Internal Revenue bulletin

Bulletin No. 2006-36
September 5, 2006

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2006–36, page 353.

Health reimbursement arrangements. This ruling holds that amounts that may be paid as medical benefits to a designated beneficiary (other than an employee's spouse or an employee's dependent) are not excludable from the employee's gross income under section 105(b) of the Code. Notice 2002–45 and Rev. Ruls. 2002–41 and 2005–24 amplified.

Rev. Rul. 2006–44, page 361.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2006.

T.D. 9279, page 355.
REG–125071–06, page 375.

Final, temporary, and proposed regulations under section 671 of the Code amend regulations section 1.671–5, reporting rules for widely held fixed investment trusts (WHFITs), to clarify and simplify the application of those rules to non-mortgage widely held fixed investment trusts (NMWHFITs). The proposed regulations also include a requirement that trustees of WHFITs file an information return with the IRS and provide for the IRS to create a directory of NMWHFITs and trustees of widely held mortgage trusts (WHMTs). The proposed regulations clarify the market discount reporting rules under the NMWHFIT safe harbor and solicit comments on the WHMT safe harbor.

REG–124152–06, page 368.

Proposed regulations provide guidance relating to the determination of who is considered to pay a foreign tax for purposes of sections 901 and 903 of the Code. A public hearing is scheduled for October 13, 2006.

Notice 2006–72, page 363.

This notice contains questions and answers that provide guidance on the information reporting requirements for qualified tuition and related expenses under section 6050S of the Code.

Announcement 2006–61, page 390.

This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution within the IRS's Small Business/Self Employed (SB/SE) organization. The SB/SE FTS will enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction.

EMPLOYEE PLANS

Notice 2006–75, page 366.

Weighted average interest rate modifications; corporate bond weighted average. This notice extends the use of the corporate bond weighted average interest rate for sections 412(c)(7)(E) and 412(l) of the Code and sections 302(c)(7)(E) and 302(d) of the Employee Retirement Income Security Act of 1974 as provided in section 301 of the Pension Protection Act of 2006.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 379.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2006–60, page 389.
Aylesi M. Bobo Charitable Foundation of Independence, MO, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

ADMINISTRATIVE

Notice 2006–72, page 363.
This notice contains questions and answers that provide guidance on the information reporting requirements for qualified tuition and related expenses under section 6050S of the Code.

Announcement 2006–58, page 388.
This document provides changes of date and location for a public hearing on proposed regulations (REG–118775–06, 2006–28 I.R.B. 73) under sections 871 and 881 of the Code relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. The public hearing is rescheduled for October 6, 2006.

Announcement 2006–59, page 388.
Bonds issued by or on behalf of Indian tribal governments are excluded from gross income only if the proceeds of such bonds are used for an "essential governmental function." This announcement of advanced notice of proposed rulemaking provides that an activity performed by an Indian tribal government will be treated as an essential governmental function if (1) many state and local governments conduct such activity and finance it with tax-exempt bonds, (2) state and local governments have been financing such activity for many years, and (3) such activity is not a commercial or industrial activity.

Announcement 2006–61, page 390.
This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution within the IRS's Small Business/Self Employed (SB/SE) organization. The SB/SE FTS will enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 105.—Amounts Received Under Accident and Health Plans

Health reimbursement arrangements. This ruling holds that amounts that may be paid as medical benefits to a designated beneficiary (other than an employee's spouse or an employee's dependent) are not excludable from the employee's gross income under section 105(b) of the Code. Notice 2002–45 and Rev. Ruls. 2002–41 and 2005–24 amplified.

Rev. Rul. 2006–36

ISSUE

Are amounts paid to an employee under a reimbursement plan excludable from the employee's gross income under § 105(b) of the Internal Revenue Code (the Code) if the plan provides that amounts may be paid as § 213(d) medical benefits to a designated beneficiary (other than the employee's spouse or dependents or an employee)?

FACTS

Employer sponsors a reimbursement plan (the Plan) that reimburses an employee solely for substantiated medical care expenses (as defined in § 213(d)). The Plan provides reimbursements up to an annual maximum dollar amount for the coverage period and reimburses medical expenses only to the extent that the expenses have not been reimbursed from any other plan. Under the Plan, each employee's unused reimbursement amount available at the end of each plan year is carried forward for use in later plan years. The Plan reimburses the substantiated medical care expenses of both current and former employees (including retired employees), their spouses and dependents (as defined in § 152, determined without regard to § 152(b)(1), (b)(2), and (d)(1)(B)). The Plan also reimburses the substantiated medical care expenses of the surviving spouse and dependents of a deceased employee. Upon the death of the deceased employee's surviving spouse and last dependent, or upon the death of the employee if there is no surviving spouse or dependents, any unused reimbursement amount is paid as reimbursement of substantiated medical care expenses of a beneficiary designated by the employee. The Plan does not include the fair market value of the coverage for the designated beneficiary in the gross income of the employee. The Plan treats the reimbursement as taxable to the designated beneficiary.

The Plan is paid for solely by Employer and is not provided pursuant to a salary-reduction election or otherwise under a § 125 cafeteria plan. Neither the employee nor any other person has the right, currently or for any future year, to receive any benefit other than the reimbursement of substantiated medical care expenses incurred by the employee, his or her spouse and dependents or the employee's designated beneficiary.

LAW AND ANALYSIS

Section 61(a)(1) provides that, except as otherwise provided in Subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Section 1.61–21(a)(3) and (4) of the Income Tax Regulations states that a fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation to the person performing such services. Thus, a fringe benefit may be taxable to a person even though that person did not actually receive the fringe benefit. If a fringe benefit is furnished to someone other than the service provider, such benefit is considered as furnished to the service provider and use by the other person is considered use by the service provider.

Section 106 provides that the gross income of an employee does not include employer-provided coverage under an accident or health plan. Section 1.106–1 of the regulations provides that the gross income of an employee does not include contributions which the employee's employer makes to an accident or health plan for compensation (through insurance or otherwise) for personal injuries or sickness to the employee or the employee's spouse or dependents.

Section 105(a) provides that, except as otherwise provided in § 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) states that except in the case of amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts referred to in § 105(a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in § 213(d)) of the taxpayer or the taxpayer's spouse or dependents (as defined in § 152, determined without regard to § 152(b)(1), (b)(2), and (d)(1)(B)).

Section 1.105–2 of the Income Tax Regulations provides that only amounts that are paid specifically to reimburse the taxpayer for expenses incurred by the taxpayer, spouse or dependents for the prescribed medical care are excludable from gross income. Section 1.105–2 further provides that payments to or on behalf of the taxpayer's spouse or dependents shall constitute indirect payment to the taxpayer. Section 1.105–2 also states that ". . . section 105(b) does not apply to amounts which the taxpayer would be entitled to receive irrespective of whether or not he incurs expenses for medical care." Thus, if an employee has the opportunity to receive a payment irrespective of whether any medical expenses have been incurred by the employee or the employee's spouse or dependents, the payment is not excludable from gross income under § 105(b) even if the employee (or his or her spouse or dependents) incurred medical expenses during the year.

Notice 2002–45, 2002–2 C.B. 93, describes the tax treatment of health reimbursement arrangements (HRAs) excludable under § 105(b). The notice explains that an HRA is an arrangement that is paid for solely by the employer and not pursuant to a salary reduction election or otherwise under a § 125 cafeteria plan. An HRA reimburses the employee for medical care expenses (as defined in § 213(d)) incurred by the employee or by the employee's spouse or dependents, and provides reimbursements up to a maximum dollar amount with any unused portion of that amount at the end of the coverage period carried forward to subsequent coverage periods.

Notice 2002–45 also states that to qualify for the exclusion from gross income under § 105(b), an HRA may only provide benefits that reimburse expenses for medical care as defined in § 213(d). An HRA does not qualify for the exclusion under § 105(b) if any person has the right to receive cash or any other taxable or non-taxable benefit under the arrangement other than the reimbursement of medical care expenses. If any person has such a right, currently or for any future year, all payments to all persons made from the arrangement in the current year are included in gross income, even amounts paid to reimburse medical care expenses of the employee, spouse or dependents.

Situation 3 of Rev. Rul. 2005–24, 2005–1 C.B. 892, describes a plan that, after the death of an employee and the employee's surviving spouse and dependents, pays all or a portion of the unused reimbursement amount in cash to a beneficiary or beneficiaries designated by the employee, and if no beneficiary is designated, to the deceased employee's estate. Rev. Rul. 2005–24 holds that an amount (including an amount paid to reimburse medical expenses) paid from a plan that provides for the payment of the unused reimbursement amount in cash or other benefits is not excludable from the employee's gross income under § 105(b). Rev. Rul. 2005–24 does not specifically address reimbursement of § 213(d) medical expenses incurred by a non-spouse or non-dependent. Nevertheless, the ruling also states that it applies to any purported employer-provided medical reimbursement arrangement that provides for the receipt by the employee or any other person of cash or any other taxable or nontaxable benefit other than the reimbursement of medical care expenses of employees and their spouses and dependents. This principle applies to amounts paid for reimbursement of medical expenses to designated beneficiaries other than the employee's spouse or dependents.

The Plan described in this ruling does not meet the requirements of § 105(b) and § 1.105–2. Because a beneficiary who is not the employee's spouse or dependent may receive some or all of the medical reimbursements under the Plan, amounts paid under the Plan are not excludable under § 105(b) even if those amounts are paid to reimburse the medical expenses of the employee or the employee's spouse or dependents. Because the benefit is provided in connection with the performance of services by the employee, the benefit is considered provided to the employee and must be included in the employee's gross income. See § 1.61–21(a)(3) and (4).

HOLDING

Amounts paid to an employee under the reimbursement plan described in this ruling are not excludable from gross income under § 105(b) if the plan permits amounts to be paid as § 213(d) medical benefits to a designated beneficiary (other than the employee's spouse or dependents of the employee). None of the payments made from the reimbursement plan during the plan year to any person, including amounts paid to reimburse the medical expenses of an employee or the employee's spouse or dependents, is excludable from the gross income.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2005–24, 2005–1 C.B. 892, Rev. Rul. 2002–41, 2002–2 C.B. 75, and Notice 2002–45, 2002–2 C.B. 93 are amplified.

EFFECTIVE DATE

For reimbursement plans containing a provision on or before August 14, 2006 stating that upon the death of a deceased employee's surviving spouse and last dependent, or upon the death of the employee, if there is no surviving spouse or dependents, any unused reimbursement amount will be paid as a reimbursement of substantiated medical care expenses of a beneficiary designated by the employee, this revenue ruling is effective with respect to that provision for plan years beginning after December 31, 2008.

DRAFTING INFORMATION

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

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

The adjusted applicable federal long-term rate is set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

26 CFR 1.671–5: Reporting for widely held fixed investment trusts.

T.D. 9279

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Reporting Rules for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and Temporary regulations

SUMMARY: This document contains final and temporary regulations amending §1.671–5, a provision which provides reporting rules for widely held fixed investment trusts (WHFITs). These regulations clarify and simplify reporting for trustees and middlemen of non-mortgage widely held fixed investment trusts (NMWHFITs). The text of these final and temporary regulations also serves, in part, as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG–125071–06) on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective July 28, 2006.

Applicability Date: For dates of applicability, see §1.671–5(m).

FOR FURTHER INFORMATION CONTACT: Faith Colson, 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These final and temporary regulations amend §1.671–5. The collection of information contained in these regulations is in §1.671–5 and has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1540. Response to this collection of information is mandatory. This information is required to be reported to beneficial owners of trust interests to enable them to correctly report their share of the items of income, deduction, and credit of the WHFIT in which they have invested. This information is also required to be reported to the IRS to enable the IRS to verify that trustees and middlemen are accurately reporting information to beneficial owners of trust interests and that beneficial owners are properly reporting their ownership of a trust interest.

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

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

Background

This document contains amendments to 26 CFR part 1. On January 24, 2006, the Internal Revenue Service (IRS) and the Treasury Department published final regulations (T.D. 9241, 2006–7 I.R.B. 427) (final regulations) under §1.671–5 in the **Federal Register** (71 FR 4002) providing reporting rules for WHFITs. On February 23, 2006, in response to comments received subsequent to the publication of the final regulations, the IRS and the Treasury Department issued Notice 2006–29, 2006–12 I.R.B. 644. Notice 2006–29 informed trustees and middlemen of NMWHFITs that §1.671–5 would be amended to extend the availability of the qualified NMWHFIT exception (discussed in section I) beyond February 23, 2006, the cut-off date provided in the final regulations for funding a NMWHFIT that satisfied the exception, and to clarify the application of certain provisions in the final regulations to NMWHFITs. On May 25, 2006, the IRS and Treasury Department issued Notice 2006–30, 2006–24 I.R.B. 1044, stating that the IRS and the Treasury Department expected to issue the additional guidance under §1.671–5 discussed in Notice 2006–29 in the near future but that such guidance would not be issued prior to the expiration of the extended cut-off date for the qualified NMWHFIT exception in Notice 2006–29. Accordingly, Notice 2006–30 extended the cut-off date for the availability of the qualified NMWHFIT exception in Notice 2006–29 for an additional 60 days. These temporary regulations extend the availability of the qualified NMWHFIT exception to the dates provided in Notice 2006–30 and clarify the NMWHFIT reporting rules as described in Notice 2006–29. These temporary regulations also simplify the application of §1.671–5 as it applies to NMWHFIT sales and dispositions as well as sales or redemptions of trust interests in an equity trust (a trust, substantially all of whose income is comprised of dividends).

Summary and Explanation of Revisions

I. *The Qualified NMWHFIT Exception*

In general, under the final regulations, trustees and middlemen of NMWHFITs are required to report information regarding market discount, bond premium, sales and dispositions of trust assets, redemptions, and sales of trust interests. Trustees and middlemen of NMWHFITs that satisfy the qualified NMWHFIT exception in §1.671–5(c)(2)(iv)(E) are, however, excepted from reporting market discount and bond premium and are permitted to use the simplified reporting rules for sales and dispositions of trust assets in §1.671–5(c)(2)(iv)(B) and the simplified reporting rules for sales or redemptions of trust interests in §1.671–5(c)(2)(v)(C). As provided in Notice 2006–29 and subsequently modified in Notice 2006–30, §1.671–5T(c)(2)(iv)(E) of these final and temporary regulations provides that the qualified NMWHFIT exception is satisfied if the calendar year for which the trustee is reporting begins before January 1, 2011, and the NMWHFIT meets any of the following requirements: (1) the NMWHFIT has a start-up date as defined in §1.671–5(b)(19) before February 23, 2006; (2) the registration statement for the NMWHFIT becomes effective under the Securities Act of 1933 (15 U.S.C. 77a) (Securities Act of 1933) and trust interests are offered for sale to the public before February 23, 2006; or (3) the registration statement of the NMWHFIT becomes effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23 and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006. The IRS and the Treasury Department have also received comments suggesting that the January 1, 2011 cut-off date be extended or eliminated. The IRS and the Treasury Department are not adopting that suggestion.

II. *Availability of the NMWHFIT Safe Harbor*

Section 1.671–5(f) provides a reporting safe harbor for NMWHFITs. If trustees and middlemen report consistently with the safe harbor, trustees and middlemen are deemed to have provided information in a manner that enables a trust interest holder to reasonably accurately report the items of income, deduction, and credit of the trust on the trust interest holder's own federal income tax return. Section 1.671–5(f)(1)(i) provides that if substantially all of a NMWHFIT's income is from dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder) and all trust interests have identical value and rights, a NMWHFIT may report under the safe harbor in §1.671–5(f). Commentators have expressed concern that, if a trustee of a NMWHFIT must sell or dispose of a significant number of trust assets and trust sales proceeds are included in the determination of whether "substantially all" of a trust's income is from interest or dividends, the NMWHFIT will be ineligible for the safe harbor reporting rules in §1.671–5(f). To address this concern, §1.671–5T(f)(1)(i) of the final and temporary regulations provides that trust sales proceeds are to be ignored in determining whether a NMWHFIT is eligible to report under the NMWHFIT safe harbor in §1.671–5(f). Accordingly, a NMWHFIT may be eligible to report under the NMWHFIT safe harbor even if it has significant trust sales proceeds from the sale or disposition of trust assets.

Commentators also noted that §1.671–5(f)(1)(i)(*1*) refers to section 6049(b) and the definition of interest in section 6049(b) does not include interest that is exempt from tax under section 103 of the Internal Revenue Code. These commentators were concerned that if a NMWHFIT's income is from tax-exempt interest, the NMWHFIT would not be eligible to report under the NMWHFIT safe harbor reporting rules. To address this concern, §1.671–5T(f)(1)(i)(A)(*1*) of the final and temporary regulations does not refer to sections 6042(b) and 6049(b) and the regulations thereunder. Accordingly, NMWHFITs whose income is from tax-exempt interest, may be eligible to report under the NMWHFIT safe harbor reporting rules.

III. *Simplified Reporting of Sales and Redemptions of Trust Interests for Equity Trusts*

Section 1.671–5(c)(2)(v) requires trustees and middlemen to provide information regarding the income that is attributable to a redeeming, selling or purchasing beneficial owner up to the date of the sale or redemption of a trust interest. Section 1.671–5(c)(2)(v)(C) provides an exception to this rule for NMWHFITs if substantially all their income is comprised of dividends (equity trusts) and the NMWHFIT is required by its governing document to distribute income at least monthly. Commentators reported that some equity trusts do not receive significant dividend income and that it would not be feasible for these trusts to make monthly distributions. These commentators suggested that there be a *de minimis* exception to the requirement that the trust make monthly distributions.

Accordingly, §1.671–5T(c)(2)(v)(C) provides that a NMWHFIT will be considered to have satisfied the requirement that it make monthly distributions notwithstanding the fact that, although the governing document requires monthly distributions, the governing document of the NMWHFIT also permits the trustee to forego making its normally required monthly distribution if the cash held for distribution is less than 0.1% of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the date that the amount of the monthly distribution is required to be determined. Commentators suggested various other modifications to the §1.675(c)(2)(v)(C) exception; however, the IRS and Treasury Department believe that the modification adopted above addresses the majority of the commentators' concerns while maintaining the integrity of the reporting information to be provided under §1.671–5.

Similar to the "substantially all" test for eligibility to use the NMWHFIT safe harbor discussed in section II above, commentators have expressed concern that if a NMWHFIT has significant sales and dispositions and trust sales proceeds are included for the purpose of determining if "substantially all" of the NMWHFIT's income is from dividends, then the NMWHFIT will not qualify for this exception even though the NMWHFIT only holds assets that produce dividend income. To address this concern, §1.671–5T(c)(2)(v)(C) of the final and temporary regulations provides that proceeds received by a NMWHFIT from the sale or disposition of trust assets are to be ignored for the purpose of determining whether an equity trust is eligible to report under that paragraph.

IV. *Simplified Reporting for Certain NMWHFIT Sales and Dispositions*

In addition to the qualified NMWHFIT exception, the final regulations provide that the trustees of NMWHFITs that meet the general *de minimis* test in §1.671–5(c)(2)(iv)(D)(*1*) are only required, under §1.671–5(c)(2)(iv)(B), to provide information regarding the amount of trust sales proceeds distributed to a trust interest holder. The reason for the *de minimis* exception, as stated in the preamble to the final regulations, is that the IRS and the Treasury Department believe that if a NMWHFIT only sells or disposes of assets infrequently, although there will be some deferral of gains and losses if sales and dispositions are not fully reported, the deferral is acceptable, in light of the burden of fully, accurately reporting the sales and dispositions.

Commentators reported that trustees of NMWHFITs frequently have to sell trust assets to obtain cash to effect redemptions. These commentators indicated that because of certain securities laws, trustees of many NMWHFITs must redeem trust interests every time an interest is tendered for redemption. Trustees have no control over the number of trust interests tendered for redemption and as a result, have no control over the number of corresponding sales of trust assets to obtain cash for these redemptions. Because of these sales to effect redemptions, many NMWHFITs will also not be able to meet the general *de minimis* test in §1.671–5(c)(2)(iv)(D)(*1*). If a NMWHFIT does not meet the general *de minimis* test, trustees and middlemen must provide information regarding the amount of trust sales proceeds that are attributable to a trust interest holder, and information that will enable a trust interest holder to allocate with reasonable accuracy a portion of its basis and a portion of its market discount or premium to the assets sold. Commentators indicated that, under the final regulations, a significant number of NMWHFITs do not qualify for the reduced reporting in §1.671–5(c)(2)(iv)(B) and that as a result, many investors will be provided with more information than they can accurately process and trustees and middlemen will be subject to the significant reporting costs of supplying this information. These commentators requested that the final regulations be amended to provide for reduced reporting for other situations in which it will have little or no compliance impact. In response to these comments, the IRS and the Treasury Department provide the following modifications to the sales and disposition reporting rules for NMWHFITs in the final regulations:

1. *NMWHFIT final calendar year exception*

Commentators requested that the IRS and Treasury Department extend the simplified reporting in §1.671–5(c)(2)(iv)(B) to the final calendar year of a NMWHFIT regardless of whether the *de minimis* test or the qualified NMWHFIT exception is satisfied. The commentators reported that for a significant number of NMWHFITs, 95% of a trustee's sales of assets to effect redemptions occur during the last three months of the NMWHFIT. The commentators asserted that there would not be significant deferral of gains or losses on sales or dispositions of assets by NMWHFITs in their final calendar year if information regarding the sales and dispositions of trust assets during these final months were not communicated to non-redeeming trust interest holders because the non-redeeming trust interest holders would be cashing out their investment during that calendar year. Accordingly, §1.671–5T(c)(2)(iv)(F) of the final and temporary regulations provide that all NMWHFITs qualify for the simplified reporting in §1.671–5T(c)(2)(iv)(B) in the final calendar year of the NMWHFIT, regardless of whether the NMWHFIT has otherwise satisfied the *de minimis* test, provided that a trust interest holder cannot roll-over its investment in the NMWHFIT to another WHFIT.

2. *Pro-rata sale exception*

Commentators also requested that *pro-rata* sales of trust assets be excepted from reporting. The commentators contended that trustees generally sell a redeeming trust interest holder's *pro-rata* share of the trust assets to effect a redemption so that there is no change in the investments of the non-redeeming trust interest holders and therefore little or no compliance benefit of reporting to the non-redeeming trust interest holders. Accordingly, the commentators requested that *pro-rata* sales of trust assets to effect redemptions be excepted from the reporting requirements of §1.671–5(c)(2)(iv).

In response to this request, §1.671–5T(c)(2)(iv)(G) of the final and temporary regulations provides that a *pro-rata* sale of a trust asset to effect a redemption is not required to be reported under §1.671–5. A *pro-rata* sale of a trust asset occurs when (1) a trust interest holder tenders one or more trust interests for redemption; (2) the trustee sells the *pro-rata* share of a trust asset that is deemed to be owned by the trust interest holder as a result of the trust interest holder's ownership of the trust interest or interests tendered for redemption; (3) the trustee engages in the sale solely to obtain cash that is immediately distributed to the redeeming trust interest holder as a result of the redemption; and (4) the redemption is reported as required under §1.671–5(c)(2)(v).

Commentators strongly urged the IRS and the Treasury Department to except NMWHFITs with a duration of no more than 15 months and that span no more than two calendar years (short-term NMWHFITs) from all reporting of sales and dispositions of trust assets. The IRS and the Treasury Department believe that the NMWHFIT final year exception, discussed in section IV(1) above, adequately provides reporting relief for most short-term NMWHFITs for the sales and dispositions of trust assets to effect redemptions that a trustee must make during the final three months of the NMWHFIT. Further, §1.671–5T(b)(21) provides an amended definition of trust sales proceeds excluding the gross proceeds paid to a NMWHFIT for a *pro-rata* sale of a trust asset to effect a redemption from the definition of trust sales proceeds. The effect of this change in the definition of trust sales proceeds is to exclude the proceeds from a *pro-rata* sale of a trust asset to effect a redemption when determining whether a trust has met the *de minimis* test. Since only the proceeds from non *pro-rata* sales of trust assets are considered for purposes of determining whether a NMWHFIT meets the *de minimis* test, more trusts will meet the *de minimis* test and qualify for the reduced reporting in §1.671–5T(c)(2)(iv)(B). The IRS and the Treasury Department believe that the combined application of the *pro-rata* sales exception, the revised definition of trust sales proceeds, and the *de minimis* test adequately address the commentators' concerns regarding sales and dispositions of trust assets by trustees of short-term NMWHFITs during the first year of the trust.

Commentators also suggested that there be a reporting exception for when a trustee engages in a non *pro-rata* sale of a trust asset because the redeeming trust interest holder is only deemed to own a fractional share of a trust asset or because market conditions or restrictions prevent a *pro-rata* sale of a trust asset. The IRS and the Treasury Department believe that this issue is also adequately addressed by the combined application of the *pro-rata* sale exception, the revised definition of trust sales proceeds and the *de minimis* test.

Effective Date

These amendments are effective July 28, 2006. The amendments are applicable to the reporting required under §1.671–5 as of January 1, 2007 (see §1.671–5(m)) and will be applied as though these amendments were included in T.D. 9241.

Special Analysis

These regulations are necessary to provide trustees and middlemen of NMWHFITs with immediate guidance on the application of the final regulations so they can take measures necessary to be able to comply with the final regulations on their January 1, 2007, effective date. Additionally, the IRS and the Treasury Department have published Notice 2006–29 and Notice 2006–30 indicating that §1.671–5 would be amended as provided in these temporary regulations and received comments regarding the application of §1.671–5 from trustees and middlemen of NMWHFITs. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b)(B)(3). The final and temporary regulations are applicable more than 30 days after they are published in the **Federal Register** and accordingly, no exemption is required under 5 U.S.C. 553(d). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analysis section of the preamble to the cross-referenced notice of proposed rulemaking published in this issue of the Bulletin. Pursuant section 7805(f) of the Code, these final and temporary regulations will be submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.671–5 is amended by:

1. Revising paragraphs (b)(5), (b)(8), and (b)(21).

2. Revising paragraphs (c)(2)(iv), (v)(C), (vi), and (vii).

3. Revising paragraphs (f)(1)(i)(A) and (viii)(A).

The revisions read as follows:

§1.671–5 Reporting for widely held fixed investment trusts.

* * * * *

(b) * * *

(5) [Reserved.] For further guidance, see §1.671–5T(b)(5).

* * * * *

(8) [Reserved.] For further guidance, see §1.671–5T(b)(8).

* * * * *

(21) [Reserved.] For further guidance, see §1.671–5T(b)(21).

* * * * *

(c) * * *

(2) * * *

(iv) [Reserved.] For further guidance, see §1.671–5T(c)(2)(iv).

(v) * * *

(C) [Reserved.] For further guidance, see §1.671–5T(c)(2)(v)(C).

(vi) [Reserved.] For further guidance, see §1.671–5T(c)(2)(vi).

(vii) [Reserved.] For further guidance, see §1.671–5T(c)(2)(vii).

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) [Reserved.] For further guidance, see §1.671–5T(f)(1)(i)(A).

* * * * *

(viii) * * *

(A) [Reserved.] For further guidance, see §1.671–5T(f)(1)(viii).

Par. 3. Section 1.671–5T is added to read as follows:

§1.671–5T Reporting for widely held fixed investment trusts (temporary).

(a) through (b)(4) [Reserved.] For further guidance, see §1.671–5(a) through (b)(4).

(5) The *cash held for distribution* is the cash held by the WHFIT (other than trust sales proceeds and proceeds from sales described in paragraph (c)(2)(iv)(G) of this section) less reasonably required reserve funds as of the date that the amount of a distribution is required to be determined under the WHFIT's governing document.

(b)(6) and (b)(7) [Reserved.] For further guidance, see §1.671–5(b)(6) and (b)(7).

(8) An *in-kind redemption* is a redemption in which a beneficial owner receives a *pro-rata* share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671. For example, for purposes of this paragraph (b)(8), if beneficial owner *A* owns a one percent interest in a WHFIT that holds 100

shares of *X* corporation stock, so that *A* is considered to own a one percent interest in each of the 100 shares, *A*'s *pro-rata* share of the *X* corporation stock for this purpose is one share of *X* corporation stock.

(b)(9) through (b)(20) [Reserved.] For further guidance, see §1.671–5(b)(9) through (b)(20).

(21) *Trust sales proceeds* equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and *pro-rata* partial principal prepayments described under §1.1275–2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under §1.6045–1(d)(3). Trust sales proceeds also do not include amounts paid to a NMWHFIT as the result of a *pro-rata* sales of trust assets to effect a redemption described in paragraph (c)(2)(iv)(G) of this section.

(b)(22) through (c)(2)(iii) [Reserved.] For further guidance, see §1.671–5(b)(22) through (c)(2)(iii).

(iv) *Asset sales and dispositions*. The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that completely retires a debt instrument (including a mortgage held by a WHMT) or a *pro-rata* prepayment on a debt instrument (see §1.1275–2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument. A *pro-rata* sale of a trust asset to effect a redemption, as defined in paragraph (c)(2)(iv)(G) of this section, is not reported as a sale or disposition under this paragraph (c)(2)(iv).

(A) *General rule*. Except as provided in paragraph (c)(2)(iv)(B) of this section (regarding the exception for certain NMWHFITs) or paragraph (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset—

(*1*) The date of each sale or disposition;

(*2*) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(*3*) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) *Exception for certain NMWHFITs*. If a NMWHFIT meets either the general WHFIT *de minimis* test of paragraph (c)(2)(iv)(D)(*1*) of this section for a calendar year, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) *Exception for certain WHMTs*. If a WHMT meets either of the *de minimis* tests of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) *De minimis tests*—(*1*) *General WHFIT de minimis test*. The general WHFIT *de minimis* test applies to a NMWHFIT or to a WHMT that does not meet the requirements for the special WHMT *de minimis* test in paragraph (c)(2)(iv)(D)(*2*) of this section. The general WHFIT *de minimis* test is satisfied if trust sales proceeds for the calendar year are not more than five percent of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the later of January 1 of that year or the trust's start-up date (as defined in §1.671–5(b)(19)).

(*2*) *Special WHMT de minimis test*. A WHMT that meets the asset requirement of §1.671–5(g)(1)(ii)(E) satisfies the special WHMT *de minimis* test in this paragraph (c)(2)(iv)(D)(*2*) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in §1.671–5(g)(1)(iii)(D)) as of the later of January 1 of that year or the trust's start-up date. For purposes of applying the special WHMT *de minimis* test in this paragraph (c)(2)(iv)(D)(*2*), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds.

(*3*) *Effect of clean-up call*. If a WHFIT fails to meet either *de minimis* test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call, as defined in §1.671–5(b)(6), the WHFIT will be treated as having met the *de minimis* test.

(E) *Qualified NMWHFIT exception*. The qualified NMWHFIT exception is satisfied if the calendar year for which the trustee is reporting begins before January 1, 2011 and —

(*1*) The NMWHFIT has a start-up date (as defined in §1.671–5(b)(19)) before February 23, 2006;

(*2*) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, *et. seq.*) and trust interests are offered for sale to the public before February 23, 2006; or

(*3*) The registration statement of the NMWHFIT become effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23, 2006, and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006.

(F) *NMWHFIT final calendar year exception*. The NMWHFIT final calendar year exception is satisfied if—

(*1*) The NMWHFIT terminates on or before December 31 of the year for which the trustee is reporting;

(*2*) A trust interest holder may not rollover its investment in the NMWHFIT to another WHFIT; and

(*3*) The trustee makes reasonable efforts to engage in *pro-rata* sales of trust assets to effect redemptions.

(G) *Pro-rata sales of trust assets to effect a redemption*—(*1*) *Definition*. A *pro-rata* sale of a trust asset to effect a redemption is not required to be reported under this paragraph (c)(2)(iv). A *pro-rata* sale of a trust asset to effect a redemption occurs when a—

(*i*) A trust interest holder tenders one or more trust interests for redemption;

(*ii*) The trustee sells the *pro-rata* share of the trust asset that is deemed to be owned by the trust interest holder under section 671 as a result of the trust interest holder's ownership of the trust interest or interests tendered for redemption (See paragraph (b)(8) of this section for a description of how *pro-rata* is to be applied for purposes of this paragraph (c)(2)(iv)(G)) ;

(*iii*) The trustee engages in the sale solely to obtain cash that is immediately distributed to the redeeming trust interest holder as a result of the redemption; and

(*iv*) The redemption is reported as required under §1.671–5(c)(2)(v) by the trustee.

(*2*) *Example*. The following example illustrates the definition of a *pro-rata* sale of a trust asset to effect a redemption:

Example: Trust has two hundred trust interests and all interests have equal value and rights. Trust owns two hundred shares of stock in corporation *X*, two hundred shares of stock in corporation *Y*, and one hundred shares of stock in corporation *Z*. *C* owns one trust interest and tenders it for redemption. To obtain cash for the redemption, the trustee of Trust sells one share of each of the *X* and *Y* stock and one share of *Z* stock. Trustee immediately distributes the proceeds from the sale of the *X* and the *Y* stock, as well as 50% of the proceeds from the sale of the *Z* stock to *C* as redemption proceeds. Trustee will report the redemption under §1.671–5(c)(2)(v). The sale of the share of *X* stock and the sale of the share of *Y* stock are each a *pro-rata* sale of a trust asset to effect a redemption and are not required to be reported under this paragraph (c)(2)(iv)(G). The proceeds from the sale of the *X* stock and the *Y* stock are not trust sales proceeds under paragraph (b)(21) of this section and are not included for the purpose of determining whether Trust meets the *de minimis* test. The sale of the *Z* stock, because it was not a sale of the *pro-rata* share of the trust asset that is treated as owned by *C* is not a *pro-rata* sale of a trust asset to effect a redemption and is required to be reported as provided under paragraph (c)(2)(iv)(A) or (B) of this section, whichever is applicable. The proceeds from the sale of the *Z* stock are trust sales proceeds under paragraph (b)(21) of this section and included for the purpose of determining whether Trust meets the *de minimis* test in paragraph (c)(2)(iv)(D)(*1*) of this section.

(c)(2)(v)(A) and (B) [Reserved.] For further guidance, see §1.671–5(c)(2)(v)(A) and (B).

(C) *Exception for certain NMWHFITs with dividend income*—(*1*) *In general*. The trustee of a NMWHFIT described in paragraph (c)(2)(v)(C)(*2*) of this section is not required to report the information described in §1.671–5(c)(2)(v)(A) (regarding redemptions) or (c)(2)(v)(B) (regarding sales). However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on that date. The trustee also must provide requesting persons with a statement that this paragraph applies to the NMWHFIT.

(*2*) *NMWHFITs that qualify for the exception*. This paragraph (c)(2)(v)(C) applies to a NMWHFIT if substantially all the income of the NMWHFIT consists of dividends (as defined in section 6042(b) and the regulations thereunder) and the NMWHFIT satisfies either paragraph (c)(2)(v)(C)(*2*)(*i*) or (*ii*) of this section. Trust sales proceeds and gross proceeds from a sale described in paragraph (c)(2)(iv)(G) of this section are ignored for the purpose of determining if substantially all of a NMWHFITs income consists of dividends.

(*i*) The trustee is required by the governing document of the NMWHFIT to determine and distribute all cash held for distribution (as defined in paragraph (b)(5) of this section) no less frequently than monthly. A NMWHFIT will be considered to have satisfied this paragraph (c)(2)(v)(C)(*2*)(*i*) notwithstanding that the governing document of the NMWHFIT permits the trustee to forego making a required monthly or more frequent distribution, if the cash held for distribution is less than 0.1% of the aggregate net asset value of the trust as of the date specified in the governing document for calculating the amount of the monthly distribution.

(*ii*) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied.

(vi) *Information regarding bond premium*. The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for each calendar year. However, if a NMWHFIT meets the general *de minimis* test of paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to report information regarding bond premium.

(vii) *Information regarding market discount*. The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of market discount that has accrued during the calendar year. However, if a NMWHFIT meets the general *de minimis* test of paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

(c)(3) through (f)(1)(i) [Reserved.] For further guidance, see §1.671–5(c)(3) through (e)(4).

(f) *Safe harbor for providing information for certain NMWHFITs*—(1) *Safe harbor for trustee reporting of NMWHFIT information*. The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) *In general*—(A) *Eligibility to report under this safe harbor*. Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(*1*) and (*2*) of this section may report under this safe harbor. For purposes of determining whether paragraph (f)(1)(i)(A)(*1*) is met, trust sales proceeds and gross proceeds from sales described in paragraph (c)(2)(iv)(G) of this section are ignored.

(*1*) Substantially all of the NMWHFIT's income is from dividends or interest; and

(*2*) All trust interests have identical value and rights.

(f)(1)(i)(B) through (f)(vii) [Reserved.] For further guidance, see §1.671–5(f)(1)(i)(B) through (f)(vii).

(viii) *Reporting market discount information under the safe harbor*—(A) *In general*. If the trustee of a NMWHFIT is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide the information required under §1.671–5(f)(1)(iv)(A)(*1*)(*iii*) of this section. If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because paragraph (c)(2)(iv) of this section applies to the NMWHFIT), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

(f)(1)(viii)(B) through (m) [Reserved.] For further guidance, see §1.671–5(f)(1)(viii)(B) through (m).

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

Approved July 28, 2006.

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

(Filed by the Office of the Federal Register on July 28, 2006, 4:15 p.m., and published in the issue of the Federal Register for August 3, 2006, 71 F.R. 43968)

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2006.

Rev. Rul. 2006–44

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2006 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2006–44 TABLE 1

Applicable Federal Rates (AFR) for September 2006

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	5.13%	5.07%	5.04%	5.02%
110% AFR	5.66%	5.58%	5.54%	5.52%
120% AFR	6.17%	6.08%	6.03%	6.00%
130% AFR	6.70%	6.59%	6.54%	6.50%
Mid-term				
AFR	5.01%	4.95%	4.92%	4.90%
110% AFR	5.52%	5.45%	5.41%	5.39%
120% AFR	6.03%	5.94%	5.90%	5.87%
130% AFR	6.54%	6.44%	6.39%	6.36%
150% AFR	7.57%	7.43%	7.36%	7.32%
175% AFR	8.85%	8.66%	8.57%	8.51%
Long-term				
AFR	5.21%	5.14%	5.11%	5.09%
110% AFR	5.73%	5.65%	5.61%	5.58%
120% AFR	6.27%	6.17%	6.12%	6.09%
130% AFR	6.79%	6.68%	6.63%	6.59%

REV. RUL. 2006–44 TABLE 2

Adjusted AFR for September 2006

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.65%	3.62%	3.60%	3.59%
Mid-term adjusted AFR	3.83%	3.79%	3.77%	3.76%
Long-term adjusted AFR	4.41%	4.36%	4.34%	4.32%

REV. RUL. 2006–44 TABLE 3

Rates Under Section 382 for September 2006

Adjusted federal long-term rate for the current month	4.41%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.52%

REV. RUL. 2006–44 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for September 2006

Appropriate percentage for the 70% present value low-income housing credit	8.19%
Appropriate percentage for the 30% present value low-income housing credit	3.51%

REV. RUL. 2006–44 TABLE 5

Rate Under Section 7520 for September 2006

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.0%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2006. See Rev. Rul. 2006-44, page 361.

Information Reporting for Qualified Tuition and Related Expenses

Notice 2006–72

This notice contains questions and answers that provide guidance on the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code (Code).

BACKGROUND

The Taxpayer Relief Act of 1997 (Public Law 105–34 (111 Stat. 788)) added section 6050S to the Code. In general, section 6050S requires any eligible educational institution (institution) to file information returns and to furnish information statements to assist taxpayers and the Service in determining the amount of qualified tuition and related expenses (qualified expenses) for which an education tax credit is allowable under section 25A (as well as other tax benefits for higher education expenses). Congress amended section 6050S in the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206 (112 Stat. 685)) and Public Law 107–131 (115 Stat. 2410) (simplification of reporting requirements relating to higher education tuition and related expenses). As amended for calendar years beginning after December 31, 2002, section 6050S requires institutions to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified tuition and related expenses (qualified expenses) during the calendar year with respect to each individual enrolled (a student) for any academic period. *See* Rev. Proc. 2005–50, 2005–32 I.R.B. 272 (consent to change method of reporting payments received or amounts billed). Institutions must separately report adjustments (*i.e.*, refunds or reimbursements of payments if an institution elects to report payments received, or reductions in charges if an institution elects to report amounts billed) made during the calendar year with respect to a student that relate to payments received, or amounts billed, for qualified expenses that the institution reported for a prior calendar year. In addition, institutions must report the aggregate amount of scholarships or grants for the payment of a student's costs of attendance that the institution administered and processed during the calendar year. Institutions must separately report reductions made during the calendar year to the amount of scholarships or grants that the institution reported for a prior calendar year.

On December 19, 2002, the Treasury Department and the Service issued final regulations under section 6050S describing the information reporting requirements for institutions. *See* T.D. 9029, 2003–1 C.B. 403 [67 FR 77678] (Dec. 19, 2002). The final regulations are applicable for information returns required to be filed with the Service, and information statements required to be furnished to students, after December 31, 2003. For prior years, institutions were not required to include dollar amounts relating to qualified expenses or scholarships and grants on information returns and information statements.

Section 1.6050S–1(b)(2)(iii) of the Income Tax Regulations (regulations) provides that the amount of payments received for qualified expenses is determined by netting the amount of payments received for qualified expenses during the calendar year against any reimbursements or refunds of qualified expenses made during the calendar year that relate to payments received for qualified expenses during the same calendar year. Section 1.6050S–1(b)(3)(iii) provides that the amount billed for qualified expenses is determined by netting the amount billed for qualified expenses during the calendar year against any reductions in charges for qualified expenses made during the calendar year that relate to amounts billed for qualified expenses during the same calendar year.

Institutions are required to report the following information on Form 1098–T, "*Tuition Statement,*" for calendar years 2006 and after:

(1) The name, address, and taxpayer identification number (TIN) of the institution;

(2) The name, address, and TIN of the student;

(3) The amount of payments received (Box 1), or the amount billed (Box 2), for qualified expenses during the calendar year;

(4) An indication whether an institution has changed its method of reporting (Box 3);

(5) The amount of any reimbursements or refunds of qualified expenses made during the calendar year that relate to payments received for qualified expenses that the institution reported for a prior calendar year, or the amount of any reductions in charges made during the calendar year that relate to amounts billed for qualified expenses that the institution reported for a prior calendar year (Box 4);

(6) The amount of any scholarships or grants that the institution administered and processed during the calendar year (Box 5);

(7) The amount of any reductions to scholarships or grants that the institution reported for a prior calendar year (Box 6);

(8) An indication whether any amounts billed, or payments received, for qualified expenses reported for the calendar year relate to an academic period that begins during the first three months of the following calendar year (Box 7);

(9) An indication whether the student was enrolled at least half-time for at least one academic period that began during the calendar year (Box 8); and

(10) An indication whether the student was enrolled in a graduate-level degree program during the calendar year (Box 9).

For rules on when a student may claim an education tax credit, *see* section 1.25A–5(e).

DISCUSSION

Q–1. Must an institution report amounts billed, or payments received, for a student who is not enrolled for an academic period during the calendar year when the institution bills the student, or receives payment, for qualified expenses, if the student will be enrolled for the first time for an academic period during the following calendar year?

A–1. No. Section 6050S(b)(2)(A) of the Code provides that institutions shall report only for students who are enrolled for an academic period beginning during the calendar year (or enrolled for an academic period in a prior calendar year) and for whom a transaction which is required to be reported is made during the calendar year. This rule applies whether the institution elects to report amounts billed (*see* section 1.6050S–1(b)(3) of the regulations) or elects to report payments received (*see* section 1.6050S–1(b)(2)).

Section 1.6050S–1(d)(1) of the regulations permits an institution to determine the enrollment status of a student for each academic period under its own rules and policies, or as of any of the following dates:

(1) 30 days after the first day of the academic period;

(2) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post Secondary Education Data System administered by the Department of Education; or

(3) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

Q–2. Must an institution report for high school students attending classes at the institution prior to graduation from high school?

A–2. An institution must report for any student if the institution considers the student to be enrolled and a transaction for which reporting is required is made during the year with respect to the student.

Q–3. Must an institution report if a student is not enrolled for an academic period during the calendar year in which the institution makes an adjustment to amounts that the institution reported for a prior year in which the student was enrolled? For example, Student A was enrolled for an academic period during calendar year 2005. During 2005, Institution X bills Student A $3,000 for qualified expenses and reports these amounts in Box 2. In 2005, after the tuition bill is sent, Student A reduces his courseload. During calendar year 2006, Institution X credits Student A's account with $200, reflecting a $200 reduction in charges for 2005. Student A is not enrolled for any academic period during calendar year 2006.

A–3. Yes. Section 6050S(b)(2)(A) of the Code and section 1.6050S–1(b)(2) and (b)(3) of the regulations provide that an institution must report for each student enrolled for an academic period in a prior year (or enrolled for an academic period beginning during the calendar year) for whom an adjustment as described in sections 1.6050S–1(b)(2)(ii)(F) or (G) or 1.6050S–1(b)(3)(ii)(F) or (G) is made during the calendar year. Accordingly, for calendar year 2006, Institution X must report in Box 4 the $200 adjustment made to amounts reported in Box 2 for calendar year 2005, even though Student A is not enrolled for an academic period during calendar year 2006.

Q–4. If an institution is not required to report because an exception to reporting under 1.6050S–1(a)(2) of the regulations applies to a category of students, may an institution nevertheless choose to report?

A–4. Yes. An institution that is not required to report because an exception to reporting applies to a category of students may nevertheless choose to report. Section 1.6050S–1(a)(1) of the regulations does not preclude optional reporting.

Q–5. Must an institution report if the regulations provide an exception to reporting for a category of students (other than non-resident alien individuals) and a student within that category requests the institution to report for a calendar year?

A–5. No. An institution is not required to report if an exception under section 1.6050S–1(a)(2)(ii)-(iv) of the regulations applies to a category of students and a student within that category requests that the institution report for a calendar year.

Q–6. In what circumstances must an institution report with respect to a student who is a non-resident alien individual?

A–6. Section 1.6050S–1(a)(2)(i) of the regulations provides that no reporting is required for non-resident alien individuals, unless the non-resident alien individual requests the institution to report for a calendar year. If a student who is a non-resident alien individual requests that the institution report for a calendar year, the institution must report with respect to that student, unless another exception under section 1.6050S–1(a)(2) applies. If a non-resident alien individual falls within a category of students covered by an exception under section 1.6050S–1(a)(2)(ii)-(iv) of the regulations for the calendar year, the institution is not required to report, even if the student requests the institution to report for the calendar year. See Q&A–5, above.

Q–7. The regulations provide an exception to reporting if a student's qualified expenses are covered by a "formal billing arrangement." What is a formal billing arrangement, and who may be a payor under a formal billing arrangement?

A–7. Section 1.6050S–1(a)(2)(iv)(B) of the regulations provides that a formal billing arrangement is an arrangement in which the institution: (1) bills only an employer or a governmental entity for education that the institution furnishes to a student and (2) does not maintain a separate financial account for the student. Where an employer is billed for a student's qualified expenses, the student must be an employee of the employer. Similar agreements with other institutional third party payors will also qualify as formal billing arrangements if the Service so determines in further published guidance or in a ruling or determination issued to the participants.

Q–8. What amounts must an institution report in Box 5 as scholarships or grants?

A–8. Section 6050S(b)(2)(B)(ii) of the Code provides that an institution must report the amount of any grants that the institution administered and processed during the calendar year for the payment of the student's costs of attendance. A student's costs of attendance may include both qualified expenses (such as tuition and required fees) and non-qualified expenses (such as room and board). The institution should report these amounts in Box 5. A qualified tuition reduction described in section 117(d) of the Code is not a scholarship or grant, and accordingly, should not be reported in Box 5; but such a reduction is relevant in determining the net amount reported in Box 2 if the institution elects to report amounts billed.

Whether an institution reported scholarship or grant amounts in Box 5 is not considered in determining amounts to be reported as payments received (Box 1) or as amounts billed (Box 2) for qualified expenses. An institution that elects to report payments received for qualified expenses generally must include the amount of scholarships and grants in Box 1, except any scholarship or grant that by its terms must be applied to expenses other than qualified expenses, such as room and board (*see* section 1.6050S–1(b)(2)(v) of the regulations). An institution that elects to report amounts billed for qualified expenses may not reduce the amount reported in Box 2 by scholarships or grants.

Q–9. The regulations require an institution to report separately any reimbursements or refunds of qualified expenses (if an institution reports payments received) or any reductions in charges (if the institution reports amounts billed), and any reductions to scholarships, made during the calendar year that relate to amounts the institution reported for a prior calendar year. Does "a prior calendar year" refer to any prior calendar year for which reporting was required, or only the immediately preceding calendar year for which reporting was required?

A–9. The separate reporting requirement in section 6050S(b)(2)(B)(iii) of the Code applies to any prior calendar year for which reporting was required, and not only to the immediately preceding calendar year.

Q–10. Must an institution that voluntarily reported dollar amounts for calendar years before 2003 report with respect to adjustments in a later calendar year that relate to qualified expenses and scholarships or grants reported for calendar years before 2003?

A–10. The reporting of adjustments in a later calendar year that relate to qualified expenses and scholarships or grants reported for calendar years before 2003 is voluntary, as was the original reporting.

Q–11. If an institution elects to report amounts billed, how must the institution report increases in certain charges and reductions in other charges for the calendar year if the increases and reductions relate to amounts reported for a prior calendar year? For example, in December 2005, an institution bills $1,000 for tuition and $50 for required fees for the 2006 Spring term that will begin in January 2006. In January 2006, the institution bills an additional $200 for tuition for the 2006 Spring term and reduces the charges for the previously billed required fees by $10 for the 2006 Spring term. In August 2006, the institution bills $1,000 for tuition for the 2006 Fall term. How must the institution report for calendar year 2005 and calendar year 2006?

A–11. Section 6050S of the Code requires reporting based on transactions that occur during a calendar year. This includes transactions which may relate to an academic period in a prior calendar year. Section 1.6050S–1(b)(3)(ii)(c) of the regulations provides that an institution that elects to report amounts billed for qualified expenses must report the amount billed for qualified expenses with respect to the student during the calendar year. Accordingly, for calendar year 2005, the institution must report $1,050 in Box 2. For calendar year 2006, the institution must aggregate the $200 billed for the 2006 Spring term and the $1,000 billed for the 2006 Fall term and report $1,200 in Box 2. In addition, as provided in section 1.6050S–1(b)(3)(iv), the institution must separately report in Box 3 the $10 reduction in charges made during calendar year 2006 that relates to amounts previously reported in Box 2 for calendar year 2005.

Q–12. If an institution elects to report payments received for qualified expenses, must an institution report payments for qualified expenses that it receives with respect to a student during the calendar year if the payment relates to an academic period that began during a prior calendar year?

A–12. Yes. Under section 1.6050S–1(b)(2) of the regulations, the institution must report all payments of qualified expenses received during the calendar year, even if one or more of the payments relate to an academic period that began during a prior calendar year.

Q–13. If an institution elects to report amounts billed for qualified expenses, how must the institution report amounts billed for qualified expenses during one calendar year if the institution administers and processes a scholarship or grant in the following calendar year for the same qualified expenses? For example, an institution bills $1,000 for qualified expenses for the 2006 Spring term in December 2005. In January 2006, the institution administers and processes a scholarship for the same qualified expenses for the 2006 Spring term.

A–13. Section 6050S of the Code requires reporting based on transactions that occur during a calendar year. For calendar year 2005, under section 1.6050S–1(b)(3)(i) of the regulations, the institution must report in Box 2 the $1,000 billed during the calendar year in Box 2. For calendar year 2006, under section 1.6050S–1(b)(3)(ii)(E), the institution must report in Box 5 the scholarship it administered and processed during 2006 for the 2006 Spring term, even though the scholarship relates to amounts billed during calendar year 2005 for the same academic period. In addition, because scholarships or grants are not reductions in charges, they are not included in the amount reported in Box 4 as adjustments to amounts reported in Box 2 for calendar year 2005.

Q–14. Should an institution include any negative numbers on Form 1098–T?

A–14. No. Section 1.6050S–1(b)(1) of the regulations provides that, for purposes of section 1.6050S–1(b)(2), an adjustment to payments received means a reimbursement or refund. In addition, section 1.6050S–1(b)(1) provides that, for purposes of section 1.6050S–1(b)(3), an adjustment to amounts billed means a reduction in charges. Any adjustments to amounts billed or payments received (as applicable) reported for a prior year, and any reductions to scholarships or grants reported for a prior year, reflect downward adjustments. These adjustments are reported as positive numbers in Box 4 or Box 6, respectively.

Q–15. Must an institution report adjustments made during a calendar year if the adjustment relates to amounts not reported for a prior calendar year because an exception to reporting applied for the prior calendar year?

A–15. No. Under section 6050S(b)(2)(B)(iii) of the Code, an institution must report adjustments made during a calendar year that relate to amounts that were reported for a prior calendar year. If an amount was not reported for a prior calendar year because an exception to reporting applied for the prior calendar year, a related adjustment need not be reported under this section.

Q–16. Can an adjustment made during a calendar year exceed the amounts billed or payments received (as applicable) for qualified expenses that an institution reported for the immediately preceding calendar year?

A–16. Adjustments made during a calendar year may relate to amounts previously reported for multiple prior calendar years. In this situation, the adjustments may exceed the amount reported for the immediately preceding calendar year. For example, an institution reported $5,000 billed for qualified expenses for calendar year 2004 and $4,000 billed for calendar year 2005. In calendar year 2006, the institution reduces the charges for 2004 by $2,000 and reduces the charges for 2005 by $3,000. In this situation, for calendar year 2006, the institution must report $5,000 in Box 4 as adjustments made during the calendar year that relate to amounts reported for prior calendar years, which exceeds the amount reported as billed in the preceding calendar year.

Q–17. Why does Form 1098–T include Box 8, the "half-time indicator?"

A–17. Section 25A of the Code provides, among other things, that the Hope Scholarship Credit is allowable for amounts paid for qualified expenses only for students enrolled at least half-time for one academic period that begins during the calendar year. Box 8 provides the Service with an indication that the Hope Scholarship Credit may be allowable for the student's qualified expenses.

Q–18. When should an institution check Box 8?

A–18. An institution should check Box 8 if for at least one academic period that began during the calendar year the student was enrolled for at least one-half of the normal full-time work load for the course of study the student is pursuing. The standard for what is half of the normal full-time work load is determined by each institution, but the standard may not be lower than the standard established by the U.S. Department of Education. *See* section 1.25A–3(d)(1)(ii) of the regulations.

Q–19. Should an institution check Box 8 if a student is not enrolled at least half-time during the calendar year when the institution bills, or receives payments, for qualified expenses, but the student will be enrolled at least-half time in the following calendar year?

A–19. No. If a student is not enrolled at least half-time for at least one academic period that begins during the calendar year for which reporting is required, the institution should not check Box 8.

Q–20. Why does Form 1098–T include Box 9, the "graduate-level indicator?"

A–20. Section 25A of the Code provides, among other things, that the Hope Scholarship Credit is allowable only for qualified expenses of a student who has not completed the first two years of post-secondary education; however, the Lifetime Learning Credit is available beyond the first two years of post-secondary education. Box 9 assists the Service in monitoring compliance with respect to a student's eligibility for the Hope Scholarship Credit or the Lifetime Learning Credit. If Box 9 is checked, the Service is alerted to the fact that the Hope Scholarship Credit is not allowable for the student's qualified expenses because the student is beyond the first two years of post-secondary education and that the Lifetime Learning Credit may be allowable.

Q–21. When should an institution check Box 9?

A–21. An institution should check Box 9 if the student was enrolled as a graduate student during the calendar year.

Q–22. Should an institution check Box 9 if a student is not a graduate student during the calendar year when the institution bills, or receives payment, for qualified expenses, but the student will be a graduate student during the following calendar year?

A–22. No. The institution should not check Box 9 unless the student is enrolled as a graduate student for at least one academic period during the calendar year for which reporting is required.

Q–23. What telephone number must an institution include on the information statement furnished to the student?

A–23. Section 1.6050S–1(c)(1)(iii)(G) of the regulations requires institutions to include the telephone number of the information contact of the institution (*i.e.*, not the institution's general telephone number). The institution information contact must be an individual, or a department, that can answer questions about the information statement. The institution may not list only the institution's general telephone number. In addition, an institution may include information of a third-party service provider who may also answer questions about the information statement.

DRAFTING INFORMATION

The principal author of this notice is Karen E. Briscoe of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Mrs. Briscoe at (202) 622–4910 (not a toll-free call).

Weighted Average Interest Rate Modification

Notice 2006–75

This notice provides guidance as to the determination of the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the additional funding requirements under § 412(l) of the Internal Revenue Code (Code) and the minimum full funding limitation of § 412(c)(7)(E), and the corresponding requirements and limitation under sections 302(c)(7)(E) and 302(d) of the Employee Retirement Income Security Act of 1974 (ERISA), as in effect for plan years beginning in 2006 and 2007. This notice implements changes to the rules regarding those interest rates that were enacted by § 301 of the Pension Protection Act of 2006, Pub. L. No. 109–280 (PPA '06).

BACKGROUND

Section 412 of the Code, and the corresponding requirements of section 302 of ERISA, set forth minimum funding standards that apply to certain plans. Title I of PPA '06, enacted on August 17, 2006, makes extensive changes to the rules of § 412 of the Code and section 302 of ERISA, generally applicable to plan years beginning on or after January 1, 2008. In addition, section 301 of PPA '06 makes certain changes to the minimum funding rules that apply to earlier plan years. For purposes of this notice, all references to § 412 refer to § 412 of the Code without regard to the amendments made by Title I of PPA '06.

PRIOR LAW

Under § 412(b)(5)(A), the funding standard account (and items therein) must be charged or credited with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

Section 412(b)(5)(B) provides special rules for the interest rate that is used to determine a plan's current liability for purposes of § 412(l) and for purposes of the minimum full funding limitation under § 412(c)(7)(E). In general, that interest rate must fall within a specified corridor based on the weighted average of the rates of interest on 30-year Treasury constant maturities during the 4-year period ending on the last day before the beginning of the plan year, as published monthly in the Internal Revenue Bulletin. See Notice 88–73, 1988–2 C.B. 383, and Notice 2006–8, 2006–5 I.R.B. 386.

Section 412(b)(5)(B)(ii) provides a special rule that applies for plan years beginning in 2004 and 2005. Under that special rule, the interest rate used to determine current liability must not be above and must not be more than 10 percent below the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. In Notice 2004–34, 2004–1 C.B. 848, the Treasury Department prescribed the method for periodically determining the corporate rates, and made the permissible range, indices and methodology used to determine the average rate publicly available.

Section 412(l)(7)(C)(i)(II) generally provides that, for plan years beginning after 1999, the interest rate used to determine the deficit reduction contribution must be not more than 105% of the weighted average interest rate (or 120% of the weighted average interest rate for plan yeas beginning in 2002 and 2003). Section 412(l)(7)(C)(i)(IV) provided that, for plan years beginning in 2004 and 2005, the interest rate used to determine current liability for purposes of determining the deficit reduction contribution must be the same as the rate used under § 412(b)(5).

PENSION PROTECTION ACT OF 2006

Section 301(b) of PPA '06 amends § 412(b)(5)(B)(ii)(II) to extend the use of the corporate bond weighted average for plan years beginning in 2006 and 2007. Section 412(l)(7)(C)(i)(IV) is also amended by extending the use of the corporate bond weighted average for plan years beginning in 2006 and 2007. Corresponding changes were made to the parallel ERISA provisions.

This notice provides the composite corporate bond rates from December, 2005 through July, 2006, and the resulting corporate bond weighted averages for plan years beginning in the months from January, 2006 through August, 2006. These interest rates have been computed in accordance with the methodology and using the indices set forth in Notice 2004–34.

For Plan Years Beginning in: Month	Year	Composite Corporate Bond Rate	Corporate Bond Weighted Average	Permissible 90%	Range 100%
December	2005	5.72			
January	2006	5.65	5.77	5.19	5.77
February	2006	5.73	5.75	5.18	5.75
March	2006	5.89	5.75	5.17	5.75
April	2006	6.18	5.74	5.17	5.74
May	2006	6.29	5.74	5.17	5.74
June	2006	6.31	5.75	5.18	5.75
July	2006	6.30	5.77	5.19	5.77
August	2006		5.78	5.20	5.78

DRAFTING INFORMATION

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

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Definition of Taxpayer for Purposes of Section 901 and Related Matters

REG–124152–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: These proposed regulations provide guidance relating to the determination of who is considered to pay a foreign tax for purposes of sections 901 and 903. The proposed regulations affect taxpayers that claim direct and indirect foreign tax credits.

DATES: Written or electronic comments must be received by October 3, 2006. Outlines of topics to be discussed at the public hearing scheduled for October 13, 2006, must be received by October 3, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–124152–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–124152–06). The public hearing will be held in the Auditorium, Internal Revenue Service, New Carrollton Building, 5000 Ellin Road, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks (*Kelly.D.Banks@irscounsel.treas.gov*); concerning the regulations, Bethany A. Ingwalson, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 901 of the Internal Revenue Code (Code) permits taxpayers to claim a credit for income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States. Section 903 of the Code permits taxpayers to claim a credit for a tax paid in lieu of an income tax.

Section 1.901–2(f)(1) of the current final regulations provides that the person by whom tax is considered paid for purposes of sections 901 and 903 is the person on whom foreign law imposes legal liability for such tax. This legal liability rule applies even if another person, such as a withholding agent, remits the tax. Section 1.901–2(f)(3) provides that if foreign income tax is imposed on the combined income of two or more related persons (for example, a husband and wife or a corporation and one or more of its subsidiaries) and they are jointly and severally liable for the tax under foreign law, foreign law is considered to impose legal liability on each such person for the amount of the foreign income tax that is attributable to its portion of the base of the tax, regardless of which person actually pays the tax.

The existing final regulations were published in 1983. Since that time, numerous questions have arisen regarding the application of the legal liability rule to fact patterns not specifically addressed in the regulations or the case law. These include situations in which the members of a foreign consolidated group may not have in the U.S. sense the full equivalent of joint and several liability for the group's consolidated tax liability, and cases in which the person whose income is included in the foreign tax base is not the person who is obligated to remit the tax. Courts have reached inconsistent conclusions on these matters. Compare *Nissho Iwai American Corp. v. Commissioner*, 89 T.C. 765, 773–74 (1987), *Continental Illinois Corp. v. Commissioner*, 998 F.2d 513 (7th Cir. 1993), *cert. denied*, 510 U.S. 1041 (1994), *Norwest Corp v. Commissioner*, 69 F.3d 1404 (8th Cir. 1995), *cert. denied*, 517 U.S. 1203 (1996), *Riggs National Corp. & Subs. v. Commissioner*, 107 T.C. 301, *rev'd and rem'd on another issue*, 163 F.3d 1363 (D.C. Cir. 1999) (all holding that U.S. lenders had legal liability for tax imposed on their interest income from Brazilian borrowers, notwithstanding that under Brazilian law the tax could only be collected from the borrowers) with *Guardian Industries Corp. & Subs. v. United States*, 65 Fed. Cl. 50 (2005), appeal docketed, No. 2006–5058 (Fed. Cir. December 19, 2005) (concluding that the subsidiary corporations in a Luxembourg consolidated group had no legal liability for tax imposed on their income, because under Luxembourg law the parent corporation was solely liable to pay the tax).

Questions have also arisen regarding the application of the legal liability rule to entities that have different classifications for U.S. and foreign tax law purposes (*e.g.*, hybrid entities and reverse hybrids). This is particularly the case following the promulgation of §§301.7701–1 through –3 (the check the box regulations) in 1997. A hybrid entity is an entity that is treated as a taxable entity (*e.g.*, a corporation) under foreign law and as a partnership or disregarded entity for U.S. tax purposes. For purposes of these regulations, a reverse hybrid is an entity that is a corporation for U.S. tax purposes but is treated as a pass-through entity for foreign tax purposes (*i.e.*, income of the entity is taxed under foreign law at the owner level). Current §1.901–2(f) does not explicitly address how to determine the person that is considered to pay foreign tax imposed on the income of hybrid entities or reverse hybrids.

The IRS and the Treasury Department have determined that the regulations should be updated to clarify the application of the legal liability rule in these situations, and request comments on additional matters that should be addressed in published guidance.

Explanation of Provisions

A. *Overview*

The IRS and Treasury Department have received substantial comments as to matters that may be addressed under the legal liability rule of §1.901–2(f). These matters include rules relating to the treatment of foreign consolidated groups, reverse hybrids, hybrid entities, hybrid instruments and payments, and other issues. The proposed regulations would provide guidance on foreign consolidated groups, reverse hybrids, and hybrid entities. However, the proposed regulations reserve on issues relating to hybrid instruments and payments, specifically on the question of who is considered to pay tax imposed on income attributable to amounts paid or accrued between related parties under a hybrid instrument or payments that are disregarded for U.S. tax purposes. These and other issues will be addressed in a subsequent guidance project.

The proposed regulations would retain the general principle that tax is considered paid by the person who has legal liability under foreign law for the tax. However, the proposed regulations would further clarify application of the legal liability rule in situations where foreign law imposes tax on the income of one person but requires another person to remit the tax. The proposed regulations make clear that foreign law is considered to impose legal liability for income tax on the person who is required to take such income into account for foreign tax purposes even if another person has the sole obligation to remit the tax (subject to the above-referenced reservation for hybrid instruments and payments).

The proposed regulations would provide detailed guidance regarding how to treat taxes paid on the combined income of two or more persons. First, the proposed regulations would clarify the application of §1.901–2(f) to foreign consolidated-type regimes where the members are not jointly and severally liable in the U.S. sense for the group's tax. The proposed regulations would make clear that the foreign tax must be apportioned among all the members *pro rata* based on the relative amounts of net income of each member as computed under foreign law. The proposed regulations would provide guidance in determining the relative amounts of net income.

Second, the proposed regulations would revise §1.901–2(f) to provide that a reverse hybrid is considered to have legal liability under foreign law for foreign taxes imposed on an owner of the reverse hybrid in respect of the owner's share of income of the reverse hybrid. The reverse hybrid's foreign tax liability would be determined based on the portion of the owner's taxable income (as computed under foreign law) that is attributable to the owner's share of the income of the reverse hybrid.

Third, the proposed regulations would clarify that a hybrid entity that is treated as a partnership for U.S. income tax purposes is legally liable under foreign law for foreign income tax imposed on the income of the entity, and that the owner of an entity that is disregarded for U.S. income tax purposes is considered to have legal liability for such tax.

These provisions are discussed in more detail below.

B. *Legal Liability under Foreign Law*

Section 1.901–2(f)(1)(i) of the proposed regulations clarifies that, except for income attributable to related party hybrid payments described in §1.901–2(f)(4), foreign law is considered to impose legal liability for income tax on the person who is required to take such income into account for foreign tax purposes. This paragraph of the proposed regulations further clarifies that such person has legal liability for the tax even if another person is obligated to remit the tax, another person actually remits the tax, or the foreign country (defined in §1.901–2(g) to include political subdivisions and U.S. possessions) can proceed against another person to collect the tax in the event the tax is not paid.

Similarly, §1.902–1(f)(1)(ii) of the proposed regulations clarifies that, in the case of a tax imposed with respect to a base other than income, foreign law is considered to impose legal liability for the tax on the person who is the owner of the tax base for foreign tax purposes. Thus, in the case of a gross basis withholding tax that qualifies as a tax in lieu of an income tax under §1.903–1(a), the proposed regulations provide that the person that is considered under foreign law to earn the income on which the foreign tax is imposed has legal liability for the tax, even if the foreign tax cannot be collected from such person.

The IRS and Treasury Department request comments on whether the regulations should provide a special rule on where legal liability resides in the case of withholding taxes imposed on an amount received by one person on behalf of the beneficial owner of such amount. In certain cases, a foreign country may consider the recipient to earn income (or be the owner of the tax base) while the United States considers the recipient to be a nominee receiving the payment on behalf of the beneficial owner. Comments should focus on how a special rule for such nominee arrangements could be narrowly drawn to prevent opportunities for abuse while maintaining the administrative advantages of the legal liability rule, which generally operates to classify as the *taxpayer* the person who is in the best position to prove the tax was required to be, and actually was, paid.

C. *Taxes Imposed on Combined Income*

1. *Foreign Consolidated Groups*

The IRS and Treasury Department believe that §1.901–2(f)(1) of the current final regulations requires allocation of foreign consolidated tax liability among the members of a foreign consolidated group *pro rata* based on each member's share of the consolidated taxable income included in the foreign tax base. In addition, the IRS and Treasury Department believe that §1.901–2(f)(3) confirms this rule in situations in which foreign consolidated regimes impose joint and several liability for the group's tax on each member. With respect to a foreign consolidated-type regime where the members do not have the full equivalent of joint and several liability in the U.S. sense, or where the income of the consolidated group members is attributed to the parent corporation in computing the consolidated taxable income, the current regulations do not include a specific illustration of how the consolidated tax should be allocated among the members of the group for foreign tax credit purposes.

Thus, the IRS and Treasury Department believe that §1.901–2(f)(1) of the current final regulations requires as a general rule *pro rata* allocation of foreign tax among the members of a foreign consolidated group, and that §1.901–2(f)(3) illustrates the application of the general rule in cases where the group members are jointly and severally liable for that consolidated tax. Failure to allocate appropriately the consolidated tax among the members of the group may result in a separation of foreign tax from the income on which the tax is imposed. This type of splitting of foreign tax and income is contrary to the general purpose of the foreign tax credit to relieve double taxation of foreign-source income. Accordingly, §1.901–2(f)(2) of the proposed regulations would explicitly cover all foreign consolidated-type regimes, including those in which the regime imposes joint and several liability in the U.S. sense, those in which the regime treats subsidiaries as branches of the parent corporation (or otherwise attributes income of subsidiaries to the parent corporation), and those in which some of the group members have limited obligations, or even no obligation, to pay the consolidated tax. Several significant commentators recommended that the regulations be clarified in this manner.

The proposed regulations would define *combined income* to include cases where the foreign country initially recognizes the subsidiaries as separate taxable entities, but pursuant to the applicable consolidated tax regime treats subsidiaries as branches of the parent, requires or treats all income as distributed to the parent, or otherwise attributes all income to the parent. This approach will minimize the need for extensive analysis of the intricacies of the relevant foreign consolidated tax regime, by treating a foreign subsidiary as legally liable for its share of the consolidated tax without regard to the precise mechanics of the foreign consolidated regime. This approach will not only reduce inappropriate foreign tax credit splitting but will also reduce administrative burdens on taxpayers and the IRS.

Section 1.902–1(f)(2) of the proposed regulations retains the general principle that the foreign tax must be apportioned among the persons whose income is included in the combined base *pro rata* based on the relative amounts of net income of each person as computed under foreign law. As under current law, this rule would apply regardless of which person is obligated to remit the tax, which person actually remits the tax, and which person the foreign country could proceed against to collect the tax in the event all or a portion of the tax is not paid. Under §1.902–1(f)(2)(i), *person* for this purpose includes a disregarded entity.

2. *Reverse Hybrid Entities*

The proposed regulations would revise §1.901–2(f) to provide that a reverse hybrid is considered to have legal liability under foreign law for foreign taxes imposed on the owners of the reverse hybrid in respect of each owner's share of the reverse hybrid's income. Proposed regulation §1.902–1(f)(2)(iii). This rule is necessary to prevent the inappropriate separation of foreign tax from the related income and to prevent dissimilar treatment of foreign consolidated groups and foreign groups containing reverse hybrids, which are treated identically for U.S. tax purposes. Under the proposed rule, the reverse hybrid's foreign tax liability would be determined based on the portion of the owner's taxable income (as computed under foreign law) that is attributable to the owner's share of the reverse hybrid's income. Thus, for example, if an owner of a reverse hybrid has no other income on which tax is imposed by the foreign country, then the entire amount of foreign tax that is imposed on the owner is treated as attributable to the reverse hybrid for U.S. income tax purposes and, accordingly, is tax for which the reverse hybrid has legal liability. This rule would apply irrespective of whether the owner and the reverse hybrid are located in the same foreign country. If the owner pays tax to more than one foreign country with respect to income of the reverse hybrid, tax paid to each foreign country would be separately apportioned on the basis of the income included in that country's tax base. The treatment of reverse hybrids in the proposed regulations is consistent with the treatment recommended by a significant commentator.

3. *Apportionment of Tax on Combined Income*

Section 1.901–2(f)(2)(iv) of the proposed regulations includes rules for determining each person's share of the combined income tax base, generally relying on foreign tax reporting of separate taxable income or books maintained for that purpose. The regulations provide that payments between group members that result in a deduction under both U.S. and foreign tax law will be given effect in determining each person's share of the combined income, but, as noted above, explicitly reserve with respect to the effect of hybrid instruments and disregarded payments between related parties (to be dealt with in a separate guidance project). Special rules address the effect of dividends (and deemed dividends) and net losses of group members on the determination of separate taxable income.

Once an amount of foreign tax is determined to be paid by a consolidated group member or reverse hybrid under the combined income rule, applicable provisions of the Code would determine the specific U.S. tax consequences of that treatment. For example, a parent corporation's payment of tax on its subsidiary's share of consolidated taxable income, or the payment of tax by the owner of a reverse hybrid with respect to its share of the income of the reverse hybrid, ordinarily would result in a capital contribution to the subsidiary or reverse hybrid. Further, under sections 902 and 960, domestic corporate owners that own 10 percent or more of a foreign corporation's voting stock are eligible to claim indirect credits. Thus, domestic corporations that are considered to own 10 percent or more of a reverse hybrid's voting stock would be able to claim indirect credits for the taxes attributable to the earnings of the reverse hybrid that are distributed as dividends or otherwise included in the owner's income for U.S. tax purposes.

D. *Hybrid Entities*

Section 1.901–2(f)(3) of the proposed regulations would also clarify the treatment of hybrid entities. In the case of an entity that is a partnership for U.S. income tax purposes but taxable under foreign law as an entity, foreign law is considered to impose legal liability for the tax on the entity. This is the case even if the owners of the entity also have a secondary obligation to pay the tax. Sections 702, 704, and 901(b)(5) and the Treasury regulations thereunder apply for purposes of allocating the foreign tax among the owners of a hybrid entity that is a partnership for U.S. tax purposes. In the case of tax imposed on an entity that is disregarded as separate from its owner for U.S. income tax purposes, foreign law is considered to impose legal liability for the tax on the owner.

E. *Effective Date*

The regulations are proposed to be effective for foreign taxes paid or accrued during taxable years beginning on or after January 1, 2007. Comments are requested as to how to determine which person paid a foreign tax in cases where a foreign taxable year ends, and foreign tax accrues, within a post-effective date U.S. taxable year of a reverse hybrid and a pre-effective date U.S. taxable year of its owner.

F. *Request for Additional Comments*

As indicated above, in developing these proposed regulations, the IRS and Treasury Department considered comments on the proper scope and content of the regulations. Commentators generally agreed that amendments to clarify that foreign tax is properly apportioned among the members of a foreign consolidated group were appropriate. Commentators also agreed that the regulations should clarify that tax imposed on a disregarded entity is considered paid by its owner, and that tax imposed on a hybrid partnership should be allocated under the rules of sections 702, 704, and 901(b)(5). Some comments strongly stated that the IRS and Treasury Department have authority to extend the scope of the regulations to require the attribution of foreign tax to reverse hybrids. One comment, however, suggested that the IRS and Treasury Department may lack such authority. The IRS and Treasury Department considered these comments and concluded that the proposed regulations are well within applicable regulatory authority and fully consistent with the case law, including *Biddle v. Commissioner*, 302 U.S. 573 (1938).

Comments also suggested that the IRS and Treasury Department should extend the scope of the regulations to ensure that hybrid instruments and hybrid entities could not be used effectively to separate foreign tax from the related foreign income. As indicated above, however, the IRS and Treasury Department have decided not to exercise this authority in these regulations. The proposed regulations reserve on the effect given to hybrid payments and disregarded payments in determining the person whose income is subject to foreign tax. The IRS and Treasury Department are continuing to study certain transactions employing hybrid instruments and other transactions designed to generate inappropriate foreign tax credit results. These include the use of hybrid instruments that accrue income for foreign tax purposes, but not U.S. tax purposes, to accelerate the payment of creditable foreign taxes before the related income is subject to U.S. tax. These also include the use of disregarded payments to shift foreign tax liabilities away from the person that is considered to earn the associated taxable income for U.S. tax purposes. It is contemplated that some or all of these issues will be addressed in a separate guidance project, and that any such regulations may also be effective for taxable years beginning on or after January 1, 2007.

The IRS and Treasury Department request additional comments regarding the appropriate application of the legal liability rule to hybrid instruments and payments that are disregarded for U.S. tax purposes. They also request comments on other issues that might be incorporated into final regulations.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and 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. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 13, 2006, beginning at 10:00 a.m. in the Auditorium, Internal Revenue Service, New Carrollton Building, 5000 Ellin Road, Lanham, MD 20706. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by October 3, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Bethany A. Ingwalson, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the 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. In §1.706–1, paragraph (c)(6) is added to read as follows:

§1.706–1 Taxable years of partner and partnership.

* * * * *

(c) * * *

(6) *Foreign taxes*. For rules relating to the treatment of foreign taxes paid or accrued by a partnership, see §1.901–2(f)(3)(i) and (ii).

* * * * *

Par. 3. In §1.901–2, paragraphs (f) and (h) are revised to read as follows:

§1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(f) *Taxpayer*—(1) *In general*—(i) *Income taxes*. Income tax (within the meaning of paragraphs (a) through (c) of this section) is considered paid for U.S. income tax purposes by the person on whom foreign law imposes legal liability for such tax. In general, foreign law is considered to impose legal liability for tax on income on the person who is required to take the income into account for foreign income tax purposes (paragraph (f)(4) of this section reserves with respect to certain related party hybrid payments). This rule applies even if under foreign law another person is obligated to remit the tax, another person (*e.g.*, a withholding agent) actually remits the tax, or foreign law permits the foreign country to proceed against another person to collect the tax in the event the tax is not paid. However, see section 905(b) and the regulations thereunder for rules relating to proof of payment. Except as provided in paragraph (f)(2)(i) of this section, for purposes of this section the term *person* has the meaning set forth in section 7701(a)(1), and so includes an entity treated as a corporation, trust, estate or partnership for U.S. tax purposes, but not a disregarded entity described in §301.7701–2(c)(2)(i) of this chapter. The person on whom foreign law imposes legal liability is referred to as the "taxpayer" for purposes of this section, §1.901–2A, and §1.903–1.

(ii) *Taxes in lieu of income taxes*. The principles of paragraph (f)(1)(i) and paragraphs (f)(2) through (f)(5) of this section shall apply to determine the person who is considered to have legal liability for, and thus to have paid, a tax in lieu of an income tax (within the meaning of §1.903–1(a)). Accordingly, foreign law is considered to impose legal liability for any such tax on the person who is the owner of the base on which the tax is imposed for foreign tax purposes.

(2) *Taxes on combined income of two or more persons*—(i) *In general*. If foreign tax is imposed on the combined income of two or more persons (for example, a husband and wife or a corporation and one or more of its subsidiaries), foreign law is considered to impose legal liability on each such person for the amount of the tax that is attributable to such person's portion of the base of the tax. Therefore, if foreign tax is imposed on the combined income of two or more persons, such tax shall be allocated among, and considered paid by, such persons on a *pro rata* basis. For this purpose, the term *pro rata* means in proportion to each person's portion of the combined income, as determined under paragraph (f)(2)(iv) of this section and, generally, under foreign law. The rules of this paragraph (f)(2) apply regardless of which person is obligated to remit the tax, which person actually remits the tax, or which person the foreign country could proceed against to collect the tax in the event all or a portion of the tax is not paid. For purposes of this paragraph (f)(2), the term *person* shall include a disregarded entity described in §301.7701–2(c)(2)(i) of this chapter. In determining the amount of tax paid by an owner of a hybrid partnership or disregarded entity (as defined in paragraph (f)(3) of this section), this paragraph (f)(2) shall first apply to determine the amount of tax paid by the hybrid partnership or disregarded entity, and then paragraph (f)(3) of this section shall apply to allocate the amount of such tax to the owner.

(ii) *Combined income*. For purposes of this paragraph (f)(2), foreign tax is imposed on the combined income of two or more persons if such persons compute their taxable income on a combined basis under foreign law. Foreign tax is considered to be imposed on the combined income of two or more persons even if the combined income is computed under foreign law by attributing to one such person (*e.g.*, the foreign parent of a foreign consolidated group) the income of other such persons. However, foreign tax is not considered to be imposed on the combined income of two or more persons solely because foreign law —

(A) Permits one person to surrender a net loss to another person pursuant to a group relief or similar regime;

(B) Requires a shareholder of a corporation to include in income amounts attributable to taxes imposed on the corporation with respect to distributed earnings, pursuant to an integrated tax system that allows the shareholder a credit for such taxes; or

(C) Requires a shareholder to include, pursuant to an anti-deferral regime (similar to subpart F of the Internal Revenue Code (sections 951 through 965)), income attributable to the shareholder's interest in the corporation.

(iii) *Reverse hybrid entities*. For purposes of this paragraph (f)(2), if an entity is a corporation for U.S. income tax purposes and a person is required to take all or a part of the income of one or more such entities into account under foreign law because the entity is treated as a branch or a pass-through entity under foreign law (a *reverse hybrid*), tax imposed on the person's share of income from each reverse hybrid and tax imposed by the foreign country on other income of the person, if any, is considered to be imposed on the combined income of the person and each reverse hybrid. Therefore, under paragraph (f)(2)(i) of this section, foreign tax imposed on the combined income of the person and each reverse hybrid shall be allocated between the person and the reverse hybrid on a *pro rata* basis. For this purpose, the term *pro rata* means in proportion to the portion of the combined income included in the foreign tax base that is attributable to the person's share of income from each reverse hybrid and the portion of the combined income that is attributable to the other income of the person (including income received from a reverse hybrid other than in the owner's capacity as an owner). If the person has a share of income from the reverse hybrid but no other income on which tax is imposed by the foreign country, the entire amount of foreign tax is allocated to and considered paid by the reverse hybrid.

(iv) *Portion of combined income*—(A) *In general*. Except with respect to income attributable to related party hybrid payments or accrued amounts described in paragraph (f)(4) of this section, each person's portion of the combined income shall be determined by reference to any return, schedule or other document that must be filed or maintained with respect to a person showing such person's income for foreign tax purposes, as properly amended or adjusted for foreign tax purposes. If no such return, schedule or document must be filed or maintained with respect to a person for foreign tax purposes, then, for purposes of this paragraph (f)(2), such person's income shall be determined from the books of account regularly maintained by or on behalf of the person for purposes of computing its taxable income under foreign law.

(B) *Effect of certain payments*. Each person's portion of the combined income shall be determined by giving effect to payments and accrued amounts of interest, rents, royalties, and other amounts to the extent such payments or accrued amounts are taken into account in computing the separate taxable income of such person both under foreign law and under U.S. tax principles. With respect to certain related party hybrid payments, see the reservation in paragraph (f)(4) of this section. Thus, for example, interest paid by a reverse hybrid to one of its owners with respect to an instrument that is treated as debt for both U.S. and foreign tax purposes would be considered income of the owner and would reduce the taxable income of the reverse hybrid. However, each person's portion of the combined income shall be determined without taking into account any payments from other persons whose income is included in the combined base that are treated as dividends under foreign law, and without taking into account deemed dividends or any similar attribution of income made for purposes of computing the combined income under foreign law. This rule applies regardless of whether any such dividend, deemed dividend or attribution of income results in a deduction or inclusion under foreign law.

(C) *Net losses*. If tax is considered to be imposed on the combined income of three or more persons and one or more of such persons has a net loss for the taxable year for foreign tax purposes, the following rules apply. If foreign law provides mandatory rules for allocating the net loss among the other persons, then the rules that apply for foreign tax purposes shall apply for purposes of paragraph (f)(2)(iv) of this section. If foreign law does not provide mandatory rules for allocating the net loss, the net loss shall be allocated among all other such persons *pro rata* based on the amount of each person's income, as determined under paragraphs (f)(2)(iv)(A) and (B) of this section. For purposes of this paragraph (f)(2)(iv)(C), foreign law shall not be considered to provide mandatory rules for allocating a loss solely because such loss is attributed from one person to a second person for purposes of computing combined income, as described in paragraph (f)(2)(ii) of this section.

(v) *Collateral consequences*. U.S. tax principles shall apply to determine the tax consequences if one person remits a tax that is the legal liability of, and thus is considered paid by, another person. For example, a payment of tax for which a corporation has legal liability by a shareholder of that corporation (including an owner of a reverse hybrid) will ordinarily result in a deemed capital contribution and deemed payment of tax by the corporation. If the corporation reimburses the shareholder for the tax payment, such reimbursement would ordinarily be treated as a distribution for U.S. tax purposes.

(3) *Taxes on income of hybrid partnerships and disregarded entities*—(i) *Hybrid partnerships*. If foreign law imposes tax at the entity level on the income of an entity that is treated as a partnership for U.S. income tax purposes (a *hybrid partnership*), the hybrid partnership is considered to be legally liable for such tax under foreign law. Therefore, the hybrid partnership is considered to pay the tax for U.S. income tax purposes. See §1.704–1(b)(4)(viii) for rules relating to the allocation of such tax among the partners of the partnership. If the hybrid partnership's U.S. taxable year closes for all partners due to a termination of the partnership under section 708 and the regulations thereunder (other than in the case of a termination under section 708(b)(1)(A)) and the foreign taxable year of the partnership does not close, then foreign tax paid or accrued by the partnership with respect to the foreign taxable year that ends with or within the new partnership's first U.S. taxable year shall be allocated between the terminating partnership and the new partnership. The allocation shall be made under the principles of §1.1502–76(b) based on the respective portions of the taxable income of the partnership (as determined under foreign law) for the foreign taxable year that are attributable to the period ending on and the period ending after the last day of the terminating partnership's U.S. taxable year. The principles of the preceding sentence shall also apply if the hybrid partnership's U.S. taxable year closes with respect to one or more, but less than all, partners or, except as otherwise provided in section 706(d)(2) or (d)(3) (relating to certain cash basis items of the partnership), there is a change in any partner's interest in the partnership during the partnership's U.S. taxable year. If, as a result of a change in ownership during a hybrid partnership's foreign taxable year, the hybrid partnership becomes a disregarded entity and the entity's foreign taxable year does not close, foreign tax paid or accrued by the disregarded entity with respect to the foreign taxable year shall be allocated between the hybrid partnership and the owner of the disregarded entity under the principles of this paragraph (f)(3)(i).

(ii) *Disregarded entities*. If foreign tax is imposed at the entity level on the income of an entity described in §301.7701–2(c)(2)(i) of this chapter (a *disregarded entity*), foreign law is considered to impose legal liability for the tax on the person who is treated as owning the assets of the disregarded entity for U.S. income tax purposes. Such person shall be considered to pay the tax for U.S. income tax purposes. If there is a change in the ownership of such disregarded entity during the entity's foreign taxable year and such change does not result in a closing of the disregarded entity's foreign taxable year, foreign tax paid or accrued with respect to such foreign taxable year shall be allocated between the old owner and the new owner. The allocation shall be made under the principles of §1.1502–76(b) based on the respective portions of the taxable income of the disregarded entity (as determined under foreign law) for the foreign taxable year that are attributable to the period ending on the date of the ownership change and the period ending after such date. If, as a result of a change in ownership, the disregarded entity becomes a hybrid partnership and the entity's foreign taxable year does not close, foreign tax paid or accrued by the hybrid partnership with respect to the foreign taxable year shall be allocated between the old owner and the hybrid partnership under the principles of this paragraph (f)(3)(ii). If the person who owns a disregarded entity is a partnership for U.S. income tax purposes, see §1.704–1(b)(4)(viii) for rules relating to the allocation of such tax among the partners of the partnership.

(4) *Tax on income attributable to related party payments or accrued amounts that are deductible for foreign (or U.S.) tax law purposes and that are nondeductible for U.S. (or foreign) tax law purposes or that are disregarded for U.S. tax law purposes*. [Reserved].

(5) *Party undertaking tax obligation as part of transaction*. Tax is considered paid by the taxpayer even if another party to a direct or indirect transaction with the taxpayer agrees, as a part of the transaction, to assume the taxpayer's foreign tax liability. The rules of the foregoing sentence apply notwithstanding anything to the contrary in paragraph (e)(3) of this section. See §1.901–2A for additional rules regarding dual capacity taxpayers.

(6) *Examples*. The following examples illustrate the rules of paragraphs (f)(1) through (f)(5) of this section.

Example 1. (i) *Facts*. Under a loan agreement between A, a resident of country X, and B, a United States person, A agrees to pay B a certain amount of interest net of any tax that country X may impose on B with respect to its interest income. Country X imposes a 10 percent tax on the gross amount of interest income received by nonresidents of country X from sources in country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of §1.903–1(a). Under the law of country X this tax is imposed on the interest income of the nonresident recipient, and any resident of country X that pays such interest to a nonresident is required to withhold and pay over to country X 10 percent of the amount of such interest. Under the law of country X, the country X taxing authority may proceed against A, but not B, if A fails to withhold and pay over the tax to country X.

(ii) *Result*. Under paragraph (f)(1)(ii) of this section, B is considered legally liable for the country X tax because such tax is imposed on B's interest income. Therefore, for U.S. income tax purposes, B is considered to pay the country X tax, and B's interest income includes the amount of country X tax that is imposed with respect to such interest income and paid on B's behalf by A. No portion of such tax is considered paid by A.

Example 2. (i) *Facts*. The facts are the same as in *Example 1*, except that in collecting and receiving the interest B is acting as a nominee for, or agent of, C, who is a United States person. Accordingly, C, not B, is the beneficial owner of the interest for U.S. income tax purposes. Country X law also recognizes the nominee or agency arrangement and, thus, considers C to be the beneficial owner of the interest income.

(ii) *Result*. Under paragraph (f)(1)(ii) of this section, legal liability for the tax is considered to be imposed on C, not B (C's nominee or agent). Thus, C is the taxpayer with respect to the country X tax imposed on C's interest income from C's loan to A. Accordingly, C's interest income for U.S. income tax purposes includes the amount of country X tax that is imposed on C with respect to such interest income and that is paid on C's behalf by A pursuant to the loan agreement. Under paragraph (f)(1)(ii) of this section, such tax is considered for U.S. income tax purposes to be paid by C. No such tax is considered paid by B.

Example 3. (i) *Facts*. A, a U.S. person, owns a bond issued by C, a resident of country X. On January 1, 2008, A and B enter into a transaction in which A, in form, sells the bond to B, also a U.S. person. As part of the transaction, A and B agree that A will repurchase the bond from B on December 31, 2013 for the same amount. In addition, B agrees to make payments to A equal to the amount of interest B receives from C. As a result of the arrangement, legal title to the bond is transferred to B. The transfer of legal title has the effect of transferring ownership of the bond to B for country X tax purposes. A remains the owner of the bond for U.S. income tax purposes. Country X imposes a 10 percent tax on the gross amount of interest income received by nonresidents of country X from sources in country X, and it is established that this tax is a tax in lieu of an income tax within the meaning of §1.903–1(a). Under the law of country X this tax is imposed on the interest income of the nonresident recipient, and any resident of country X that pays such interest to a nonresident is required to withhold and pay over to country X 10 percent of the amount of such interest. On December 31, 2008, C pays B interest on the bond and withholds 10 percent of country X tax.

(ii) *Result*. Under paragraph (f)(1)(ii) of this section, B is considered legally liable for the country X tax because B is the owner of the interest income for country X tax purposes, even though A and not B recognizes the interest income for U.S. tax purposes. The result would be the same if the transaction had the effect of transferring ownership of the bond to B for U.S. income tax purposes.

Example 4. (i) *Facts*. On January 1, 2007, A, a United States person, purchases a bond issued by X, a foreign person resident in country Y. A accrues interest income on the bond for U.S. tax purposes from January 1, 2007, until A sells the bond to B, another United States person, on July 1, 2007. On December 31, 2007, X pays interest on the bond that accrued for the entire year to B. Country Y imposes a 10 percent tax on the gross amount of interest income received by nonresidents of country Y from sources in country Y, and it is established that this tax is a tax in lieu of an income tax within the meaning of §1.903–1(a). Under the law of country Y this tax is imposed on the interest income of the nonresident recipient, and any resident of country Y that pays such interest to a nonresident is required to withhold and pay over to country Y 10 percent of the amount of such interest. Pursuant to the law of country Y, X withholds tax from the interest paid to B.

(ii) *Result*. Under paragraph (f)(1)(ii) of this section, legal liability for the tax is considered to be imposed on B. Thus, B is the taxpayer with respect to the entire amount of the country Y tax even though, for U.S. income tax purposes, B only recognizes interest that accrues on the bond on and after July 1, 2007. No portion of the country Y tax is considered to be paid by A even though, for U.S. income tax purposes, A recognizes interest on the bond that accrues prior to July 1, 2007.

Example 5. (i) *Facts*. A, a United States person and resident of country X, is an employee of B, a corporation organized in country X. Under the laws of country X, B is required to withhold from A's wages and pay over to country X foreign social security tax of a type described in paragraph (a)(2)(ii)(C) of this section, and it is established that this tax is an income tax described in paragraph (a)(1) of this section.

(ii) *Result*. Under paragraph (f)(1)(i) of this section, A is considered legally liable for the country X tax because such tax is imposed on A's wages. Therefore, for U.S. income tax purposes, A is considered to pay the country X tax.

Example 6. (i) *Facts*. A, a United States person, owns 100 percent of B, an entity organized in country X. B is a corporation for country X tax purposes, and a disregarded entity for U.S. income tax purposes. B owns 100 percent of corporation C and corporation D, both of which are also organized in country X. B, C and D use the "u" as their functional currency and file on a combined basis for country X income tax purposes. Country X imposes an income tax described in paragraph (a)(1) of this section at the rate of 30 percent on the taxable income of corporations organized in country X. Under the country X combined reporting regime, income (or loss) of C and D is attributed to, and treated as income (or loss) of, B. B has the sole obligation to pay country X income tax imposed with respect to income of B and income of C and D that is attributed to, and treated as income of, B. Under the law of country X, country X may proceed against B, but not C or D, if B fails to pay over to country X all or any portion of the country X income tax imposed with respect to such income. In year 1, B has taxable income of 100u, C has taxable income of 200u, and D has a net loss of (60u). Under the law of country X, B is considered to have 240u of taxable income with respect to which 72u of country X income tax is imposed. Country X does not provide mandatory rules for allocating D's loss.

(ii) *Result*. Under paragraph (f)(2)(ii) of this section, the 72u of country X tax is considered to be imposed on the combined income of B, C, and D. Because country X law does not provide mandatory rules for allocating D's loss between B and C, under paragraph (f)(2)(iv)(C) of this section D's (60u) loss is allocated *pro rata*: 20u to B ((100u/300u) x 60u) and 40u to C ((200u/300u) x 60u). Under paragraph (f)(2)(i) of this section, the 72u of country X tax must be allocated *pro rata* among B, C, and D. Because D has no income for country X tax purposes, no country X tax is allocated to D. Accordingly, 24u (72u x (80u/240u)) of the country X tax is allocated to B, and 48u (72u x (160u/240u)) of such tax is allocated to C. Under paragraph (f)(3)(ii) of this section, A is considered to have legal liability for the 24u of country X tax allocated to B under paragraph (f)(2) of this section.

Example 7. (i) *Facts*. A, a domestic corporation, owns 95 percent of the voting power and value of C, an entity organized in country Z that uses the "u" as its functional currency. B, a domestic corporation, owns the remaining 5 percent of the voting power and value of C. Pursuant to an election made under §301.7701–3(a), C is treated as a corporation for U.S. income tax purposes, but as a partnership for country Z income tax purposes. Accordingly, under country Z law, A and B are required to take into account their respective shares of the taxable income of C. Country Z imposes an income tax described in paragraph (a)(1) of this section at the rate of 30 percent on such taxable income. For 2007, C has 500u of taxable income for country Z tax purposes. A's and B's shares of such income are 475u and 25u, respectively. In addition, A has 125u of taxable income attributable to a permanent establishment in country Z. Income of nonresidents that is attributable to a permanent establishment in country Z is also subject to the country Z income tax at a rate of 30 percent. Accordingly, country Z imposes 180u of tax on A's total taxable income of 600u (475u of income from C and 125u of income from the permanent establishment). Country Z imposes 7.5u of tax on B's 25u of taxable income from C.

(ii) *Result*. Under paragraph (f)(2)(iii) of this section, the 180u of tax imposed on the taxable income of A is considered to be imposed on the combined income of A and C. Under paragraph (f)(2)(i) of this section, such tax must be allocated between A and C on a *pro rata* basis. Accordingly, C is considered to be legally liable for the 142.5u (180u x (475u/600u)) of country Z tax imposed on A's 475u share of C's income, and A is considered to be legally liable for the 37.5u (180u x (125u/600u)) of the country Z tax imposed on A's 125u of income from its permanent establishment. Under paragraph (f)(2)(iii) of this section, the 7.5u of tax imposed on the taxable income of B is considered to be imposed on the combined income of B and C. Since B has no other income on which income tax is imposed by country Z, under paragraph (f)(2)(iii) of this section the entire amount of such tax is allocated to and considered paid by C. C's post-1986 foreign income taxes include the U.S. dollar equivalent of 150u of country Z income tax C is considered to pay for U.S. income tax purposes. A, but not B, is eligible to compute deemed-paid taxes under section 902(a) in connection with dividends received from C. Under paragraph (f)(2)(v) of this section, the payment by A or B of tax for which C is considered legally liable is treated as a capital contribution by A or B to C.

Example 8. (i) *Facts*. A, B, and C are U.S. persons that each use the calendar year as their taxable year. A and B each own 50 percent of the capital and profits of D, an entity organized in country M. D is a partnership for U.S. income tax purposes, but is a corporation for country M tax purposes. D uses the "u" as its functional currency and the calendar year as its taxable year for both U.S. tax purposes and country M tax purposes. Country M imposes an income tax described in paragraph (a)(1) of this section at a rate of 30 percent at the entity level on the taxable income of D. On September 30, 2008, A sells its 50 percent interest in D to C. A's sale of its partnership interest results in a termination of the partnership under section 708(b) for U.S. tax purposes. As a result of the termination, "old" D's taxable year closes on September 30, 2008 for U.S. tax purposes. New D also has a short U.S. taxable year, beginning on October 1, 2008, and ending on December 31, 2008. The sale of A's interest does not close D's taxable year for country M tax purposes. D has 400u of taxable income for its 2008 foreign taxable year with respect to which country M imposes 120u equal to $120 of income tax.

(ii) *Result*. Under paragraph (f)(3)(i) of this section, hybrid partnership D is legally liable for the $120 of country M income tax imposed on its net income. Because D's taxable year closes on September 30, 2008, for U.S. tax purposes, but does not close for country M tax purposes, under paragraph (f)(3)(i) of this section the $120 of country M tax must be allocated under the principles of §1.1502–76(b) between the short U.S. taxable years of "old" D and new D. See §1.704–1(b)(4)(viii) for rules relating to the allocation of "old" D's country M taxes between A and B and the allocation of new D's country M taxes between B and C.

Example 9. (i) *Facts*. A, a United States person engaged in construction activities in country X, is subject to the country X income tax. Country X has contracted with A for A to construct a naval base. A is a dual capacity taxpayer (as defined in paragraph (a)(2)(ii)(A) of this section) and, in accordance with paragraphs (a)(1) and (c)(1) of §1.901–2A, A has established that the country X income tax as applied to dual capacity persons and the country X income tax as applied to persons other than dual capacity persons together constitute a single levy. A has also established that that levy is an income tax within the meaning of paragraph (a)(1) of this section. Pursuant to the terms of the contract, country X has agreed to assume any country X income tax liability that A may incur with respect to A's income from the contract.

(ii) *Result*. For U.S. income tax purposes, A's income from the contract includes the amount of tax that is imposed by country X on A with respect to its income from the contract and that is assumed by country X; and the amount of the tax liability assumed by country X is considered to be paid by A. By reason of paragraph (f)(5) of this section, country X is not considered to provide a subsidy, within the meaning of section 901(i) and paragraph (e)(3) of this section, to A.

* * * * *

(h) *Effective date*. Paragraphs (a) through (e) and paragraph (g) of this section, §1.901–2A and §1.903–1 apply to taxable years beginning after November 14, 1983. Paragraph (f) of this section is effective for foreign taxes paid or accrued during taxable years of the taxpayer beginning on or after January 1, 2007.

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

(Filed by the Office of the Federal Register on August 3, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 4, 2006, 71 F.R. 44240)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Reporting Rules for Widely Held Fixed Investment Trusts

REG–125071–06

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 and the Treasury Department are issuing final and temporary regulations (T.D. 9279) amending §1.671–5 which provides reporting rules for widely held fixed investment trusts (WHFITs). The final and temporary regulations clarify and simplify reporting for trustees and middlemen of non-mortgage widely held fixed investment trusts (NMWHFITs). The text of those final and temporary regulations serves, in part, as the text of these proposed regulations. In addition to the amendments to §1.671–5 included in the final and temporary regulations, these proposed regulations provide for the creation of a directory of NMWHFITs and trustees of widely held mortgage trusts (WHMTs). These regulations also clarify the reporting rules for market discount under the NMWHFIT safe harbor for NMWHFITs that hold debt instruments with original issue discount (OID). The preamble to these regulations also solicits comments regarding the safe harbor for WHMTs.

DATES: Written or electronic comments and requests for a public hearing must be received by October 2, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–125071–06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044, or send electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS–REG–125071–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Faith Colson, (202) 622–3060 (not a toll-free number); concerning submission of comments and/or requests for a public hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These proposed regulations amend §1.671–5. The collection of information contained in these proposed regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1540. Response to this collection of information is mandatory. The collection of information in these proposed regulations is in §1.671–5. This information is required to be reported to beneficial owners of trust interests to enable them to correctly report their share of the items of income, deduction, and credit of the WHFIT in which they have invested. This information is also required to be reported to the IRS to enable the IRS to verify that trustees and middlemen are accurately reporting information to beneficial owners of trust interests and that beneficial owners are properly reporting their ownership of a trust interest.

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

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

Background and Explanation of Provisions

On January 24, 2006, the Internal Revenue Service (IRS) and the Treasury Department published final regulations (T.D. 9241, 2006–7 I.R.B. 427) under §1.671–5 in the **Federal Register** (71 FR 4002) providing reporting rules for WHFITs. Final and temporary regulations in this issue of the Bulletin amend §1.671–5. These amendments are intended to clarify and simplify the reporting required by NMWHFITs under §1.671–5. The text of the final and temporary regulations also serves, in part, as the text of these proposed regulations. The preamble to final and temporary regulations explains the final and temporary regulations and those parts of these proposed regulations that are included in the final and temporary regulations. These proposed regulations include proposed amendments to §1.671–5 in addition to those provided by the final and temporary regulations. The proposed amendments to §1.671–5 that are not included in the final and temporary regulations are discussed below.

I. *Proposed Directory of WHMT Trustees and NMWHFITs and Requirement That WHMT trustees Provide a List of WHMTs for Which They act on an Internet Website.*

Prior to the publication of the final regulations under §1.671–5, commentators expressed concern that middlemen would not be able to identify a client's investment as an investment in a WHFIT and suggested that the IRS publish a directory or list of WHFITs that would include the name and CUSIP number of each WHFIT, along with the name, address and telephone number of the WHFIT's representative. Commentators noted that a publicly available directory or list would assist middlemen and brokers in identifying a client's investment as an investment in a WHFIT and in locating the WHFIT's representative.

In response to these comments, the final regulations require a trustee to identify the WHFIT as either a WHMT or a NMWHFIT when providing trust information. The preamble to the final WHFIT regulations provides that the IRS and the Treasury Department are studying whether a directory or list of WHFITs can be compiled by the IRS and expressed concern that such a directory was not feasible because of the large number of WHMTs. In the preamble, the IRS and the Treasury Department requested additional comments from middlemen regarding the type of WHFITs that should be included in any directory, the type of information needed by middlemen (especially middlemen holding WHMT interests), and the format of a directory that would be most helpful. Trustees were also asked to comment regarding how the IRS could obtain the trust information needed for the directory from the trustees in the least burdensome manner.

Since the publication of the final regulations, the IRS has received additional comments regarding the need for a directory of WHFITs. Commentators indicated that such a directory would significantly improve a middleman's ability to comply with §1.671–5 and suggested that the IRS provide a directory of WHMT trustees and NMWHFITs, with each WHMT trustee maintaining a list of the WHMTs for which the trustee acts at an Internet website available to middlemen.

In response to these comments, the IRS proposes to expand Publication 938, "*Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs))*," or create a separate publication to list WHMT trustees and NMWHFITs. The IRS currently intends to list NMWHFITs in this directory by trustee (listed in alphabetical order) with the NMWHFITs for which the trustee acts listed by CUSIP number, followed by any NMWHFITs, listed in alphabetical order by name which do not have CUSIP numbers. NMWHFIT trustees will be required to file Form 8811, "*Information Return for Real Estate Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations*," or a similar form to provide the IRS with the information it needs to list NMWHFITs in the directory.

The directory will also alphabetically list WHMT trustees and provide the address of the Internet website that lists the WHMTs for which the trustee acts. WHMT trustees will be required to file Form 8811, or similar form, to identify themselves to the IRS as a WHMT trustee and provide an Internet website that lists the WHMTs for which the trustee acts. The IRS and Treasury Department continue to request comments on the need for the directory and the format to be used for the directory, as well as comments regarding how to obtain information from trustees in the least burdensome manner.

II. *Clarification of Market Discount Information Required to be Reported under the NMWHFIT Safe Harbor.*

Commentators also noted the need for amendments to the information required to be reported under the NMWHFIT safe harbor with respect to market discount. If a NMWHFIT does not qualify for the reduced reporting in §1.671–5(c)(2)(iv)(B), §1.671–5(f)(1)(viii) requires the trustee to provide information regarding the portion of the trust that the assets sold represented. Assuming that a trust interest holder purchased its interest at a discount, it was contemplated that the trust interest holder would allocate the same portion of its discount to the sale as the assets represented to the NMWHFIT. The trust interest holder would then determine how much of the discount allocated to the sold assets had accrued since the trust interest holder purchased its interest using either a ratable or constant interest method, as appropriate.

After reviewing the comments received after the publication of T.D. 9241, the IRS and the Treasury Department noted that the information required to be reported under the safe harbor is incomplete with respect to a NMWHFIT holding debt instruments with original issue discount (OID). Under both the general provisions (§1.671–5(c)(2)(ii)(A) and (vii)) and the safe harbor (§1.671–5(f)(1)(vii) and (viii)), OID information is required to be calculated and provided separately from market discount. Accordingly, to enable trust interest holders to determine the amount of market discount the interest holder is to allocate to a particular sale or disposition of debt instruments by the NMWHFIT, §1.671–5(f)(1)(viii)(A) is proposed to be amended with respect to NMWHFITs that hold debt instruments with OID, to include a requirement that trustees provide the aggregate adjusted issue price of the debt instruments held by the NMWHFIT per trust interest as of the start-up date as well as of January 1 of each subsequent year of the NMWHFIT. It is contemplated that trust interest holders will use the January 1 adjusted issue price for the year in which the trust interest holder purchased its interest to determine whether a trust interest was acquired with market discount. So as not to require trustees to calculate information for calendar years prior to the effective date of the final regulations, the proposed regulations only apply this requirement to NMWHFITs with a start-up date (as defined in §1.671–5(b)(19)) after January 24, 2006.

III. *Request for comments on the expansion of the WHMT safe harbor.*

The final regulations include safe harbor reporting rules for WHMTs. Section 1.671–5(g)(1)(ii)(B) provides that, to be eligible to report under the WHMT safe harbor, all interests in the WHMT must represent the right to receive an equal *pro-rata* share of both the income and the principal payments received by the WHMT on the mortgages it holds and that, for example, a WHMT that holds or issues trust interests that qualify as stripped interests under section 1286 may not report under the safe harbor. Further, a WHMT that holds an interest in another WHFIT is not eligible to report under the WHMT safe harbor. See §1.671–5(b)(11) (limiting the definition of a mortgage to exclude an interest in another WHFIT) and §1.671–5(g)(1)(ii)(E)(*1*) (providing that only WHMTs that directly hold mortgages may use the safe harbor). Since the publication of the final regulations, a commentator has requested that safe harbor reporting rules be developed for WHMTs that hold or issue stripped interests and for WHMTs that hold interests in other WHMTs. The IRS and the Treasury Department will consider this request in connection with further action on this proposed regulation and request additional comments regarding the need for additional WHMT safe harbor reporting rules, the nature of the arrangements for which the additional safe harbors are needed, the safe harbor reporting suggested and how such reporting is consistent with substantive law.

Effective Date

The IRS and the Treasury Department expect to take prompt action to finalize the proposed regulations so that certain of the provisions that are only included in the proposed regulations can be made effective as of January 1, 2007 (see §1.671–5(m)) as though the provisions were included in T.D. 9241. The IRS and Treasury Department invite recommendations regarding the effective date of proposed paragraphs (c)(3) (requiring trustees to file an information return with the IRS and requiring WHMT trustees to provide an Internet Website listing the WHMTs for which they act) and (c)(5) (providing for middlemen to refer to a directory created by the IRS), that may require some lead time for their implementation.

Special Analysis

It has been determined that these proposed regulations are 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 the regulations will not to have a significant economic impact on small entities because the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities are not expected to be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and 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. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. 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 Faith Colson, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Par. 2. Section 1.671–5 is amended by:

1. Revising paragraphs (b)(5), (b)(8), and (b)(21).

2. Revising paragraphs (c)(2)(iv), (v)(C), (vi), and (vii).

3. Revising paragraph (c)(3).

4. Adding paragraph (c)(5)(iv).

5. Revising paragraphs (f)(1)(i)(A) and (viii)(A).

The revisions and addition read as follows:

§1.671–5 Reporting for widely held fixed investment trusts.

* * * * *

(b) * * *

(5) [The text of proposed §1.671–5(b)(5) is the same as the text of §1.671–5T(b)(5) published elsewhere in this issue of the Bulletin].

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(8) [The text of proposed §1.671–5(b)(8) is the same as the text of §1.671–5T(b)(8) published elsewhere in this issue of the Bulletin].

* * * * *

(21) [The text of proposed §1.671–5(b)(21) is the same as the text of §1.671–5T(b)(21) published elsewhere in this issue of the Bulletin].

* * * * *

(c) * * *

(2) * * *

(iv) [The text of proposed §1.671–5(c)(2)(iv) is the same as the text of §1.671–5T(c)(2)(iv) published elsewhere in this issue of the Bulletin].

(v) * * *

(C) [The text of proposed §1.671–5(c)(2)(v)(C) is the same as the text of §1.671–5T(c)(2)(v)(C) published elsewhere in this issue of the Bulletin].

(vi) [The text of proposed §1.671–5(c)(2)(vi) is the same as the text of §1.671–5T(c)(2)(vi) published elsewhere in this issue of the Bulletin].

(vii) [The text of proposed §1.671–5(c)(2)(vii) is the same as the text of §1.671–5T(c)(2)(vii) published elsewhere in this issue of the Bulletin].

* * * * *

(3) *Requirement that trustees file an information return and that WHMT trustees list WHMTs on an Internet website*—(i) *Information return identifying a NMWHFIT to the IRS*. For each NMWHFIT for which the trustee acts, the trustee of a NMWHFIT must file the form specified as the information return to be used for identifying a NMWHFIT to the IRS. The form must be filed by the due date provided by that form and must contain the information required to be provided by the form. If, following the publication of final regulations in the **Federal Register**, the IRS issues additional guidance that prescribes another method to be used to identify and provide information with respect to a NMWHFIT to the IRS, this method must be used.

(ii) *Information return for trustees of WHMTs and the requirement that the trustee maintain an Internet website listing the CUSIP numbers and names of the WHMTs for which the trustee acts*. The trustee of a NMWHFIT must file the form specified as the information return to be used for identifying the trustee to the IRS. The form must be filed by the due date provided by that form and contain the information required to be provided by the form. In addition, the trustee must maintain a list of the WHMTs for which the trustee acts on the trustee's Internet website (or another site designated by the trustee for this purpose). If, following the publication of final regulations in the **Federal Register**, the IRS issues additional guidance that prescribes another method to be used to identify a trustee as a WHMT trustee and provide information with respect to the WHMTs for which the trustee acts, this method must be used.

* * * * *

(5) * * *

(iv) *Directory of WHMT trustees and NMWHFITs*. The IRS provides a directory of WHMT trustees and NMWHFITs, and WHMT trustees provide an Internet website at which the trustees list the WHMTs for which they act, to assist requesting persons in locating a representative of a WHFIT that will provide the information specified in paragraph (c) of this section. A requesting person may report consistent with this section for any arrangement identified in the directory as a NMWHFIT or on a WHMT trustee's Internet website as a WHMT provided that the requesting person does not have actual knowledge that the arrangement is not a WHFIT.

(f) * * *

(1) * * *

(i) * * *

(A) [The text of proposed §1.671–5(f)(1)(i)(A) is the same as the text of §1.671–5T(f)(1)(i)(A) published elsewhere in this issue of the Bulletin].

* * * * *

(viii) *Reporting market discount information under the safe harbor* — (A) *In general* — (*1*) *Trustee is required to provide market discount information*. If the trustee is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide—

(*i*) The information required to be provided under paragraph (f)(1)(iv)(A)(*1*)(*iii*) of this section; and

(*ii*) If the NMWHFIT holds debt instruments with OID and the NMWHFIT has a start-up date on or after January 24, 2006, the aggregate adjusted issue price of the debt instruments per trust interest calculated as of the start-up date and as of January 1 for each subsequent year of the NMWHFIT.

(*2*) *Trustee is not required to provide market discount information*. If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because the NMWHFIT meets the *de minimis* test of paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final year exception of paragraph (c)(2)(iv)(F) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

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

(Filed by the Office of the Federal Register on July 28, 2006, 4:15 p.m., and published in the issue of the Federal Register for August 3, 2006, 71 F.R. 43998)

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

Announcement 2006-57

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

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

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Crane, Stephen	Palm Springs, CA	Enrolled Agent	May 4, 2006 to August 3, 2007
Cohen, Ronald J.	Newburgh, NY	Attorney	Indefinite from June 21, 2006
Layson, David A.	Corydon, IN	Attorney	April 7, 2006 to October 6, 2007
Brough, Donald L.	Salem, IN	CPA	July 1, 2006 to June 30, 2010

Name	Address	Designation	Date of Suspension
Gulian, Yervant	Great Neck, NY	CPA	April 17, 2006 to December 16, 2007
Rivera-Smith, Dawn	Brick, NJ	CPA	May 30, 2006 to November 29, 2008
Eckstein, Matthew	Woodbury, NY	CPA	June 15, 2006 to March 14, 2007
Hecht, Jodee L.	Clifton, VA	CPA	Indefinite from June 19, 2006
Finch, Phillip W.	Yorktown, VA	CPA	Indefinite from June 22, 2006
Troese Jr., Henry A.	Clarion, PA	Enrolled Agent	Indefinite from June 22, 2006
Robbins, Ronald E.	Pittsford, VT	CPA	June 24, 2006 to June 23, 2008
Shapiro, Sidney C.	West Palm Beach, FL	CPA	Indefinite from July 1, 2006
Martini, Anthony	Stamford, CT	CPA	June 18, 2006 to December, 17, 2007
Cunningham, William	Philadelphia, PA	CPA	July 1, 2006 to March 31, 2007
Simontacchi, Joseph F.	Morris Plains, NJ	CPA	Indefinite from July 1, 2006
Carroccio, Ronald P.	Staten Island, NY	CPA	Indefinite from July 1, 2006
Miller, Walter P.	Roanoke, VA	CPA	Indefinite from July 1, 2006
Aneji, Patrick	Houston, TX	CPA	Indefinite from June 22, 2006
Rosenbloom, Mark L.	Chicago, IL	Attorney	August 15, 2006 to August 14, 2007

Name	Address	Designation	Date of Suspension
Viener, Ira S.	Fort Lee, NJ	CPA	Indefinite from August 1, 2006
Ganz, Sheldon M.	Great Neck, NJ	CPA	Indefinite from August 1, 2006
Tomasulo, Maria	Wantagh, NY	CPA	Indefinite from August 7, 2006
Galpern, Joel G.	North Miami, FL	CPA	Indefinite from September 1, 2006

Expedited Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Dolan Jr., John L.	Memphis, TN	Attorney	Indefinite from April 3, 2006
St. Mary, Randall L.	Snohomish, WA	Attorney	Indefinite from April 3, 2006
Theriault, Michael J.	Bel Air, MD	Attorney	Indefinite from April 3, 2006
Smith, Bernard P.	Marblehead, MA	Attorney	Indefinite from April 3, 2006
Bradley, Phillip M.	West Point, VA	Attorney	Indefinite from April 3, 2006
Haefele, Richard J.	Wayzata, MN	Attorney	Indefinite from April 3, 2006
Decker, William E.	Mandeville, LA	Attorney	Indefinite from April 3, 2006

Name	Address	Designation	Date of Suspension
Arbour, John J.	Monroe, LA	Attorney	Indefinite from April 3, 2006
Keller, John S.	Martin Kenner, LA	Attorney	Indefinite from April 3, 2006
Fallon, Charles D.	Neptune, NJ	Attorney	Indefinite from April 3, 2006
Agresti, Thomas J.	Centennial, CO	Attorney	Indefinite from April 3, 2006
Kirsch, Craig F.	Pittsburgh, PA	CPA	Indefinite from April 3, 2006
Hall, Lenny G.	McDowell, KY	CPA	Indefinite from April 11, 2006
Hultgren, Jerry R.	Fresno, CA	Attorney	Indefinite from April 11, 2006
Loutos, Peter A.	Chicago, IL	Attorney	Indefinite from April 11, 2006
Smith III, Frank L.	Bushnell, FL	Attorney	Indefinite from April 11, 2006
Morley, Michael J.	Springfield, PA	CPA	Indefinite from April 11, 2006
Waters, Richard W.	Smithfield, UT	CPA	Indefinite from April 11, 2006
Hartgraves, Travis M.	Abilene, TX	Attorney	Indefinite from April 14, 2006
Dunn, George T.	Lockhart, TX	Attorney	Indefinite from April 14, 2006
Adkins, Thomas R.	Houston, TX	Attorney	Indefinite from April 14, 2006
Hairston, John W.	Sugar Land, TX	Attorney	Indefinite from April 26, 2006

Name	Address	Designation	Date of Suspension
Marcone, Frank J.	Upper Providence, PA	Attorney	Indefinite from May 1, 2006
Fraley, Donald J.	Minneapolis, MN	Attorney	Indefinite from May 3, 2006
Tooke, S. Judd	Shreveport, LA	Attorney	Indefinite from May 3, 2006
Reilly, Michael G.	Council Bluffs, IA	Attorney	Indefinite from May 3, 2006
Faneuil, Robert A.	Newton, MA	Attorney	Indefinite from May 3, 2006
Maignan, Peter R.	Upper Marlboro, MD	Attorney	Indefinite from May 3, 2006
Son, David	Phoenix, AZ	Attorney	Indefinite from May 5, 2006
Susman, Warren I.	New York, NY	Attorney	Indefinite from May 8, 2006
Wurst, Jerome	Arlington, TX	Attorney	Indefinite from May 8, 2006
O'Shea, Joseph G.	Jackson Heights, NY	Attorney	Indefinite from May 8, 2006
Biegelson, Alan	Brooklyn, NY	Attorney	Indefinite from May 8, 2006
Leonard, Robert K.	Winston-Salem, NC	Attorney	Indefinite from May 8, 2006
Cassidy, Michael M.	Madison, WI	Attorney	Indefinite from May 8, 2006
Dobkin, Daniel B.	New Hyde Park, NY	Attorney	Indefinite from May 8, 2006
Nealy, Joseph L.	Sugarland, TX	Attorney	Indefinite from May 16, 2006
Conmey, Edwin W.	Oconomowoc, WI	Attorney	Indefinite from May 16, 2006

Name	Address	Designation	Date of Suspension
Knott Jr., Robert T.	Los Angeles, CA	Attorney	Indefinite from May 16, 2006
Diamond, Howard S.	Mendham, NJ	Attorney	Indefinite from May 16, 2006
Fitzgerald, Bill L.	Lubbock, TX	Attorney	Indefinite from May 16, 2006
Brubaker, Gregory A.	San Francisco, CA	Attorney	Indefinite from May 18, 2006
Dodenbier, Robert F.	Lehi, UT	Attorney	Indefinite from May 18, 2006
Young, Paul J.	Taft, CA	Attorney	Indefinite from June 8, 2006
Dahodwala, Fatema	Andover, MA	Attorney	Indefinite from June 8, 2006
Mendola, Joseph E.	Monessen, PA	CPA	Indefinite from June 8, 2006
Rooney, Edward F.	Minneapolis, MN	Attorney	Indefinite from June 8, 2006
Long, Rebecca L.	Wichita, KS	Attorney	Indefinite from June 8, 2006
West, Clifton C.	Fayetteville, NC	Attorney	Indefinite from June 8, 2006
Silva, Zoilo I.	City Island, NY	Attorney	Indefinite from June 8, 2006
Tyler Jr., Earle S.	Bangor, ME	Attorney	Indefinite from June 12, 2006
Horneber, Alice S.	Sioux City, IA	Attorney	Indefinite from June 12, 2006
Donnelly, Christine M.	Blue Springs, MO	Attorney	Indefinite from June 12, 2006
Driscoll Jr., Peter	Columbia, MD	Attorney	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
Souza, John C.	Pocatello, ID	Attorney	Indefinite from June 12, 2006
Crockett, Kevin J.	Midvale, UT	Attorney	Indefinite from June 12, 2006
White, Debra M. Wyatt	Navasota, TX	CPA	Indefinite from June 12, 2006
Wilkins, Daniel J.	Chelmsford, MA	Attorney	Indefinite from June 12, 2006
Merica, Chad L.	Murray, UT	CPA	Indefinite from June 12, 2006
Wintroub, David S.	Omaha, NE	Attorney	Indefinite from June 12, 2006
Smith, Roderick E.	Kansas City, MO	Attorney	Indefinite from June 12, 2006
Guida, Joseph M.	Aberdeen, MD	Attorney	Indefinite from June 12, 2006
Sonibare, Nash	St. Paul, MN	CPA	Indefinite from June 12, 2006
Braun, Marc W.	St. Louis, MO	Attorney	Indefinite from June 12, 2006
Coffey, John J.	Rye, NH	Attorney	Indefinite from June 12, 2006
Whitehead, H. Allen	New York, NY	Attorney	Indefinite from June 12, 2006
Lansky, Sidney	Mattapoisett, MA	Attorney	Indefinite from June 12, 2006
Pazniokas, Paul M.	Norwood, MA	Attorney	Indefinite from June 12, 2006
Bajgrowicz, James J.	Santa Rosa, CA	Attorney	Indefinite from June 12, 2006
Davis, Bret J.	Los Angeles, CA	Attorney	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
McAvoy, Timothy	Chicago, IL	Attorney	Indefinite from June 12, 2006
Loffadelli, Thomas C.	Studio City, CA	Attorney	Indefinite from June 12, 2006
Emeziem, Kelechi C.	Antioch, CA	Attorney	Indefinite from June 12, 2006
Pugh, William C.	Wayzata, MN	Attorney	Indefinite from June 12, 2006
Lamanna, Eugene C.	Reading, PA	Attorney	Indefinite from June 12, 2006
Bartels, John R.	St. Paul, MN	Attorney	Indefinite from June 12, 2006
Shapiro, Kenneth S.	Bala Cynwyd, PA	CPA	Indefinite from June 14, 2006
Stone, Jerry W.	Austin, TX	Attorney	Indefinite from June 21, 2006
Vanriper, Philip E.	Binghamton, NY	Attorney	Indefinite from June 21, 2006
Simuro, Valerie T.	Gardiner, NY	Attorney	Indefinite from June 21, 2006
Simms, William K.	Brooklyn, NY	Attorney	Indefinite from June 21, 2006
Weaver, Terring M.	Clarksburg, WV	CPA	Indefinite from July 1, 2006
Norman, Clarence	Brooklyn, NY	Attorney	Indefinite from August 3, 2006
Knight, John G.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006
Kronegold, Sheldon H.	Englewood, NJ	Attorney	Indefinite from August 3, 2006

Name	Address	Designation	Date of Suspension
Foushee, Wayne H.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006

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

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

Name	Address	Designation	Effective Date
Kahn, Harold	Hollis, NY	CPA	June 26, 2006 to June 25, 2010

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

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

Name	Address	Designation	Effective Date
Gailey, James N.	Huntersville, NC	CPA	June 5, 2006

Censure Issued by Consent

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

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

Name	Address	Designation	Date of Censure
Williams, Daniel S.	Carlsbad, CA	Attorney	March 29, 2006
Azan, Reinaldo L.	Miami Beach, FL	CPA	July 24, 2006
Golub, Stephen B.	Norwalk, CT	CPA	August 3, 2006

Revisions to Regulations Relating To Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments; Hearing

Announcement 2006–58

AGENCY: Internal Revenue Service, Treasury.

ACTION: Changes of date and location for public hearing.

SUMMARY: This document provides changes of date and location for a public hearing on proposed regulations (REG–118775–06, 2006–28 I.R.B. 73) under sections 871 and 881 of the Internal Revenue Code (Code) relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation.

DATES: The public hearing originally scheduled for Thursday, September 7, 2006, at 10 a.m. is rescheduled for Friday, October 6, 2006, at 10 a.m. Outlines of topics to be discussed at the public hearing will be due by August 24, 2006.

ADDRESSES: The public hearing was originally being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC. The hearing location has changed. The public hearing will be held in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, (301) 922–0539 (not a toll-free number) or Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice of public hearing (REG–118775–06) appearing in the **Federal Register** on Tuesday, June 13, 2006 (71 FR 34047), announced that a public hearing on proposed regulations relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation would be held on Thursday, September 7, 2006, beginning at 10 a.m. in the IRS Auditorium, 1111 Constitution Avenue, NW, Washington, DC.

The date and location of the hearing have changed. The hearing is rescheduled for Friday, October 6, 2006, beginning at 10 a.m. in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

A period of 10 minutes is allotted to each person for presenting oral comments. The IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

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 August 8, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 9, 2006, 71 F.R. 45474)

Definition of Essential Governmental Function Under Section 7871 and Limitation to Activities Customarily Performed by States and Local Governments

Announcement 2006–59

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document applies to Indian tribal governments and to State and local governments that issue bonds for the benefit of Indian tribal governments. This document describes rules that the IRS and the Treasury Department anticipate proposing, in a notice of proposed rulemaking (REG–118788–06), regarding the definition of an essential governmental function under section 7871(c) of the Internal Revenue Code and the limitation of that term to activities customarily performed by State and local governments for purposes of section 7871(e) of the Internal Revenue Code. This document also invites comments from the public regarding this proposed standard.

DATES: Written or electronic comments must be submitted by November 7, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118788–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–118788–06).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Kelly Banks, (202) 927–1443; concerning the proposed rules, Timothy L. Jones or Aviva M. Roth, (202) 622–4164 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 7871(a)(4) of the Internal Revenue Code of 1986 provides that an Indian tribal government is to be treated as a State "subject to subsection (c), for purposes of section 103 (relating to State and local bonds)". Section 7871(c)(1) provides that "section 103(a) shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function". Section 7871(e) provides that "[f]or purposes of this section, the term 'essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers".

Section 7871 was originally enacted in 1982 by The Indian Tribal Government Tax Status Act, Pub. L. No. 97–473, 96 Stat. 2605 § 202 (1983). In the legislative history to that Act, the Senate Finance Committee indicated that tax-exempt bond financing was not intended to be available to Indian tribal governments for "commercial or industrial activities (or other activities other than essential governmental functions)." S. Rep. No. 97–646, at 13–14 (1982).

Section 7871(e) was added to the statute by The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100–203, 101 Stat. 1330, § 10632(a) (1987). In the legislative history to this provision, the House Ways and Means Committee criticized 1984 Temporary Treasury Regulations interpreting the term essential governmental function in section 7871(c) for including certain activities eligible for Federal funding in that definition. The House Ways and Means Committee stated that the reason for this amendment was that the Committee was concerned about reports that Indian tribal governments were issuing tax-exempt bonds for interests in "commercial and industrial enterprises". The Committee further included the following statement about section 7871(e):

> The bill clarifies that, with respect to bonds issued by Indian tribal governments, the term 'essential governmental function' does not include any governmental function that is not customarily performed (and financed with governmental tax-exempt bonds) by State and local governments with general taxing powers. For example, issuance of bonds to finance commercial or industrial facilities (*e.g.*, private rental housing, cement factories, or mirror factories) which bonds technically may not be private activity bonds is not included within the scope of the essential governmental function exception.
>
> Additionally, the committee wishes to stress that only those activities that are customarily financed with governmental bonds (*e.g.*, schools, roads, governmental buildings, etc.) are intended to be within the scope of this exception, notwithstanding that isolated instances of a State or local government issuing bonds for another activity may occur.

H. R. Rep. No. 100–391, at 1139 (1987).

The 1987 Conference Committee adding the limited manufacturing facility provision of section 7871(c)(3)(A), noted that:

> A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the 'essential governmental function' standard (*i.e.*, the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments). For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

H. R. Rep. No. 100–495, at 1012 n.5 (1987) (Conf. Rep.).

The IRS has become aware of an increasing number of instances in which taxpayers have raised questions about the application of section 7871(e). Accordingly, the Treasury Department and the IRS have determined to seek public comment in advance of issuing proposed regulations in this area.

Explanation of Provisions

The Treasury Department and the IRS anticipate that the proposed regulations will provide that for purposes of section 7871(c) and section 7871(e), an activity will be considered an essential governmental function that is customarily performed by State and local governments if: (1) there are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds, (2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and (3) the activity is not a commercial or industrial activity. The proposed regulations will further provide that examples of activities customarily performed by State and local governments include, but are not limited to, public works projects such as roads, schools, and government buildings.

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

Drafting Information

The principal authors of this advance notice of proposed rulemaking are Aviva M. Roth and Timothy L. Jones, Office of the Chief Counsel (Tax-Exempt and Government Entities), however, other personnel from the IRS and Treasury Department participated in its development.

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

(Filed by the Office of the Federal Register on August 8, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 9, 2006, 71 F.R. 45474)

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

Announcement 2006–60

The Internal Revenue Service has revoked its determination that the organization listed below qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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 September 5, 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.

Aylesi M. Bobo Charitable Foundation
Independence, MO

Fast Track Settlement for SB/SE Taxpayers

Announcement 2006–61

DESCRIPTION OF SB/SE FAST TRACK SETTLEMENT

This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution at the earliest opportunity within the IRS's Small Business/Self Employed organization (SB/SE). The purpose of SB/SE FTS is to enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals (Appeals) to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction. SB/SE and Appeals will jointly administer the SB/SE FTS process. SB/SE FTS will be used to resolve factual and legal issues and may be initiated at any time after an issue has been fully developed, preferably before the issuance of a 30-day letter or equivalent notice.

SB/SE FTS will be available to taxpayers for a test period of up to two years, beginning upon the date of publication of this announcement. Within this period, there will be an initial focused test of six months during which SB/SE FTS will only be available for taxpayers under examination in Chicago, Illinois; Houston, Texas; and St. Paul, Minnesota. By the end of this six-month focused test, SB/SE and Appeals will evaluate the program, consider necessary adjustments and determine whether to continue testing SB/SE FTS for the remaining eighteen months of the test period. If continued, SB/SE FTS will be available to taxpayers nationwide. Upon completion of the two-year test period, SB/SE and Appeals will again evaluate the program, consider necessary adjustments, and determine whether to make the program permanent.

RELIANCE ON AND DIFFERENCES FROM LMSB FAST TRACK SETTLEMENT

The procedures for using FTS for SB/SE taxpayers rely on the provisions of Revenue Procedure 2003–40, 2003–1 C.B. 1044, which implemented a Large and Mid-Size Business Fast Track Settlement Dispute Resolution Program and allows the use of Appeals settlement authority in SB/SE cases. *See* section 3.02 of Rev. Proc. 2003–40.

During the two-year test period, SB/SE FTS extends the provisions of the LMSB Fast Track program to SB/SE cases and provides for direct oversight of the program by SB/SE and Appeals. SB/SE FTS therefore involves procedures almost identical to the LMSB FTS procedures described in Rev. Proc. 2003–40. The key differences between the LMSB and SB/SE FTS procedures are as follows:

- The SB/SE Group Manager or designee fulfills the duties of the LMSB Team manager, as described in Rev. Proc. 2003–40;
- SB/SE Group Managers and Appeals Team Managers select and manage cases eligible for SB/SE FTS; and
- The SB/SE FTS process is designed to be completed within 60 days of acceptance of the SB/SE-Appeals FTS Application.

CASE ELIGIBILITY AND EXCLUSIONS

Subject to the limitations set forth below, SB/SE FTS is generally available for cases under the jurisdiction of the SB/SE Division if:

- Issues are fully developed;
- The taxpayer has stated a position in writing (or filed a small case request for cases in which the total amount for any tax period is less than $25,000, as described in Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree)*; and
- There are a limited number of unagreed issues.

SB/SE FTS is *not* available for:

- Collection Appeals Program, Collection Due Process, Offer-In-Compromise and Trust Fund Recovery cases, except as provided in any guidance issued by the Service;
- Correspondence examination cases worked solely in a Campus/Service Center site;
- Cases in which the taxpayer has failed to respond to Service communications and no documentation has been previously submitted for consideration by Compliance;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues outside SB/SE jurisdiction, except as provided below;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Issues for which the taxpayer has submitted a request for competent authority assistance;
- Issues for which the taxpayer has requested the simultaneous Appeal/Competent Authority procedure described in section 8 of Rev. Proc. 2002–52, 2002–2 C.B. 242, or the corresponding provision of any successor guidance;
- Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2006–2, 2006–1 I.R.B. 89, or any successor guidance;
- "Whipsaw" issues, *i.e.*, issues for which resolution with respect to one

party might result in inconsistent treatment in the absence of the participation of another party; or

- Issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the SB/SE FTS process.

If an issue is determined not to be eligible for the SB/SE FTS program, all issues in the case shall not be eligible for the SB/SE FTS program.

SB/SE FTS may not be the appropriate dispute resolution process for all cases involving SB/SE taxpayers. The SB/SE Group Manager or designee and the taxpayer will evaluate their individual circumstances to determine if this process meets their needs.

SB/SE FTS may also be available for cases under the jurisdiction of the Tax Exempt and Government Entities (TE/GE) Division, depending on the circumstances and operational needs of the case. The use of SB/SE FTS procedures for such cases will require the consent of the taxpayer, the local Appeals Team Manager and the TE/GE Field Manager, or equivalent. For TE/GE cases approved for SB/SE FTS, the appropriate TE/GE Field Manager, or equivalent, will carry out the responsibilities of the SB/SE Group Manager as set forth in this announcement. The application process for TE/GE taxpayers wishing to use SB/SE FTS procedures may be modified by subsequent published guidance.

APPLICATION PROCESS

A taxpayer that is interested in participating in SB/SE FTS, or that has questions about the program and its suitability for the taxpayer's case, may contact the SB/SE Group Manager for the year currently under examination. Either the taxpayer, Examining Agent or the SB/SE Group Manager can initiate the process to take part in the SB/SE FTS program at any time after an issue has been fully developed but preferably before a 30-day or equivalent letter is issued.

To apply for the SB/SE FTS program, the taxpayer and the SB/SE Group Manager should submit a SB/SE-Appeals FTS Application, attached as Exhibit 1, to the local Appeals Team Manager. A Summary of Issues or Examination Re-engineering Lead sheets (the equivalent to a Form 5701, *Notice of Proposed Adjustment*) will be prepared by the SB/SE Compliance team, and a written response from the taxpayer should be included with the SB/SE-Appeals FTS Application to complete the package for the parties to understand opposing views.

If the case is not accepted for inclusion in SB/SE FTS, the SB/SE or Appeals representative will inform the taxpayer of the basis for this decision and discuss other dispute resolution opportunities with the taxpayer, including 30-day letter procedures contained in IRS Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*. The decision not to accept a case into the SB/SE FTS program is not subject to administrative appeal or judicial review.

SETTLEMENT PROCESS

SB/SE FTS employs various alternative dispute resolution techniques to promote case resolution. An Appeals Officer, trained in mediation, will serve as a neutral party (the FTS Appeals Official). The FTS Appeals Official will not perform in a traditional Appeals role, but will use dispute resolution techniques to facilitate settlement between the parties.

During SB/SE FTS, the taxpayer and SB/SE representatives hold a conference with the FTS Appeals Official (the FTS Session). The taxpayer and SB/SE representatives at the FTS Session should include individuals with decision-making authority and the information and expertise necessary to assist the parties and the FTS Appeals Official during the settlement process. The FTS Appeals Official may ask the parties to limit the number of participants at the FTS Session to facilitate the process. A taxpayer is not required to have a representative to participate in SB/SE FTS. If the taxpayer is represented by a person engaged in practice before the Service, however, this individual must have a power of attorney from the taxpayer (Form 2848, *Power of Attorney and Declaration of Representative*) in addition to the FTS Agreement.

The FTS Appeals Official will hold the FTS Session at the date and location agreed to by both parties. Prior to the FTS Session, the FTS Appeals Official will advise the participants of the procedures and establish ground rules. The FTS Appeals Official may modify the rules and procedures during the session to adapt to changes in circumstances. The FTS Session may include conferences attended by all of the parties, separate meetings with each party, or both as determined appropriate in the sole judgment of the FTS Appeals Official.

The FTS Appeals Official will use a FTS Session Report to assist in planning the FTS Session and to report on developments during the FTS Session. The FTS Session Report will include a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS Session and other information useful to the process as determined by the parties and the FTS Appeals Official. The FTS Appeals Official may also prepare and update an Agenda, which guides the communication, sets the order of issue discussion, poses questions to clarify the issues and guides the meetings. During the FTS Session, the FTS Appeals Official will provide decision makers from both parties with copies of the Agenda and the FTS Session Report.

Generally, the FTS Appeals Official will consider only those issues outlined in the FTS Session Report, except by mutual agreement of the parties. If the taxpayer presents information during the FTS Session that the taxpayer had not previously presented during the audit, the FTS Appeals Official will adjust the targeted completion date to give the appropriate Service officials time to evaluate the information/documentation.

During the FTS Session, the FTS Appeals Official may propose settlement terms for any or all issues and may consider settlement terms proposed by either party. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the SB/SE Group Manager rejects it, the SB/SE Territory Manager must review SB/SE's rejection of the settlement proposal and either concur in writing, or accept the settlement proposal on behalf of SB/SE. If the SB/SE Territory Manager concurs with the Group Manager's rejection of the settlement proposal, and an acceptable alternative settlement cannot be reached, the issue will be closed out of the FTS program as unagreed.

If the parties resolve any of the disputed issues at the conclusion of the FTS Session, the parties and the FTS Appeals Official shall sign the FTS Session Report acknowledging acceptance of the terms of settlement for purposes of preparing computations. The signature of the parties on the FTS Session Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case.

The SB/SE FTS process is confidential. IRS employees involved in any way with the SB/SE FTS process are subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including section 6103. By signing the FTS Agreement, attached as Exhibit 1, the taxpayer consents, pursuant to section 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the SB/SE FTS process to those persons named on the Agreement as participants in the process. IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the SB/SE FTS Session, except as provided by statute.

The prohibition against *ex parte* communications between Appeals Officers and other IRS employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the SB/SE FTS process because the Appeals personnel are facilitating an agreement between the taxpayer and SB/SE and are not acting in their traditional Appeals settlement role.

Any recommended settlement by the FTS Appeals Official of an issue in FTS shall be subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance. FTS therefore creates no special authority for settlement by the FTS Appeals Official. For example, if the FTS issue is coordinated in either the Technical Advisor Program or the Appeals Technical Guidance program, the proposed settlement of that issue is subject to established procedures, including submission of the proposed settlement to the Appeals Coordinator for review and concurrence.

If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Except as specifically provided above, both parties retain the right to withdraw throughout the entire SB/SE FTS process. A party wishing to withdraw should provide written notice to the FTS Appeals Official and the other party.

POST-SETTLEMENT PROCEDURE

If the parties reach an agreement on all or some issues through the SB/SE FTS process, the SB/SE representative or FTS Appeals Official, as appropriate, will use established issue or case closing procedures and applicable agreement forms, including preparation of a Form 906 specific matters closing agreement, if appropriate.

If applicable, the Service will report a proposed resolution reached as a result of SB/SE FTS to the Joint Committee on Taxation in accordance with section 6405. The taxpayer acknowledges that the Service may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments on the proposed settlement from the Joint Committee on Taxation. If the taxpayer declines to agree with any changes by the Service upon reconsideration, SB/SE will close the case unagreed and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

GENERAL PROVISIONS

A resolution reached by the parties through the SB/SE FTS process will not bind the parties for taxable years or issues not covered by the SB/SE-Appeals FTS agreement, unless such taxable years or issues are expressly addressed in a formal closing agreement reached as part of the SB/SE FTS process.

For SB/SE FTS cases that are returned for traditional Appeals consideration for any reason, *ex parte* restrictions will not be imposed on intra-Appeals communications. Appeals management will take appropriate measures to ensure these cases are handled impartially.

DELEGATION OF AUTHORITY

This announcement constitutes a delegation by the Commissioner of Internal Revenue of settlement authority to Grade 14, 13 and 12 Appeals Officers who are assigned to be Appeals FTS Officials for SB/SE FTS cases described in this announcement. This delegation of settlement authority includes the responsibility for arriving at the final disposition from the Government's perspective, approving the final settlement in accordance with the delegated authority, and executing the appropriate closing documents. This authority may not be redelegated.

EFFECTIVE DATE

SB/SE FTS is effective beginning September 5, 2006.

COMMENTS

The IRS encourages interested persons to comment on this program, including suggested changes to make the program more useful and effective. Send submissions to:

Internal Revenue Service-Appeals
Attn: Nancy J. Talajkowski
160 Spear Street, Suite 800
San Francisco, CA 94105

FURTHER INFORMATION

For further information regarding this announcement, contact either: Thomas S. Ryan, SB/SE Program Analyst, at (757) 213–3810 (not a toll-free number); or Nancy J. Talajkowski, Appeals Program Analyst, Tax Policy & Procedure (Alternative Dispute Resolution) at (415) 227–5007 (not a toll-free number).

Exhibit 1: Application for SB/SE-Appeals Fast Track Settlement

To: Local Appeals Office ______________________

Date: ______________

Is the case subject to Joint Committee review? ☐ No ☐ Yes

Taxpayer:

Name: ______________________

Address: ______________________

City, State and Zip Code: ______________________

Taxpayer EIN ______________ Tax Years Involved ______________

Corporate Officer: ______________________ Title: ______________

Telephone #: (__) ______________ Fax #: (__) ______________

Compliance:

Revenue Agent/SB/SE Group Manager Name: ______________ Group ______________

Address: ______________________

City, State and Zip Code: ______________________

Telephone Number: (__) ______________ Fax #: (__) ______________

MFT Code ______________ Type of Tax ______________

Name of Representative:

Taxpayer's Representative (if applicable): ______________________

Name of Firm: ______________________

Address: ______________________

City, State and Zip Code: ______________________

Telephone #: (__) ______________ Fax #: (__) ______________

SIGNATURES

The undersigned request Appeals assistance in the SB/SE-Appeals Fast Track Settlement process. The issues for which this assistance is requested are described in the Summary of Issues or Examination Re-Engineering Lead sheets and Taxpayer's written response thereto attached to this agreement. By signing the Application to Fast Track Settlement, the taxpayer consents, pursuant to section 6103(c) of the Internal Revenue Code, to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the FTS process to those persons named on the Agreement as participants in the process. IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the SB/SE Fast Track Settlement session, except as provided by statute, such as in sections 6103 or 7214 (a) (8) of the Code, or 5 U.S.C. § 574. The prohibition against ex parte communications between Appeals Officers and other Service employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in Fast Track Settlement because Appeals personnel, in facilitating an agreement between the taxpayer and SB/SE, are not acting in their traditional Appeals settlement role.

______________________ ______________________

Taxpayer Date SB/SE Group Manager Date

____

Representative Date

Comments and Other Participants (attach additional sheets as necessary)

Name	**Position or Affiliation**	**Phone**

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2006–27 through 2006–36

Announcements:

Notices:

Proposed Regulations:

Proposed Regulations— Continued:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

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

Bulletins 2006–27 through 2006–36

Announcements:

2005-59
Updated and superseded by
Ann. 2006-45, 2006-31 I.R.B. *121*

Notices:

2002-45
Amplified by
Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

2006-20
Supplemented and modified by
Notice 2006-56, 2006-28 I.R.B. *58*

2006-53
Modified by
Notice 2006-71, 2006-34 I.R.B. *316*

Proposed Regulations:

REG-134317-05
Corrected by
Ann. 2006-47, 2006-28 I.R.B. *78*

Revenue Procedures:

2002-9
Modified and amplified by
Notice 2006-67, 2006-33 I.R.B. *248*

2005-41
Superseded by
Rev. Proc. 2006-29, 2006-27 I.R.B. *13*

2005-49
Superseded by
Rev. Proc. 2006-33, 2006-32 I.R.B. *140*

Revenue Rulings:

81-35
Amplified and modified by
Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

81-36
Amplified and modified by
Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

87-10
Amplified and modified by
Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

2002-41
Amplified by
Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

2003-43
Amplified by
Notice 2006-69, 2006-31 I.R.B. *107*

Revenue Rulings— Continued:

2005-24
Amplified by
Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

Treasury Decisions:

9254
Corrected by
Ann. 2006-44, 2006-27 I.R.B. *49*

9258
Corrected by
Ann. 2006-46, 2006-28 I.R.B. *76*

9262
Corrected by
Ann. 2006-56, 2006-35 I.R.B. *342*

9264
Corrected by
Ann. 2006-46, 2006-28 I.R.B. *76*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

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