilities must complete Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, in accordance with the instructions and complete Part II by checking the box on Line 11m (Other) writing "qualified highway or surface freight transfer facility bonds" in the space provided for the bond description, and entering the amount of the bonds in the Issue Price column.

DRAFTING INFORMATION

The principal author of this notice is Aviva M. Roth of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Aviva M. Roth at (202) 622–3980 (not a toll-free call).

Elections Created or Affected by the American Jobs Creation Act of 2004

Notice 2006–47

The purpose of this notice is to alert taxpayers to various elections under the Internal Revenue Code that were created by the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (the Act), which was enacted on October 22, 2004, and provide interim guidance on how those elections may be made. In light of changes made by the Act, the notice also informs taxpayers that they may revoke certain elections that are currently in effect. Additional guidance regarding these elections or revocations will be issued, as needed.

SCOPE

This notice is not intended to be all inclusive, and thus, does not cover each and every election or revocation of an election that was either created or affected by the Act. Most notably, this notice does not address any election or revocation for which published guidance was issued prior to May 1, 2006. In particular, this notice does not address the elections or revocations described in the following sections of the Act:

1. Act Sec. 101 — Repeal of Exclusion for Extraterritorial Income. See section 5 of Rev. Proc. 2001–37, 2001–1 C.B. 1327.

2. Act Sec. 231 — Members Of Family Treated As 1 Shareholder. See Notice 2005–91, 2005–51 I.R.B. 1164.

3. Act Sec. 248 — Election to Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate. See Notice 2005–2, 2005–3 I.R.B. 337.

4. Act Sec. 422 — Incentives to Reinvest Foreign Earnings in United States. See section 7 of Notice 2005–10, 2005–6 I.R.B. 474.

5. Act Sec. 501 — Deduction of State and Local General Sales Taxes in Lieu of State and Local Income Taxes. See Notice 2005–31, 2005–14 I.R.B. 830.

6. Act Sec. 833 — Disallowance of Certain Partnership Loss Transfers. See Notice 2005–32, 2005–16 I.R.B. 895.

7. Act Sec. 836 — Limitation on Transfer or Importation of Built-In Losses. See Notice 2005–70, 2005–41 I.R.B. 694.

INTERIM PROVISIONS

The Treasury Department and the Internal Revenue Service provide the following interim rules to implement the elections

and revocations discussed below. The Service will treat elections or revocations as effective if they are made in the form and manner set forth in this notice. These interim rules will apply until further guidance is issued.

A. Title I — Provisions Relating to Repeal of Exclusion for Extraterritorial Income

1. Act Sec. 102 — Deduction Relating to Income Attributable to Domestic Production Activities

Act section 102(c) allows a taxpayer to revoke an election under section 631(a) of the Code to treat the cutting of timber as a sale or exchange. Any section 631(a) election for a taxable year ending on or before October 22, 2004, may be revoked under Act section 102(c) for any taxable year ending after that date. In addition, any election under section 631(a) for a taxable year ending on or before October 22, 2004 (and any revocation of the election under Act section 102(c)), is disregarded for purposes of determining whether the taxpayer is eligible to make a subsequent election under section 631(a). A revocation under Act section 102(c) will remain in effect until the first taxable year for which the taxpayer makes a new election under section 631(a).

Effective Date: An election under section 631(a) for a taxable year ending on or before October 22, 2004, may be revoked for a taxable year ending after that date.

Deadline for Making Election: The revocation must occur by the due date (including extensions) for filing the tax return for the first taxable year for which the revocation is to be effective.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after October 22, 2004, and the taxpayer wants to revoke a section 631(a) election for that taxable year, the taxpayer may make the revocation by filing an amended federal tax return for that taxable year, and all subsequent affected taxable year(s), on or before November 15, 2006.

If a taxpayer already revoked a section 631(a) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should complete the appropriate line in Part II of the December 2005 or later revision of Form T, if Form T is otherwise required to be filed, or prepare a statement revoking the section 631(a) election as specified below under Interim Rules, and attach it to the taxpayer's next filed federal income tax return.

Interim Rules: The election under section 631(a) may be revoked by either completing the appropriate line in Part II of the December 2005 or later revision of Form T, if Form T is otherwise required to be filed, or attaching a statement revoking the election to the applicable tax return. The statement should identify the revocation as a revocation under Act section 102(c). If, in accordance with this notice, the taxpayer is revoking a section 631(a) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s).

B. Title II — Business Tax Incentives

1. Act Sec. 242 — Modification of Application of Income Forecast Method of Depreciation

Act section 242 allows taxpayers, under new section 167(g)(7) of the Code, to either include participations and residuals expected to be paid before the end of the tenth taxable year following the taxable year in which the property is placed in service in the adjusted basis of property for which the income forecast method of depreciation is used, or exclude participations and residuals from the adjusted basis of property for which the income forecast method of depreciation is used and deduct the participations and residuals in the taxable year that the participations and residuals are paid. The method elected for a given property must be applied consistently thereafter.

Effective Date: Property placed in service after October 22, 2004.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the return for the taxable year the income forecast property is placed in service.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after October 22, 2004, and if the taxpayer wants to make a section 167(g)(7) election for income forecast property placed in service during that taxable year, the taxpayer may make the election either: (1) by filing an amended federal tax return for the taxable year in which the income forecast property was placed in service, and all subsequent affected taxable year(s), on or before November 15, 2006; or (2) by filing a Form 3115, *Application for Change in Accounting Method*, for the first or second taxable year ending on or after December 31, 2005, in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, or any successor. The change in method of accounting from filing a Form 3115 results in a section 481(a) adjustment. Further, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Rev. Proc. 2002–9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number "99".

Section 1.446–1(e)(3)(ii) of the Income Tax Regulations authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002–9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90–38, 1990–1 C.B. 57.

In accordance with section 1.446–1(e)(3)(ii), Rev. Rul. 90–38, and section 2.04 of Rev. Proc. 2002–9, a taxpayer making a section 167(g)(7) election for a prior taxable year by filing amended federal tax return(s) in accordance with this notice is hereby granted consent to make this retroactive change in method of accounting using a cut-off method.

If a taxpayer already made a section 167(g)(7) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should attach a statement containing the information specified below under Interim Rules to the taxpayer's next filed federal income tax return.

Interim Rules: For each property placed in service during a particular taxable year, a taxpayer should attach a statement to the return for that taxable year providing the name (or other unique identifying designation) of the property, stating how the taxpayer will treat participations and residuals, and providing the date the property was placed in service. If, in accordance with this notice, a taxpayer is making a section 167(g)(7) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s). If, in accordance with this notice, a taxpayer is making a section 167(g)(7) election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement should be attached to the Form 3115.

2. Act Sec. 244 — Special Rules for Certain Film and Television Productions

Act section 244 allows taxpayers to elect, under new section 181 of the Code, to treat the cost of any qualified film or television production (as defined in section 181(d)) as an expense that is not chargeable to capital account and to deduct it. This election does not apply, however, to any qualified film or television production the aggregate cost of which exceeds $15,000,000 (or $20,000,000 for the areas specified in section 181(a)(2)(B)). Any election made under section 181 may not be revoked without the prior written consent of the Commissioner.

Effective Date: Qualified film and television productions commencing after October 22, 2004, and before January 1, 2009. A production commences when principal photography begins with respect to the production.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the return for the taxable year in which costs of the production are first paid or incurred. The taxpayer also should attach a statement to the return for each subsequent taxable year in which costs of the production are paid or incurred.

If a taxpayer begins principal photography of a production after October 22, 2004, but first paid or incurred costs of the production before October 23, 2004, the taxpayer is entitled to make a section 181 election for those costs. If, before June 15, 2006, the taxpayer filed its federal tax return for the taxable year in which the costs of the production were first paid or incurred, and if the taxpayer wants to make a section 181 election for that taxable year, the taxpayer may make the election either: (1) by filing an amended federal tax return for the taxable year in which the costs of the production were first paid or incurred, and all subsequent affected taxable year(s), on or before November 15, 2006, provided that all of these years are open under the period of limitations on assessment under section 6501(a); or (2) by filing a Form 3115, *Application for Change in Accounting Method*, for the first or second taxable year ending on or after December 31, 2005, in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, or any successor. The change in method of accounting from filing a Form 3115 results in a section 481(a) adjustment. Further, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Rev. Proc. 2002–9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number "100".

Section 1.446–1(e)(3)(ii) of the Income Tax Regulations authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002–9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90–38, 1990–1 C.B. 57.

In accordance with section 1.446–1(e)(3)(ii), Rev. Rul. 90–38, and section 2.04 of Rev. Proc. 2002–9, a taxpayer making a section 181 election for a prior taxable year by filing amended federal tax return(s) in accordance with this notice is hereby granted consent to make this retroactive change in method of accounting using a cut-off method.

If a taxpayer already made a section 181 election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should attach a statement containing the information specified below under Interim Rules to the taxpayer's next filed federal income tax return.

Interim Rules: For each production to which the election applies, a taxpayer should attach a statement to the return for the taxable year in which costs of the production are first paid or incurred stating that the taxpayer is making an election under section 181 and providing the name (or other unique identifying designation) of the production, the date principal photography commenced (if applicable), the cost paid or incurred for the production during the taxable year, the qualified compensation (as defined in section 181(d)(3)) paid or incurred for the production during the taxable year, and the total compensation paid or incurred for the production during the taxable year. If the taxpayer expects that the total cost of the production will be significantly paid or incurred in an area specified in section 181(a)(2)(B), the statement also should identify the area and the cost paid or incurred in that area during the taxable year.

If a taxpayer pays or incurs additional costs of the production in any taxable year subsequent to the taxable year in which costs of the production are first paid or incurred, the taxpayer should attach a statement to the return for that subsequent taxable year providing the name (or other unique identifying designation) of the production, the date principal photography commenced (if applicable), the cost paid or incurred for the production during the taxable year, the aggregate cost paid or

incurred for the production during the taxable year and all prior taxable years, the qualified compensation (as defined in section 181(d)(3)) paid or incurred for the production during the taxable year, the aggregate qualified compensation paid or incurred for the production during the taxable year and all prior taxable years, the total compensation paid or incurred for the production during the taxable year, and the aggregate total compensation paid or incurred for the production during the taxable year and all prior taxable years. If the taxpayer expects that the total cost of the production will be significantly paid or incurred in an area specified in section 181(a)(2)(B), the statement also should identify the area, the cost paid or incurred in that area during the taxable year, and the aggregate cost paid or incurred in that area during the taxable year and all prior taxable years.

If, in accordance with this notice, a taxpayer is making a section 181 election for a prior taxable year by filing an amended federal tax return, the above statements, as applicable, should be attached to each amended return. If, in accordance with this notice, a taxpayer is making a section 181 election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement in the above paragraph should be attached to the Form 3115 except the amounts of the cost or compensation paid or incurred for the production should only be the amounts paid or incurred in taxable years prior to the year of change (as defined in section 5.02 of Rev. Proc. 2002–9).

C. Title III — Tax Relief for Agriculture and Small Manufacturers

1. Act Sec. 313 — Apportionment of Small Ethanol Producer Credit

Act section 313 allows a cooperative described in section 1381(a) of the Code to elect, on an annual basis, under new section 40(g)(6) of the Code, to allocate the cooperative's small ethanol producer credit *pro rata* among its patrons on the basis of the quantity or value of business done with or for its patrons for the taxable year.

Effective Date: Taxable years ending after October 22, 2004.

Deadline for Making Election: The election must be made on a timely filed return (including extensions) for the taxable year to which the election applies. If, before June 15, 2006, a cooperative filed its federal tax return for a taxable year ending after October 22, 2004, and if the cooperative wants to make a section 40(g)(6) election to allocate the cooperative's small ethanol producer credit *pro rata* among its patrons for that taxable year, the cooperative may make the election by filing an amended return for that taxable year on or before November 15, 2006. If a cooperative already made a section 40(g)(6) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the cooperative should attach a statement containing the information specified below under Interim Rules to the cooperative's next filed federal income tax return. Once made, the election is irrevocable for that taxable year. Pursuant to section 1347(b) of the Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594, 1056, effective for taxable years ending after August 8, 2005, the election shall not take effect unless the cooperative provides written notice of the election that is mailed to its patrons during the payment period described in section 1382(d).

Interim Rules: The election may be made by attaching the statement described in the instructions to Form 6478, *Credit for Alcohol Used as Fuel*, to the cooperative's return. The cooperative should notify its patrons of the amount of credit apportioned to them in a written notice or on Form 1099–PATR, *Taxable Distributions Received From Cooperatives*, on or before the last day of the payment period (as defined in section 1382(d)) for the taxable year of the cooperative.

2. Act Sec. 322 — Expensing of Certain Reforestation Expenditures

Act section 322 allows taxpayers to elect, under section 194(b) of the Code, to treat up to $10,000 of reforestation expenditures with respect to any qualified timber property as an expense that is not chargeable to capital account and to deduct those expenditures in the year paid or incurred under section 194(b). The remainder of the reforestation expenditures for the year may be amortized over 84 months under section 194(a).

Taxpayers making an election for a qualified timber property under sections 194(a) or 194(b) should create and maintain separate timber accounts for each qualified timber property and should include all reforestation treatments and the dates upon which each was applied. Any qualified timber property that is subject to a section 194 election may not be included in any other timber account (*e.g.*, depletion block) for which depletion is allowed under section 611. At no time may an amortizable timber account become part of a depletable timber account for purposes of deduction under section 165(a). The timber account should be maintained until the timber is disposed of through sale, harvest or other transaction. All records relating to a qualified timber property account also should be maintained until disposal occurs.

Effective Date: Reforestation expenditures with respect to a qualified timber property paid or incurred after October 22, 2004.

Deadline for Making Election: The election must be made on a timely filed return (including extensions) for the taxable year in which the reforestation expenditures with respect to a qualified timber property were paid or incurred.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after October 22, 2004, in which reforestation expenditures were paid or incurred after October 22, 2004, with respect to any qualified timber property, and if the taxpayer wants to make a section 194(b) election for the reforestation expenditures paid or incurred during that taxable year, the taxpayer may make the election either: (1) by filing an amended federal tax return for the taxable year in which the taxpayer paid or incurred the reforestation expenditures for which the taxpayer wants to make the election, and all subsequent affected taxable year(s), on or before November 15, 2006; or (2) by filing a Form 3115, *Application for Change in Accounting Method*, for the first or second taxable year ending on or after December 31, 2005, in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announce-

ment 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, or any successor. The change in method of accounting from filing a Form 3115 results in a section 481(a) adjustment. Further, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Rev. Proc. 2002–9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number "101".

Section 1.446–1(e)(3)(ii) of the Income Tax Regulations authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002–9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90–38, 1990–1 C.B. 57.

In accordance with section 1.446–1(e)(3)(ii), Rev. Rul. 90–38, and section 2.04 of Rev. Proc. 2002–9, a taxpayer making a section 194(b) election for a prior taxable year by filing amended federal tax return(s) in accordance with this notice is hereby granted consent to make this retroactive change in method of accounting using a cut-off method.

If a taxpayer already made a section 194(b) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should complete Part IV of the December 2005 or later revision of Form T, if Form T is otherwise required to be filed, or prepare a statement containing the information specified below under Interim Rules, and attach it to the taxpayer's next filed federal income tax return.

Interim Rules: The election may be made by entering the deduction claimed on the appropriate line of a taxpayer's income tax return for the year in which the reforestation expenditures were paid or incurred, and either completing Part IV of the December 2005 or later revision of Form T, if Form T is otherwise required to be filed, or attaching a statement to the return that includes the following information for each qualified timber property for which an election is being made: the unique stand identification numbers, the total number of acres reforested during the taxable year, the nature of the reforestation treatments, and the total amounts of the qualified reforestation expenditures eligible to be amortized under section 194(a) or deducted under section 194(b). If, in accordance with this notice, a taxpayer is making a section 194(b) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s). If, in accordance with this notice, a taxpayer is making a section 194(b) election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement should be attached to the Form 3115.

An election under section 194 may be revoked only with the consent of the Commissioner, which will only be granted in rare and unusual circumstances. An application for consent to revoke an election under section 194 should be submitted to the Internal Revenue Service in the form of a letter ruling request. The application should contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting the revocation including: the name and address of the taxpayer, the taxable years for which the election was in effect, and the reason for revoking the election.

3. Act Sec. 338 — Expensing of Capital Costs Incurred in Complying With Environmental Protection Agency Sulfur Regulations

Act section 338 allows small business refiners (as defined in section 45H(c)(1) of the Code) to elect, under new section 179B of the Code, to deduct 75 percent of the qualified capital costs (as defined in section 45H(c)(2)) that are paid or incurred by the taxpayer during the taxable year. In general, qualified capital costs are costs paid or incurred during a certain period to comply with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency. The basis of any property must be reduced by the portion of the cost of the property taken into account under the election. Any election made under section 179B(a) may not be revoked without the prior written consent of the Commissioner. This notice does not apply to the election under new section 179B(e), which was added by section 1324 of the Energy Policy Act of 2005.

Effective Date: Qualified capital costs that are paid or incurred after December 31, 2002, in taxable years ending after that date.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the return for the taxable year in which the qualified capital costs are paid or incurred.

If, before June 15, 2006, a taxpayer filed its federal income tax return for a taxable year ending after December 31, 2002, in which qualified capital costs were paid or incurred after December 31, 2002, and if the taxpayer wants to make a section 179B(a) election for all qualified capital costs paid or incurred during that taxable year, the taxpayer may make the election either: (1) by filing an amended federal tax return for the taxable year in which the taxpayer paid or incurred the qualified capital costs for which the taxpayer wants to make the election, and all subsequent affected taxable year(s), on or before November 15, 2006, provided that these years are open under the period of limitations on assessment under section 6501(a); or (2) by filing a Form 3115, *Application for Change in Accounting Method*, for the first or second taxable year ending on or after December 31, 2005, in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, or any successor. The change in method of accounting from filing a Form 3115 results in a section 481(a) adjustment. Further, the scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Rev. Proc. 2002–9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number "102".

Section 1.446–1(e)(3)(ii) of the Income Tax Regulations authorizes the Commis-

sioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002–9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90–38, 1990–1 C.B. 57.

In accordance with section 1.446–1(e)(3)(ii), Rev. Rul. 90–38, and section 2.04 of Rev. Proc. 2002–9, a taxpayer making a section 179B(a) election for a prior taxable year by filing amended federal tax return(s) in accordance with this notice is hereby granted consent to make this retroactive change in method of accounting using a cut-off method.

If a taxpayer already made a section 179B(a) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should attach a statement containing the information specified below under Interim Rules to the taxpayer's next filed federal income tax return.

Interim rules: The election may be made by entering the deduction claimed at the appropriate place on a taxpayer's federal tax return for the taxable year in which the qualified capital costs are paid or incurred, and by attaching a statement to the return providing the amount of the qualified capital costs, the calculation of the deduction under section 179B, a description of the property for which the basis is reduced by the portion of the cost of the property taken into account under the election, and the amount of that basis reduction. If, in accordance with this notice, a taxpayer is making a section 179B(a) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s). If, in accordance with this notice, a taxpayer is making a section 179B(a) election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement should be attached to the Form 3115.

4. Act Sec. 339 — Credit for Production of Low Sulfur Diesel Fuel

Act section 339 allows cooperative organizations described in section 1381(a) of the Code to elect, on an annual basis, under new section 45H(g) of the Code, to apportion any portion of the low sulfur diesel fuel production credit for the taxable year among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for those patrons for the taxable year.

Effective Date: The election applies to expenses paid or incurred after December 31, 2002, in taxable years ending after that date.

Deadline for Making Election: The election must be made on a timely filed return (including extensions) for the taxable year to which the election applies. If, before June 15, 2006, a cooperative filed its federal tax return for a taxable year ending after December 31, 2002, and if the cooperative wants to make a section 45H(g) election to apportion any portion of the low sulfur diesel fuel production credit for that taxable year among patrons eligible to share in patronage dividends for that taxable year, the cooperative may make the election by filing an amended return for that taxable year on or before November 15, 2006, provided that all of these years are open under the period of limitations on assessment under section 6501(a). If a cooperative already made a section 45H(g) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the cooperative should attach a statement containing the information specified below under Interim Rules to the cooperative's next filed federal income tax return. Once made, the election is irrevocable for that taxable year.

Interim Rules: The election may be made by attaching the statement described in the instructions to new Form 8896, *Low Sulfur Diesel Fuel Production Credit*, to the cooperative's return. The cooperative should notify the patrons of the amount of credit apportioned to them in a written notice or on Form 1099–PATR, *Taxable Distributions Received From Cooperatives*, on or before the last day of the payment period (as defined in section 1382(d)) for the taxable year of the cooperative.

D. Title IV — Tax Reform and Simplification for United States Businesses

1. Act Sec. 401 — Interest Expense Allocation Rules

Act section 401 allows worldwide affiliated groups (as defined in new section 864(f)(1)(C) of the Code) to make a one-time election, under new section 864(f) of the Code, to allocate interest expense on a worldwide basis. Act section 401 also provides a one-time election to expand the financial institution group of a worldwide affiliated group. Once made, the elections apply for the taxable year for which made and all subsequent taxable years, unless revoked with the consent of the Secretary.

Effective Date: The election to allocate interest expense on a worldwide basis may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists that includes at least 1 foreign corporation. The election to expand a financial institution group may be made only for the first taxable year beginning after December 31, 2008, in which the pre-election worldwide affiliated group includes 1 or more financial corporations.

Deadline for Making Election: Each election must be made by the due date (including extensions) for filing the return for the first taxable year to which the election applies.

Interim Rules: Guidance for making these elections, which first become available in taxable years beginning after 2008, will be provided in the instructions to Form 1118 or in other guidance at a later date.

2. Act Sec. 404 — Reduction to 2 Foreign Tax Credit Baskets

Act section 404 allows taxpayers to elect, under new section 904(d)(2)(H)(ii) of the Code, to treat foreign tax paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, on an amount that does not constitute income for U.S. tax purposes as imposed on general limitation income or financial services income. Once the elec-

tion is made, it applies to the taxable year for which made and all subsequent taxable years beginning before January 1, 2007, unless revoked with the consent of the Commissioner.

Effective Date: Foreign taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the tax return for the first taxable year to which the election applies.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after December 31, 2004, and if the taxpayer wants to make a section 904(d)(2)(H)(ii) election for foreign taxes paid or accrued during that taxable year, the taxpayer may make the election by filing an amended federal tax return for the taxable year in which the foreign taxes were paid or accrued, and all subsequent affected taxable year(s), on or before November 15, 2006.

Interim Rules: An election to treat tax on amounts that do not constitute income for U.S. tax purposes as imposed on financial services income should be made by attaching a statement to the applicable tax return and including the foreign taxes for which the election is made on the separate Form 1116 or Form 1118 filed with respect to financial services income. No separate statement is required to elect to treat taxes on amounts that do not constitute income for U.S. tax purposes as imposed on general limitation income. See Treas. Reg. § 1.904–6(a)(1)(iv). If, in accordance with this notice, a taxpayer is making a section 904(d)(2)(H)(ii) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s).

3. Act Sec. 408 — Translation of Foreign Taxes

Act section 408 allows taxpayers that otherwise must translate foreign income tax payments at the average exchange rate to elect, under new section 986(a)(1)(D) of the Code, to use the exchange rate in effect on the date the taxes are paid, provided the foreign taxes are denominated in nonfunctional currency. Once made, the election applies to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner.

Effective Date: Taxable years beginning after December 31, 2004.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the tax return for the first taxable year to which the election applies.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after December 31, 2004, and if the taxpayer wants to make a section 986(a)(1)(D) election for that taxable year, the taxpayer may make the election by filing an amended federal tax return for the taxable year in which the foreign taxes were paid or accrued, and all subsequent affected taxable year(s), on or before November 15, 2006.

Interim Rules: A taxpayer may elect to use the payment date exchange rates to translate all foreign income taxes, or it may elect to use the payment date exchange rates to translate only those nonfunctional currency foreign income taxes that are attributable to qualified business units with U.S. dollar functional currencies. The election should be made by attaching a statement to the applicable tax return. The statement should identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with a U.S. dollar functional currency. If, in accordance with this notice, a taxpayer is making a section 986(a)(1)(D) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s).

E. Title VII — Miscellaneous Provisions

1. Act Sec. 706 — Certain Alaska Natural Gas Pipeline Property treated as 7-Year Property

Act section 706 allows taxpayers to elect, under new section 168(i)(16)(B)(ii) of the Code, to treat any Alaska natural gas pipeline (as defined in section 168(i)(16)) that is placed in service after December 31, 2004, and before January 1, 2014, as being placed in service on January 1, 2014. If the election is made, the Alaska natural gas pipeline that is subject to the election will be subject to depreciation beginning on January 1, 2014, and will be 7-year property under section 168(e)(3)(C).

Effective Date: Property placed in service after December 31, 2004.

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the return for the taxable year the Alaska natural gas pipeline is placed in service (determined before the application of section 168(i)(16)(B)(ii)).

Interim Rule: The election may be made by not claiming any depreciation for the pipeline on the return for the taxable year the Alaska natural gas pipeline is placed in service (determined before the application of section 168(i)(16)(B)(ii)) if this taxable year is before the taxpayer's taxable year that includes January 1, 2014.

F. Title VIII — Revenue Provisions

1. Act Sec. 909 — Sales or Dispositions to Implement Federal Energy Regulatory Commission or State Electric Restructuring Policy

Act section 909 allows taxpayers that realize qualified gain from a qualifying electric transmission transaction (QETT) to elect, under new section 451(i) of the Code, to recognize all or part of the gain ratably over an 8-year period beginning with the year that includes the date of the QETT.

Effective Date: QETTs after October 22, 2004, and before January 1, 2007 (subsequently extended by the Energy Policy Act of 2005 to QETTs before January 1, 2008).

Deadline for Making Election: The election must be made by the due date (including extensions) for filing the return for the taxable year in which the QETT occurred.

If, before June 15, 2006, a taxpayer filed its federal tax return for a taxable year ending after October 22, 2004, and if the taxpayer wants to make a section 451(i) election for a QETT occurring during that taxable year, the taxpayer may make the election either: (1) by filing an amended federal tax return for the taxable year in which the QETT occurred and all subsequent affected taxable year(s), on or before November 15, 2006; or (2) by filing a Form 3115, *Application for Change in Accounting Method*, for the first or second

taxable year ending on or after December 31, 2005, in accordance with the automatic change in method of accounting provisions of Revenue Procedure 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Revenue Procedure 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Revenue Procedure 2002–54, 2002–2 C.B. 432, or any successor. The change in method of accounting from filing a Form 3115 results in a section 481(a) adjustment. Further, the scope limitations in section 4.02 of Revenue Procedure 2002–9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Revenue Procedure 2002–9, the taxpayer should include on line 1a of the Form 3115 the designated automatic method change number "103".

Section 1.446–1(e)(3)(ii) of the Income Tax Regulations authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002–9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90–38, 1990–1 C.B. 57.

In accordance with section 1.446–1(e)(3)(ii), Rev. Rul. 90–38, and section 2.04 of Rev. Proc. 2002–9, a taxpayer making a section 451(i) election for a prior taxable year by filing amended federal tax return(s) in accordance with this notice is hereby granted consent to make this retroactive change in method of accounting using a cut-off method.

If a taxpayer already made a section 451(i) election on a federal income tax return that was filed before June 15, 2006, but did not include with that return all of the information specified below under Interim Rules, the taxpayer should attach a statement containing the information specified below under Interim Rules to the taxpayer's next filed federal income tax return. Once made, the election is irrevocable.

Interim Rules: The election may be made on a statement attached to the return for the taxable year in which the QETT occurred, that provides all of the details regarding the QETT, including a description of the items of property sold; the date of the QETT; the amount of proceeds realized and the amount of gain realized; a description of any exempt utility property purchased, its cost, the date of purchase, and the identity of the purchaser (taxpayer or other member of the taxpayer's affiliated group); and a representation indicating the total cost of exempt utility property the taxpayer intends to purchase.

If, in accordance with this notice, a taxpayer is making a section 451(i) election for a prior taxable year by filing amended federal tax return(s), this statement should be attached to the amended federal tax return(s). If, in accordance with this notice, a taxpayer is making a section 451(i) election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement should be attached to the Form 3115.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1986.

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

The collections of information in this notice are in sections A.1., B.1., B.2., C.1., C.2., C.3., C.4., D.2., D.3., and F.1.

1. Act Sec. 102 (section A.1.)

The estimated total annual reporting or recordkeeping burden is 100 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 30 minutes. The estimated number of respondents or recordkeepers is 200.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are businesses or other for-profit institutions, farms and individuals.

This information is needed to inform the IRS that an election under section 631(a) has been revoked in accordance with Act section 102(c).

2. Act section 242 (section B.1.)

The estimated total annual reporting or recordkeeping burden is 500 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents or recordkeepers is 500.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are individuals and businesses.

This information is needed to ensure the consistent treatment of participations and residuals for each property.

3. Act section 244 (section B.2.)

The estimated total annual reporting or recordkeeping burden is 500 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents or recordkeepers is 500.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are individuals and businesses.

This information is needed to ensure that each film or television production qualifies for the deduction.

4. Act section 313 (section C.1.)

The estimated total annual reporting or recordkeeping burden is 40 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents or recordkeepers is 40.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are cooperatives described in section 1381(a).

This information is needed to support the *pro rata* apportionment among patrons of the cooperative, as allowed by section 40(g)(6).

5. Act section 322 (section C.2.)

The estimated total annual reporting or recordkeeping burden is 3 million hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1.5 hours. The estimated number of respondents or recordkeepers is 2 million.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are large timber producers and independent timber producers, including nonindustrial landowners.

This information is needed to prevent the improper shifting of basis between qualified timber properties for which depletion is available and qualified timber properties for which depletion is not available because an election under section 194 has been made.

6. Act section 338 (section C.3.)

The estimated total annual reporting or recordkeeping burden is 75 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 1 hour, depending on individual circumstances, with an estimated average of 45 minutes. The estimated number of respondents or recordkeepers is 100.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are businesses.

This information is needed to ensure that the deduction is properly determined and to ensure the specific identification of each property for which the basis is reduced.

7. Act section 339 (section C.4.)

The estimated total annual reporting or recordkeeping burden is 50 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents or recordkeepers is 50.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are cooperatives described in section 1381(a).

This information is needed to support the apportionment of the section 45H(g) credit among patrons of a cooperative.

8. Act section 404 (section D.2.)

The estimated total annual reporting or recordkeeping burden is 7,500 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 30 minutes. The estimated number of respondents or recordkeepers is 15,000.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are large multinational corporations that are financial services entities.

This information is needed to enable the IRS to verify the computation of the allowable foreign tax credit.

9. Act section 408 (section D.3.)

The estimated total annual reporting or recordkeeping burden is 25,000 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 30 minutes. The estimated number of respondents or recordkeepers is 50,000.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are large multinational corporations.

This information is needed to enable the IRS to verify the computation of the allowable foreign tax credit.

10. Act section 909 (section F.1.)

The estimated total annual reporting or recordkeeping burden is 1,000 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents or recordkeepers is 1,000.

The estimated annual frequency of responses (used for reporting requirements only) is once.

The likely respondents are providers of electric transmission services.

This information is needed to ensure that the gain from the sale of certain electric transmission property is properly reported.

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

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, is modified and amplified to include these automatic changes in method of accounting in the APPENDIX.

DRAFTING INFORMATION

The principal author of this notice is Henry S. Schneiderman of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding the elections under Act sections 401, 404 or 408, contact the Office of Associate Chief Counsel (International) at (202) 622–3800 (not a toll-free call). For further information regarding the elections under Act sections 102, 242, 244, 313, 322, 338, 339 or 706, contact the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 622–3000 (not a toll-free call). For further information regarding the election under Act section 909, contact the Office of Associate Chief Counsel (Income Tax & Accounting) at (202) 622–4800 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2006–23

SECTION 1. PURPOSE AND BACKGROUND

.01 *Purpose.* This revenue procedure sets forth the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the provisions of tax coordination agreements entered into between the Internal Revenue Service (IRS) and the tax agencies of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (NMI), the United States Virgin Islands (USVI), and Puerto Rico (collectively, the possessions), as described in section 1.02 of this revenue procedure. The tax

coordination agreements described in section 1.02 of this revenue procedure each contain provisions allowing the competent authorities of the United States and the possession to resolve by mutual agreement inconsistent tax treatment by the two jurisdictions. This revenue procedure updates Rev. Proc. 89–8, 1989–1 C.B. 778, to conform more closely with the current competent authority procedures. *See*, *e.g.*, Rev. Proc. 2002–52, 2002–2 C.B. 242, for tax treaty competent authority procedures. In addition, this revenue procedure reflects the tax coordination agreement entered into between the United States and the NMI, effective January 30, 2003. Finally, conforming changes to terminology are made to reflect administrative and organizational changes in the IRS.

.02 *Background.* The IRS has entered into agreements, as described in paragraphs (1) through (5) of this section 1.02 (coordination agreements) for coordinating tax administration between the IRS and the tax agencies in American Samoa, Guam, the NMI, Puerto Rico, and the USVI (possession tax agencies). The coordination agreements authorize the exchange of information and mutual assistance with regard to taxes. In accordance with the coordination agreements, the IRS has established cooperative programs (or so-called "mutual agreement procedures") to resolve tax disputes arising from inconsistent positions taken by the IRS and a possession tax agency. The mutual agreement procedures generally permit taxpayers to request competent authority assistance when they consider that actions of the United States, possessions, or both, result or will result in taxation that is contrary to the provisions of a coordination agreement. The Director, International (LMSB) acts as the U.S. competent authority under the coordination agreements with the responsibility for coordination and liaison of tax administration issues involving the possessions of the United States, including reaching mutual agreements in specific cases. *See* Delegation Order 4–36 (formerly D.O. 269) (effective 11/22/02).

(1) *American Samoa.* The "Tax Implementation Agreement Between the United States of America and American Samoa" was signed by the Government of American Samoa on December 10, 1987, and by the Government of the United States on January 7, 1988; it generally became effective on January 1, 1988 (American Samoa implementation agreement). Article 6 of the American Samoa implementation agreement deals with the mutual agreement procedure on potential double taxation.

(2) *Guam.* The 1977 "Agreement on Coordination of Tax Administration" entered into between the United States and Guam was amended to add section 10. The amendment was signed by the Government of Guam on January 10, 1985, and by the Government of the United States on July 12, 1985, and became effective on that date (Guam coordination agreement). Section 10 of the Guam coordination agreement deals with the mutual agreement procedure on potential double taxation.

(3) *Commonwealth of the Northern Mariana Islands.* The "Tax Coordination Agreement Between the United States of America and the Commonwealth of the Northern Mariana Islands" was signed by the Government of the NMI on December 5, 2002, and by the Government of the United States on January 30, 2003, and became effective on that date (NMI coordination agreement). Section 10 of the NMI coordination agreement deals with the mutual agreement procedure on potential double taxation.

(4) *Puerto Rico.* The "Tax Coordination Agreement Between the United States of America and the Commonwealth of Puerto Rico" was signed by the Government of Puerto Rico on December 31, 1988, and the Government of the United States on May 26, 1989; and became effective on that date (Puerto Rico coordination agreement). Article 6 of the Puerto Rico coordination agreement deals with the mutual agreement procedure on potential double taxation.

(5) *United States Virgin Islands.* The "Tax Implementation Agreement Between the United States of America and the Virgin Islands" was signed on February 24, 1987, and took effect on that date (USVI implementation agreement). Article 6 of the USVI implementation agreement deals with the mutual agreement procedure on potential double taxation.

SECTION 2. SCOPE

.01 *In general.* This revenue procedure sets forth the procedures by which taxpayers may obtain assistance from the U.S. competent authority under the coordination agreements. Taxpayers are urged to examine the mutual agreement procedure provisions or other specific provisions of the coordination agreement under which they seek relief, in order to determine whether relief may be available in their particular case. This revenue procedure is not intended to limit or expand any specific coordination agreement provisions relating to competent authority matters.

.02 *Requests for Assistance.* In general, requests by taxpayers for competent authority assistance must be submitted in accordance with this revenue procedure. However, where an agreement between the governments or other published administrative guidance provides specific procedures for requests for competent authority assistance, those procedures shall apply, and the provisions of this revenue procedure shall not apply to the extent inconsistent with such procedures. Taxpayers may consult the "Tax Information for International Businesses" page at *www.irs.gov* (*http://www.irs.gov/businesses/international/index.html*) for links to a variety of agreements and other documents that may modify the procedures set forth in this revenue procedure.

.03 *General Process.* If a taxpayer's request for competent authority assistance is accepted, the U.S. competent authority generally will consult with the competent authority of the appropriate possession tax agency and attempt to reach a mutual agreement that is acceptable to all parties. If the taxpayer raises such a request with the possession tax agency, that agency generally will consult with the U.S. competent authority in accordance with the applicable coordination agreement. However, this revenue procedure does not provide procedures to be used by any possession tax agency. The U.S. competent authority also may initiate competent authority negotiations, as provided in each of the coordination agreements, in any situation deemed necessary to protect U.S. interests.

.04 *Failure to Request Assistance.* Failure to request competent authority assistance or to take appropriate steps as necessary to maintain availability of the remedy may cause a denial of part or all of credits claimed under the Code (for example, under section 901, 902, or 932). *See*, *e.g.*, Treas. Reg. § 1.901–2(e)(5)(i). *See also*

section 9 of this revenue procedure concerning protective measures and section 11 of this revenue procedure concerning the determination of creditable taxes.

.05 *Issues Regarding Cover Over.* Requests for competent authority assistance under this revenue procedure are not proper in cases involving the cover over of funds, for example under section 7654 of the Code. The taxpayer lacks standing in such cases because matters concerning cover over are resolved on a government-to-government basis.

SECTION 3. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *General.* The coordination agreements provide generally that when, by reason of inconsistent positions taken by the IRS and a possession tax agency, a taxpayer is or would be subject to inconsistent tax treatment by the two jurisdictions, the Director, International (LMSB) and the designated possession tax official shall seek to avoid double taxation. In particular, but not by way of limitation, the parties may exchange views to reach agreement on: (a) the same allocation of income, deductions, credits, or allowances between related persons; (b) the same determination of residency of a particular taxpayer, and (c) the same determination of the source of particular items of income and allocation and apportionment of expense. *See* section 9 of this revenue procedure, which prescribes protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and possession tax agencies. *See also* section 12.02 of this revenue procedure for circumstances in which competent authority assistance may be denied.

.02 *Requirements of a Coordination Agreement.* There is no authority for the U.S. competent authority to provide relief from U.S. tax or to provide other assistance due to taxation arising under the tax laws of the possession or the United States, unless such authority is granted by the Code or a coordination agreement.

.03 *Applicable Standards in Allocation Cases.* With respect to requests for competent authority assistance involving the allocation of income and deductions between a U.S. taxpayer and a related person, the U.S. competent authority and its counterpart in the possession will be guided by the arm's length standard consistent with the regulations under section 482 of the Code. When negotiating mutual agreements on the allocation of income and deductions, the U.S. competent authority will take into account all of the facts and circumstances of the particular case and the purpose of the coordination agreement to avoid double taxation.

.04 *Who Can File Requests for Assistance.* The U.S. competent authority will consider requests for assistance from U.S. persons, as defined in section 7701(a)(30) of the Code. For purposes of this revenue procedure, a U.S. person is referred to as "the taxpayer." Non-U.S. persons generally must present their initial request for assistance to the relevant possession tax agency. As noted in section 12.02 of this revenue procedure, there are circumstances in which the U.S. competent authority will not pursue assistance.

.05 *Closed Cases.* A case previously closed after examination shall not be reopened in order to make an adjustment unfavorable to the taxpayer unless the exceptional circumstances described in Rev. Proc. 2005–32, 2005–23 I.R.B. 1206 (providing procedures for reopening cases if fraud, substantial error, or certain other circumstances are present), are present. The U.S. competent authority may, but is not required to, accept a taxpayer's request for competent authority consideration that will require the reopening of a case closed after examination.

.06 *Possession Initiated Competent Authority Request.* When the competent authority of a possession refers a request from a possession taxpayer to the U.S. competent authority for consultation under the mutual agreement procedure, the U.S. competent authority generally will require the U.S. related taxpayer (in the case of an allocation of income or deductions between related persons) or may require the possession taxpayer (in other cases) to file a request for competent authority assistance under this revenue procedure.

.07 *Requests Relating to Residence Issues.* U.S. competent authority assistance may be available to taxpayers seeking to clarify their residency status in the United States. Generally, competent authority assistance is limited to situations where resolution of a residency issue is necessary in order to avoid double taxation. A request for assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the possession tax agency in order to ensure consistent treatment by the United States and the applicable possession. The U.S. competent authority does not issue unilateral determinations with respect to whether an individual is a resident of the United States or of a possession.

SECTION 4. PROCEDURES FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *Time for Filing.* A request for competent authority assistance generally should be filed as soon as it appears that the taxpayer or a related person is or would be subject to inconsistent tax treatment by the IRS and a possession tax agency. In a case involving a U.S. initiated adjustment of tax or income resulting from a tax examination, a request for competent authority assistance may be submitted as soon as practicable after the amount of the proposed adjustment is communicated in writing to the taxpayer. Where a U.S. initiated adjustment has not yet been communicated in writing (*e.g.*, a notice of proposed adjustment) to the taxpayer, the U.S. competent authority generally will deny the request as premature. In the case of a possession examination, a request may be submitted as soon as the taxpayer believes such filing is warranted based on the actions of the possession proposing the adjustment. In a case involving the re-allocation of income or deductions between related entities, the request should not be filed until such time that the taxpayer can establish that there is the probability of double taxation. In cases not involving an examination, a request can be made when the taxpayer believes that an action or potential action warrants the assistance of the U.S. competent authority. Examples of such action include a ruling or promulgation by a possession tax agency concerning a taxation matter, or the withholding of a tax by a withholding agent. Except as otherwise provided in a coordination agreement, taxpayers have discretion over the time for filing a request; however, delays in filing may preclude effective relief. *See* section 9 of this revenue procedure, which explains protective measures to be taken by the taxpayer and any concerned

related person with respect to U.S. and possession tax agencies. *See also* section 7.06 of this revenue procedure for rules relating to accelerated issue resolution and competent authority assistance.

.02 *Place for Filing.* The taxpayer must send all written requests for, or any inquiries regarding, competent authority assistance to the Director, International (LMSB), Attn: Office of Tax Treaty, Internal Revenue Service, 1111 Constitution Avenue, NW, Routing: MA3–322A, Washington, DC 20224.

.03 *Additional Filing.* In the case of U.S. initiated adjustments, the taxpayer also must file a copy of the request with the office of the IRS where the taxpayer's case is pending. If the request is filed after the matter has been designated for litigation or while a suit contesting the relevant tax liability of the taxpayer is pending in a U.S. court, a copy of the request also must be filed with the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW, Rm. 4554, Washington, DC 20224, with a separate statement attached identifying the court where the suit is pending and the docket number of the action.

.04 *Form of Request.* A request for competent authority assistance must be in the form of a letter addressed to the Director, International. It must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. The request must contain a statement that assistance is requested under the mutual agreement procedure with the possession and must include the information described in section 4.05 of this revenue procedure. *See* section 5 of this revenue procedure for requests involving small cases.

.05 *Information Required.* The following information shall be included in the request for competent authority assistance:

(1) a reference to the specific coordination agreement and the provisions therein pursuant to which the request is made;

(2) the name, address, U.S. taxpayer identification number, and possession tax identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;

(3) if applicable, a description of the control and business relationships among the taxpayer and all relevant related persons for the years in issue, including any changes in such relationships to the date of filing the request;

(4) a brief description of the issues for which competent authority assistance is requested, including a brief description of the relevant transactions, activities or other circumstances involved in the issues raised and the basis for the adjustment, if any;

(5) the years and amounts involved with respect to the issue;

(6) the IRS office which has made or is proposing to make the adjustment or, if known, the IRS office with examination jurisdiction over the taxpayer;

(7) an explanation of the nature of the relief sought or the action requested in the United States or in the possession with respect to the issues raised, including a statement as to whether the taxpayer wishes to avail itself of the relief provided under Rev. Proc. 99–32, 1999–2 C.B. 296, as indicated in section 10 of this revenue procedure;

(8) a statement whether the period of limitations for the years for which relief is sought has expired in the United States or in the possession;

(9) a statement of relevant U.S. and possession judicial or administrative proceedings which involve the taxpayer and all relevant related persons;

(10) to the extent known by the taxpayer, a statement of relevant possession judicial or public administrative proceedings which do not involve the taxpayer or related persons, but involve the same issue for which competent authority assistance is requested;

(11) a statement whether the request for competent authority assistance involves issues that are currently, or were previously, considered part of an Advance Pricing Agreement (APA) proceeding or other proceeding relevant to the issue under consideration in the United States or part of a similar proceeding in the possession;

(12) a statement whether the taxpayer or related person is entitled to any possession tax incentive or subsidy program benefits for the year or years in question;

(13) if *bona fide* residence in a possession is at issue, a statement of all facts and circumstances supporting such residence (*see* Treas. Reg. § 1.937–1);

(14) a copy of any relevant correspondence received from the possession tax agency and copies of any briefs, protests, and other relevant material submitted to the possession tax agency;

(15) a copy of the possession tax returns for the year or years in question;

(16) a statement whether the federal tax return of the taxpayer and, when applicable, the tax return of a relevant related person, for the year or years in question were examined, or are being examined;

(17) a statement whether a credit for a possession tax paid was claimed on the taxpayer's federal tax return for the tax year or years in question and, if a credit was claimed, whether the credit was claimed for all or part of the possession tax paid or accrued with respect to the particular item that is the subject of the request for assistance;

(18) if applicable, powers of attorney with respect to the taxpayer;

(19) if the jurisdiction of an issue is with an Appeals office, a summary of prior discussions of the issue with that office and contact information regarding the Appeals officer handling the issue; also, if appropriate, a statement whether the taxpayer is requesting the Simultaneous Appeals procedure as provided in section 8 of this revenue procedure;

(20) in a separate section, include the statement and information required by section 9.02 of this revenue procedure if the request is to serve as a protective claim;

(21) on a separate document, a statement that the taxpayer consents to the disclosure to the possession tax agency (with the name of the possession specifically stated) and that possession tax agency's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the coordination agreement under which the taxpayer is seeking relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a possession tax agency. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the recordkeeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a coordination agreement. *See* section 6103(k)(4) of the

Code. Taxpayers are encouraged to provide duplicates to the U.S. and possession competent authorities of all information otherwise disclosable under the coordination agreement;

(22) a penalties of perjury statement in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts; and

(23) any other information required or requested under this revenue procedure, as applicable. *See, e.g.*, section 7.06 of this revenue procedure, which requires the provision of certain information in the case of a request for the accelerated competent authority procedure, and section 10 of this revenue procedure, which requires the provision of certain information in the case of a request for Rev. Proc. 99–32 treatment. Requests for supplemental information may include items such as detailed financial information, comparability analysis, or other material relevant to a transfer pricing analysis.

.06 *Other Dispute Resolution Programs.* Requests for competent authority assistance that involve an APA or Pre-Filing Agreement request must include any other information required under the relevant revenue procedure.

.07 *Other Documentation.* In addition, the taxpayer shall, on request, submit any other information or documentation deemed necessary by the U.S. or possession competent authority for purposes of reaching an agreement. This includes English translations of any documentation required in connection with the competent authority request.

.08 *Updates.* The taxpayer must keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for competent authority assistance. The taxpayer also must provide any updated information or new documentation that becomes known or is created after the request is filed and that is relevant to the resolution of the issues under consideration.

.09 *Conferences.* To the extent possible, the U.S. competent authority will consult with the taxpayer regarding the status and progress of the mutual agreement proceedings. The taxpayer may request a pre-filing conference with the U.S. competent authority to discuss the mutual agreement process with respect to matters covered under a coordination agreement, including discussion of the proper time for filing, the practical aspects of obtaining relief and actions necessary to facilitate the proceedings. Similarly, after a matter is resolved by the competent authorities, a taxpayer may also request a conference with the U.S. competent authority to discuss the resolution.

.10 *Copy to the Possessions.* The taxpayer shall provide a copy of any request for competent authority assistance under this revenue procedure to the possession tax agency.

SECTION 5. SMALL CASE PROCEDURE FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *General.* To facilitate requests for assistance involving small cases, this section provides a special procedure simplifying the form of a request for assistance and, in particular, the amount of information that initially must be submitted. All other requirements of this revenue procedure continue to apply to requests for assistance made pursuant to this section.

.02 *Small Case Standards.* Eligible taxpayers may file an abbreviated request for competent authority assistance in accordance with this section if the total proposed adjustment involved in the matter is not greater than the following:

Taxpayer	Proposed Adjustment
Individual	$ 200,000
Corporation/Partnership	$1,000,000
Other	$ 200,000

.03 *Small Case Filing Procedure.* The abbreviated request for competent authority assistance under the small case procedure must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. Although other information and documentation may be requested at a later date, the initial request for assistance should include the following information and materials:

(1) a statement indicating that this is a matter subject to the small case procedure;

(2) the name, address, U.S. taxpayer identification number, and possession taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;

(3) a description of the issue and the nature of the relief sought;

(4) the taxable years and amounts involved with respect to the issues;

(5) the name of the possession;

(6) a statement whether the taxpayer or related person is entitled to any possession tax incentive or subsidy program benefits for the year or years in question;

(7) if *bona fide* residence in a possession is at issue, a statement of all facts and circumstances supporting such residence (*see* Treas. Reg. § 1.937–1);

(8) if applicable, powers of attorney with respect to the taxpayer;

(9) on a separate document, a statement that the taxpayer consents to the disclosure to the possession tax agency (with the name of the possession specifically stated) and that possession tax agency's staff, of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the coordination agreement under which the taxpayer is seeking

relief. The taxpayer may request, as part of this statement, that its trade secrets not be disclosed to a possession tax agency. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the recordkeeping requirements of section 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a coordination agreement. *See* section 6103(k)(4) of the Code; and

(10) a penalties of perjury statement in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for competent authority assistance are true, correct and complete.

The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts.

SECTION 6. RELIEF REQUESTED FOR POSSESSIONS INITIATED ADJUSTMENT WITHOUT COMPETENT AUTHORITY INVOLVEMENT

Taxpayers seeking correlative relief with respect to a possession initiated adjustment should present their request to the U.S. competent authority. However, when the adjustment involves years under the jurisdiction of the Industry or Area Director or IRS Appeals, taxpayers sometimes try to obtain relief from these offices. This may occur, for example, if the adjustment involves a re-allocation of income or deductions involving a related person. In these cases, taxpayers will be advised to contact the U.S. competent authority office. In appropriate cases, the U.S. competent authority will advise the Industry or Area Director or IRS Appeals office on appropriate action. The U.S. competent authority may request the taxpayer to provide the information described under sections 4.05 and 4.07 of this revenue procedure. Failure to request competent authority assistance may result in denial of correlative relief with respect to the issue, including applicable tax credits.

SECTION 7. COORDINATION WITH OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

.01 *Suspension of Administrative Action with Respect to U.S. Adjustments.* When a request for competent authority assistance is accepted with respect to a U.S. initiated adjustment, the IRS will postpone further administrative action with respect to the issues under competent authority consideration (such as assessment or collection procedures), except (a) in situations in which the IRS may be requested otherwise by the U.S. competent authority, or (b) in situations involving cases pending in court and in other instances in which action must be taken to avoid prejudicing the U.S. Government's interest. The normal administrative procedures continue to apply, however, to all other issues not under U.S. competent authority consideration. For example, if there are other issues raised during the examination and the taxpayer is not in agreement with these issues, the usual procedures for completing the examination with respect to these issues apply. If the taxpayer is issued a 30-day letter with respect to these issues and prepares a protest of the unagreed issues, the taxpayer need not include any unagreed issue under consideration by the competent authority. Following the receipt of a taxpayer's protest, normal IRS Appeals procedures shall be initiated with respect to those issues not subject to competent authority consideration.

.02 *Coordination with IRS Appeals.* Taxpayers that disagree with a proposed U.S. adjustment either may pursue their right of administrative review with IRS Appeals before requesting competent authority assistance or may request competent authority assistance immediately. However, the U.S. competent authority will not unilaterally withdraw an adjustment that should more properly be within the jurisdiction of Appeals. IRS Appeals' consideration, if any, of potential competent authority matters will be made without regard to other issues or considerations that do not involve potential competent authority matters. Taxpayers who are pursuing their rights with IRS Appeals may contact the competent authority if they believe they have a potential competent authority issue. If a taxpayer decides to make a competent authority request, the taxpayer may choose to make a request pursuant to the Simultaneous Appeals procedures in section 8 of this revenue procedure or otherwise. Prior actions taken with respect to an issue after settlement discussions with Appeals have commenced on that issue, but before a competent authority request is made, will be carefully scrutinized, as such discussions may jeopardize the competent authority's ability to do more than seek correlative relief (*cf.* section 7.05). If a taxpayer makes a competent authority request, the taxpayer is deemed to consent to the U.S. competent authority contacting IRS Appeals. *See* Rev. Proc. 2000–43, 2000–2 C.B. 404.

.03 *Coordination with Litigation.* The U.S. competent authority will not, without the consent of the Associate Chief Counsel (International), accept (or continue to consider) a taxpayer's request for assistance if the request involves a taxable period pending in a U.S. court or involves a matter pending in a U.S. court or designated for litigation for any taxable period. If the case is pending in the United States Tax Court, the taxpayer may, in appropriate cases, be asked to join the IRS in a motion to sever issues or delay trial pending completion of the competent authority proceedings. If the case is pending in any other court, the Associate Chief Counsel (International) will consult with the Department of Justice about appropriate action, and the taxpayer may, in appropriate cases, be asked to join the U.S. Government in a motion to sever issues or delay trial pending completion of the competent authority proceedings. Final decision on severing issues or delaying trial rests with the court. The filing of a competent authority request does not, however, relieve the taxpayer from taking any action that may be necessary or required with respect to litigation.

.04 *Coordination with Other Alternative Dispute Resolution and Pre-Filing*

Procedures. Competent authority assistance is available to taxpayers in conjunction with other alternative dispute resolution and pre-filing procedures in order to ensure taxation in accordance with the coordination agreement. Other revenue procedures and IRS publications should be consulted as necessary with regard to specific matters. *See, e.g.*, Rev. Proc. 2006–9, 2006–2 I.R.B. 278 (concerning APAs); Rev. Proc. 2005–12, 2005–2 I.R.B. 311 (concerning Pre-Filing Agreements). Taxpayers that have applications under any other dispute resolution procedures should seek competent authority assistance as early as possible if they believe they have potential competent authority issues.

.05 *Effects of Agreements or Judicial Determinations on Competent Authority Proceedings.* If a taxpayer either executes a closing agreement with the IRS (whether or not contingent upon competent authority relief) with respect to a potential competent authority issue or reaches a settlement on the issue with IRS Appeals or with Chief Counsel pursuant to a closing agreement or other written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the possession tax agency and will not undertake any actions that will otherwise change such agreements. However, the U.S. competent authority will, in appropriate cases, consider actions necessary for the purpose of providing treatment similar to that provided in Rev. Proc. 99–32. Once a taxpayer's tax liability for the taxable periods in issue has been determined by a U.S. court (including settlement of the proceedings before or during trial), the U.S. competent authority similarly will endeavor only to obtain correlative relief from the possession tax agency and will not undertake any action that would otherwise reduce the taxpayer's federal tax liability for the taxable periods in issue as determined by a U.S. court. Taxpayers therefore should be aware that in these situations, as well as in situations where a possession tax agency takes a similar position with respect to issues resolved under the possession's domestic laws, relief from double taxation may be jeopardized.

.06 *Accelerated Competent Authority Procedure.* A taxpayer requesting competent authority assistance with respect to an issue raised by the IRS also may request that the competent authorities attempt to resolve the issue for subsequent taxable periods for which returns have been filed if the same issue continues in those periods. *See also* Rev. Proc. 94–67, 1994–2 C.B. 800, concerning the Accelerated Issue Resolution (AIR) process. The U.S. competent authority will consider the request and will contact the appropriate IRS field office to consult on whether the issue should be resolved for subsequent taxable periods. If the IRS field office consents to this procedure, the U.S. competent authority will address with the possession competent authority the request for such taxable periods. For purposes of resolving the issue, the taxpayer must furnish all relevant information and statements that may be requested by the U.S. competent authority pursuant to this revenue procedure. In addition, if the case involves a Coordinated Industry Case (CIC) taxpayer, the taxpayer must furnish all relevant information and statements requested by the IRS, as described in Rev. Proc. 94–67, 1994–2 C.B. 800. If the case involves a non-CIC taxpayer, the taxpayer must furnish all relevant information and statements that may be requested by the IRS field office. A request for the accelerated competent authority procedure may be made at the time of filing a request for competent authority assistance or at any time thereafter, but generally before conclusion of the mutual agreement in the case; however, taxpayers are encouraged to request the procedure as early as practicable. The application of the accelerated procedure may require the prior consent of the Associate Chief Counsel (International). *See* section 7.03 of this revenue procedure. A request for the accelerated competent authority procedure must contain a statement that the taxpayer agrees that: (1) the inspection of books of account or records under the accelerated competent authority procedure will not preclude or impede (under section 7605(b) or any administrative provision adopted by the IRS) a later examination of a return or inspection of books of account or records for any taxable period covered in the accelerated competent authority assistance request, and (2) the IRS need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection. The accelerated competent authority procedure is not subject to the AIR process limitations.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *General.* A taxpayer filing a request for competent authority assistance under this revenue procedure may, at the same time or at a later date, request IRS Appeals' consideration of the competent authority issue under the procedures and conditions provided in this section. The U.S. competent authority also may request IRS Appeals' involvement if it is determined that such involvement would facilitate the negotiation of a mutual agreement in the case or otherwise would serve the interest of the IRS. The taxpayer may, at any time, request a pre-filing conference with the offices of the Chief of IRS Appeals and the U.S. competent authority to discuss the Simultaneous Appeals procedure. *See* section 7.02 of this revenue procedure for coordination with the competent authority of cases already in IRS Appeals. However, arbitration or mediation procedures that otherwise would be available through the IRS Appeals process are not available for cases in the simultaneous appeals procedure. *See* Announcement 2000–4, 2000–1 C.B. 317, as extended by Announcement 2002–60, 2002–2 C.B. 28, or any subsequent announcement; and Rev. Proc. 2002–44, 2002–2 C.B. 10.

.02 *Time for Requesting the Simultaneous Appeals Procedure.*

(1) *When Filing For Competent Authority Assistance.* The Simultaneous Appeals procedure may be invoked at any of the following times:

(a) When the taxpayer applies for competent authority assistance with respect to an issue for which the examining IRS office has proposed an adjustment and before the protest is filed;

(b) When the taxpayer files a protest and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to IRS Appeals; and

(c) When the case is in IRS Appeals and the taxpayer later decides to request competent authority assistance with respect to the competent authority issue. The taxpayer may sever the competent authority issue for referral to the U.S. competent authority and invoke the Simultaneous Ap-

peals procedure at any time when the case is in IRS Appeals but before settlement of the issue. Taxpayers, however, are encouraged to invoke the Simultaneous Appeals procedure as soon as possible, preferably as soon as practicable after the first IRS Appeals conference.

(2) *After Filing For Competent Authority Assistance.* The taxpayer may request the Simultaneous Appeals procedure at any time after requesting competent authority assistance. However, a taxpayer's request for the Simultaneous Appeals procedure generally will be denied if made after the date the U.S. position paper is communicated to the possession competent authority, unless the U.S. competent authority determines that the procedure would facilitate an early resolution of the competent authority issue or otherwise is in the best interest of the IRS.

.03 *Cases Pending in Court.* If the matter is pending before a U.S. court or has been designated for litigation and jurisdiction has been released to the U.S. competent authority, a request for the Simultaneous Appeals procedure may be granted only with the consent of the U.S. competent authority and the Associate Chief Counsel (International).

.04 *Request for Simultaneous Appeals Procedure.* The taxpayer's request for the Simultaneous Appeals procedure should be addressed to the U.S. competent authority either as part of the initial competent authority assistance request or, if made later, as a separate letter to the U.S. competent authority. The request should state whether the issue was previously protested to IRS Appeals for the periods in competent authority or for prior periods (in which case a copy of the relevant portions of the protest and an explanation of the outcome, if any, should be provided). The U.S. competent authority will send a copy of the request to the Chief of IRS Appeals, who, in turn, will forward a copy to the appropriate Area Director. When the U.S. competent authority invokes the Simultaneous Appeals procedure, the taxpayer will be notified. The U.S. competent authority has jurisdiction of the issue when the Simultaneous Appeals procedure is invoked.

.05 *Role of IRS Appeals in the Simultaneous Appeals Procedure.*

(1) *IRS Appeals Process.* The IRS Appeals representative assigned to the case will consult with the taxpayer and the U.S. competent authority for the purpose of reaching a resolution of the unagreed issue under competent authority jurisdiction before the issue is presented to the possession competent authority. For this purpose, established IRS Appeals procedures generally apply. The IRS Appeals representative will consult with the U.S. competent authority during this process to ensure appropriate coordination of the IRS Appeals process with the competent authority procedure, so that the terms of a tentative resolution and the principles and facts upon which it is based are compatible with the position that the U.S. competent authority intends to present to the possession competent authority with respect to the issue. Any resolution reached with the IRS under this procedure is subject to the competent authority process and, therefore, is tentative and not binding on the IRS or the taxpayer. The IRS will not request the taxpayer to conclude the IRS Appeals process with a written agreement. The conclusions of the tentative resolution, however, generally will be reflected in the U.S. position paper used for negotiating a mutual agreement with the possession competent authority. The procedures under this section do not give taxpayers the right to receive reconsideration of the issue by IRS Appeals where the taxpayer applied for competent authority assistance after having received substantial IRS Appeals consideration. Rather, the IRS may rely upon, but necessarily will not be bound by, such previous consideration by IRS Appeals when considering the case under the Simultaneous Appeals procedure.

(2) *Assistance to U.S. Competent Authority.* The U.S. competent authority is responsible for developing a U.S. position paper with respect to the issue and for conducting the mutual agreement procedure. Generally, requesting IRS Appeals' consideration of an issue under competent authority jurisdiction will not affect the manner in which taxpayers normally are involved in the competent authority process.

.06 *Denial or Termination of Simultaneous Appeals Procedure.*

(1) *Taxpayer's Termination.* The taxpayer may, at any time, withdraw its request for the Simultaneous Appeals procedure.

(2) *IRS's Denial or Termination.* The U.S. competent authority, the Chief of IRS Appeals or the appropriate Area Director may decide to deny or terminate the Simultaneous Appeals procedure if the procedure is determined to be prejudicial to the mutual agreement procedure or to the administrative appeals process. For example, a taxpayer that received IRS Appeals consideration before requesting competent authority assistance, but was unable to reach a settlement in IRS Appeals, may be denied the Simultaneous Appeals procedure. A taxpayer may request a conference with the offices of the U.S. competent authority and the Chief of IRS Appeals to discuss the denial or termination of the procedure.

.07 *Returning to IRS Appeals.* If the competent authorities fail to agree or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer will be permitted to refer the issue to IRS Appeals for further consideration.

.08 *IRS Appeals' Consideration of Non-Competent Authority Issues.* The Simultaneous Appeals procedure does not affect the taxpayer's rights to IRS Appeals' consideration of other unresolved issues. The taxpayer may pursue settlement discussions with respect to the other issues without waiting for resolution of the issues under competent authority jurisdiction.

SECTION 9. PROTECTIVE MEASURES

.01 *General.* The taxpayer or related persons should take protective measures with the U.S. and possession tax agencies so that the implementation of any agreement reached by the competent authorities or alternative remedies outside of the competent authority process are not barred by administrative, legal or procedural barriers. Such barriers may arise either before or after a competent authority request is filed. Protective measures include, but are not limited to: (a) filing protective claims for refund or credit; (b) staying the expiration of any period of limitations on the making of a refund or other tax adjustment; (c) avoiding the lapse or termination of the taxpayer's right to appeal any tax determination; (d) complying with all applicable procedures for invoking competent authority consideration; and (e) contesting an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or possession tax. A taxpayer should take

protective measures in a timely manner, that is, in a manner that allows sufficient time for appropriate procedures to be completed and effective before barriers arise. Generally, a taxpayer should consider, at the time an adjustment is first proposed, which protective measures may be necessary and when such measures should be taken. However, earlier consideration of appropriate actions may be desirable, for example, in the case of a recurring adjustment or where the taxpayer otherwise is on notice that an adjustment is likely to be proposed. Taxpayers may consult with the U.S. competent authority to determine the need for and timing of protective measures in their particular case.

.02 *Filing Protective Claim for Credit or Refund with a Competent Authority Request.*

(1) *In General.* A valid protective claim for credit or refund must meet the requirements of section 6402 of the Code and the regulations thereunder. Accordingly, a protective claim must (a) fully advise the IRS of the grounds on which credit or refund is claimed; (b) contain sufficient facts to apprise the IRS of the exact basis of the claim; (c) state the year for which the claim is being made; (d) be on the proper form; and (e) be verified by a written declaration made under penalties of perjury.

(2) *Treatment of Competent Authority Request as Protective Claim.* The IRS will treat a request for competent authority assistance itself as one or more protective claims for credit or refund with respect to issues raised in the request and within the jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treas. Reg. § 301.6402–3 with respect to those issues, provided that the request meets the other requirements of section 6402 of the Code and the regulations thereunder, as described in section 9.02(1) of this revenue procedure. The information constituting the protective claim should be set forth in a separate section of the request for assistance and captioned "Protective claim pursuant to section 9.02 of Rev. Proc. 2006–23." The penalties of perjury statement described in sections 4.05(22) and 5.03(10) of this revenue procedure satisfies the requirement for the written declaration and a separate declaration is not required.

.03 *Protective Filing Before Competent Authority Request.*

(1) *In general.* There may be situations in which a taxpayer would be unable to file a formal competent authority assistance request before the period of limitations would expire with respect to the affected U.S. return. In these situations, before the period of limitations expires, the taxpayer should file a protective claim for credit or refund of the taxes attributable to the potential competent authority issue to ensure that alternative remedies outside of the competent authority process will not be barred. Situations for which a protective filing may be appropriate include: (i) the possession is considering but has not yet proposed an adjustment; or (ii) the possession has proposed an adjustment but the taxpayer or related person decides to pursue administrative or judicial remedies in the possession.

(2) *Letter to Competent Authority Treated as Protective Claim.* In situations in which a protective claim is filed prior to submitting a request for competent authority assistance, the taxpayer may make a protective claim in the form of a letter to the competent authority. The letter must indicate that the taxpayer is filing a protective claim and set forth, to the extent available, the information required under paragraphs (1) through (10) of section 4.05 or under paragraphs (1) through (5) of section 5.03 of this revenue procedure. The letter must include a penalties of perjury statement as described in sections 4.05(22) and 5.03(10) of this revenue procedure. The letter must be filed in the same place and manner as a request for competent authority assistance. The IRS will treat the letter as a protective claim(s) with respect to issues raised in the letter to and within the jurisdiction of the competent authority and will not require a taxpayer to file the form described in Treas. Reg. § 301.6402–3 with respect to those issues, provided that the request meets the other requirements described in section 9.02(1) of this revenue procedure. The letter must include the caption "Protective claim pursuant to section 9.03 of Rev. Proc. 2006–23."

(3) *Notification Requirement.* After filing a protective claim, the taxpayer periodically must notify the U.S. competent authority whether the taxpayer still is considering filing for competent authority assistance. The notification must be filed every twelve months until the formal request for competent authority assistance is filed. The U.S. competent authority may deny competent authority assistance if the taxpayer fails to file this annual notification.

(4) *No Consultation between Competent Authorities until Formal Request is Filed.* The U.S. competent authority generally will not undertake any consultation with the possession competent authority with respect to a protective claim filed under section 9.03 of this revenue procedure. The U.S. competent authority will place the protective claim in suspense until either a formal request for competent authority assistance is filed or the taxpayer notifies the U.S. competent authority that competent authority consideration is no longer needed. In appropriate cases, the U.S. competent authority will send the taxpayer a formal notice of claim disallowance.

.04 *Effect of a Protective Claim.*

(1) *Credits and refunds.* Protective claims filed under either section 9.02 or 9.03 of this revenue procedure will only allow a credit or a refund to the extent of the grounds set forth in the protective claim and only to the extent agreed to by the U.S. and possession competent authorities or to the extent unilaterally allowed by the U.S. competent authority. This revenue procedure does not grant a taxpayer the right to invoke section 482 of the Code in the taxpayer's favor or compel the IRS to allocate income or deductions or grant a tax credit or refund.

(2) *Protective Filing with the Possessions.* Protective claims filed under either section 9.02 or 9.03 of this revenue procedure will not constitute filing with the possession tax agencies. Consequently, the taxpayer should take the pertinent protective measures with the possession tax agencies, as necessary.

SECTION 10. APPLICATION OF REV. PROC. 99–32

Rev. Proc. 99–32 generally provides a means to conform a taxpayer's accounts and allow repatriation of certain amounts following an allocation of income between related U.S. and possession corporations under section 482 of the Code without the federal income tax consequences of the adjustments that would otherwise have been necessary to conform the taxpayer's accounts in light of the allocation of income. In situations where a section 482 allocation

is the subject of a request for competent authority assistance, any new or pending requests for Rev. Proc. 99–32 treatment relating to such allocation must be disposed of by the competent authority. Accordingly, if a taxpayer intends to seek Rev. Proc. 99–32 treatment in connection with competent authority assistance relating to a section 482 allocation, the taxpayer must request Rev. Proc. 99–32 treatment in conjunction with its request for competent authority assistance. If a taxpayer has already requested Rev. Proc. 99–32 treatment at the time it submits a request for competent authority assistance relating to a section 482 allocation, consideration of Rev. Proc. 99–32 treatment must be transferred to competent authority and a copy of the pending Rev. Proc. 99–32 request forwarded along with the request for competent authority assistance.

SECTION 11. DETERMINATION OF CREDITABLE TAXES

For purposes of determining the amount of tax creditable under sections 901, 902 and 932 of the Code, any amounts paid to possession tax authorities that would not have been due if the possession had made a correlative adjustment may not constitute a creditable tax. *See* Treas. Reg. § 1.901–2(e)(5)(i) and Rev. Rul. 92–75, 1992–2 C.B. 197. Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures as described in section 9 of this revenue procedure or failure to seek competent authority assistance, may constitute failure to exhaust all effective and practical remedies as may be required to claim a credit. *See, e.g.*, Treas. Reg. § 1.901–2(e)(5)(i). Further, the fact that the taxpayer has sought competent authority assistance but obtained no relief, either because the competent authorities failed to reach an agreement or because the taxpayer rejected an agreement reached by the competent authorities, generally will not, in and of itself, demonstrate that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for possession tax (including liability pursuant to a possession tax audit adjustment). Any determination within the IRS of whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority.

SECTION 12. ACTION BY U.S. COMPETENT AUTHORITY

.01 *Notification of Taxpayer.* Upon receiving a request for assistance pursuant to this revenue procedure, the U.S. competent authority will notify the taxpayer whether the facts provide a basis for assistance.

.02 *Denial of Assistance.* The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer if:

(1) the taxpayer is not entitled to such assistance (for example, the facts do not indicate that inconsistent positions have been taken by the IRS and the possession tax agency, or the taxpayer lacks standing to challenge an issue (*see, e.g.*, section 2.05 of this revenue procedure) on which competent authority assistance was requested;

(2) the taxpayer is willing only to accept a competent authority agreement under conditions that are unreasonable or prejudicial to the interests of the U.S. Government;

(3) the taxpayer rejected the competent authority resolution of the same or similar issue in a prior case;

(4) the taxpayer does not agree that competent authority negotiations are a government-to-government activity that does not include the taxpayer's participation in the negotiation proceedings;

(5) the taxpayer does not furnish upon request sufficient information to determine whether the applicable coordination agreement applies to the taxpayer's facts and circumstances;

(6) the taxpayer was found to have acquiesced in a possession initiated adjustment that involved significant legal or factual issues that otherwise would be properly handled through the competent authority process and then unilaterally made a corresponding correlative adjustment or claimed an increased credit for a possession tax paid, without initially seeking U.S. competent authority assistance;

(7) the taxpayer: (i) fails to comply with this revenue procedure; (ii) failed to cooperate with the IRS during the examination of the periods in issue and such failure significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement (*e.g.*, significant factual development is required that cannot effectively be completed outside the examination process); or (iii) fails to cooperate with the U.S. competent authority (including failing to provide sufficient facts and documentation to support its claim of double taxation or taxation contrary to the coordination agreement) or otherwise significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement; or

(8) the transaction giving rise to the request for competent authority assistance: (i) is more properly within the jurisdiction of Appeals; (ii) includes an issue pending in a U.S. Court, or designated for litigation, unless competent authority consideration is concurred in by the U.S. competent authority and the Associate Chief Counsel (International); or (iii) involves fraudulent activity by the taxpayer.

.03 *Extending Period of Limitations for Assessment.* If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent extending the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.04 *No Review of Denial of Request for Assistance.* The U.S. competent authority's denial of a taxpayer's request for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

.05 *Notification.* The U.S. competent authority will notify a taxpayer requesting assistance under this revenue procedure of any agreement that the U.S. and the possession competent authorities reach with respect to the request. If the taxpayer accepts the resolution reached by the competent authorities, the agreement shall provide that it is final and is not subject to further administrative or judicial review. If the competent authorities fail to agree, or if the agreement reached is not acceptable to the taxpayer, the taxpayer may withdraw the request for competent authority assistance and may then pursue all rights to review otherwise available under the laws of the United States and the possession.

.06 *Closing Agreement.* When appropriate, the taxpayer will be requested to

reflect the terms of the mutual agreement and of the competent authority assistance provided in a closing agreement, in accordance with sections 6.07 and 6.17 of Rev. Proc. 68–16, 1968–1 C.B. 770 (modified by Rev. Proc. 94–67, 1994–2 C.B. 800).

.07 *Disposition of Funds.* When competent authority assistance is requested with regard to determination of an issue, or issues, that results in the disposition of funds, then when appropriate, and as part of the competent authority agreement, the taxpayer may be asked to waive any procedural rights that he may have with regard to the funds at issue if it is determined that either the United States or the possession is ultimately entitled to such funds by statute. In that case, the taxpayer may be asked to assign his right to the funds directly to the proper jurisdiction.

.08 *Unilateral Withdrawal or Reduction of U.S. Initiated Adjustments.* With respect to U.S. initiated adjustments under section 482 of the Code, the primary goal of the mutual agreement procedure is to obtain a correlative adjustment from the possession involved. For other types of U.S. initiated adjustments, the primary goal of the U.S. competent authority is the avoidance of taxation in contravention of the relevant coordination agreement. Unilateral withdrawal or reduction of U.S. initiated adjustments, therefore, generally will not be considered. For example, the U.S. competent authority will not withdraw or reduce an adjustment to income, deductions, credits or other items solely because the period of limitations has expired in the possession and the possession competent authority has declined to grant any relief. If the period provided by the possession statute of limitations has expired, the U.S. competent authority may take into account other relevant facts to determine whether such withdrawal or reduction is appropriate and may, in extraordinary circumstances and as a matter of discretion, provide such relief with respect to the adjustment to avoid actual or economic double taxation. In no event, however, will relief be granted where there is fraud or negligence with respect to the relevant transactions.

SECTION 13. REQUESTS FOR RULINGS

.01 *General.* Requests for advance rulings regarding the interpretation or application of a provision of the Code, as distinguished from requests for assistance from the U.S. competent authority pursuant to this revenue procedure, must be submitted to the Associate Chief Counsel (International). *See* Rev. Proc. 2006–1, 2006–1 I.R.B. 1, and Rev. Proc. 2006–7, 2006–1 I.R.B. 242.

.02 *Possession Tax Rulings.* The Service does not issue advance rulings on the effect of a coordination agreement on the tax laws of a possession for purposes of determining the tax of the possession.

SECTION 14. FEES

Rev. Proc. 2006–1, 2006–1 I.R.B. 1, sec. 15, requires the payment of user fees for requests to the Service for rulings, opinion letters, determination letters and similar requests. No user fees are required for requests for competent authority assistance pursuant to this revenue procedure.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 89–8, 1989–1 C.B. 778, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective for requests for competent authority assistance filed after May 15, 2006.

SECTION 17. DRAFTING INFORMATION

The principal authors of this revenue procedure are Mae J. Lew and Javier G. Salinas of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Mr. Salinas at (202) 435–5262 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Under Section 1502; Amendment of Tacking Rule Requirements of Life-Nonlife Consolidated Regulations

REG–133036–05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9258) relating to the requirements for including insurance companies in a life-nonlife consolidated return. The text of those regulations also serves as the text of these proposed regulations. These regulations affect corporations filing life-nonlife consolidated returns.

DATES: Written or electronic comments and requests for a public hearing must be received by July 24, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–133036–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133036–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS - REG–133036–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Drafting Attorney, Ross Poulsen, (202) 622–7770; concerning submission of comments and/or requests for a public hearing, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) under section 1502 relating to the life-nonlife consolidated return regulations. The temporary regulations contain an exception (the tacking rule) to the five-year affiliation rules of sections 1503(c)(2) and 1504(c)(2). The temporary regulations replace the tacking rule of §1.1502–47(d)(12)(v) with a rule that does not contain a condition relating to the separation of profitable activities from loss activities. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations with one or more life insurance company members, which tend to be larger businesses. Moreover, the number of taxpayers affected is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Ross Poulsen, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1502–47 is amended by:

1. Adding paragraphs (b)(2)(i) and (b)(2)(ii).

2. Removing paragraph (d)(12)(v)(C).

3. Redesignating paragraph (d)(12)(v)(D) and (d)(12)(v)(E) as (d)(12)(v)(C) and (d)(12)(v)(D).

4. Revising paragraph (d)(12)(v), and newly-designated paragraphs (d)(12)(v)(C) and (d)(12)(v)(D).

The revisions and additions read as follows:

§1.1502–47 Consolidated returns by life-nonlife groups.

[The text of this proposed section is the same as the text of §1.1502–47T published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.1502–76 is amended by:

1. Removing paragraph (a)(2).

2. Redesignating paragraph (a)(1) as paragraph (a).

3. Revising the paragraph heading for newly-designated paragraph (a).

The revision reads as follows:

§1.1502–76 Taxable year of members of group.

[The text of this proposed section is the same as the text of §1.1502–76T published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on April 24, 2006, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2006, 71 F.R. 23882)

Determination of Basis of Stock or Securities Received in Exchange for, or With Respect to, Stock or Securities in Certain Transactions; Treatment of Excess Loss Accounts; Correction

Announcement 2006–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (T.D. 9244, 2006–8 I.R.B. 463), that was published in the **Federal Register** on Thursday, January 26, 2006 (71 FR 4264). This regulation provides guidance regarding the determination of the basis of stock or securities received in exchange for, or with respect to stock or securities in certain transactions.

DATES: This correction is effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (T.D. 9244, 2006–8 I.R.B. 463) that are the subject of these corrections are under sections 356, 358, and 1502 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9244 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

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

PART 1 — INCOME TAXES

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

Authority: 26 USC 7805 * * *

§1.358–1 [Corrected]

Par. 2. Section 1.358–1 is amended by removing the seventh and eighth sentences of paragraph (b), *Example* and adding the following sentence in their place to read as follows:

§1.358–1 Basis to distributes.

(a) * * *

(b) * * *

Example * * * The basis to A of the one share of stock Corporation Y is $90, that is, the adjusted basis of the one share of stock of Corporation X ($90), decreased by the sum of the cash received ($10) and the fair market value of the other property received ($30) and increased by the sum of the amount treated as a dividend ($5) and the amount treated as a gain from the exchange of property ($35). * * *

* * * * *

§1.358–2 [Corrected]

Par. 3. Section 1.358–2 is amended as follows:

A. By revising paragraph (a)(2)(viii).

B. By revising paragraph (2)(ii) paragraph (c) in *Examples 4, 5, 6,* and *11.*

The corrections read as follows:

§1.358–2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(viii) This paragraph (a)(2) shall not apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and section 354 or section 356, if, in connection with the exchange, the shareholder or security holder exchanges property for stock or securities in an exchange to which neither section 354 nor section 356 applies or liabilities of the shareholder or security holder are assumed.

* * * * *

(c) * * *

Example 4. (i) * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under §1.356–1(b), because the terms of the exchange do not specify that shares of Corporation Y stock or cash are received in exchange for particular shares of Class A stock or Class B stock of Corporation X, a *pro rata* portion of the shares of Corporation Y stock and cash received will be treated as received in exchange for each share of Class A stock and Class B stock of Corporation X surrendered based on the fair market value of such stock. Therefore, J is treated as receiving one share of Corporation Y stock and $5 of cash in exchange for each share of Class A stock of Corporation X and one share of Corporation Y stock and $5 of cash in exchange for each share of Class B stock of Corporation X. J realizes a gain of $140 on the exchange of shares of Class A stock of Corporation X, $100 of which is recognized under §1.356–1(a). J realizes a gain of $80 on the exchanges of Class B stock of Corporation X, all of which is recognized under §1.356–1(a). Under paragraph (a)(2)(i) of this section, J has 10 shares of Corporation Y stock, each of which has a basis of $2 and is treated as having been acquired on Date 1, 10 shares of Corporation Y stock, each of which has a basis of $4 and is treated as having been acquired on Date 2, and 20 shares of Corporation Y stock, each of which has a basis of $5 and is treated as having been acquired on Date 3. Under paragraph (a)(2)(vii) of this

section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $2, which have a basis of $4, and which have a basis of $5.

Example 5. (i) * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under §1.356–1(b), because the terms of the exchange specify that J receives 40 shares of stock of Corporation Y in exchange for J's shares of Class A stock of Corporation X and $200 of cash in exchange for J's shares of Class B stock of Corporation X and such terms are economically reasonable, such terms control." in its place. J realizes a gain of $140 on the exchange of shares of Class A stock of Corporation X, none of which is recognized under §1.356–1(a). J realizes a gain of $80 on the exchange of shares of Class B stock of Corporation X, all of which is recognized under §1.356–1(a). * * *

Example 6. (i) * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under §1.354–1(a), because the terms of the exchange specify that J receives 10 shares of stock of Corporation Y in exchange for J's shares of Class A stock of Corporation X and a Corporation Y security in exchange for its Corporation X security and such terms are economically reasonable, such terms control. * * *

* * * * *

Example 11. (i) * * *

(ii) *Analysis.* Because the value of the common stock indicates that the liquidation preference associated with the Corporation Y preferred stock could be satisfied even if the reorganization did not occur, it is not appropriate to deem the issuance of additional Corporation Y preferred stock. * * *

* * * * *

§1.1502–19T [Corrected]

3. Section 1.1502–19T is amended by:

A. Revising the section heading.

B. Revising paragraph (b)(2) through (c).

C. Revising the text of paragraph (h)(2)(iv).

The corrections read as follows:

§1.1502–19T Excess loss accounts (temporary)

(a) through (c) [Reserved]. For further guidance, see §1.1502–19(a) through (c).

* * * * *

(h)(2)(iv) * * * For guidance regarding determinations of the basis of the stock of a subsidiary acquired in and intercompany reorganization on or after January 23, 2006, see paragraphs (d) and (g) *Example 2* of this section.

* * * * *

§1.1502–32 [Corrected]

4. Section 1.1502–32 is amended by revising the text of paragraph (h)(8) to read as follows:

§1.1502–32 Investment adjustments.

* * * * *

(h) * * *

(h)(8) * * * Paragraph (b)(5)(ii) *Example 6* of this section applies only with respect to determinations of the basis of the stock of a subsidiary on or after January 23, 2006. For determinations of the basis of the stock of a subsidiary before January 23, 2006, see §1.1502–32(b)(5)(ii) *Example 6* as contained in the 26 CFR part 1 edition revised as of April 1, 2005.

Guy R. Traynor,
Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on April 12, 2006, 8:45 a.m., and published in the issue of the Federal Register for April 13, 2006, 71 F.R. 19117)

Residence Rules Involving U.S. Possessions; Correction

Announcement 2006–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contain a correction to final regulations (T.D. 9248, 2006–9 I.R.B. 524) that were published in the **Federal Register** on Tuesday, January 31, 2006 (71 FR 4996) that provide rules for determining *bona fide* residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands under sections 937(a) and 881(b) of the Internal Revenue Code (Code).

DATES: This correction is effective January 31, 2006.

FOR FURTHER INFORMATION CONTACT: J. David Varley, (202) 435–5262 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 9248, 2006–9 I.R.B. 524) that are the subject of this correction are under sections 937(a) and 881(b) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (T.D. 9248) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9248), which were the subject of FR Doc. 06–818, is corrected as follows:

1. On page 4997, column 2, in the preamble under the paragraph heading "Explanation of Provisions and Summary of Comments", first paragraph, fourth line from the bottom, the language "tax and closer connection tests is the" is corrected to read "tax home and closer connection test is the".

LaNita Van Dyke,
Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on March 20, 2006, 8:45 a.m., and published in the issue of the Federal Register for March 21, 2006, 71 F.R. 14099)

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

Announcement 2006–33

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 15, 2006, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Parents & Friends for
Better Education, Inc.
Houma, LA

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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