Internal Revenue bulletin

Bulletin No. 2007-17
April 23, 2007

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

T.D. 9318, page 990.

Final regulations under section 263A of the Code relate to the definition of self-constructed property that is considered produced on a “routine and repetitive” basis in the ordinary course of a taxpayer’s trade or business for purposes of the simplified service cost method and the simplified production method provided by the regulations. For purposes of these methods, property is produced on a routine and repetitive basis only if numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and either the applicable recovery period of the property determined under section 168(c) is not longer than 3 years or the property is a material or supply that will be used and consumed within 3 years of being produced.

T.D. 9320, page 994.

Final regulations under section 985 of the Code provide the translation rates that must be used when translating into dollars certain items and amounts transferred by a qualified business unit (QBU) to its home office or parent corporation for purposes of computing dollar approximate separate transactions method (DASTM) gain or loss.

REG–156779–06, page 1015.

Proposed regulations under section 901 of the Code provide guidance relating to the determination of the amount of taxes paid for purposes of section 901. A public hearing is scheduled for July 30, 2007.

Notice 2007–36, page 1000.

This notice provides guidance with respect to the 50-percent additional first year depreciation deduction provided by section 1400N(d) of the Code for specified Gulf Opportunity Zone extension property and provides additional guidance with respect to the original use requirement. Notice 2006–77 clarified, modified, and amplified.

EMPLOYEE PLANS

Notice 2007–32, page 996.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities. The weighted average interest rate for April 2007 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

Notice 2007–34, page 996.

This notice sets forth guidance regarding the application of section 409A to split-dollar life insurance arrangements. This notice addresses the identification of the types of arrangements subject to section 409A, including the application of the effective date rules under section 409A. This notice also includes guidance on bringing such arrangements into compliance with section 409A, and provides certain related relief under the effective date provisions of the regulations under sections 61 and 7872 addressing split-dollar life insurance arrangements.

EXEMPT ORGANIZATIONS

Announcement 2007–42, page 1037.

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

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 1026.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2007–43, page 1038.

The IRS has revoked its determination that EPASA-USA, Inc., of Ridgewood, NY; Morocco and the Casbah Dance Experience, Inc., of New York, NY; ABG Housing, Inc., of Orlando, FL; The Credit Network, Inc., of Silver Spring, MD; Global Mindlink Foundation, Inc., of Coral Springs, FL; Credit Debt Solutions, Inc., of Chevy Chase, MD; Skopos Charities, Inc., of San Jose, CA; Douglas R. & Patricia B. McKinnon Charitable Supporting Organization of Tomball, TX; The Dreamhouse Charity, Inc., of Wilsonville, OR; Dads Place Ministries, Inc., of Thurmont, MD; Potomac Forum, Ltd., of Potomac, MD; Community Housing and Land Development, Inc., of San Jose, CA; and New Haven Shelter of Rancho Palos Verdes, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

EXCISE TAX

Notice 2007–37, page 1002.

This notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under sections 34, 40A, 6426, and 6427 of the Code.

ADMINISTRATIVE

Rev. Proc. 2007–29, page 1004.

Electronic filing specifications. This procedure contains changes in electronic filing procedures for Form 8851, *Summary of Archer MSAs*. The procedure should be used for filing Forms 8851 for Tax Years 2005, 2006, and any subsequent years. Rev. Proc. 2001–31 superseded.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 34.—Certain Uses of Gasoline and Special Fuels

A notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under sections 34, 40A, 6426, and 6427. See Notice 2007-37, page 1002.

Section 40A.—Biodiesel and Renewable Diesel Used as Fuel

A notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under sections 34, 40A, 6426, and 6427. See Notice 2007-37, page 1002.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A–1: Uniform capitalization of costs.

T.D. 9318

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the capitalization of costs under the simplified service cost method and the simplified production method provided by the Income Tax Regulations. For taxpayers that use the simplified service cost method or the simplified production method, the regulations clarify when self-constructed assets are produced on a routine and repetitive basis in the ordinary course of their businesses.

DATES: *Effective Date:* These regulations are effective on March 29, 2007.

Applicability Date: For dates of applicability, see §§1.263A–1(l) and 1.263A–2(f).

FOR FURTHER INFORMATION CONTACT: Steven J. Gee or Donna M. Crawford, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On August 2, 2005, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–121584–05, 2005–2 C.B. 523 [70 FR 44535]) by cross reference to temporary regulations (T.D. 9217, 2005–2 C.B. 498 [70 FR 44467]) (collectively, the 2005 regulations) under section 263A of the Internal Revenue Code (Code). These regulations provide that self-constructed tangible personal property is considered produced on a routine and repetitive basis in the ordinary course of a taxpayer's trade or business for purposes of the simplified service cost method or the simplified production method when units of tangible personal property are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of such assets under section 168(c) is not longer than 3 years.

The IRS and Treasury Department issued Rev. Proc. 2006–11, 2006–3 I.R.B. 309, see §601.601(d)(2)(ii)(*b*), which provides procedures by which a taxpayer changing its method of accounting to comply with §1.263A–1T or §1.263A–2T (issued under T.D. 9217) for its first taxable year ending on or after August 2, 2005, may request the consent of the Commissioner utilizing either the administrative procedures for requesting the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27, 1997–1 C.B. 680, as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*)), or the administrative procedures for obtaining the automatic consent of the Commissioner (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*)). These final regulations have been revised to be consistent with the procedures provided in Rev. Proc. 2006–11.

One written comment was received in response to the 2005 regulations. No requests to speak at a public hearing were received, and no hearing was held. After consideration of the comment, the proposed regulations under section 263A are adopted by this Treasury decision.

Summary of Comments

A commentator expressed the belief that the categories of property, as described in Notice 88–86, 1988–2 C.B. 401, see §601.601(d)(2)(ii)(*b*), eligible for the simplified service cost method and the simplified production method represent a reasonable balance between technical accuracy and simplification. The commentator opposed the requirements in the 2005 regulations that, to qualify for the category of property "produced on a routine and repetitive basis," the property must be mass-produced using standardized designs and assembly line techniques, and have an applicable recovery period of not longer than 3 years. The commentator argued that, with respect to electric utility companies, there is no sound tax policy to support limiting the application of the methods based on the manner in which self-constructed assets are produced or the number of years over which the self-constructed assets are depreciated. The commentator further stated that the preamble to the 2005 regulations did not explain why there may be a distortion of income from the use of the simplified methods, and why such a distortion justified distinctions based on the method of manufacturing and the recovery lives of property.

The simplified methods are less accurate and less precise than a facts and circumstances method and, thus, may capitalize more or less costs than a facts and circumstances method. Therefore, the simplified methods may cause distortions when compared to a more accurate facts and circumstances method. The amount of distortion may not be very large for assets that are mass produced, because the underlying assumption of the simplified methods that costs are incurred ratably across all the assets may be appropriate. Additionally, any distortion caused by the lack of precision quickly reverses if the assets to which the methods may be applied typically have a high turnover rate, that is, a short recovery period. Inventory production frequently meets one or both of these two criteria. The IRS and Treasury Department provided the simplified methods for inventory because the reduction in the burdens of complying with the uniform capitalization rules generally outweighed the possible distortion within the simplified methods.

Under temporary regulations published in the **Federal Register** on March 30, 1987 (T.D. 8131, 1987–1 C.B. 98 [52 FR 10052]) (1987 regulations), the simplified methods were available only to inventory and non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The preamble to the 1987 regulations stated that the methods were "designed to alleviate the administrative burdens of complying with [section 263A] where mass production of assets occurs on a repetitive and routine basis, with a typically high 'turnover' rate for the produced assets." The preamble to the 1987 regulations stated that the simplified methods could not be utilized with respect to self-constructed assets because the simplified methods were not appropriate for use "in accounting for casual or occasional production of property."

In response to comments suggesting that the categories of property eligible for the simplified service cost method and the simplified production method be expanded to include other categories of property with similar characteristics, Notice 88–86 expanded the availability of the methods, in relevant part, to "property constructed by a taxpayer for use in its trade or business if, in the ordinary course of its production activities, the taxpayer produces such property on a routine and repetitive basis (that is, the taxpayer produces numerous items of such property within a taxable year)." The final regulations published in the **Federal Register** on August 9, 1993 (T.D. 8482, 1993–2 C.B. 77 [58 FR 42198]) included the new category from Notice 88–86. The addition of certain self-constructed assets was merely intended to add another category of property with characteristics similar to inventory (mass produced or high turnover) and was not an indication that the application of the simplified methods to the production, whether or not casual or occasional, of all self-produced assets was considered appropriate.

The IRS and Treasury Department continue to believe that to prevent distortion when applied to self-constructed property, the simplified service cost method and simplified production method should be limited to property that is mass produced and has a typically high "turnover" rate. Accordingly, the final regulations do not incorporate the commentator's suggestions. The regulations clarify, however, that property with a typically high "turnover" rate includes materials and supplies that are used and consumed within three years of being produced.

The IRS and Treasury Department recognize that the application of the uniform capitalization requirements to self-constructed property can be burdensome, particularly to small taxpayers. The IRS and Treasury Department will consider proposing simplified methods for self-constructed property for small taxpayers in future guidance under section 263A.

Additionally, a commentator indicated that for taxpayers that have both property that is eligible for the simplified methods and property that is ineligible for the simplified methods, the regulations do not provide specific procedures to determine how to allocate service costs and other indirect costs between the eligible property and the ineligible property. The IRS and Treasury Department agree that service costs and other indirect costs must be allocated to ineligible property as well as eligible property. However, prescribing specific procedures and methods for these allocations is beyond the scope of these regulations. The IRS and Treasury Department may address this issue in future guidance.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.263A–1 is amended by revising paragraphs (h)(2)(i)(D), (k) and (l) to read as follows:

§1.263A–1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis*—(*1*) *In general*. Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in §1.263A–10(c)) are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and either the applicable recovery period of the property determined under section 168(c) is not longer than 3 years or the property is a material or supply that will be used and consumed within 3 years of being produced. For purposes of this paragraph (h)(2)(i)(D), the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of §1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph (h)(2)(i)(D).

(*2*) *Examples*. The following examples illustrate this paragraph (h)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year, Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

* * * * *

(k) *Change in method of accounting*—(1) *In general*. A change in a taxpayer's treatment of mixed service costs to comply with paragraph (h)(2)(i)(D) of this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations under those sections apply. See §1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, issued under §1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, "*Application for Change in Accounting Method*," the designated number for the automatic accounting method change authorized by this paragraph (k) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. Alternatively, notwithstanding the provisions of any administrative procedures that preclude a taxpayer from requesting the advance consent of the Commissioner to change a method of accounting that is required to be made pursuant to a published automatic change procedure, for its first taxable year ending on or after August 2, 2005, a taxpayer may request the advance consent of the Commissioner to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (5) of this section, for obtaining the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27, 1997–1 C.B. 680, as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*) of this chapter). For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (k)(3) and (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method.

(2) *Scope limitations*. Any limitations on obtaining the automatic consent or advance consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection*. A taxpayer that changes its method of accounting in accordance with this paragraph (k) to comply with paragraph (h)(2)(i)(D) of this section does not receive audit protection if its method of accounting for mixed service costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment*. A change in method of accounting to conform to paragraph (h)(2)(i)(D) of this section requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to paragraph (h)(2)(i)(D) of this section.

(5) *Time for requesting change*. Notwithstanding the provisions of §1.446–1(e)(3)(i) and any contrary administrative procedure, a taxpayer may submit a request for advance consent to change its method of accounting to comply with paragraph (h)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005, on or before the date that is 30 days after the end of the taxable year for which the change is requested.

(l) *Effective date*. Paragraphs (h)(2)(i)(D), (k), and (l) of this section apply for taxable years ending on or after August 2, 2005.

§1.263A–1T [Removed]

Par. 3. Section 1.263A–1T is removed.

Par. 4. Section 1.263A–2 is amended by revising paragraphs (b)(2)(i)(D), (e) and (f) to read as follows:

§1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis*—(*1*) *In general*. Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in §1.263A–10(c)) are mass-produced, that is, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and either the applicable recovery period of the property determined under section 168(c) is not longer than 3 years or the property is a material or supply that will be used and consumed within 3 years of being produced. For purposes of this paragraph (b)(2)(i)(D), the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of §1.46–3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph (b)(2)(i)(D).

(*2*) *Examples*. The following examples illustrate this paragraph (b)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

* * * * *

(e) *Change in method of accounting*—(1) *In general*. A change in a taxpayer's treatment of additional section 263A costs to comply with paragraph (b)(2)(i)(D) of this section is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations under those sections apply. See §1.263A–7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, issued under §1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*) of this chapter). For purposes of Form 3115, "*Application for Change in Accounting Method*," the designated number for the automatic accounting method change authorized by this paragraph (e) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. Alternatively, notwithstanding the provisions of any administrative procedures that preclude a taxpayer from requesting the advance consent of the Commissioner to change a method of accounting that is required to be made pursuant to a published automatic change procedure, for its first taxable year ending on or after August 2, 2005, a taxpayer may request the advance consent of the Commissioner to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (5) of this section, for obtaining the advance consent of the Commissioner (for further guidance, for example, see Rev. Proc. 97–27, 1997–1 C.B. 680, as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, and §601.601(d)(2)(ii)(*b*) of this chapter). For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (e)(3) and (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method.

(2) *Scope limitations*. Any limitations on obtaining the automatic consent or advance consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with paragraph (b)(2)(i)(D) of this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection*. A taxpayer that changes its method of accounting in accordance with this paragraph (e) to comply with paragraph (b)(2)(i)(D) of this section does not receive audit protection if its method of accounting for additional section 263A costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment*. A change in method of accounting to conform to paragraph (b)(2)(i)(D) of this section requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to paragraph (b)(2)(i)(D) of this section.

(5) *Time for requesting change*. Notwithstanding the provisions of §1.446–1(e)(3)(i) and any contrary administrative procedure, a taxpayer may submit a request for advance consent to change its method of accounting to comply with paragraph (b)(2)(i)D) of this section for its first taxable year ending on or after August 2, 2005, on or before the date that is 30 days after the end of the taxable year for which the change is requested.

(f) *Effective date*. Paragraphs (b)(2)(i)(D), (e), and (f) of this section apply for taxable years ending on or after August 2, 2005.

§1.263A–2T **[Removed]**

Par. 5. Section 1.263A–2T is removed.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved March 20, 2007.

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

(Filed by the Office of the Federal Register on March 28, 2007, 8:45 a.m., and published in the issue of the Federal Register for March 29, 2007, 72 F.R. 14675)

Section 985.—Functional Currency

26 CFR 1.985–3: United States dollar approximate separate transactions method.

T.D. 9320

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

United States Dollar Approximate Separate Transactions Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations which provide the translation rates that must be used when translating into dollars certain items and amounts transferred by a qualified business unit (QBU) to its home office or parent corporation for purposes of computing dollar approximate separate transactions method (DASTM) gain or loss. This regulation is necessary to provide guidance under section 985 regarding the proper translation rates that must be used under the DASTM method. Taxpayers affected by these regulations are taxpayers with QBUs required to use the DASTM method of accounting described in §1.985–3.

DATES: *Effective Date:* This regulation is effective March 30, 2007.

Applicability Date: This regulation is applicable to any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under §1.985–3(d)(3).

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy, at (202) 622–3870.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2006, a notice of proposed rulemaking (REG–118897–06, 2006–31 I.R.B. 120), United States Dollar Approximate Separate Transactions Method, was published in the **Federal Register** (71 FR 39604). The notice of proposed rulemaking proposed to amend §1.985–3(d)(3). No requests for a public hearing were received, and no public hearing was held. The IRS received no comments in response to the notice of proposed rulemaking. The proposed regulation is adopted without change by this Treasury decision.

Explanation of Provisions

For taxable years beginning after August 24, 1994, a U.S. taxpayer's QBU that would otherwise be required to use a hyperinflationary currency as its functional currency generally must use the dollar as its functional currency and must compute income or loss under the DASTM method of accounting described in §1.985–3. See §1.985–1(b)(2)(ii). Under the DASTM method of accounting, a QBU's income or loss for a taxable year is computed in U.S. dollars and adjusted to account for its DASTM gain or loss. See §1.985–3(b). A QBU's DASTM gain or loss for a taxable year is determined under §1.985–3(d) by first computing the QBU's change in net worth from the prior year. In computing the QBU's change in net worth, items whose dollar value fluctuates with changes in exchange rates are translated using the year-end exchange rate while items whose dollar value does not change with exchange rate fluctuations are translated using the exchange rate for the translation period in which the cost of the item was incurred. Specified adjustments are made to the QBU's change in net worth. Under §1.985–3(d)(3), one of the adjustments requires adding back to the change in net worth transactions that decrease the QBU's net worth without affecting the QBU's income or loss including dividend distributions, certain transfers, and returns of capital from the QBU to its home office or parent corporation. This final regulation provides the translation rate to be used in translating these items into dollars for purposes of computing DASTM gain or loss.

Under §1.985–3(d)(3), the applicable translation rate to be used generally depends upon whether the dollar value of the item transferred changes with fluctuations in exchange rates. Accordingly, the regulation provides that if the item giving rise to the adjustment is an asset which would be translated under §1.985–3(d)(5) at the exchange rate for the last translation period of the taxable year if it were on the QBU's year-end balance sheet, the item will be translated at the exchange rate on the date the item is transferred. However, if the item giving rise to the adjustment is an asset which would be translated under §1.985–3(d)(5) at the exchange rate for the translation period in which the cost of the item was incurred if it were on the QBU's year-end balance sheet, the item will be translated at the same historical rate.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to this regulation, and because this regulation does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendment 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 1.985–3 is amended by revising paragraph (d)(3) to read as follows:

§1.985–3 United States dollar approximate separate transactions method.

* * * * *

(d) * * *

(3) *Positive adjustments*—(i) *In general*. The items described in this paragraph (d)(3) are dividend distributions for the taxable year and any items that decrease net worth for the taxable year but that generally do not affect income or loss or earnings and profits (or a deficit in earnings and profits). Such items include a transfer to the home office of a QBU branch and a return of capital.

(ii) *Translation*. Except as provided by ruling or administrative pronouncement, items described in paragraph (d)(3)(i) of this section shall be translated into dollars as follows:

(A) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the last translation period of the taxable year if it were shown on the QBU's year-end balance sheet, such item shall be translated at the exchange rate on the date the item is transferred.

(B) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the translation period in which the cost of the item was incurred if it were shown on the QBU's year-end balance sheet, such item shall be translated at the same historical rate.

(iii) *Effective date*. Paragraph (d)(3)(ii) of this section is applicable for any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under this paragraph (d)(3).

* * * * *

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved March 20, 2007.

Eric Solomon,
Assistant Secretary for Tax Policy.

(Filed by the Office of the Federal Register on March 29, 2007, 8:45 a.m., and published in the issue of the Federal Register for March 30, 2007, 72 F.R. 15043)

Section 6426.—Credit for Alcohol Fuel, Biodiesel and Alternative Fuel Mixtures

A notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under sections 34, 40A, 6426, and 6427. See Notice 2007-37, page 1002.

Section 6427.—Fuels Not Used for Taxable Purposes

A notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under sections 34, 40A, 6426, and 6427. See Notice 2007-37, page 1002.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rates Update

Notice 2007–32

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

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–36 I.R.B. 366.

The composite corporate bond rate for March 2007 is 5.84 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in: Month	Year	Corporate Bond Weighted Average	90% to 100% Permissible Range
April	2007	5.80	5.22 to 5.80

30-YEAR TREASURY SECURITIES INTEREST RATE

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

The rate of interest on 30-year Treasury securities for March 2007 is 4.72 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2037.

Drafting Information

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

Guidance Regarding the Application of Section 409A to Split-Dollar Life Insurance Arrangements

Notice 2007–34

I. PURPOSE

This notice provides guidance regarding the application of section 409A of the Internal Revenue Code (Code) to split-dollar life insurance arrangements. This notice also provides that certain modifications of split-dollar life insurance arrangements necessary to comply with, or avoid application of, section 409A will not be treated as a material modification for purposes of § 1.61–22(j) of the Income Tax Regulations.

II. BACKGROUND

A. Section 409A

Section 409A was added to the Code by section 885 of the American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA). Section 409A(a) generally provides that unless certain requirements are met, amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a) also provides rules under which deferrals of compensation will not result in such immediate and additional tax liability, including rules about the timing of initial elections to defer compensation, payments of deferred compensation, and changes to the time or form of a scheduled payment of previously deferred amounts.

Section 885(d) of the AJCA and § 1.409A–6 provide that section 409A of the Code generally applies to amounts deferred after December 31, 2004. Section 885(d) of the AJCA and § 1.409A–6 further provide that section 409A applies to earnings on deferred compensation only to the extent that section 409A applies to the deferred compensation. Section 885(d) of the AJCA and § 1.409A–6 also provide, however, that amounts deferred in taxable years beginning before January 1, 2005 are treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, except as permitted under transition guidance.

Notice 2005–1, 2005–1 C.B. 274, provides certain transition relief with respect to the application of section 409A. This relief was modified and partially extended in the preamble to the proposed regulations regarding the application of section 409A to nonqualified deferred compensation plans (REG–158080–04, 2005–2 C.B. 786 [70 Fed. Reg. 57930] (Oct. 4, 2005)). This relief was again modified and partially extended in Notice 2006–79, 2006–43 I.R.B. 763.

Because certain types of split-dollar life insurance arrangements provide for deferred compensation as defined under § 1.409A–1(b), the requirements of section 409A apply to such arrangements. Split-dollar life insurance arrangements that provide only death benefits (as defined in § 1.409A–1(a)(5)) to or for the benefit of the service provider are excluded from coverage under section 409A under the exception for death benefit plans contained in § 1.409A–1(a)(5). Similarly, arrangements that provide a legally binding right to amounts that are included in income in accordance with the exception for short-term deferrals under § 1.409A–1(b)(4) also do not provide for deferred compensation subject to section 409A to the extent so included.

B. Section 1.61–22 of the Income Tax Regulations

Section 1.61–22 provides rules for the taxation of a split-dollar life insurance arrangement. Section 1.61–22(j)(1)(i) provides that the regulations apply to any split-dollar life insurance arrangement entered into after September 17, 2003. Section 1.61–22(j)(2)(i) provides that, for purposes of the general effective date provision, if an arrangement entered into on or before September 17, 2003 is materially modified after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

Section 1.61–22(j)(2)(ii) provides a non-exclusive list of changes that are not material modifications for this purpose. Section 1.61–22(j)(2)(iii) provides that the Commissioner, in revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, may provide additional guidance with respect to other modifications that are not material for this purpose. This notice is intended to provide such additional guidance with respect to certain modifications related to split-dollar life insurance arrangements covered by section 409A.

Commentators expressed concerns about the impact of changes to a split-dollar life insurance arrangement to comply with section 409A, where the split-dollar life insurance arrangement was entered into on or before September 17, 2003 and is not otherwise subject to the regulations set forth in § 1.61–22. Commentators suggested that modifications necessary to comply with section 409A may cause the split-dollar life insurance arrangement to be treated as materially modified for purposes of § 1.61–22(j)(2). Comments were requested as to the scope of changes that would be necessary to comply with, or avoid application of, section 409A, and under what conditions those changes should not be treated as material modifications for purposes of § 1.61–22(j)(2). The Treasury Department and the IRS have considered all of the comments submitted in formulating this notice providing guidance under which certain modifications will not be treated as material modifications for purposes of § 1.61–22(j).

C. IRS Notice 2002–8

Notice 2002–8, 2002–1 C.B. 398, provides guidance regarding split-dollar life insurance arrangements entered into before the date of publication of final regulations (*i.e.*, before September 18, 2003). Specifically, Notice 2002–8, Part IV.2 provides that, for split-dollar life insurance arrangements entered into before September 18, 2003, in cases where the value of current life insurance protection is treated as an economic benefit provided by a sponsor to a benefited person under a split-dollar life insurance arrangement, the IRS will not treat the arrangement as having been terminated (and thus will not assert that there has been a transfer of property to the benefited person by reason of termination of the arrangement) for so long as the parties to the arrangement continue to treat and report the value of the life insurance protection as an economic benefit provided to the benefited person. This treatment will be accepted without regard to the level of the remaining economic interest that the sponsor has in the life insurance contract.

Notice 2002–8, Part IV.3 also provides that, for split-dollar life insurance arrangements entered into before September 18, 2003, the parties to the arrangement may treat premium or other payments by the sponsor as loans. In such cases, the IRS will not challenge reasonable efforts to comply with the requirements of sections 1271–1275 and section 7872 of the Code. To qualify for this treatment, all payments made by the sponsor from the inception of the arrangement (reduced by any repayments to the sponsor) before the first taxable year in which such payments are treated as loans for Federal tax purposes must be treated as loans entered into at the beginning of the first year in which such payments are treated as loans.

III. APPLICATION OF SECTION 409A TO SPLIT-DOLLAR LIFE INSURANCE ARRANGEMENTS

A. Section 409A Grandfathered Benefits

1. In General

Section 409A is not effective with respect to amounts deferred in taxable years beginning before January 1, 2005, unless the plan under which the amount was deferred is materially modified after October 3, 2004 (section 409A grandfathered benefits). For purposes of determining whether section 409A is applicable with respect to an amount, the amount is considered deferred before January 1, 2005 and therefore grandfathered from application of section 409A if, before January 1, 2005, the service provider had a legally binding right to be paid the amount, and the right to the amount was earned and vested. See § 1.409A–6(b).

Section 409A is effective with respect to earnings on amounts deferred only to the extent that section 409A is effective with respect to the amounts deferred. Accordingly, section 409A is not effective with respect to earnings on section 409A grandfathered benefits. See § 1.409A–6.

2. Determination of Section 409A Grandfathered and Non-Grandfathered Benefits under a Split-Dollar Life Insurance Arrangement

For purposes of applying § 1.409A–6, earnings on section 409A grandfathered benefits under a split-dollar life insurance arrangement include an increase in the policy cash value, or an increase in any portion of the policy cash value, that is attributable to the section 409A grandfathered benefits. For this purpose, earnings on section 409A grandfathered benefits do not include any increase in the policy cash value attributable to continued services performed, compensation earned, or premium payments or other contributions made on or after January 1, 2005.

Where benefits under a split-dollar life insurance arrangement have a component that is a section 409A grandfathered benefit and a component that is a section 409A non-grandfathered benefit, the calculation of the section 409A grandfathered component of the benefit may be made under any reasonable method that allocates increases in policy cash value attributable to the section 409A grandfathered benefit. For this purpose, a method will not be treated as reasonable if it allocates a disproportionate amount of policy costs and expenses to the section 409A non-grandfathered component.

For purposes of this section III.A.2, the use of the proportional allocation method described in this paragraph will be treated as a reasonable method. The proportional allocation method defines the section 409A grandfathered benefit (including grandfathered earnings) as of any valuation date as equal to the greater of:

1. the portion of the policy cash value at December 31, 2004 that was earned and vested (as defined in § 1.409A–6(b)) reduced by any amount securing an amount owed to the service recipient; and

2. an amount equal to the policy cash value on the valuation date multiplied by a fraction, the numerator of which is the sum of the grandfathered premiums actually paid on the policy and the denominator of which is the sum of all premiums actually paid on the policy by the valuation date.

For purposes of this paragraph, grandfathered premiums include both premiums actually paid on or before December 31, 2004 that were earned and vested (as defined in § 1.409A–6(b)) as of such date and premiums paid after such date pursuant to a legally binding right that was earned and vested (as defined in § 1.409A–6(b)) as of such date.

B. Arrangements Subject to § 1.61–22

This section III.B addresses a split-dollar life insurance arrangement, or a portion of a split-dollar life insurance arrangement, that is not grandfathered under § 1.409A–6, but is subject to the rules under § 1.61–22 (but not § 1.7872–15) (including an arrangement or portion thereof that defers compensation in taxable years beginning before January 1, 2005, if the arrangement is materially modified (within the meaning of § 1.409A–6(d)) after October 3, 2004). Except where such an arrangement provides for only a short-term deferral excluded from coverage under § 1.409A–1(b)(4), a split-dollar life insurance arrangement the taxation of which is governed by the rules of § 1.61–22(d) – (g) generally provides for deferred compensation if, under the terms of the arrangement and the relevant facts and circumstances, the service provider has a legally binding right during a taxable year of the service provider to compensation that, pursuant to the terms of the arrangement, is or may be includible in the income of the service provider in a later taxable year of the service provider.

A split-dollar life insurance arrangement does not constitute a nonqualified deferred compensation plan for purposes of section 409A to the extent the arrangement constitutes a death benefit plan. See § 1.409A–1(a)(5). For purposes of this section III.B, the right to compensation described as the cost of current life insurance protection in § 1.61–22(d)(2)(i) and (3) is treated as provided under a death benefit plan under § 1.409A–1(a)(5) and thus is excluded from the requirements of section 409A, even if additional economic benefits are available under the arrangement that are subject to the application of section 409A.

Accordingly, a split-dollar life insurance arrangement covered by this section III.B provides for deferred compensation for purposes of section 409A if, under the terms of the arrangement and the relevant facts and circumstances, the service provider has a legally binding right during a taxable year of the service provider to economic benefits described in § 1.61–22(d)(2)(ii) (policy cash value to which the service provider has current access within the meaning of § 1.61–22(d)(4)(ii)) or § 1.61–22(d)(2)(iii) (any other economic benefits provided to the service provider) that, pursuant to the terms of the arrangement, are payable to (or on behalf of) the service provider in a later taxable year of the service provider, and such legally binding right does not qualify as a short-term deferral for purposes of § 1.409A–1(b)(4). For purposes of the application of section 409A, the excess of the policy cash value over the aggregate premium payments is treated as earnings. See § 1.409A–3(e) for the treatment of earnings for purposes of satisfying the requirements of section 409A.

C. Arrangements Subject to § 1.7872–15.

This section III.C addresses any split-dollar life insurance arrangement, or portion of a split-dollar life insurance arrangement, that is not grandfathered under § 1.409A–6, but is subject to § 1.7872–15 (and not § 1.61–22) (including an arrangement or portion thereof that defers compensation in taxable years beginning before January 1, 2005, if the arrangement is materially modified (within the meaning of § 1.409A–6(d)) after October 3, 2004).

Split-dollar life insurance arrangements pursuant to which payments are treated as split-dollar loans under § 1.7872–15 generally will not give rise to deferrals of compensation within the meaning of section 409A. However, in certain situations, such an arrangement may give rise to deferrals of compensation for purposes of section 409A, for example, if amounts on a split-dollar loan are waived, cancelled, or forgiven.

D. Arrangements Grandfathered under § 1.61–22(j)

1. In General

This section III.D addresses a split-dollar life insurance arrangement, or a portion of a split-dollar life insurance arrangement, that is not grandfathered under § 1.409A–6, but is grandfathered under § 1.61–22 (and thus is not covered by § 1.61–22 or § 1.7872–15 unless materially modified).

A split-dollar life insurance arrangement addressed by this section III.D provides for deferred compensation for purposes of section 409A if, under the terms of the arrangement and the relevant facts and circumstances, the service provider has a legally binding right during a taxable year to compensation that pursuant to the terms of the arrangement is payable to (or on behalf of) the service provider in a later year (for example, upon termination of the split-dollar arrangement), and such legally binding right does not qualify as a short-term deferral for purposes of § 1.409A–1(b)(4), and is not treated as provided under a death benefit plan for purposes of § 1.409A–1(a)(5). Notice 2002–8 provides that, in cases where the value of current life insurance protection is treated as an economic benefit provided by a sponsor to a benefited person under a split-dollar life insurance arrangement, the IRS will not treat the arrangement as having been terminated for so long as the parties to the arrangement continue to treat and report the value of the life insurance protection as an economic benefit provided to the benefited person. In such cases, provided that all other requirements of Notice 2002–8 are satisfied, the IRS will not assert that there has been a transfer of property to the benefited person by reason of termination of the arrangement for purposes of section 409A. In addition, in such cases, the IRS will not treat the right to the economic benefit of current life insurance protection (within the meaning of Notice 2002–8) as deferred compensation for purposes of section 409A.

For split-dollar life insurance arrangements entered into before September 18, 2003, the parties to the arrangement may be eligible to treat premium or other payments by the sponsor as loans under either Part IV.3 or Part IV.4 of Notice 2002–8. In such a situation, the arrangement generally will not give rise to deferrals of compensation within the meaning of section 409A. However, in certain situations, the arrangement may give rise to deferrals of compensation for purposes of section 409A, for example, if all or a portion of the payments on the loans are waived, cancelled, or forgiven.

2. Additional Transition Relief under § 1.61–22(j)

For purposes of § 1.61–22(j), a modification of a split-dollar life insurance arrangement necessary to bring such arrangement into compliance with section 409A, or to avoid application of section 409A, will not be treated as a material modification of such arrangement. For this purpose, a modification of a split-dollar life insurance arrangement is considered necessary to bring such arrangement into compliance with section 409A only if each of the following requirements is met:

1. The service recipient or service provider participating in the split-dollar life insurance arrangement has made a determination, based upon a reasonable application of section 409A, the regulations, and other guidance, that section 409A is applicable to the arrangement, and that the arrangement does not comply with the requirements of section 409A;

2. The service recipient or service provider participating in the split-dollar life insurance arrangement has made a determination, based upon a reasonable application of section 409A, the regulations, and other guidance, that the modification causes the arrangement to comply with section 409A or results in section 409A no longer being applicable to the arrangement, or that the modification is a necessary part of a number of actions that together cause the arrangement to come into compliance with section 409A or result in section 409A no longer being applicable to the arrangement;

3. The modification to the arrangement consists solely of changes to the applicable definitions (such as, the definition of a separation from service or a disability) or changes to the payment timing requirements, including election provisions related to the time and form of payment, or changes to the conditions under which all or part of the benefit under the arrangement will be forfeited (such as, an acceleration of a vesting requirement), reasonably intended to conform the arrangement to the requirements of, or to qualify for an exclusion from, section 409A;

4. The modification establishes a time and form of payment, or establishes potential times and forms of payment that are consistent with times and forms of payment under which the benefits could have been paid under the terms of the arrangement before the modification (including through the exercise of service recipient or service provider discretion in accordance with the terms of the arrangement before modification); and

5. The modification does not materially enhance the value of the benefits to the service provider under the arrangement.

IV. CONTINUED APPLICATION OF SECTION 409A

This notice does not affect the application of section 409A, including the application of the treatment of certain plans that are materially modified after October 3, 2004 as subject to section 409A. In addition, this notice does not affect the application of any transition relief under section 409A. Final regulations under section 409A were released on April 10, 2007 (T.D. 9321, 72 Fed. Reg. 19234 (April 17, 2007)). The final regulations generally are applicable for taxable years beginning on or after January 1, 2008. However, taxpayers may rely on the final regulations for purposes of applying this notice to prior periods.

V. DRAFTING INFORMATION

The principal author of this notice is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding the application of section 409A, contact Stephen Tackney at (202) 927–9639 (not a toll-free call).

GO Zone Bonus Depreciation Additional Guidance

Notice 2007–36

SECTION 1. PURPOSE

This notice provides guidance with respect to the 50-percent additional first year depreciation deduction provided by § 1400N(d) of the Internal Revenue Code (GO Zone additional first year depreciation deduction) for specified Gulf Opportunity Zone extension property (GO Zone extension property). This notice also provides additional guidance with respect to the original use requirement described in § 1400N(d)(2)(A)(iii) for qualified Gulf Opportunity Zone property (GO Zone property), including GO Zone extension property.

SECTION 2. BACKGROUND

.01 Section 1400N(d) generally allows a 50-percent additional first year depreciation deduction for GO Zone property. The GO Zone additional first year depreciation deduction is allowable in the taxable year in which the GO Zone property is placed in service by the taxpayer.

.02 GO Zone property is depreciable property that meets all of the requirements provided in § 1400N(d)(2) and in section 2.02 of Notice 2006–77, 2006–40 I.R.B. 590. One of these requirements is that the original use of the property must commence with the taxpayer in the GO Zone on or after August 28, 2005. Another requirement is that the property must be placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of qualified nonresidential real property and residential rental property). Depreciable property described in § 1400N(d)(2)(B) and in section 2.03 of Notice 2006–77 is not eligible for the GO Zone additional first year depreciation deduction.

.03 Section 1400N(d)(6), added by section 120 of the Tax Relief and Health Care Act of 2006 (TRHCA), Pub. L. No. 109–432, 120 Stat. 2922, extends the placed-in-service date requirement for GO Zone extension property. Section 1400N(d)(6)(A) provides that in the case of any GO Zone extension property, § 1400N(d)(2)(A) is applied without regard to § 1400N(d)(2)(A)(v), which is the placed-in-service date requirement described in section 2.02 of this notice. Section 1400N(d)(6)(B) provides that Go Zone extension property is property substantially all of the use of which is in one or more specified portions of the GO Zone (as described in section 3 of this notice) and that is either (I) nonresidential real property or residential rental property that is placed in service by the taxpayer on or before December 31, 2010, or (II) in the case of a taxpayer who places a building described in (I) in service on or before December 31, 2010, property described in § 168(k)(2)(A)(i) if substantially all of the use of such property is in such building and such property is placed in service by the taxpayer not later than 90 days after such building is placed in service. In the case of any GO Zone extension property that is nonresidential real property or residential rental property, § 1400N(d)(6)(D) provides that the GO Zone additional first year depreciation deduction is applicable only to the extent of the adjusted basis of such property attributable to manufacture, construction, or production before January 1, 2010. For further guidance, see section 4 of this notice.

.04 The counties and parishes in Alabama, Louisiana, and Mississippi that comprise the GO Zone are listed on page 2 of IRS Publication 4492, *Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma*, under Gulf Opportunity (GO) Zone (Core Disaster Area). In defining GO Zone extension property, § 1400N(d)(6)(C) provides that the term "specified portions of the GO Zone" means those portions of the GO Zone that are in any county or parish that is identified by the Secretary as being a county or parish in which hurricanes occurring during 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish that were occupied (determined according to the 2000 Census). The Joint Committee on Taxation's explanation of TRHCA references the data compiled, and published on February 12, 2006, in Current Housing Unit Damage Estimates Hurricanes Katrina, Rita, and Wilma, which is available at *www.dhs.gov/xlibrary/assets/GulfCoast_HousingDamageEstimates_021206.pdf* in identifying the counties and parishes that qualify as specified portions of the GO Zone. *See* Staff of Joint Committee of Taxation, Technical Explanation of H.R. 6408, the "Tax Relief and Health Care Act of 2006," as Introduced in the House on December 7, 2006, at 40, n.52 (December 7, 2006). For further guidance, see section 3 of this notice.

.05 With respect to the original use requirement described in section 2.02 of this notice, section 2.02(3) of Notice 2006–77 provides that rules similar to the original use rules in § 1.168(k)–1(b)(3) of the Income Tax Regulations apply. In addition, used property will satisfy the original use requirement so long as the property has not been previously used within the GO Zone. The Treasury Department and the Internal Revenue Service have learned that taxpayers are uncertain how to apply the original use requirement to transactions involving reconditioned or rebuilt property in the GO Zone. This notice clarifies the application of the original use requirement in § 1400N(d)(2)(A)(iii) for GO Zone property, including GO Zone extension property.

SECTION 3. SPECIFIED PORTIONS OF THE GO ZONE

Solely for purposes of § 1400N(d)(6), the portions of the GO Zone that are the specified portions of the GO Zone are:

.01 Alabama: No counties.

.02 Louisiana: The parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany, and Washington.

.03 Mississippi: The counties of Hancock, Harrison, Jackson, Pearl River, and Stone.

SECTION 4. GO ZONE EXTENSION PROPERTY

.01 *Definition*. GO Zone extension property is depreciable property that meets all of the following requirements:

(1) Property that is described in § 1400N(d)(2)(A)(i), (ii), (iii), and (iv), and in sections 2.02(1), (2), (3), and (4) of Notice 2006–77 (as modified by section 5 of this notice);

(2) Property that is not described in § 1400N(d)(2)(B) and in section 2.03 of Notice 2006–77;

(3) Substantially all of the use of the property is in one or more specified portions of the GO Zone (as defined in section 3 of this notice). For purposes of this section 4.01(3), the term "substantially all" means 80 percent or more during each taxable year. If greater than 20 percent of the use of the property is outside the counties and parishes designated as being part of the specified portions of the GO Zone, then the property is not GO Zone extension property under § 1400N(d)(6); and

(4)(a) Property that is nonresidential real property (as defined in § 168(e)(2)(B)) or residential rental property (as defined in § 168(e)(2)(A)) and depreciated under § 168 and placed in service by the taxpayer on or before December 31, 2010; or

(b) In the case of a taxpayer that places in service on or before December 31, 2010, a building (as defined in § 1.48–1(e)(1)) that is described in section 4.01(4)(a) of this notice and is GO Zone extension property, property that is described in § 168(k)(2)(A)(i) and § 1.168(k)–1(b)(2)(i) if substantially all of the use of such property is in the building and such property is placed in service by the taxpayer not later than 90 calendar days after the building is placed in service by the taxpayer. For purposes of this section 4.01(4)(b), the term "substantially all" means 80 percent or more during each taxable year. If greater than 20 percent of the use of the property is not in the building, then the property is not GO Zone extension property. Further, land improvements that are not in the building (for example, the sidewalks surrounding the building) are not GO Zone extension property. Moreover, if the building that is described in section 4.01(4)(a) of this notice and is GO Zone extension property is a multi-story building and the floors of that building are placed in service by the taxpayer on different dates, the taxpayer must place in service the property described in this section 4.01(4)(b) not later than 90 calendar days after the entire building is placed in service by the taxpayer but not later than March 31, 2011.

.02 *Determination of Adjusted Basis Qualifying for the GO Zone Additional First Year Depreciation Deduction*.

(1) *Property described in § 1400N(d)(6)(B)(ii)(I) and section 4.01(4)(a) of this notice*.

(a) *In general*. In the case of GO Zone extension property described in § 1400N(d)(6)(B)(ii)(I) and section 4.01(4)(a) of this notice (GO Zone extension real property), § 1400N(d)(6)(D) provides that the GO Zone additional first year depreciation deduction is available only for the adjusted basis of such property attributable to manufacture, construction, or production before January 1, 2010. The amounts of adjusted basis of the property attributable to manufacture, construction, or production before January 1, 2010, are referred to as "progress expenditures."

(b) *Determination of progress expenditures*. For purposes of § 1400N(d)(6)(D), progress expenditures for GO Zone extension real property that is manufactured, constructed, or produced generally is the amount paid or incurred that is properly chargeable to capital account with respect to the property. The amount that is properly chargeable to capital account for purposes of § 1400N(d)(6)(D) also includes any other costs paid or incurred by the taxpayer, such as interest, or any other direct or indirect costs that are required to be capitalized under § 263A(a) and the regulations thereunder with respect to the manufacture, construction, or production of the property.

For GO Zone extension real property actually manufactured, constructed, or produced by the taxpayer, the amount paid or incurred by the taxpayer is properly chargeable to capital account at the time and to the extent that the amount is properly includible in computing basis of the property under the taxpayer's method of accounting, such as, for example, after the requirements of § 461 (including the economic performance requirement of § 461(h)) are satisfied.

In the case of GO Zone extension real property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract (as defined in § 1.168(k)–1(b)(4)(ii)), the amount that is properly chargeable to capital account for purposes of § 1400N(d)(6)(D) includes any payments by the taxpayer under the contract that represent part of the purchase price of the property but only to the extent progress is made in manufacture, construction, or production of the property, or, to the extent costs are incurred by the taxpayer earlier than payments are made (determined on a cumulative basis for the property), any part of that price for which the taxpayer has satisfied the requirements of § 461 (including the economic performance requirement of § 461(h)). In the case of an accrual method taxpayer, the taxpayer has made a payment if the transaction would be considered a payment by a taxpayer using the cash receipts and disbursements method of accounting. Solely for purposes of this paragraph, the written binding contract must be entered into before the manufacture, construction, or production of the property to be delivered under the contract is completed.

With respect to GO Zone extension real property that is manufactured, constructed, or produced by another person and is purchased by the taxpayer after the manufacture, construction, or production of the property is completed, only the part of the purchase price attributable to the cost of manufacture, construction, or production of the GO Zone extension real property before January 1, 2010, is eligible for the GO Zone additional first year depreciation deduction.

(2) *Property described in § 1400N(d)(6)(B)(ii)(II) and section 4.01(4)(b) of this notice*. The progress expenditure rule in § 1400N(d)(6)(D) and section 4.02(1) of this notice does not apply to the GO Zone extension property described in § 1400N(d)(6)(B)(ii)(II) and section 4.01(4)(b) of this notice (GO Zone extension personal property). Accordingly, the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of such GO Zone extension personal property is

eligible for the GO Zone additional first year depreciation deduction (assuming all requirements are met).

SECTION 5. ORIGINAL USE REQUIREMENT FOR THE GO ZONE ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 *In general*. For purposes of the GO Zone additional first year depreciation deduction, depreciable property will meet the requirements of § 1400N(d)(2)(A)(iii) if the original use of the property commences with the taxpayer in the GO Zone on or after August 28, 2005. Except as provided in rules similar to the original use rules in § 1.168(k)–1(b)(3)(iii) (sale-leaseback, syndication, and certain other transactions) and in § 1.168(k)–1(b)(3)(iv) (fractional interests in property), original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, additional capital expenditures paid or incurred by a taxpayer to recondition or rebuild property that is acquired by purchase or owned by the taxpayer satisfy the original use requirement because it is the first use to which the improvement is put.

The cost of reconditioned or rebuilt property does not satisfy the original use requirement because the reconditioned or rebuilt property has been previously used. However, for purposes of the GO Zone additional first year depreciation deduction, used property (including reconditioned or rebuilt property) will satisfy the original use requirement so long as the property has not been previously used within the GO Zone. Thus, unlike the rules in § 1.168(k)–1(b)(3)(i), the portion of the cost of reconditioned or rebuilt property that is attributable to the cost of capital expenditures that were not previously used within the GO Zone will satisfy the original use requirement, regardless of whether or not the underlying property (before being reconditioned or rebuilt) to which the capital expenditures relate was previously used either inside or outside of the GO Zone. The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this section 5.01, property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property, whether acquired or self-constructed.

Rules similar to the rules in § 1.168(k)–1(b)(3)(ii), (iii), and (iv) also apply for purposes of the original use requirement for the GO Zone additional first year depreciation deduction.

.02 *Examples*. The following examples illustrate the provisions of this section 5.

Example 1. In July 2005, *A*, a calendar-year taxpayer, placed in service a new building that is located in the GO Zone. During 2007, *A* incurs $2,000,000 of capital expenditures to renovate and expand such building. In October 2007, *A* places these capital expenditures in service for use in *A*'s trade or business. The $2,000,000 of capital expenditures incurred by *A* satisfies the original use requirement. Assuming all other requirements are met, *A* may claim the GO Zone additional first year depreciation deduction for the $2,000,000 of capital expenditures, regardless of whether the $2,000,000 is added to the basis of the building or is capitalized as a separate asset.

Example 2. In March 2007, *B*, a calendar-year taxpayer, purchases from *C* for $5,000,000 a damaged building that is located in the GO Zone and has been previously used in *C*'s trade or business. In August 2007, *B* incurs $4,000,000 of capital expenditures to renovate the building. In November 2007, *B* places the building in service for use in *B*'s trade or business. The $5,000,000 purchase price does not qualify for the GO Zone additional first year depreciation deduction because the building was previously used by *C* within the GO Zone and, therefore, the original use requirement is not met. However, the $4,000,000 of capital expenditures incurred by *B* satisfies the original use requirement. Assuming all other requirements are met, *B* may claim the GO Zone additional first year depreciation deduction for the $4,000,000 of capital expenditures, regardless of whether the $4,000,000 is added to the basis of the building or is capitalized as a separate asset.

Example 3. *D* owns a building in the GO Zone that was used in *D*'s trade or business prior to Hurricane Katrina. This building was badly damaged by Hurricane Katrina. Since that hurricane, the building has been closed. *D* incurs $3,000,000 of capital expenditures to renovate and improve the closed building. All of the $3,000,000 capital expenditures are components and properties not previously used in the GO Zone. Upon completion of the improvements in March 2007, *D* decides to sell the still-closed building instead of placing the renovated building in service. In May 2007, *D* sells the building to *E* for $8,000,000. At the time of the sale, the fair market value of the improvements made by *D* is $3,000,000. None of the improvements made by *D* were placed in service by *D* and, therefore, *D* could not take a depreciation deduction with respect to the improvements. In June 2007, *E* places the building (with the improvements) in service for use in *E*'s trade or business. Of *E*'s total cost of the building ($8,000,000), $5,000,000 is attributable to the part of the building previously used in the GO Zone and $3,000,000 is attributable to the improvements made by *D* that were not previously used in the GO Zone. Consequently, 62.5 percent of *E*'s total cost of the building is attributable to used components and property and, thus, *E* has purchased a reconditioned or rebuilt building. Of *E*'s total cost of the building ($8,000,000), $5,000,000 does not qualify for the GO Zone additional first year depreciation deduction because this amount is attributable to property previously used in the GO Zone. However, the remaining amount of $3,000,000 is for improvements that were not previously used in the GO Zone and, thus, satisfies the original use requirement. Assuming all other requirements are met, *E* may claim the GO Zone additional first year depreciation deduction for the $3,000,000 cost of the improvements.

Example 4. The facts are the same as in *Example 3*, except that *D* incurs $7,000,000 of capital expenditures to renovate and improve the closed building, all of the $7,000,000 capital expenditures are components and properties not previously used in the GO Zone, and the fair market value of these improvements at the time of the sale of the building to *E* is $7,000,000. Of *E*'s total cost of the building ($8,000,000), $1,000,000 is attributable to the part of the building previously used in the GO Zone and $7,000,000 is attributable to the improvements made by *D* that were not previously used in the GO Zone. Consequently, only 12.5 percent of *E*'s total cost of the building is attributable to used parts and, thus, *E* is treated as purchasing a new building (and not a reconditioned or rebuilt building). Thus, *E*'s total cost of the building ($8,000,000) satisfies the original use requirement. Assuming all other requirements are met, *E* may claim the GO Zone additional first year depreciation deduction for the $8,000,000 cost of the building.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Section 2.02(3) of Notice 2006–77, 2006–40 I.R.B. 590, is clarified, modified, and amplified to read as provided in section 5 of this notice.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Douglas H. Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Kim at (202) 622–3110 (not a toll-free call).

Renewable Diesel

Notice 2007–37

Section 1. PURPOSE

(a) This notice provides guidance on the credits and payments provided for renewable diesel and renewable diesel mixtures under §§ 34, 40A, 6426, and 6427 of the Internal Revenue Code. Section 1346 of the Energy Policy Act of 2005 (Pub. L.

109–58) made these credits and payments applicable to renewable diesel and renewable diesel mixtures beginning January 1, 2006. References to regulations in this notice are to the Manufacturers and Retailers Excise Tax Regulations.

(b) This notice addresses issues related to fuel produced by coprocessing biomass and petroleum feedstocks (coproduced fuel). The coprocessing of biomass and petroleum feedstocks typically involves the use of catalysts, but the Energy Policy Act and its legislative history do not specify whether a process that uses catalysts is a thermal depolymerization process for purposes of the Internal Revenue Code. In addition, it is not clear under the Energy Policy Act and its legislative history whether the portion of coproduced fuel attributable to biomass is sufficiently similar to the remainder of the coproduced fuel to treat the portion attributable to biomass as renewable diesel if the coproduced fuel as a whole satisfies Clean Air Act registration requirements and ASTM diesel standards applicable to renewable diesel.

(c) The Department of Energy has advised and the Department of the Treasury and the Internal Revenue Service have concluded based on that advice that thermal depolymerization should be defined generically and broadly to include processes that use heat and pressure, with or without the presence of catalysts. The Department of Energy has also indicated that coproduced fuel attributable to biomass is likely to be virtually indistinguishable from the crude-oil derived products in the coproduced fuel, with only minor differences at the molecular level, and the rules in this notice relating to coproduced fuel follow from this view.

Section 2. RENEWABLE DIESEL; RENEWABLE DIESEL MIXTURE

(a) *Renewable diesel*—(1) *In general*. *Renewable diesel* means diesel fuel that—

(i) Is derived from biomass (as defined in § 45K(c)(3)) using a thermal depolymerization process;

(ii) Meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act (42 U.S.C. 7545); and

(iii) Meets the requirements of the American Society of Testing and Materials (ASTM) D975 or D396.

(2) *Thermal depolymerization* is a process for the reduction of complex organic materials through the use of pressure and heat to decompose long-chain polymers of hydrogen, oxygen, and carbon into short-chain hydrocarbons with a maximum length of around 18 carbon atoms. A process may qualify as thermal depolymerization even if catalysts are used in the process.

(3) *Treatment as biodiesel*. For purposes of the Code, Notice 2005–4, 2005–1 C.B. 289, and Notice 2005–62, 2005–2 C.B. 443, renewable diesel is treated as biodiesel except that—

(i) Renewable diesel is *diesel fuel* as defined in § 48.4081–1(c)(2);

(ii) The amount of the credit or payment allowable for renewable diesel is $1.00 per gallon;

(iii) The small biodiesel producer credit of § 40A(a)(3) does not apply; and

(iv) The Certificate for Biodiesel described in section 2 of Notice 2005–4 (as modified by Notice 2005–62) must indicate at all appropriate locations that the fuel to which the certificate relates is renewable diesel and state that the renewable diesel meets the requirements of paragraph (a)(1) of this section instead of the requirements for biodiesel that are described in the certificate.

(b) *Renewable diesel mixture*—(1) *In general*. *Renewable diesel mixture* means a mixture of renewable diesel and diesel fuel (other than renewable diesel) that contains at least 0.1 percent (by volume) of diesel fuel (other than renewable diesel). The term also includes diesel fuel described in section 3(a) of this notice. Any volume of kerosene in a renewable diesel mixture is disregarded in determining whether the renewable diesel mixture satisfies the 0.1 percent requirement. The diesel fuel in a renewable diesel mixture may be either dyed or undyed. However, taxpayers are reminded of the penalty in § 6715 for the willful alteration of the strength or composition of any dye in dyed fuel. Also see § 48.6715–1.

(2) *Treatment as biodiesel mixture*. For purposes of the Code, Notice 2005–4, and Notice 2005–62, a renewable diesel mixture is treated as a biodiesel mixture.

Section 3. COPRODUCTION

(a) *In general*. Fuel produced from biomass (as defined in § 45K(c)(3)) and petroleum feedstocks using a thermal depolymerization process is a renewable diesel mixture if such fuel—

(1) Has been registered by the EPA under section 211 of the Clean Air Act (42 U.S.C. 7545); and

(2) Meets the requirements of ASTM D975 or D396.

(b) *Amount of renewable diesel in mixture*. If fuel is treated as a renewable diesel mixture under section 3(a) of this notice, only the portion of the mixture attributable to biomass qualifies as renewable diesel used in the production of a renewable diesel mixture. A taxpayer claiming a credit or payment with respect to fuel treated as a renewable diesel mixture under section 3(a) of this notice must use generally accepted scientific practices to establish the portion of the fuel that is attributable to biomass.

Section 4. EFFECTIVE DATE

This notice is effective January 1, 2006.

Section 5. DRAFTING INFORMATION

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

NOTE: Use this Revenue Procedure to prepare Form 8851, Summary of Archer MSAs, for submission to Internal Revenue Service (IRS) using the FIRE (Filing Information Returns Electronically) System. Electronic filing is the only filing option for filers with more than 250 forms. **Call the IRS Enterprise Computing Center — Martinsburg (ECC-MTB) toll-free at 1–866–455–7438 for log on procedures specific to Form 8851.**

26 CFR 601.602: Tax forms and instructions.

Rev. Proc. 2007–29

TABLE OF CONTENTS

Part A. General

Part B. Electronic Filing Specifications

Part C. Record Format Specifications and Record Layouts

Part A. General

.01 Numerous editorial changes were made to this revenue procedure. Major changes are emphasized by the use of *italics*. Filers are urged to read the revenue procedure in its entirety.

Sec. 1. Purpose

.01 The purpose of this revenue procedure is to provide the specifications under which trustees may file Form 8851, Summary of Archer MSAs, electronically.

.02 Comments concerning this revenue procedure, or suggestions for making it more helpful and user friendly, can be addressed to:

IRS-Enterprise Computing Center — Martinsburg
Information Reporting Program
Attn: 8851 Coordinator
240 Murall Drive
Kearneysville WV 25430

.03 It is unlawful to intentionally transmit a computer virus to the Internal Revenue Service. Violators may be subject to a fine and/or imprisonment.

Sec. 2. Nature of Changes

.01 This Revenue Procedure was completely revised since its last revision in 2001. Please review this Revenue Procedure in its entirety. This section only lists the major changes.

.02 The name of the Martinsburg Computing Center was changed to Enterprise Computing Center – Martinsburg (ECC-MTB).

.03 ECC-MTB no longer accepts magnetic media for the filing of Forms 8851. The only acceptable method for those with over 250 forms is electronic filing via the FIRE System (see Part B). Filers of Form 8851 must call ECC-MTB toll-free at 1–866–455–7438, extension 3 for log-on instructions.

.04 The FIRE System is now on the Internet at http://fire.irs.gov. Substantial changes were made to the FIRE System so review this information carefully.

.05 The due date for filing Forms 8851 was changed to March 20, 2007. This date is effective for both filing periods, January 1, 2005 through June 30, 2005, and January 1, 2006 through June 30, 2006. A separate transmission is required for each filing period.

Sec. 3. Where To File and How To Contact the IRS Enterprise Computing Center — Martinsburg

.01 Paper Forms 8851 are processed at IRS-Enterprise Computing Center — Martinsburg (IRS/ECC-MTB). Send forms and correspondence to ECC at the following address:

IRS-Enterprise Computing Center — Martinsburg
Information Reporting Program
Attn: 8851 Coordinator
240 Murall Drive
Kearneysville WV 25430

.02 Paper forms and publications should be requested by calling the "Forms Only Number" listed in your local telephone directory or by calling the IRS toll-free number **1–800–TAX–FORM (1–800–829–3676).** Forms and publications can also be obtained by using the IRS Web site *www.irs.gov*.

.03 The Information Reporting Program Customer Service Section (IRP/CSS), located at IRS/ECC-MTB, answers electronic, paper filing and tax law questions from the payer community relating to the filing of business information returns (Forms 8851, 1096, 1098, 1099, 5498, 8027, and W-2G). Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRP/CSS. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Standard Time, by calling toll-free **1–866–455–7438.** The Telecommunications Device for the Deaf **(TDD)** toll number is **304–267–3367.** Call as soon as questions arise to avoid the busy filing seasons. Recipients of information returns (payees) should continue to contact 1–800–829–1040 with any questions on how to report the information returns data on their tax returns.

.04 The telephone numbers for inquiries or electronic submissions are:

Information Reporting Program Customer Service Section

TOLL-FREE 1–866–455–7438 or outside the U.S. 1–304–263–8700

304–267–3367 — TDD
(Telecommunication Device for the Deaf)

304–264–5602 — Fax Machine

Electronic Filing — FIRE system
http://fire.irs.gov

TO OBTAIN FORMS:
1–800–TAX–FORM (1–800–829–3676)

www.irs.gov — IRS website access to forms

Sec. 4. Filing Requirements

.01 If you are required to report 250 or more Archer MSAs, you must file electronically. Even though a trustee may not meet the required filing threshold of 250 documents, IRS encourages the filing of the Form 8851 electronically. Filers who transmit their information electronically are considered to have satisfied the magnetic media filing requirements.

.02 The filing requirement applies individually to each reporting entity as defined by its separate Taxpayer Identification Number (TIN), (Social Security Number [SSN], or Employer Identification Number [EIN]). For example, if filing for a corporation with several branches or locations and each uses the same name and EIN, the filer must aggregate the total volume to be filed for that EIN and apply the filing requirement accordingly.

.03 For additional information on filing requirements, please refer to the instructions on Form 8851.

Sec. 5. Due Dates

.01 *The due dates for filing paper returns with IRS also apply to electronic filing. File Form 8851, postmarked no later than March 20, 2007 for each reporting period. The two reporting periods are January 1, 2005 through June 30, 2005 for 2005 and January 1, 2006 through June 30, 2006 for 2006.*

.02 When using a delivery service other than the U.S. Postal Service, if no date of shipment appears on the package or container, the date of receipt will be the date received at IRS/ECC-MTB. Notice 97–26, 1997–17 I.R.B. 6, provides rules for determining the date that is treated as the postmark date. For items delivered by a non-designated Private Delivery Service (PDS), the actual date of receipt by IRS/ECC-MTB will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004–83, 2004–52 I.R.B. 1030, the actual date of receipt by IRS/ECC-MTB will be used as the filing date. The timely mailing rule also applies to furnishing statements to recipients and participants.

Note: Due to security regulations at ECC-MTB, the Internal Revenue police officers will only accept packages from PDSs or couriers from *8:00 a.m. to 3:00 p.m.*, Monday through Friday.

Sec. 6. Processing of Information Returns Electronically

.01 All data received at IRS/ECC-MTB for processing will be given the same protection as individual income tax returns (Form 1040). IRS/ECC-MTB will process the data and determine if the records are formatted and coded according to this revenue procedure.

.02 *If you are filing information for more than one trustee or tax year, each trustee or tax year must be transmitted separately.*

.03 Do not report duplicate information. If a filer submits returns electronically, identical paper documents must **not** be filed.

.04 If the data is formatted incorrectly, IRS/ECC-MTB will request a replacement file. When IRS/ECC-MTB requests a replacement file, it is because we encountered errors (not limited to format) and were unable to process the file. It is imperative that filers maintain backup copies and/or recreate capabilities for their information return files. Open all IRS/ECC-MTB correspondence immediately. Refer to Part B, Section 4, for detailed procedures for replacing files submitted electronically.

.05 IRS/ECC-MTB will work with the filers to identify and resolve processing problems. If contacted by IRS/ECC-MTB, please respond promptly. IRS/ECC-MTB may have information the filers need to correct their files.

Sec. 7. Effect on Paper Documents

.01 Electronic reporting eliminates the need to submit paper Forms 8851 to IRS.

.02 Even though the threshold for filing electronically is 250 or more MSAs, IRS encourages transmitters to submit all returns electronically.

.03 The address for filing paper Forms 8851 is:

IRS-Enterprise Computing Center — Martinsburg
Information Reporting Program
Attn: 8851 Coordinator
240 Murall Drive
Kearneysville, WV 25430

.04 In all instances, identify which accounts are for individuals that were previously uninsured or excludable account holders, if applicable.

Sec. 8. State Abbreviations

.01 The following state and U.S. territory abbreviations are to be used when developing the state code portion of address fields. This table provides state and territory abbreviations only, and does not represent those states participating in the Combined Federal/State Filing Program.

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	No. Mariana Islands	MP
Alaska	AK	Louisiana	LA	Ohio	OH
American Samoa	AS	Maine	ME	Oklahoma	OK
Arizona	AZ	Marshall Islands	MH	Oregon	OR
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federated States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	(U.S.) Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY
Kansas	KS				

.02 Filers must adhere to the city, state, and ZIP Code format for U.S. addresses in the "B" Record. This also includes American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

.03 When reporting APO/FPO addresses, use the following format:

EXAMPLE:

Payee Name	PVT Willard J. Doe
Mailing Address	Company F, PSC Box 100 167 Infantry REGT
Payee City	APO (or FPO)
Payee State	AE, AA, or AP*
Payee ZIP Code	098010100

*AE is the designation for ZIPs beginning with 090–098, AA for ZIP 340, and AP for ZIPs 962–966.

Sec. 9. Definition of Terms

Element	Description
Account Holder	The owner of the Archer MSA.
Employer Identification Number (EIN)	A nine-digit number assigned by IRS for Federal tax reporting purposes.
File	For the purpose of this revenue procedure, a file consists of all records submitted by a transmitter electronically.
Filer	Person or organization that prepares and submits files. May be the trustee and/or transmitter.
Replacement	An information return file sent by the filer **at the request of IRS/ECC-MTB** because of errors encountered while processing their original submission.

Note 1: Filers should never submit files to IRS/ECC-MTB marked "Replacement" unless IRS/ECC-MTB has requested a replacement file in writing or via the FIRE System.

Element	Description
Social Security Number (SSN)	A nine-digit number assigned by the Social Security Administration (SSA) to an individual for tax and wage reporting purposes.
Special Character	Any character that is not a numeric, an alpha, or a blank.
Taxpayer Identification Number (TIN)	May be either a Social Security Number (SSN) or an Employer Identification Number (EIN).
Transmitter Control Code (TCC)	The five-digit code "MSA01" assigned to all filers prior to submitting Forms 8851 electronically. This number is inserted in the "A" Record and must be present in the file.
Trustee	Person or organization that is the custodian of the Archer MSA and is required to file Form 8851.

Part B. Electronic Filing Specifications

Note: The FIRE System DOES NOT provide fill-in forms. Filers must program files according to the Record Layout Specifications contained in this publication. For a list of software providers, log on to *www.irs.gov* and go to the *Approved IRS e-file for Business Providers* link.

Sec. 1. General

.01 Electronic filing of Forms 1098, 1099, 5498, 8851 and W-2G information returns, originals, corrections, and replacements is offered as an alternative to paper filing. Payers who are under the filing threshold requirement, are encouraged to file electronically.

.02 All electronic filing of information returns are received at IRS/ECC-MTB via the FIRE (Filing Information Returns Electronically) System. To connect to the FIRE System, point your browser to *http://fire.irs.gov*. The system is designed to support the electronic filing of information returns only.

.03 The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each program. Only inquiries concerning electronic filing of information returns should be directed to IRS/ECC-MTB.

.04 Files submitted to IRS/ECC-MTB electronically must be in standard ASCII code. Do not send paper forms with the same information as electronically submitted files. This would create duplicate reporting resulting in penalty notices.

Sec. 2. Advantages of Filing Electronically

Some of the advantages of filing electronically are:

(1) Paperless, no Form 4804 requirements.
(2) Security – Secure Socket Layer (SSL) 128-bit encryption.
(3) Results available within 5 workdays regarding the acceptability of the data transmitted. It is the filer's responsibility to log into the system and check results.
(4) Better customer service due to on-line availability of transmitter's files for research purposes.

Sec. 3. Electronic Filing Approval Procedure

.01 Filers **must** fax a Form 8851, Summary of Archer MSAs, to IRS/ECC-MTB **prior** to filing the Form(s) 8851 electronically. **Only** trustee information, information above line 'a', should be provided on the Form 8851 when filing electronically. Please annotate the Form 8851 with "Electronic Filing" to indicate the method of filing. The fax number is (304) 264–5602.

.02 *Filers* ***must*** *call ECC-MTB toll-free at 1–866–455–7438, extension 3* ***prior*** *to logging on to the FIRE System for procedures specific to filing Form 8851.*

.03 Electronic filers assign their own logon name and password and do not need prior or special approval.

.04 For all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be 8 alpha/numerics containing at least 1 uppercase, 1 lowercase, and 1 numeric. However, filers who forget their password or PIN, can call **toll-free 1–866–455–7438** for assistance. The FIRE System may require users to change their passwords on a yearly basis.

Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/ECC-MTB 24 hours a day, 7 days a week. Technical assistance is available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time by calling **toll-free 1–866–455–7438, ext. 3.**

.02 The FIRE System will be down from 2 p.m. EST December 21, 2007, through January 2, 2008. This allows IRS/ECC-MTB to update its system to reflect current year changes.

.03 If you are sending files larger than 10,000 records electronically, data compression is encouraged. When transmitting files larger than 5 million records, please contact IRS/ECC-MTB for additional information. WinZip and PKZip are the only acceptable compression packages. IRS/ECC-MTB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon the type of connection to the internet and if data compression is used. **The time required to transmit a file can be reduced up to 95 percent by using compression.**

.04 Transmitters may create files using self assigned file name(s). Files submitted electronically will be assigned a new unique file name by the FIRE System. The filename assigned by the FIRE System will consist of submission type (ORIG [original] and REPL [replacement]), the filer's TCC and a four-digit number sequence. The sequence number will be incremented for every file sent. For example, if it is your first original file for the calendar year and your TCC is MSA01, the IRS assigned filename would be ORIG.MSA01.0001. **Record the filename.** This information will be needed by ECC-MTB to identify the file, if assistance is required.

.05 If a file was submitted timely and is bad, the filer will have up to 60 days from the day the file was transmitted to transmit an acceptable replacement file. If an acceptable file is not received within 60 days, the payer could be subject to late filing penalties. This only applies to files originally submitted electronically.

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE System indicated the original file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE System. (**See Note.**)

Note: Filers should never transmit anything to IRS/ECC-MTB as a "Replacement" file unless the CHECK FILE STATUS option on the FIRE System indicates the file is bad.

Sec. 5. PIN Requirements

.01 User will be prompted to create a PIN consisting of 10 numerics when establishing their initial logon name and password.

.02 The PIN is required each time an ORIGINAL or REPLACEMENT file is sent electronically and is permission to release the file. An authorized agent may enter their PIN, however, the payer is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If you forget your PIN, please call **toll-free 1–866–455–7438, ext. 3** for assistance.

Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 1042-S, 1098, 1099, 5498, 8027, 8851, and W-2G.

.02 The results of the electronic transmission will be available in the CHECK FILE STATUS area of the FIRE System within 5 business days. It is the filer's responsibility to verify the acceptability of files submitted by selecting the CHECK FILE STATUS option. Forms 1042-S and 8027 require a longer processing time.

Sec. 7. Connecting to the FIRE System

.01 Point your browser to http://fire.irs.gov to connect to the FIRE System.

.02 Filers should turn off their pop-up blocking software before transmitting their files.
.03 Before connecting, call ECC-MTB for specific log on procedures for Form 8851 (See Part A, Sec. 3.)
.04 Your browser must support SSL 128-bit encryption.
.05 Your browser must be set to receive "cookies". Cookies are used to preserve your User ID status.

<u>First time connection to The FIRE System</u> (If you have logged on previously, skip to Subsequent Connections to the FIRE System.)

Click ***"Create New Account".***

Fill out the registration form and click ***"Submit"***.

Enter your ***User ID*** (most users logon with their first and last name).

Enter and verify your ***password*** (the password is user assigned and must be 8 alpha/numerics, containing at least 1 uppercase, 1 lowercase and 1 numeric). FIRE may require you to change the password once a year.

Click ***"Create".***

If you receive the message **"Account Created"**, click ***"OK".***

Enter and verify your 10-digit self-assigned PIN (Personal Identification Number).

Click ***"Submit".***

If you receive the message **"Your PIN has been successfully created!",** click ***"OK".***

Read the bulletin(s) and/or click **"Click here to continue".**

<u>Subsequent connections to The FIRE System</u>

Click ***"Log On".***

Enter your ***User ID*** (most users logon with their first and last name).

Enter your ***password*** (the password is user assigned and is case sensitive).

Read the bulletin(s) and/or click **"Click here to continue".**

<u>Uploading your file to the FIRE System</u>

Options:

Click ***"Send Information Returns"***
Enter your ***TCC:***
Enter your ***EIN:***
Click ***"Submit".***

The system will then display the company name, address, city, state, ZIP code, phone number, contact and email address. This information will be used to contact or send correspondence (if necessary) regarding this transmission. Update as appropriate and/or Click ***"Accept".***

Click one of the following:

Original File
Replacement File
Click on the file to be replaced.

Enter your 10-digit PIN.
Click ***"Submit".***
Click ***"Browse"*** to locate the file and open it.
Click ***"Upload".***

Uploading your file to the FIRE System

When the upload is complete, the screen will display the total bytes received and tell you the name of the file you just uploaded.

If you have more files to upload for that TCC:

Click ***"File Another?";*** otherwise,
Click ***"Main Menu".***

It is your responsibility to check the acceptability of your file; therefore, be sure to check back into the system in 5 business days using the CHECK FILE STATUS option.

Checking your FILE STATUS

Menu:

Click ***"Check File Status".***
Enter your ***TCC:***
Enter your ***EIN:***
Click ***"Search".***

If "Results" indicate:

"Good, Not Released" and you agree with the "Count of Payees", you are finished with this file.

"Good, Released" — File has been released to our mainline processing.

"Bad" — Correct the errors and timely resubmit the file as a "replacement".

"Not yet processed" — File has been received, but we do not have results available yet. Please check back in a few days.

Click on the desired file for a detailed report of your transmission.
When you are finished, click on ***Main Menu.***
Click ***"Log Out"***.
Close your Web Browser.

Part C. Record Format Specifications and Record Layouts

.01 In order to be acceptable, records within the file must be in the following sequence:

(a) A Trustee "A" Record
(b) Account Holder "B" Records
(c) Control Total "C" Record

.02 If you are filing for more than one trustee, each trustee **must** be reported on a separate file.

Sec. 1. The Trustee "A" Record — General Field Descriptions and Record Layout

.01 This record identifies the entity preparing and transmitting the file. The first record of a file MUST be a Trustee "A" Record. Otherwise, a replacement file will be requested. The "A" Record is a fixed length of 150 positions.

Record Name: Trustee “A” Record			
Positions	**Field Title**	**Length**	**Description and Remarks**
1	Record Type	1	**Required.** Enter “A”.
2–10	Trustee TIN	9	Enter the Taxpayer Identification Number (TIN), either the Employer Identification Number (EIN) or the Social Security Number (SSN) of the Trustee.
11–50	Trustee Name	40	**Required.** Enter the trustee’s name. Abbreviate if necessary to fit 40-character limit, and omit punctuation. Left-justify and blank fill.
51–90	Trustee Address	40	**Required.** Enter mailing address of the trustee. Street address should include number, street, apartment or suite number (or P.O. Box if mail is not delivered to street address). Abbreviate as needed to fit 40-character limit, and omit punctuation. Left-justify and blank fill.
91–119	Trustee City	29	**Required.** Enter the city or town of trustee. If applicable, enter APO or FPO only. Left-justify and blank fill.
120–121	Trustee State	2	**Required.** Enter the valid U.S. Postal Service state abbreviation. Refer to the chart of valid state abbreviations in Part A, Sec. 8.
122–130	Trustee ZIP Code	9	**Required.** Enter the ZIP code of the trustee for all U.S. addresses, U.S. territories or possessions, APO/FPO addresses. For trustees using a five-digit ZIP code, enter the ZIP code in the left-most five positions and zero fill the remaining four positions. For trustees outside the U.S., enter nine zeros only. Do NOT blank fill.
131–135	Transmitter Control Code	5	**Required.** Enter your five-digit Transmitter (TCC) Control Code, “MSA01.” This is the TCC assigned to all filers who report Form(s) 8851 electronically.
136	Report Period	1	**Required.** Enter the last digit of the year for which the Form 8851 is being filed. For example, if reporting for tax year 2005, enter a ‘5’ , enter a ‘6’, if reporting for 2006, etc.
137–148	Blanks	12	Enter Blanks.
149–150	Blanks or Carriage Return/Line Feed	2	Enter blanks or Carriage Return/Line Feed(CR/LF).

Trustee “A” Record Layout

Record Type “A”	Trustee TIN	Trustee Name	Trustee Address	Trustee City
1	2–10	11–50	51–90	91–119

Trustee State	Trustee ZIP Code	Transmitter Control Code (TCC) “MSA01”	Report Period	Blanks	Blanks or Carriage Return/Line Feed
120–121	122–130	131–135	136	137–148	149–150

Sec. 2. The Account Holder “B” Record — General Field Descriptions and Record Layout

.01 The “B” record contains the account holder information. The format of the “B” record will remain constant and is a fixed length of 150 positions.

Record Name: Account Holder "B" Record			
Positions	**Field Title**	**Length**	**Description and Remarks**
1	Record Type	1	**Required.** Enter "B".
2–10	Account Holder's Identification Number (TIN)	9	**Required.** Enter the nine-digit Taxpayer Identification Number (TIN) (EIN or SSN) of the Account Holder. Do NOT enter blanks, hyphens, or alpha characters. A TIN consisting of all the same digit (e.g., 111111111) is not acceptable.
11–50	Account Holder Name	40	**Required.** Enter the name of the account holder. Abbreviate as needed. Left-justify and blank fill.
51	Previously Uninsured Indicator	1	**Required.** Enter a code from the list below to indicate whether or not the account holder was previously uninsured. For a definition of "Previously Uninsured", please see Form 8851. **Condition** — **Code** Previously uninsured — 1 Previously insured — 0
52	Excludable Indicator	1	**Required.** Enter a code from the list below to indicate whether the account holder is excludable. For a definition of "excludable", please see Form 8851. **Condition** — **Code** Excludable — 1 Not excludable — 0
53–148	Blanks	96	Enter blanks.
149–150	Blank or Carriage Return/Line Feed	2	Enter blanks or carriage return/line feed (CR/LF).

Account Holder "B" Record Layout

Record Type "B"	Account Holder TIN	Account Holder Name	Previously Uninsured Indicator
1	2–10	11–50	51

Excludable Indicator	Blanks	Blanks or Carriage Return/Line Feed
52	53–148	149–150

Sec. 3. The Control Total "C" Record — General Field Descriptions and Record Layout

.01 Enter a "C" Record after the last "B" Record submitted for a particular Trustee "A" Record. The "C" Record serves as a summary of the preceding "B" Records' data, and enables IRS to cross check the correctness of information received.

.02 A "C" Record is the last record on the file.

.03 Each "C" Record has a fixed length of 150 positions.

.04 If the field is not applicable, allow for the field by entering blanks or zeros as instructed.

Record Name: Control Total “C” Record			
Positions	**Field Title**	**Length**	**Description and Remarks**
1	Record Type	1	**Required.** Enter “C”.
2–7	Number of Account Holders	6	**Required.** Enter the total number of account holders being reported. Right-justify and zero fill.
8–13	Previously Uninsured	6	Enter the total number of account holders that were previously uninsured. Right-justify and zero fill.
14–19	Excludable	6	Enter the total number of excludable account holders being reported. Right-justify and zero fill.
20–148	Blanks	129	Enter blanks.
149–150	Blank or Carriage Return/Line Feed	2	Enter blanks or carriage return/line feed (CR/LF).

Control Total “C” Record Layout

Record Type “C”	Number of Account Holders	Previously Uninsured	Excludable
1	2–7	8–13	14–19

Blanks	Blanks or Carriage Return/Line Feed (CR/LF)
20–148	149–150

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Determining the Amount of Taxes Paid for Purposes of Section 901

REG–156779–06

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 the amount of taxes paid for purposes of section 901. The proposed regulations affect taxpayers that claim direct and indirect foreign tax credits. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by June 28, 2007. Outlines of topics to be discussed at the public hearing scheduled for July 30, 2007, at 10 a.m. must be received by July 9, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–156779–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–156779–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–156779–06). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C.

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 (202) 622–7180; concerning the regulations, Bethany A. Ingwalson, (202) 622–3850 (not toll-free numbers).

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 (or deemed paid) during the taxable year to any foreign country or to any possession of the United States.

Section 1.901–2(a) of the regulations defines a tax as a compulsory payment pursuant to the authority of a foreign country to levy taxes, and further provides that a tax is an income, war profits, or excess profits tax if the predominant character of the tax is that of an income tax in the U.S. sense. Section 1.901–2(e) provides rules for determining the amount of tax paid by a taxpayer for purposes of section 901. Section 1.901–2(e)(5) provides that an amount paid is not a compulsory payment, and thus is not an amount of tax paid, to the extent that the amount paid exceeds the amount of liability under foreign law for tax. For purposes of determining whether an amount paid exceeds the amount of liability under foreign law for tax, §1.901–2(e)(5) provides the following rule:

> An amount paid does not exceed the amount of such liability if the amount paid is determined by the taxpayer in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax, and if the taxpayer exhausts all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties, to reduce, over time, the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment).

Section 1.901–2(e)(5) provides further that if foreign tax law includes options or elections whereby a taxpayer's liability may be shifted, in whole or part, to a different year, the taxpayer's use or failure to use such options or elections does not result in a noncompulsory payment, and that a settlement by a taxpayer of two or more issues will be evaluated on an overall basis, not on an issue-by-issue basis, in determining whether an amount is a compulsory amount. In addition, it provides that a taxpayer is not required to alter its form of doing business, its business conduct, or the form of any transaction in order to reduce its liability for tax under foreign law.

A. *U.S.-Owned Foreign Entities*

Commentators have raised questions regarding the application of §1.901–2(e)(5) to a U.S. person that owns one or more foreign entities. In particular, commentators have raised questions concerning the application of the regulation when one foreign entity directly or indirectly owned by a U.S. person transfers, pursuant to a group relief type regime, a net loss to another foreign entity, which may or may not also be owned by the U.S. person. Certain commentators have expressed concern that foreign taxes paid by the transferor in a subsequent tax year might not be compulsory payments to the extent the transferor could have reduced its liability for those foreign taxes had it chosen not to transfer the net loss in the prior year. This concern arises because the current final regulations apply on a taxpayer-by-taxpayer basis, obligating each taxpayer to minimize its liability for foreign taxes over time, even though the net effect of the loss surrender may be to minimize the amount of foreign taxes paid in the aggregate by the controlled group over time.

Similar questions and concerns arise when one or more foreign subsidiaries of a U.S. person reach a combined settlement with a foreign taxing authority that results in an increase in the amount of one foreign subsidiary's foreign tax liability and a decrease in the amount of a second foreign subsidiary's foreign tax liability.

B. *Certain Structured Passive Investment Arrangements*

The IRS and Treasury Department have become aware that certain U.S. taxpayers are engaging in highly structured transactions with foreign counterparties in order to generate foreign tax credits. These transactions are intentionally structured to create a foreign tax liability when, removed from the elaborately engineered structure, the basic underlying business transaction generally would result in significantly less, or even no, foreign taxes. In particular, the transactions purport to convert what would otherwise be an ordinary course financing arrangement between a U.S. person and a foreign counterparty, or a portfolio investment of a U.S. person, into some form of equity ownership in a foreign special purpose vehicle (SPV). The transaction is deliberately structured to create income in the SPV for foreign tax purposes, which income is purportedly subject to foreign tax. The parties exploit differences between U.S. and foreign law in order to permit the U.S. taxpayer to claim a credit for the purported foreign tax payments while also allowing the foreign counterparty to claim a foreign tax benefit. The U.S. taxpayer and the foreign counterparty share the cost of the purported foreign tax payments through the pricing of the arrangement.

Explanation of Provisions

The proposed regulations address the application of §1.901–2(e)(5) in cases where a U.S. person directly or indirectly owns one or more foreign entities and in cases in which a U.S. person is a party to a highly structured passive investment arrangement described in this preamble. The proposed regulations would treat as a single taxpayer for purposes of §1.901–2(e)(5) all foreign entities with respect to which a U.S. person has a direct or indirect interest of 80 percent or more. The proposed regulations would treat foreign payments attributable to highly structured passive investment arrangements as noncompulsory payments under §1.901–2(e)(5) and, thus, would disallow credits for such amounts.

A. *U.S.-Owned Foreign Entities*

Section 1.901–2(e)(5) requires a taxpayer to interpret and apply foreign law reasonably in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax. This requirement ensures that a taxpayer will make reasonable efforts to minimize its foreign tax liability even though the taxpayer may otherwise be indifferent to the imposition of foreign tax due to the availability of the foreign tax credit. The purpose of this requirement is served if all foreign entities owned by such person, in the aggregate, satisfy the requirements of the regulation. Accordingly, for purposes of determining compliance with §1.901–2(e)(5), the proposed regulations would treat as a single taxpayer all foreign entities in which the same U.S. person has a direct or indirect interest of 80 percent or more. For this purpose, an interest of 80 percent or more means stock possessing 80 percent or more of the vote and value (in the case of a foreign corporation) or an interest representing 80 percent or more of the income (in the case of non-corporate foreign entities).

The proposed regulations provide that if one 80 percent-owned foreign entity transfers or surrenders a net loss for the taxable year to a second such entity pursuant to a foreign law group relief or similar regime, foreign tax paid by the transferor in a different tax year does not fail to be a compulsory payment solely because such tax would not have been due had the transferor retained the net loss and carried it over to such other year. Similarly, it provides that if one or more 80 percent-owned foreign entities enter into a combined settlement under foreign law of two or more issues, such settlement will be evaluated on an overall basis, not on an issue-by-issue or entity-by-entity basis, in determining whether an amount is a compulsory amount. The proposed regulations include examples to illustrate the proposed rule.

The IRS and Treasury Department intend to monitor structures involving U.S.-owned foreign groups, including those that would be covered by the proposed regulations, to determine whether taxpayers are utilizing such structures to separate foreign taxes from the related income. The IRS and Treasury Department may issue additional regulations in the future in order to address arrangements that result in the inappropriate separation of foreign tax and income.

B. *Certain Structured Passive Investment Arrangements*

The structured arrangements discovered and identified by the IRS and the Treasury Department can be grouped into three general categories: (1) U.S. borrower transactions, (2) U.S. lender transactions, and (3) asset holding transactions. The transactions, including the claimed U.S. tax results, are described in section B.1 of this preamble. Section B.2 of this preamble discusses the purpose of the foreign tax credit regime and explains why allowing a credit in the transactions is inconsistent with this purpose. Section B.3 of this preamble discusses comments the IRS and the Treasury Department have received on the transactions and describes the proposed regulations. The IRS is continuing to scrutinize the transactions under current law and intends to utilize all tools available to challenge the claimed U.S. tax results in appropriate cases.

1. *Categories of structured passive investment arrangements*

(a) *U.S. borrower transactions*

The first category consists of transactions in which a U.S. person indirectly borrows funds from an unrelated foreign counterparty. If a U.S. person were to borrow funds directly from a foreign person, the U.S. person generally would make nondeductible principal payments and deductible interest payments. The U.S. person would not incur foreign tax. The foreign lender generally would owe foreign tax on its interest income. In a structured financing arrangement, the U.S. borrower attempts to convert all or a portion of its deductible interest payments and, in certain cases, its nondeductible principal payments into creditable foreign tax payments. The U.S. borrower's foreign tax credit benefit is shared by the parties through the pricing of the arrangement. See *Example 1* of proposed §1.901–2(e)(5)(iv)(D).

In a typical structured financing arrangement, the loan is made indirectly through an SPV. The foreign lender's interest income (and, in many cases, other income) is effectively isolated in the SPV. The U.S. borrower acquires a direct or indirect interest in the SPV and asserts that it has a direct or indirect equity interest in the SPV for U.S. tax purposes. The U.S. borrower claims a credit for foreign taxes imposed on the income derived by the SPV. The U.S. borrower's purported equity interest may be treated as debt for foreign tax purposes or it may be treated as an equity interest that is owned by the foreign lender for foreign tax purposes. In either case, the foreign lender is treated as owning an equity interest in the SPV for foreign tax purposes, which entitles the foreign lender to receive tax-free distributions from the SPV.

For example, assume that a U.S. person seeks to borrow $1.5 billion from a foreign person. Instead of borrowing the funds directly, the U.S. borrower forms a corporation (SPV) in the same country as the foreign counterparty. The U.S. borrower contributes $1.5 billion to SPV in exchange for 100 percent of the stock of SPV. SPV, in turn, loans the entire $1.5 billion to a corporation wholly owned by the U.S. borrower. The U.S. borrower recovers its $1.5 billion by selling its entire interest in SPV to the foreign counterparty, subject to an obligation to repurchase the interest in five years for $1.5 billion. Each year, SPV earns $120 million of interest income from the U.S. borrower's subsidiary. SPV pays $36 million of foreign tax and distributes the remaining $84 million to the foreign counterparty.

The U.S. borrower takes the position that, for U.S. tax purposes, the sale-repurchase transaction is a borrowing secured by the SPV stock. Accordingly, the U.S. borrower asserts that it owns the stock of SPV for U.S. tax purposes and has an outstanding debt obligation to the foreign counterparty. It reports the distribution from SPV as dividend income and claims indirect credits under section 902 for the $36 million of foreign taxes paid by SPV. It includes in income the cash dividend of $84 million paid to the foreign counterparty, plus a section 78 gross-up amount of $36 million, for a total of $120 million. The U.S. borrower claims a deduction of $84 million as interest on its debt obligation to the foreign counterparty. In addition, the U.S. borrower's subsidiary claims an interest deduction of $120 million. In the aggregate, the U.S. borrower and its subsidiary claim a foreign tax credit of $36 million and an interest expense deduction (net of income inclusions) of $84 million.

For foreign tax purposes, the foreign counterparty owns the equity of SPV and is not subject to additional foreign tax upon receipt of the dividend. Thus, the net result is that the foreign jurisdiction receives foreign tax payments attributable to what is in substance the lender's interest income, which is consistent with the foreign tax results that would be expected from a direct borrowing.

Both parties benefit from the arrangement. The foreign lender obtains an after-foreign tax interest rate that is higher than the after-foreign tax interest rate it would earn on a direct loan. The U.S. borrower's funding costs are lower on an after-U.S. tax basis (though not on a pre-U.S. tax basis) because it has converted interest expense into creditable foreign tax payments.

The benefit to the parties is solely attributable to the reduction in the U.S. borrower's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. borrower. The foreign jurisdiction benefits from the arrangement because the amount of interest received by SPV exceeds the amount of interest that would have been received by the foreign lender if the transaction had been structured as a direct loan. As a result, the amount paid by SPV to the foreign jurisdiction exceeds the amount of foreign tax the foreign jurisdiction would have imposed on the foreign lender's interest income in connection with a direct loan.

(b) *U.S. lender transactions*

The second category consists of transactions in which a U.S. person indirectly loans funds to an unrelated foreign counterparty. If a U.S. person were to loan the funds directly to the foreign person, the U.S. person generally would be subject to U.S. tax on its interest income and the borrower would receive a corresponding deduction for the interest expense. The U.S. person generally would not be subject to foreign tax other than, in certain circumstances, a gross basis withholding tax.

In a typical structured financing arrangement, the U.S. person advances funds to a foreign borrower indirectly through an SPV. The U.S. person asserts that its interest in the SPV is equity for U.S. tax purposes. Income of the foreign borrower (or another foreign counterparty) is effectively shifted into the SPV. The U.S. person receives cash payments from the SPV and claims a credit for foreign taxes imposed on the income recognized by the SPV for foreign tax purposes. The foreign tax credits eliminate all or substantially all of the U.S. tax the U.S. person would otherwise owe on its return and, in many cases, U.S. tax the U.S. person would otherwise owe on unrelated foreign source income. The economic cost of the foreign taxes is shared through the pricing of the arrangement. See *Example 4* of proposed §1.901–2(e)(5)(iv)(D).

For example, assume a U.S. person seeks to loan $1 billion to a foreign person. In lieu of a direct loan, the U.S. lender contributes $1 billion to a newly-formed corporation (SPV). The foreign counterparty contributes $2 billion to SPV, which is organized in the same country as the foreign counterparty. SPV contributes the total $3 billion to a second special purpose entity (RH), receiving a 99 percent equity interest in RH in exchange. The foreign counterparty owns the remaining 1 percent of RH. RH loans the funds to the foreign counterparty in exchange for a note that pays interest currently and a second zero-coupon note. RH is a corporation for U.S. tax purposes and a flow-through entity for foreign tax purposes.

Each year, the foreign counterparty pays $92 million of interest to RH, and RH accrues $113 million of interest on the zero-coupon note. RH distributes the $92 million of cash it receives to SPV. Because RH is a partnership for foreign tax purposes, SPV is required to report for foreign tax purposes 99 percent ($203 million) of the income recognized by RH. Because RH is a corporation for U.S. tax purposes, SPV recognizes only the cash distributions of $92 million for U.S. tax purposes. SPV pays foreign tax of $48 million on its net income (30 percent of $159 million, or $203 interest income less $44 million interest deduction) and distributes its remaining cash of $44 million to the U.S. lender.

The U.S. lender takes the position that it has an equity interest in SPV for U.S. tax purposes. It claims an indirect credit for the $48 million of foreign taxes paid by SPV. It includes in income the cash dividend of $44 million, plus a section 78 gross-up amount of $48 million. For foreign tax purposes, the U.S. lender's interest in SPV is debt, and the foreign borrower owns 100 percent of the equity of SPV. The foreign counterparty and SPV, in the aggregate, have a net deduction of $44 million for foreign tax purposes.

Both parties benefit from the transaction. The foreign borrower obtains "cheap financing" because the $44 million of cash distributed to the U.S. lender is less than the amount of interest it would have to pay on a direct loan with respect to which the U.S. lender would owe U.S. tax. The U.S. lender is better off on an after-U.S. tax basis because of the foreign tax credits, which eliminate the U.S. lender's U.S. tax on the "dividend" income.

The benefit to the parties is solely attributable to the reduction in the U.S. lender's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. lender. The foreign jurisdiction benefits because the aggregate foreign tax result is a deduction for the foreign borrower that is less than the amount of the interest deduction the foreign borrower would have had upon a direct loan.

(c) *Asset holding transactions*

The third category of transactions ("asset holding transactions") consists of transactions in which a U.S. person that owns an income-producing asset moves the asset into a foreign taxing jurisdiction. For example, assume a U.S. person owns passive-type assets (such as debt obligations) generating an income stream that is subject to U.S. tax. In an asset holding transaction, the U.S. person transfers the assets to an SPV that is subject to tax in a foreign jurisdiction on the income stream. Ordinarily, such a transfer would not affect the U.S. person's after-tax position since the U.S. person could claim a credit for the foreign tax paid and, thereby, obtain a corresponding reduction in the amount of U.S. tax it would otherwise owe. In the structured transactions, however, the cost of the foreign tax is shared by a foreign person who obtains a foreign tax benefit by participating in the arrangement. Thus, the U.S. person is better off paying the foreign tax instead of U.S. tax because it does not bear the full economic burden of the foreign tax.

In a typical structured transaction, a foreign counterparty participates in the arrangement with the SPV. For example, the foreign counterparty may be considered to own a direct or indirect interest in the SPV for foreign tax purposes. The foreign counterparty's participation in the arrangement allows it to obtain a foreign tax benefit that it would not otherwise enjoy. The foreign counterparty compensates the U.S. person for this benefit in some manner. This compensation, which can be viewed as a reimbursement for a portion of the foreign tax liability resulting from the transfer of the assets, puts the U.S. person in a better after-U.S. tax position. See *Example 7* of proposed §1.901–2(e)(5)(iv)(D).

The benefit to the parties is solely attributable to the reduction in the U.S. taxpayer's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. taxpayer. The foreign jurisdiction benefits because the foreign taxes purportedly paid by the SPV exceed the amount by which the foreign counterparty's taxes are reduced.

2. *Purpose of the foreign tax credit*

The purpose of the foreign tax credit is to mitigate double taxation of foreign source income. Because the foreign tax credit provides a dollar-for-dollar reduction in U.S. tax that a U.S. person would otherwise owe, the U.S. person generally is indifferent, subject to various foreign tax credit limitations, as to whether it pays foreign tax on its foreign source income (if fully offset by the foreign tax credit) or whether it pays U.S. (and no foreign) tax on that income.

The structured arrangements described in section B.1 of this preamble violate this purpose. A common feature of all these arrangements is that the U.S. person and a foreign counterparty share the economic cost of the foreign taxes claimed as credits by the U.S. person. This creates an incentive for the U.S. person to subject itself voluntarily to the foreign tax because there is a U.S. tax motivation to do so. The result is an erosion of the U.S. tax base in a manner that is not consistent with the purpose of the foreign tax credit provisions.

Although the foreign counterparty derives a foreign tax benefit in these arrangements, the foreign jurisdiction generally is made whole because of the payments to the foreign jurisdiction made by the special purpose vehicle. In fact, the aggregate amount of payments to the foreign jurisdictions in connection with these transactions generally exceeds the amount of foreign tax that would have been imposed in the ordinary course. Only the U.S. fisc experiences a reduction in tax payments as a result of the structured arrangements.

The IRS and Treasury Department recognize that often there is a business purpose for the financing or portfolio investment underlying the otherwise elaborately engineered transactions. However, it is inconsistent with the purpose of the foreign tax credit to permit a credit for foreign taxes that result from intentionally structuring a transaction to generate foreign taxes in a manner that allows the parties to obtain duplicate tax benefits and share the cost of the tax payments. The result in these structured arrangements is that both parties as well as the foreign jurisdiction benefit at the expense of the U.S. fisc.

3. *Comments and proposed regulations*

The IRS and Treasury Department have determined that it is not appropriate to allow a credit in connection with these highly engineered transactions where the U.S. taxpayer benefits by intentionally subjecting itself to foreign tax. The proposed regulations would revise §1.901–2(e)(5) to provide that an amount paid to a foreign country in connection with such an arrangement is not an amount of tax paid. Accordingly, under the proposed regulations, a taxpayer would not be eligible to claim a foreign tax credit for such a payment. For periods prior to the effective date of final regulations, the IRS will continue to utilize all available tools under current law to challenge the U.S. tax results claimed in connection with such arrangements, including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, existing §1.901–2(e), section 269, and the partnership anti-abuse rules of §1.701–2.

Certain commentators recommended that the IRS and Treasury Department adopt a broad anti-abuse rule that would deny a foreign tax credit in any case where allowance of the credit would be inconsistent with the purpose of the foreign tax credit regime. Other commentators recommended a narrower approach that would only deny foreign tax credits attributable to transactions that include particular features. The IRS and Treasury Department are concerned that a broad anti-abuse rule would create uncertainty for both taxpayers and the IRS. The IRS and Treasury Department have concluded that, at this time, a targeted rule denying foreign tax credits in arrangements similar to the arrangements described in section B.1 of this preamble is more appropriate.

For periods after the effective date of final regulations, the IRS and Treasury Department will continue to scrutinize other arrangements that are not covered by the regulations but are inconsistent with the purpose of the foreign tax credit. Such arrangements may include arrangements that are similar to arrangements described in the proposed regulations, but that do not meet all of the conditions included in the proposed regulations. The IRS will utilize all available tools, including those described above, to challenge the claimed U.S. tax results in appropriate cases. In addition, the IRS and Treasury Department may issue additional regulations in the future in order to address such other arrangements.

The proposed regulations would retain the general rule in the existing regulations that a taxpayer need not alter its form of doing business or the form of any transaction in order to reduce its foreign tax liability. However, the proposed regulations would provide that, notwithstanding the general rule, an amount paid to a foreign country (a "foreign payment") is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to a structured passive investment arrangement. For this purpose, the proposed regulations would define a structured passive investment arrangement as an arrangement that satisfies six conditions. The six conditions consist of features that are common to the three types of arrangements identified in section B.1 of this preamble. The IRS and Treasury Department believe it is appropriate to treat foreign payments attributable to these arrangements as voluntary payments because such arrangements are intentionally structured to generate the foreign payment.

The first condition is that the arrangement utilizes an entity that meets two requirements (an "SPV"). The first requirement is that substantially all of the gross income (for United States tax purposes) of the entity is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. The second requirement is that there is a purported foreign tax payment attributable to income of the entity. The purported foreign tax may be paid by the entity itself, by the owner(s) of the entity (if the entity is treated as a pass-through entity under foreign law) or by a lower-tier entity (if the lower-tier entity is treated as a pass-through entity under U.S. law).

For purposes of this first requirement, passive investment income is defined as income described in section 954(c), with two modifications. The first modification is that if the entity is a holding company that owns a direct equity interest (other than a preferred interest) of 10 percent or more in another entity (a lower-tier entity) that is predominantly engaged in the active conduct of a trade or business (or substantially all the assets of which consist of qualifying equity interests in other entities that are predominantly engaged in the active conduct of a trade or business), passive investment income does not include income attributable to the interest in such lower-tier entity. This exception does not apply if there are arrangements under which substantially all of the opportunity for gain and risk of loss with respect to such interest in the lower-tier entity are borne by either the U.S. party or the counterparty (but not both). Accordingly, a direct equity interest in any such lower-tier entity is not held to produce passive investment income provided there are no arrangements under which substantially all of the entity's opportunity for gain and risk of loss with respect to the lower-tier entity are borne by either the U.S. party or the counterparty (but not both). This modification is based on the notion that an entity is not a passive investment vehicle of the type targeted by these regulations if the entity is a holding company for one or more operating companies. This modification ensures that a joint venture arrangement between a U.S. person and a foreign person is not treated as a passive investment arrangement solely because the joint venture is conducted through a holding company structure.

The second modification is that passive investment income is determined by disregarding sections 954(c)(3) and (c)(6) and by treating income attributable to transactions with the counterparties (described in this preamble) as ineligible for the exclusions under sections 954(h) and (i). Sections 954(c)(3) and (c)(6) provide exclusions for certain related party payments of dividends, interest, rents, and royalties. Those exclusions are not appropriate for these transactions because these transactions can be structured utilizing related party payments. The modifications to the application of sections 954(h) and (i) are intended to ensure that income derived from the counterparty cannot qualify for the exclusion from passive investment income, but will not prevent other income from qualifying for those exclusions. The IRS and Treasury Department intend that the structured financing arrangements described in this preamble do not qualify for the active banking, financing or insurance business exceptions to the definition of passive investment income. Comments are requested on whether further modifications or clarifications to the proposed regulations' definition of passive investment income are appropriate to ensure this result.

The requirement that substantially all of the assets of the entity produce passive investment income is intended to ensure that an entity engaged in an active trade or business is not treated as an SPV solely because, in a particular year, it derives only passive investment income.

The second overall condition is that a person (a "U.S. party") would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment if such payment were an amount of tax paid. Such eligibility to claim the credit could arise because the U.S. party would be treated as having paid or accrued the foreign payment for purposes of section 901 if it were an amount of tax paid. Alternatively, the U.S. party's eligibility to claim the credit could arise because the U.S. party owns an equity interest in the SPV or another entity that would be treated as having paid or accrued the foreign payment for purposes of section 901 if it were an amount of tax paid.

The third overall condition is that the foreign payment or payments are (or are expected to be) substantially greater than the amount of credits, if any, that the U.S. party would reasonably expect to be eligible to claim under section 901(a) if such U.S. party directly owned its proportionate share of the assets owned by the SPV other than through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would subject the income generated by its share of the assets to a net basis foreign tax. For example, if the SPV owns a note that generates interest income with respect to which a foreign payment is made, but foreign law (including an applicable treaty) provides for a zero rate of withholding tax on interest paid to non-residents, the U.S. party would not reasonably expect to pay foreign tax for which it could claim foreign tax credits if it directly owned the note and directly earned the interest income.

The fourth condition is that the arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a disregarded payment) for a counterparty or for a person that is related to the counterparty, but not related to the U.S. party.

The fifth condition is that the counterparty is a person (other than the SPV) that is unrelated to the U.S. party and that (i) directly or indirectly owns 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax or (ii) acquires 20 percent or more of the assets of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax.

The sixth condition is that the U.S. and an applicable foreign country treat the arrangement differently under their respective tax systems. For this purpose, an applicable foreign country is any foreign country in which either the counterparty, a person related to the counterparty (but not related to the U.S. party) or the SPV is subject to net basis tax. To provide clarity and limit the scope of this factor, the proposed regulations provide that the arrangement must be subject to one of four specified types of inconsistent treatment. Specifically, the U.S. and the foreign country (or countries) must treat one or more of the following aspects of the arrangement differently, and the U.S. treatment of the inconsistent aspect must materially affect the amount of foreign tax credits claimed, or the amount of income recognized, by the U.S. party to the arrangement: (i) the classification of an entity as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes; (ii) the characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued in the transaction; (iii) the proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty; or (iv) the amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

Under the proposed regulations, a foreign payment would not be a compulsory payment if it is attributable to an arrangement that meets the six conditions. The proposed regulations would treat a foreign payment as attributable to such an arrangement if the foreign payment is attributable to income of the SPV. Such foreign payments include a payment by the SPV, a payment by the owner of the SPV (if the SPV is a pass-through entity under foreign law) and a payment by a lower-tier entity that is treated as a pass-through entity under U.S. law. For this purpose, a foreign payment is not treated as attributable to the income of the SPV if the foreign payment is a gross basis withholding tax imposed on a distribution or payment from the SPV to the U.S. party. Such taxes could be considered to be noncompulsory payments because the U.S. party intentionally subjects itself to the taxes as part of the arrangement. However, the IRS and Treasury Department have determined that such taxes should not be treated as attributable to the arrangement because, among other reasons, the foreign counterparty generally does not derive a duplicative foreign tax benefit and, therefore, generally does not share the economic cost of such taxes.

The IRS and Treasury Department considered excluding all foreign payments with respect to which the economic cost is not shared from the definition of foreign payments attributable to the arrangement, but determined that such a rule would be difficult to administer. The IRS and Treasury Department request comments on whether it would be appropriate to exclude certain foreign payments from the definition of foreign taxes attributable to the structured passive investment arrangement. Comments should address the rationale and administrable criteria for identifying any such exclusions.

Certain commentators recommended that the proposed regulations include a requirement that the foreign tax credits attributable to the arrangement be disproportionate to the amount of taxable income attributable to the arrangement. This recommendation has not been adopted for three reasons. First, the IRS and Treasury Department were concerned that such a requirement would create too much uncertainty and would be unduly burdensome for taxpayers and the IRS. Second, the extent to which interest and other expenses, as well as returns on borrowed funds and capital, should be considered attributable to a particular arrangement is not entirely clear. A narrow view could present opportunities for manipulation, especially for financial institutions having numerous alternative placements of leverage for use within the group, while an expansive view could undercut the utility of such a test. Third, the fundamental concern in these transactions is that they create an incentive for taxpayers voluntarily to subject themselves to foreign tax. This concern exists irrespective of whether the particular arrangement generates a disproportionate amount of foreign tax credits.

The IRS and Treasury Department considered whether it would be appropriate to permit a taxpayer to treat a foreign payment attributable to an arrangement that meets the definition of a structured passive investment arrangement as an amount of tax paid, if the taxpayer can show that tax considerations were not a principal purpose for the structure of the arrangement. Alternatively, the IRS and Treasury Department considered whether it would be appropriate to treat a foreign payment as an amount of tax paid if a taxpayer shows that there is a substantial business purpose for utilizing a hybrid instrument or entity, which would not include reducing the taxpayer's after-tax costs or enhancing the taxpayer's after-tax return through duplicative foreign tax benefits. The IRS and Treasury Department determined not to include such a rule in these proposed regulations due to administrability concerns. Comments are requested, however, on whether the final regulations should include such a rule as well as how such a rule could be made to be administrable in practice, including what reasonably ascertainable evidence would be sufficient to establish such a substantial non-tax business purpose, or the lack of a tax-related principal purpose. Comments should also address whether it would be appropriate to adopt a broader anti-abuse rule and permit a taxpayer to demonstrate that it should not apply.

C. *Effective Date*

The regulations are proposed to be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the final regulations are published in the **Federal Register**. No inference is intended regarding the U.S. tax consequences of structured passive investment arrangements prior to the effective date of the 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, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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 July 30, 2007, at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 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 July 9, 2007. 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. Section 1.901–2 is amended by adding paragraphs (e)(5)(iii) and (iv), and revising paragraph (h) to read as follows:

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

* * * * *

(e)(5) * * *

(iii) *U.S.-owned foreign entities*—(A) *In general*. If a U.S. person described in section 901(b) directly or indirectly owns stock possessing 80 percent or more of the total voting power and total value of one or more foreign corporations (or, in the case of a non-corporate foreign entity, directly or indirectly owns an interest in 80 percent or more of the income of one or more such foreign entities), the group comprising such foreign corporations and entities (the "U.S.-owned group") shall be treated as a single taxpayer for purposes of paragraph (e)(5) of this section. Therefore, if one member of such a U.S.-owned group transfers or surrenders a net loss for the taxable year to a second member of the U.S.-owned group and the loss reduces the foreign tax due from the second member pursuant to a foreign law group relief or similar regime, foreign tax paid by the first member in a different year does not fail to be a compulsory payment solely because such tax would not have been due had the member that transferred or surrendered the net loss instead carried over the loss to reduce its own income and foreign tax liability in that year. Similarly, if one or more members of the U.S.-owned group enter into a combined settlement under foreign law of two or more issues involving different members of the group, such settlement will be evaluated on an overall basis, not on an issue-by-issue or entity-by-entity basis, in determining whether an amount is a compulsory amount. The provisions of this paragraph (e)(5)(iii) apply solely for purposes of determining whether amounts paid are compulsory payments of foreign tax and do not, for example, modify the provisions of section 902 requiring separate pools of post-1986 undistributed earnings and post-1986 foreign income taxes for each member of a qualified group.

(B) *Special rules*. All domestic corporations that are members of a consolidated group (as that term is defined in §1.1502–1(h)) shall be treated as one domestic corporation for purposes of this paragraph (e)(5)(iii). For purposes of this paragraph (e)(5)(iii), indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), whether the interest is owned by a U.S. or foreign person.

(C) *Examples*. The following examples illustrate the rules of this paragraph (e)(5)(iii):

Example 1. (i) *Facts*. A, a domestic corporation, wholly owns B, a country X corporation. B, in turn, wholly owns several country X corporations, including C and D. B, C, and D participate in group relief in country X. Under the country X group relief rules, a member with a net loss may choose to surrender the loss to another member of the group. In year 1, C has a net loss of (1,000x) and D has net income of 5,000x for country X tax purposes. Pursuant to the group relief rules in country X, C agrees to surrender its year 1 net loss to D and D agrees to claim the net loss. D uses the net loss to reduce its year 1 net income to 4,000x for country X tax purposes, which reduces the amount of country X tax D owes in year 1 by 300x. In year 2, C earns 3,000x with respect to which it pays 900x of country X tax. Country X permits a taxpayer to carry forward net losses for up to ten years.

(ii) *Result*. Paragraph (e)(5)(i) of this section provides, in part, that an amount paid to a foreign country does not exceed the amount of liability under foreign law for tax if the taxpayer determines such amount in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax. Under paragraph (e)(5)(iii)(A) of this section, B, C, and D are treated as a single taxpayer for purposes of testing whether the reasonably expected foreign tax liability has been minimized over time, because A directly and indirectly owns 100 percent of each of B, C, and D. Accordingly, none of the 900x paid by C in year 2 fails to be a compulsory payment solely because C could have reduced its year 2 country X tax liability by 300x by choosing to carry forward its year 1 net loss to year 2 instead of surrendering it to D to reduce D's country X liability in year 1.

Example 2. (i) *Facts*. L, M, and N are country Y corporations. L owns 100 percent of the common stock of M, which owns 100 percent of the stock of N. O, a domestic corporation, owns a security issued by M that is treated as debt for country Y tax purposes and as stock for U.S. tax purposes. As a result, L owns 100 percent of the stock of M for country Y purposes while O owns 99 percent of the stock of M for U.S. tax purposes. L, M, and N participate in group relief in country Y. Pursuant to the group relief rules in country Y, M may surrender its loss to any member of the group. In year 1, M has a net loss of $10 million, N has net income of $25 million, and L has net income of $15 million. M chooses to surrender its year 1 net loss to L. Country Y imposes tax of 30 percent on the net income of country Y corporations. Accordingly, in year 1, the loss surrender has the effect of reducing L's country Y tax by $3 million. In year 1, N makes a payment of $7.5 million to country Y with respect to its net income of $25 million. If M had surrendered its net loss to N instead of L, N would have had net income of $15 million, with respect to which it would have owed only $4.5 million of country Y tax.

(ii) *Result*. M and N, but not L, are treated as a single taxpayer for purposes of paragraph (e)(5) of this section because O directly and indirectly owns 99 percent of each of M and N, but owns no direct or indirect interest in L. Accordingly, in testing whether M and N's reasonably expected foreign tax liability has been minimized over time, L is not considered the same taxpayer as M and N, collectively, and the $3 million reduction in L's year 1 country Y tax liability through the surrender to L of M's $10 million country Y net loss in year 1 is not considered to reduce M and N's collective country Y tax liability.

(iv) *Certain structured passive investment arrangements*—(A) *In general*. Notwithstanding paragraph (e)(5)(i) of this section, an amount paid to a foreign country (a "foreign payment") is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to an arrangement described in paragraph (e)(5)(iv)(B) of this section. For purposes of this paragraph (e)(5)(iv), a foreign payment is attributable to an arrangement described in paragraph (e)(5)(iv)(B) of this section if the foreign payment is described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section.

(B) *Conditions*. An arrangement is described in this paragraph (e)(5)(iv)(B) if all of the following conditions are satisfied:

(*1*) *Special purpose vehicle (SPV)*. An entity that is part of the arrangement meets the following requirements:

(*i*) Substantially all of the gross income (for United States tax purposes) of the entity is passive investment income as defined in paragraph (e)(5)(iv)(C)(*4*) of this section, and substantially all of the assets of the entity are assets held to produce such passive investment income. As provided in paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section, passive investment income generally does not include income of a holding company from qualified equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business. Thus, except as provided in paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section, qualified equity interests of a holding company in such lower-tier entities are not held to produce passive investment income and the ownership of such interests will not cause the holding company to satisfy this paragraph (e)(5)(iv)(B)(*1*)(*i*).

(*ii*) There is a foreign payment attributable to income of the entity (as determined under the laws of the foreign country to which such foreign payment is made), including the entity's share of income of a lower-tier entity that is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity includes a foreign payment attributable to income that is required to be taken into account by an owner of the entity, if the entity is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity also includes a foreign payment attributable to income of a lower-tier entity that is a branch or pass-through entity for U.S. tax purposes. A foreign payment attributable to income of the entity does not include a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a distribution or payment from the entity to a U.S. party (as defined in paragraph (e)(5)(iv)(B)(*2*) of this section).

(*2*) *U.S. party*. A person (a "U.S. party") would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section if the foreign payment were an amount of tax paid.

(*3*) *Direct investment*. The foreign payment or payments described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section are (or are expected to be) substantially greater than the amount of credits, if any, the U.S. party would reasonably expect to be eligible to claim under section 901(a) for foreign taxes attributable to income generated by the U.S. party's proportionate share of the assets owned by the SPV if the U.S. party directly owned such assets. For this purpose, direct ownership shall not include ownership through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would result in the income generated by the U.S. party's proportionate share of the assets being subject to tax on a net basis in the foreign country to which the payment is made. A U.S. party's proportionate share of the assets of the SPV shall be determined by reference to such U.S. party's proportionate share of the total value of all of the outstanding interests in the SPV that are held by its equity owners and creditors.

(*4*) *Foreign tax benefit*. The arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a disregarded payment) for a counterparty described in paragraph (e)(5)(iv)(B)(*5*) of this section or for a person that is related to the counterparty (determined under the principles of paragraph (e)(5)(iv)(C)(*6*) of this section by applying the tax laws of a foreign country in which the counterparty is subject to tax on a net basis) but is not related to the U.S. party (within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section).

(*5*) *Unrelated counterparty*. The arrangement involves a counterparty. A counterparty is a person (other than the SPV) that is not related to the U.S. party (within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section) and that meets one of the following conditions:

(*i*) The person is considered to own directly or indirectly 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax.

(*ii*) In a single transaction or series of transactions, the person directly or indirectly acquires 20 percent or more of the value of the assets of the SPV under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax. For purposes of determining the percentage of assets of the SPV acquired by the person, an asset of the SPV shall be disregarded if a principal purpose for transferring such asset to the SPV was to avoid this paragraph (e)(5)(iv)(B)(*5*)(*ii*).

(*6*) *Inconsistent treatment*. The U.S. and an applicable foreign country (as defined in paragraph (e)(5)(iv)(C)(*1*) of this section) treat one or more of the following aspects of the arrangement differently under their respective tax systems, and the U.S. treatment of the inconsistent aspect would materially affect the amount of income recognized by the U.S. party or the amount of credits claimed by the U.S. party if the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section were an amount of tax paid:

(*i*) The classification of the SPV (or an entity that has a direct or indirect ownership interest in the SPV) as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes.

(*ii*) The characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued by the SPV (or an entity that has a direct or indirect ownership interest in the SPV) to the U.S. party, the counterparty or a person related to the U.S. party or the counterparty.

(*iii*) The proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty.

(*iv*) The amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

(C) *Definitions*—(*1*) *Applicable foreign country*. An *applicable foreign country* means each foreign country to which a foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section is made or which confers a foreign tax benefit described in paragraph (e)(5)(iv)(B)(*4*) of this section.

(*2*) *Entity*. For purposes of paragraph (e)(5)(iv)(B)(*1*) and (e)(5)(iv)(C)(*4*) of this section, the term *entity* includes a corporation, trust, partnership or disregarded entity described in §301.7701–2(c)(2)(i) of this chapter.

(*3*) *Indirect ownership*. For purposes of paragraph (e)(5)(iv) of this section, indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), whether the interest is owned by a U.S. or foreign entity.

(*4*) *Passive investment income*—(*i*) *In general*. For purposes of paragraph (e)(5)(iv) of this section, the term *passive investment income* means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(*4*)(*i*) and paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. In determining whether income is described in section 954(c), sections 954(c)(3) and 954(c)(6) shall be disregarded, and sections 954(h) and (i) shall be taken into account by applying those provisions at the entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions with a person that would be a counterparty (as defined in paragraph (e)(5)(iv)(B)(*5* of this section) if the entity were an SPV, or with other persons that are described in paragraph (e)(5)(iv)(B)(*4*) of this section and that are eligible for a foreign tax benefit described in such paragraph (e)(5)(iv)(B)(*4*), shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and (i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or (i).

(*ii*) *Income attributable to lower-tier entities*. Except as provided in this paragraph (e)(5)(iv)(C)(*4*)(*ii*), income of an entity that is attributable to an equity interest in a lower-tier entity is passive investment income. If the entity is a holding company and directly owns a qualified equity interest in another entity (a "lower-tier entity") that is engaged in the active conduct of a trade or business and that derives more than 50 percent of its gross income from such trade or business, then none of the entity's income attributable to such interest is passive investment income, provided that there are no arrangements whereby substantially all of the entity's opportunity for gain and risk of loss with respect to such interest is borne by the U.S. party (or a related person) or the counterparty (or a related person), but not both parties. For purposes of the preceding sentence, an entity is a holding company, and is considered to be engaged in the active conduct of a trade or business and to derive more than 50 percent of its gross income from such trade or business, if substantially all of its assets consist of qualified equity interests in one or more entities, each of which is engaged in the active conduct of a trade or business and derives more than 50 percent of its gross income from such trade or business and with respect to which there are no arrangements whereby substantially all of the entity's opportunity for gain and risk of loss with respect to such interest is borne by the U.S. party (or a related person) or the counterparty (or a related person), but not both parties. For purposes of this paragraph (e)(5)(iv)(C)(*4*)(*ii*), a lower-tier entity that is engaged in a banking, financing, or similar business shall not be considered to be engaged in the active conduct of a trade or business unless the income derived by such entity would be excluded from section 954(c)(1) under section 954(h) or (i), determined by applying those provisions at the lower-tier entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions with a person that would be a counterparty (as defined in paragraph (e)(5)(iv)(B)(*5*) of this section) if the entity were an SPV, or with other persons that are described in paragraph (e)(5)(iv)(B)(*4*) of this section and that are eligible for a foreign tax benefit described in such paragraph (e)(5)(iv)(B)(*4*), shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and (i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or (i).

(*5*) *Qualified equity interest*. With respect to an interest in a corporation, the term *qualified equity interest* means stock representing 10 percent or more of the total combined voting power of all classes of stock entitled to vote and 10 percent or more of the total value of the stock of the corporation or disregarded entity, but does not include any preferred stock (as defined in section 351(g)(3)). Similar rules shall apply to determine whether an interest in an entity other than a corporation is a qualified equity interest.

(*6*) *Related person*. Two persons are related for purposes of paragraph (e)(5)(iv) of this section if—

(*i*) One person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of the other person; or

(*ii*) The same person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of both persons.

(*7*) *Special purpose vehicle (SPV)*. For purposes of this paragraph (e)(5)(iv), the term *SPV* means the entity described in paragraph (e)(5)(iv)(B)(*1*) of this section.

(D) *Examples*. The following examples illustrate the rules of paragraph (e)(5)(iv) of this section. No inference is intended as to whether a taxpayer would be eligible to claim a credit under section 901(a) if a foreign payment were an amount of tax paid.

Example 1. U.S. borrower transaction. (i) *Facts*. A domestic corporation (USP) forms a country M corporation (Newco), contributing $1.5 billion in exchange for 100 percent of the stock of Newco. Newco, in turn, loans the $1.5 billion to a second country M corporation (FSub) wholly owned by USP. FSub is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its gross income from such business. USP then sells its entire interest in Newco to a country M corporation (FP) for the original purchase price of $1.5 billion, subject to an obligation to repurchase the interest in five years for $1.5 billion. The sale has the effect of transferring ownership of the Newco stock to FP for country M tax purposes. The sale-repurchase transaction is structured in a way that qualifies as a collateralized loan for U.S. tax purposes. Therefore, USP remains the owner of the Newco stock for U.S. tax purposes. In year 1, FSub pays Newco $120 million of interest. Newco pays $36 million to country M with respect to such interest income and distributes the remaining $84 million to FP. Under country M law, the $84 million distribution is excluded from FP's income. FP is not related to USP within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section. Under an income tax treaty between country M and the U.S., country M does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result*. The payment by Newco to country M is not a compulsory payment, and thus is not an amount of tax paid. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's only asset, a note, is held to produce such income, and the payment to country M is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USP would be deemed to pay the foreign payment under section 902(a) and, therefore, would be eligible to claim a credit for such payment under section 901(a). Third, USP would not pay any country M tax if it directly owned Newco's loan receivable. Fourth, distributions from Newco to FP are exempt from tax under country M law. Fifth, FP is a counterparty because FP and USP are unrelated and FP owns more than 10 percent of the stock of Newco under country M law. Sixth, FP is the owner of 100 percent of Newco's stock for country M tax purposes, while USP is the owner of 100 percent of Newco's stock for U.S. tax purposes, and USP's ownership of the stock would materially affect the amount of credits claimed by USP if the payment to country M were an amount of tax paid. If the foreign payment were treated as an amount of tax paid, USP's ownership of the stock for U.S. tax purposes would make USP eligible to claim a credit for such amount under sections 901(a) and 902(a). Because the payment to country M is not an amount of tax paid, USP has dividend income of $84 million and is not deemed to pay any country M tax under section 902(a). USP also has interest expense of $84 million. FSub's post-1986 undistributed earnings are reduced by $120 million of interest expense.

Example 2. U.S. borrower transaction. (i) *Facts*. The facts are the same as in *Example 1*, except that FSub is a wholly-owned subsidiary of Newco. In addition, FSub agrees not to pay, and Newco and FP agree not to cause FSub to pay, dividends during the five-year period in which FP holds the Newco stock subject to the obligation of USP to repurchase the stock.

(ii) *Result*. The results are the same as in *Example 1*. Although Newco wholly owns FSub, which is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its income from such business, income attributable to Newco's stock in FSub is passive investment income because there are arrangements whereby substantially all of Newco's opportunity for gain and risk of loss with respect to its stock in FSub is borne by USP. See paragraph (e)(iv)(C)(*4*)(*ii*) of this section. Accordingly, Newco's stock in FSub is held to produce passive investment income. Thus, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's assets are held to produce such income, and the payment to country M is attributable to such income.

Example 3. Active business; no SPV. (i) *Facts*. A, a domestic corporation, wholly owns B, a country X corporation engaged in the manufacture and sale of widgets. On January 1, 2008, C, also a country X corporation, loans $400 million to B in exchange for an instrument that is debt for U.S. tax purposes and equity for country X tax purposes. As a result, C is considered to own 20 percent of the stock of B for country X tax purposes. B loans $55 million to D, a country Y corporation wholly owned by A. For its 2008 tax year, B has $166 million of net income attributable to its sales of widgets and $3.3 million of interest income attributable to the loan to D. Country Y does not impose tax on interest paid to nonresidents. B makes a payment of $50.8 million to country X with respect to B's net income. Country X does not impose tax on dividend payments between country X corporations. A and C are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section.

(ii) *Result*. B is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this section because the amount of interest income received from D does not constitute substantially all of B's income and the $55 million loan to D does not constitute substantially all of B's assets. Accordingly, the $50.8 million payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 4. U.S. lender transaction. (i) *Facts*. (A) A country X corporation (foreign bank) contributes $2 billion to a newly-formed country X corporation (Newco) in exchange for 100 percent of Newco's common stock. A U.S. bank (USB) contributes $1 billion to Newco in exchange for securities that are treated as stock of Newco for U.S. tax purposes and debt of Newco for country X tax purposes. The securities represent 10 percent of the total voting power of Newco. Newco contributes the entire $3 billion to a newly-formed country X entity (RH) in exchange for 99 percent of RH's equity. Foreign bank owns the remaining 1 percent of RH. RH is treated as a corporation for U.S. tax purposes and a partnership for country X tax purposes. RH loans the entire $3 billion it receives from Newco to foreign bank in exchange for a note that pays interest currently and a zero-coupon note. Under an income tax treaty between country X and the U.S., country X does not impose country X tax on interest received by U.S. residents from sources in country X. Country X does not impose tax on dividend payments between country X corporations. USB and the foreign bank are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section.

(B) In year 1, foreign bank pays RH $92 million of interest and accrues $113 million of interest on the zero-coupon note. RH distributes the $92 million of cash it receives to Newco. Newco distributes $44 million to USB. Because RH is a partnership for country X purposes, Newco is required to report for country X purposes 99 percent ($203 million) of the income recognized by RH. Newco is entitled to interest deductions of $44 million for distributions to USB on the securities for country X tax purposes and, thus, has $159 million of net income for country X tax purposes. Newco makes a payment to country X of $48 million with respect to its net income. For U.S. tax purposes, Newco's post-1986 undistributed earnings pool for year 1 is $44 million ($92 million - $48 million). For country X tax purposes, foreign bank is entitled to interest expense deductions of $205 million.

(ii) *Result*. (A) The payment to country X is not a compulsory payment, and thus is not an amount of tax paid. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's sole asset, stock of RH, is held to produce such income, and the payment to country X is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USB would be deemed to pay the $48 million under section 902(a) and, therefore, would be eligible to claim a credit under section 901(a). Third, USB would not pay any country X tax if it directly owned its proportionate share of Newco's asset, the 99 percent interest in RH, because under the U.S.-country X tax treaty country X would not impose tax on USB's distributive share of RH's interest income. Fourth, foreign bank is entitled to interest deductions under country X law for interest it pays and accrues to RH, and will receive tax-free dividends from Newco upon payment of the accrued interest. Fifth, foreign bank and USB are unrelated and foreign bank is considered to own more than 10 percent of Newco under country X law. Sixth, the U.S. and country X view several aspects of the transaction differently, and the U.S. treatment would materially affect the amount of credits claimed by USB if the country X payment were an amount of tax paid. If the country X payment were treated as an amount of tax paid, the equity treatment of the securities for U.S. tax purposes would make USB eligible to claim a credit for the payment under sections 901(a) and 902(a). Moreover, the fact that Newco recognizes a smaller amount of income for U.S. tax purposes than it does for country X tax purposes would increase the amount of credits USB would be eligible to claim upon receipt of the $44 million distribution. Because the $48 million payment to country X is not an amount of tax paid, USB has dividend income of $44 million. It is not deemed to pay tax under section 902(a).

(B) In addition, RH is an SPV because all of RH's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, RH's sole assets, notes of foreign bank, are held to produce such income, and Newco's payment to country X is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USB would be deemed to pay the $48 million under section 902(a) and, therefore, would be eligible to claim a credit under section 901(a). Third, USB would not pay any country X tax if it directly owned its proportionate share of RH's assets, notes of foreign bank, because under the U.S.-country X tax treaty country X would not impose tax on interest paid by foreign bank to USB. Fourth, foreign bank is entitled to interest deductions under country X law for interest it pays and accrues to RH, and will receive tax-free dividends from Newco upon payment of the accrued interest. Fifth, foreign bank and USB are unrelated and foreign bank is considered to own directly or indirectly more than 10 percent of RH under country X law. Sixth, the U.S. and country X view several aspects of the transaction differently, and the U.S. treatment would materially affect the amount of credits claimed by USB if the country X payment were an amount of tax paid. If the country X payment were treated as an amount of tax paid, the equity treatment of the Newco securities for U.S. tax purposes would make USB eligible to claim a credit for the payment under sections 901(a) and 902(a). Moreover, the entity classification of RH for U.S. tax purposes results in Newco recognizing a smaller amount of income for U.S. tax purposes than it does for country X tax purposes, which would increase the amount of credits USB would be eligible to claim upon receipt of the $44 million distribution. Because the $48 million payment to country X is not an amount of tax paid, USB has dividend income of $44 million. It is not deemed to pay tax under section 902(a).

Example 5. Active business; no SPV. (i) *Facts*. A, a country X corporation, and B, a domestic corporation, each contribute $1 billion to a newly-formed country X entity (C) in exchange for stock of C. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. C contributes $1.95 billion to a newly-formed country X corporation (D) in exchange for 100 percent of D's stock. It loans its remaining $50 million to D. Accordingly, C's sole assets are stock and debt of D. D uses the entire $2 billion to engage in the business of manufacturing and selling widgets. For the 2015 tax year, D derives $300 million of income from its widget business and derives $2 million of interest income. For the 2015 tax year, C has dividend income of $200 million and interest income of $3.2 million with respect to its investment in D. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result*. C's dividend income is not passive investment income, and C's stock in D is not held to produce such income, because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. As a result, less than substantially all of C's income is passive investment income and less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this section, and the $960,000 payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 6. Active business; no SPV. (i) *Facts*. The facts are the same as in *Example 5*, except that instead of loaning $50 million to D, C contributes the $50 million to E in exchange for 10 percent of the stock of E. E is a country Y entity that in not engaged in the active conduct of a trade or business. Also, for the 2015 tax year, D pays no dividends to C, E pays $3.2 million in dividends to C, and C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result*. C's dividend income attributable to its stock in E is passive investment income, and C's stock in E is held to produce such income. C's stock in D is not held to produce passive investment income because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. As a result, less than substantially all of C's assets are held to produce passive investment income. Accordingly, C does not meet the requirements of paragraph (e)(5)(iv)(B)(*1*) of this section, and the $960,000 payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 7. Asset holding transaction. (i) *Facts*. (A) A domestic corporation (USP) contributes $6 billion of country Z debt obligations to a country Z entity (DE) in exchange for all of the class A and class B stock of DE. A corporation unrelated to USP and organized in country Z (Fcorp) contributes $1.5 billion to DE in exchange for all of the class C stock of DE. DE uses the $1.5 billion contributed by Fcorp to redeem USP's class B stock. The class C stock is entitled to "all" income from DE. However, Fcorp is obligated immediately to contribute back to DE all distributions on the class C stock. USP and Fcorp enter into—

(*1*) A forward contract under which USP agrees to buy after five years the class C stock for $1.5 billion; and

(*2*) An agreement under which USP agrees to pay Fcorp interest at a below-market rate on $1.5 billion.

(B) For U.S. tax purposes, these steps create a secured loan of $1.5 billion from Fcorp to USP. Therefore, for U.S. tax purposes, USP is the owner of both the class A and class C stock. DE is a disregarded entity for U.S. tax purposes and a corporation for country Z tax purposes. In year 1, DE earns $400 million of interest income on the country Z debt obligations. DE makes a payment to country Z of $100 million with respect to such income and distributes the remaining $300 million to Fcorp. Fcorp contributes the $300 million back to DE. USP and Fcorp are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section. Country Z does not impose tax on interest income derived by U.S. residents.

(C) Country Z treats Fcorp as the owner of the class C stock. Pursuant to country Z tax law, Fcorp is required to report the $400 million of income with respect to the $300 million distribution from DE, but is allowed to claim credits for DE's $100 million payment to country Z. For country Z tax purposes, Fcorp's contribution increases its basis in the class C stock. When the class C stock is later "sold" to USP for $1.5 billion, the increase in tax basis will result in a country Z tax loss for Fcorp. Each year, the amount of the basis increase (and, thus, the amount of the loss generated) will be approximately $300 million.

(ii) *Result*. The payment to country Z is not a compulsory payment, and thus is not an amount of tax paid. First, DE is an SPV because all of DE's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, all of DE's assets are held to produce such income, and the payment to country Z is attributable to such income. Second, if the payment were treated as an amount of tax paid, USP would be eligible to claim a credit for such amount under section 901(a). Third, USP would not pay any country Z tax if it directly owned DE's assets. Fourth, Fcorp is entitled to claim a credit under country Z tax law for the payment and will recognize a loss under country Z law upon the "sale" of the class C stock. Fifth, Fcorp and USP are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section and Fcorp is considered to own more than 10 percent of DE under country Z law. Sixth, the United States and country X view certain aspects of the transaction differently and the U.S. treatment would materially affect the amount of credits claimed by USP if the country Z payment were an amount of tax paid. USP's ownership of the class C stock for U.S. tax purposes would make USP eligible to claim a credit for the country Z payment if the payment were treated as an amount of tax paid.

* * * * *

(h) *Effective date*. Paragraphs (a) through (e)(5)(ii) and paragraph (g) of this section, §1.901–2A, and §1.903–1 apply to taxable years beginning after November 14, 1983. Paragraphs (e)(5)(iii) and (iv) of this section are effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which these regulations are published as final regulations in the **Federal Register**.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on March 29, 2007, 8:45 a.m., and published in the issue of the Federal Register for March 30, 2007, 72 F.R. 15081)

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

Announcement 2007-41

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
Hankinson, Eugene M.	Somerset, PA	CPA	Indefinite from November 15, 2006
Canzano, Richard M.	Winchester, MA	Attorney	Indefinite from November 20, 2006
Sims, Jr., Lionel	Houston, TX	CPA	Indefinite from November 20, 2006

Name	Address	Designation	Date of Suspension
Wendekier, Raymond J.	Patton, PA	Attorney	Indefinite from November 21, 2006
Golden, Larry	Hinesville, GA	CPA	Indefinite from November 28, 2006
Lane, David B.	Hanover, MA	Attorney	Indefinite from November 28, 2006
Brown, Arthur I.	Miami, FL	CPA	Indefinite from December 1, 2006
Frisk, Daniel J.	Fargo, ND	Attorney	Indefinite from December 1, 2006
Small, Kenneth A.	McMurray, PA	CPA	Indefinite from December 1, 2006
Vazquez, Sonya M.	Port Orchard, WA	CPA	Indefinite from December 1, 2006
Swistak, Anthony	Adams, MA	Enrolled Agent	Indefinite from December 6, 2006
Lenahan, Jr., Robert J.	Elizabeth, NJ	Attorney	Indefinite from December 11, 2006
Hayes, Richard A.	Havervill, MA	Attorney	Indefinite from December 14, 2006
Scheller, Stephen M.	Coppell, TX	CPA	Indefinite from December 15, 2006
Wilson, James M.	Berlin, NJ	CPA	Indefinite from December 15, 2006
Franzese, Joseph P.	Winthrop, MA	Attorney	Indefinite from December 18, 2006
Black, Charles C.	Marietta, GA	Attorney	Indefinite from January 1, 2007
Enright, III, Robert A.	Naples, FL	Attorney	Indefinite from January 1, 2007

Name	Address	Designation	Date of Suspension
Fromovitz, Norman M.	Brooklyn, NY	CPA	Indefinite from January 1, 2007
Saylor, Mary A.	Iowa City, IA	Enrolled Agent	Indefinite from January 1, 2007
Seeherman, Alan	Wynnewood, PA	CPA	Indefinite from January 1, 2007
Beistel, Theodore L.	Canton, OH	CPA	Indefinite from January 3, 2007
Myers, Robert J.	Fairport Harbor, OH	CPA	Indefinite from January 9, 2007
Burrus, Robert V.	Valparaiso, IN	CPA	Indefinite from January 22, 2007
Patterson, Douglas W.	Newburgh, IN	Attorney	Indefinite from January 31, 2007
Lang, Jeffrey H.	Fishers, IN	CPA	Indefinite from January 22, 2007
Chickering, David	Vermillion, SD	CPA	February 5, 2007 to November 4, 2007
Moss, Steve E.	Henderson, NC	CPA	Indefinite from February 5, 2007
Hazlip, Kevin	Orange Park, FL	Enrolled Agent	Indefinite from February 10, 2007
Adelson, Robert A.	Newton, MA	Attorney	Indefinite from February 15, 2007
Boyer, Daniel D.	North Judson, IN	CPA	Indefinite from February 15, 2007
LaRusso, Anthony J.	North Caldwell, NJ	Attorney	Indefinite from February 15, 2007
Martin, Spencer R.	Lancaster, PA	CPA	Indefinite from February 15, 2007
Hursh, Stephanie S.	Brush Prairie, WA	Enrolled Agent	Indefinite from February 20, 2007

Name	Address	Designation	Date of Suspension
Guidera, George C.	Weston, CT	Attorney	Indefinite from February 26, 2007
Ruth, Christopher A.	Cypress, CA	CPA	Indefinite from February 27, 2007
Elias, Lenard S.	El Cajon, CA	Enrolled Agent	Indefinite from March 1, 2007
Ikeji, Chuck	Orlando, FL	CPA	Indefinite from March 1, 2007
Lewis, Craig S.	Savannah, GA	CPA	Indefinite from March 1, 2007
Sloan, Eric R.	Brighton, MI	CPA	Indefinite from March 1, 2007
Gostomski, Michael	Stamford, CT	CPA	Indefinite from March 5, 2007
Hafer, Charles J.	Hamburg, PA	Enrolled Agent	Indefinite from March 5, 2007
Jones, Phillip G.	Andalusia, AL	Enrolled Agent	Indefinite from March 7, 2007
Agashiwala, Mahesh J.	New York, NY	CPA	Indefinite from March 22, 2007
Berndgen, Michael	Plantation, FL	CPA	Indefinite from April 1, 2007
Grahn, Charles R.	Indianapolis, IN	Attorney	Indefinite from April 1, 2007
Shaw, G. Joyce	Hebron, KY	Enrolled Agent	Indefinite from April 1, 2007
Pikaart, Jr., Edward H.	N. Branford, CT	CPA	Indefinite from April 10, 2007
Kelley, Richard S.	Beverly, MA	Attorney	Indefinite from May 1, 2007
Crabtree, Michael L.	San Dimas, CA	Enrolled Agent	Indefinite from May 15, 2007

Name	Address	Designation	Date of Suspension
Hausmann, Mark D.	Troy, NY	Attorney	Indefinite from May 15, 2007

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
Hatchett, William M.	Pontiac, MI	Attorney	Indefinite from November 13, 2006
Jacobs, Mark L.	Jackson Heights, NY	Attorney	Indefinite from November 21, 2006
Sylver, Peter T.	E. Longmeadow, MA	Attorney	Indefinite from November 21, 2006
Portlock, David R.	Pensacola, FL	Enrolled Agent	Indefinite from November 27, 2006
Ascher, Michael P.	North Port, FL	Attorney	Indefinite from November 28, 2006
Barrett, Norman W.	Dover, DE	CPA	Indefinite from November 28, 2006
Burd, Gene	Houston, TX	Attorney	Indefinite from November 28, 2006
Caceres, Carlos H.	Silver Spring, MD	Attorney	Indefinite from November 28, 2006
Carrabotta, Peter S.	Niles, IL	Attorney	Indefinite from November 28, 2006
Davis, Carleton W.	St. Louis, MO	Attorney	Indefinite from November 28, 2006

Name	Address	Designation	Date of Suspension
Frasier, Roland B.	Rancho Santa Fe, CA	Attorney	Indefinite from November 28, 2006
Hubbard, Edward	Chicago, IL	Attorney	Indefinite from November 28, 2006
Hynes, Richard W.	Brookline, MA	Attorney	Indefinite from November 28, 2006
Johnson, Barbara C.	Andover, MA	Attorney	Indefinite from November 28, 2006
Konas, Theodore V.	Lancaster, PA	CPA	Indefinite from November 28, 2006
Korson, Daniel M.	Muskegon, MI	CPA	Indefinite from November 28, 2006
Lee, III, Norman J.	Collegeville, PA	Attorney	Indefinite from November 28, 2006
Loiben, Alan A.	Skokie, IL	Attorney	Indefinite from November 28, 2006
McGarry, Thomas H.	Denver, CO	Attorney	Indefinite from November 28, 2006
Roberts, Quinton D.	Elkridge, MD	Attorney	Indefinite from November 28, 2006
Schofield, Peter L.	Spencer, MA	Attorney	Indefinite from November 28, 2006
Shultz, Ryan K.	Mitchell, NE	Attorney	Indefinite from November 28, 2006
Stenger, Jeanne P.	Temecula, CA	Attorney	Indefinite from November 28, 2006
Wood, Gary K.	Edina, MN	Attorney	Indefinite from November 28, 2006
Bakare, Adigun S.	Laurel, MD	Attorney	Indefinite from December 6, 2006

Name	Address	Designation	Date of Suspension
Biagini, Marc J.	Downers Grove, IL	Attorney	Indefinite from December 6, 2006
Birchall, Richard G.	Brewster, MA	Attorney	Indefinite from December 6, 2006
Brown, Edward E.	Indianapolis, IN	Attorney	Indefinite from December 6, 2006
Cunningham, Jr., Shirley A.	Ft. Lauderdale, FL	Attorney	Indefinite from December 6, 2006
Docherty, Scott R.	Branson West, MO	Attorney	Indefinite from December 6, 2006
Dressler, Peter P.	West Chicago, IL	Attorney	Indefinite from December 6, 2006
Henry, William J.	Irvington, NJ	Attorney	Indefinite from December 6, 2006
Hubbard, Cynthia A.	Geneva, IL	Attorney	Indefinite from December 6, 2006
Jackson, Jr., Donald H.	Hanover, MA	Attorney	Indefinite from December 6, 2006
Katz, Norman H.	Owings Mills, MD	Attorney	Indefinite from December 6, 2006
Lakin, Leonard S.	Wellesley Hills, MA	Attorney	Indefinite from December 6, 2006
McGreevy, Jacqueline K.	Carbondale, CO	Attorney	Indefinite from December 6, 2006
Zepp, Dale D.	Ferguson, MO	Attorney	Indefinite from December 6, 2006
Triplett, Austin H.	Homewood, IL	Attorney	Indefinite from December 11, 2006
Murphy, Patrick W.	Honolulu, HI	Attorney	Indefinite from December 11, 2006
Cronin, Jr., Edward M.	Cambridge, MA	Attorney	Indefinite from December 11, 2006

Name	Address	Designation	Date of Suspension
Christof, Kevin F.	Santa Monica, CA	Attorney	Indefinite from December 21, 2006
Heath, Kenneth J.	Canaan, VT	CPA	Indefinite from December 21, 2006
Madigan, Brian C.	Binghamton, NY	Attorney	Indefinite from December 21, 2006
Malloy, Terry P.	Tulsa, OK	Attorney	Indefinite from December 21, 2006
Baynes, Robert M.	Indianapolis, IN	CPA	Indefinite from December 27, 2006
Ceresa, Richard A.	Woodbridge, CA	CPA	Indefinite from December 27, 2006
Crews, Richard A.	Henderson, CO	Attorney	Indefinite from December 27, 2006
Menkveld, Paul G.	Tucson, AZ	Attorney	Indefinite from December 27, 2006
Worischeck, Joseph H.	Tempe, AZ	Attorney	Indefinite from December 27, 2006
Brown, Kirk P.	Pueblo, CO	Attorney	Indefinite from December 28, 2006
Dowling, Stanley W.	Scotts Valley, CA	CPA	Indefinite from December 28, 2006
Simmons, Henry L.	Greensboro, NC	CPA	Indefinite from December 28, 2006
Steele, Regina D.	San Diego, CA	Attorney	Indefinite from December 29, 2006
Craig, III, William A.	Austin, TX	Attorney	Indefinite from January 1, 2007
Acker, Thomas R.	Hollis Center, ME	Attorney	Indefinite from January 8, 2007
Baxter, Laura M.	Monee, IL	CPA	Indefinite from January 8, 2007

Name	Address	Designation	Date of Suspension
Herald, Sally J.	Cold Spring, KY	Attorney	Indefinite from January 8, 2007
Klapheke, II, William T.	Bowling Green, KY	Attorney	Indefinite from January 8, 2007
McCarthy, Charles C.	Encino, CA	Attorney	Indefinite from January 8, 2007
Bolling, Darius C.	Chicago, IL	CPA	Indefinite from January 10, 2007
Breitlauch, Linda	Saylorsburg, PA	Attorney	Indefinite from January 10, 2007
Coddington, Paul F.	Concord, NH	Attorney	Indefinite from January 10, 2007
Davis, Jr., William E.	Pinehurst, TX	CPA	Indefinite from January 10, 2007
Esola, Louis A.	Greensburg, PA	CPA	Indefinite from January 10, 2007
Finch, Judith A.	Walnut Creek, CA	Attorney	Indefinite from January 10, 2007
Jeing, Thomas C.	San Francisco, CA	Attorney	Indefinite from January 10, 2007
Ledbetter, Dean D.	Pelham, AL	CPA	Indefinite from January 10, 2007
McDiarmid, Katherine B.	Greensboro, NC	Attorney	Indefinite from January 10, 2007
Mills, George P.	Oceanside, CA	Attorney	Indefinite from January 10, 2007
Rather, James L.	Irvine, CA	Attorney	Indefinite from January 10, 2007
Rivera, Eduardo M.	Torrance, CA	Attorney	Indefinite from January 10, 2007
Stepovich, Michael A.	Fairbanks, AK	Attorney	Indefinite from January 10, 2007

Name	Address	Designation	Date of Suspension
Ulbrich, David L.	Woodland Hills, CA	CPA	Indefinite from January 10, 2007
Swanson, Todd-Ellis	Greenville, SC	CPA	Indefinite from January 20, 2007
Rubin, Deborah L.	Delray Beach, FL	Attorney	Indefinite from January 26, 2007
Wood, Brent E.	Cary, NC	Attorney	Indefinite from January 26, 2007
Currin, Samuel T.	Raleigh, NC	Attorney	Indefinite from February 7, 2007
Lupo, Robert N.	Weston, MA	Attorney	Indefinite from February 20, 2007
Taggart, Lawrence W.	El Cajon, CA	Attorney	Indefinite from March 7, 2007
Fife, III, James H.	Schererville, IN	Attorney	Indefinite from March 8, 2007
Katsis, Kevin G.	Riverside, IL	Attorney	Indefinite from March 8, 2007
O'Driscoll, Dennis M.	Quincy, MA	Attorney	Indefinite from March 8, 2007
Siever, Beth F.	Austin, TX	Attorney	Indefinite from March 8, 2007
Wheatley-Clark, Sheila R.	Houston, TX	CPA	Indefinite from March 8, 2007

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
Redmond, Debra	Gifford, PA	Enrolled Agent	Indefinite from March 5, 2007

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
Brookstein, Gary	Huntingdon Valley, PA	CPA	December 15, 2006
James T. Jubb	Baltimore, MD	CPA	December 15, 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
Zucker, Robert W.	Boca Raton, FL	CPA	November 14, 2006
Montgomery, David E.	Pleasanton, CA	Enrolled Agent	November 15, 2006
Higgins, James M.	S. Boston, MA	Attorney	December 1, 2006
Pennington, Debra L.	Lees Summit, MO	Enrolled Agent	January 29, 2007
Goodwin, Steven C.	Concord, MA	Attorney	February 2, 2007
Francis, Andrew W.E.	Houston, TX	CPA	February 21, 2007
Griffin, Richard M.	Duluth, GA	CPA	February 28, 2007

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, 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 resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Filipski, Kenneth M.	Bakersfield, CA	April 16, 2007

Foundations Status of Certain Organizations

Announcement 2007–42

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Advanced Senior Assisted Living and Development of America, Inc., Detroit, MI
Adventurous Youth Organization, Beverly Hills, CA
Africans in America, Inc., New York, NY
Agape Life Institute, Austin, TX
Amercia Vive Foundation, Bell, CA
American Dream Project, Inc., Wayne, NJ
AMICA Institute, South Hampton, NY
Asian Community Media Institute, Inc., Saint Paul, MN
Association of Christian Professionals, Inc., Chicago, IL
Audax Theatre Group, New York, NY
Bay Area Ability Center, Incorporated, Bay City, MI
Berean Basketball Boosters, Wilmington, OH
Bergens Promise, Inc., Rochelle Park, NJ
Beta Community Services, Inc., II, Baton Rouge, LA
Brainstorm, West Chester, PA
Brooklyn Heritage, Inc., Brooklyn, NY
Camp Refuge, Columbia, SC
Carolina Housing Alliance, Inc., Taylors, SC
Children and Families of East Tennessee, Inc., Johnson City, TN
City Links 4charities, Inc., Orlando, FL
Coastal Renaissance Behavioral Health Services, Inc., Sarasota, FL
Coluntuno Charitable Foundation Co., Marblehead, MA
Community Staffing Resources, Inc., Woonsocket, RI
Covington Middle School Parent Network, Vancouver, WA
Creation Station Art Center, Inc., Copley, OH
Dabhar, Inc., Downey, CA
Dallas County Repeater Corporation, Dallas, TX
Down to Earth Ministries, Inc., Chippewa Falls, WI
Earle Action Community Development Corporation, Inc., Earle, AR
Echelon, Inc., Meridian, MS
El Roi, Inc., Brick, NJ
Emmanuel Ministries of Romania, Inc., Sumter, SC
Exceptional Resources, Banks, OR
Father Resource Network, Mill Valley, CA
Finer Things Academy, Inc., Youngstown, OH
Friends of Boy Scout Troop 224, Orinda, CA
Friends of the Ashford Community Park, Ashford, WA
Gifts of First Fruits Foundation, The Colony, TX
God's Children at Play, Los Angeles, CA
Grandslam, Inc., Kingsport, TN
Grenier Foundation, Newark, CA
Harambee Community Development Corporation, Inc., Cincinnati, OH
Hartford Baltimore County Cheerleading League, Inc., Baltimore, MD
Health & Fitness Foundation of America, Irvine, CA
Hilltop Camp, Richland Center, WI
His Love and Truth Ministries, Arcata, CA
Historic Hilger Homestead, Helena, MT
Institute for the Study of Ideologies and Literature, Minneapolis, MN
International Partnership for Health NFP, Chicago, IL
Jeffrey G. Loving Memorial Open Arms Free Medical Facility, Angel Fire, NM
Judahs House, Fresno, CA
Just Everyday Sisters Used Supernaturally, Gardena, CA
Juxtopia Group, Inc., Baltimore, MD
Kat Whirld, Inc., Greenfield, MA
Kaye Starr Singers Corporation, Layton, UT
Kerr Interfaith Disaster Response, Inc., Kerrville, TX
Kiwanis Club of West Jeffersons Reflections of Hope Foundation, Inc., Harvey, LA
Lander County Humane Society, Battle Mountain, NV
Life Ten Ten, Inc., Jersey City, NJ
Light House Christian Ministry, Corsicana, TX
Little Creek Special Equestrians, Inc., Centerpoint, IN
L O F S, Inc., Leap of Faith Services, Memphis, TN

Lost Coast Interpretive Association, Whitehorn, CA
Lumina Group of St. Louis, St. Louis, MO
Make It Public, Inc., San Francisco, CA
MH Community Service, Monterey Park, CA
Mike Scuch Memorial College Scholarship Fund, Staten Island, NY
Miracle Life Nisim Haim, Oak Park, MI
Modjeska Ranch Rescue, Silverrado, CA
National Association of Disabled Asian-American, Los Angeles, CA
National Visionary Leadership Project, Washington, DC
Native Veterans Association of Alaska, Anchorage, AK
Norman and Judith Jo Kreiss Family Foundation, San Diego, CA
North End Partnership Association, Mason City, IA
Northwest Alabama Education Partnership, Florence, AL
Old River Committee, Inc., Tracy, CA
One America Foundation, Inc., Baltimore, MD
Pomerelle Institute, Inc., Albion, ID
Raisin Hope Rescue & Rehabilitation, Raymond, WA
Recreation Trail Management, Loveland, OH
Redeemed Services, Inc., Los Angeles, CA
Rehema Adult Day Health Care Center, Pomona, CA
Research Nurse Association, Inc., Wellesley, MA
Resiliency for Action and Success, Orange Park, FL
Rock Christian, Inc., Bakersfield, CA
Save A Teen, Oregon City, OR
Save Our Strays, Inc., Newport News, VA
Sea of Dreams Foundation, Inc., Honolulu, HI
Sherit Isroel, Inc., Brooklyn, NY
Silver Lake Football Association, Everett, WA
Single Family Services, Las Vegas, NV
SIS (Stay in School), Inc., Chicago, IL
Society for Counter-Ordnance Technology, Charlottesville, VA
Somaliland Community of Metro Chicago, Chicago, IL
Spazi, Inc., Miami, FL
Sterling Youth Accountability Board, Patton, CA
Sunny Health Recovery Center, Inc., Fairbanks, AK
Sunshine Service Dogs, Inc., Luck, TX
Teach Me to Live Ecumenical Ministries, Makawao, HI
Thaddean Society, Elgin, IL
Thomas Hart Benton Catalogue Raisonne Foundation, Inc., New York, NY
True Divine Ministries, Cincinnati, OH
US Sailing Foundation of Marion County, Jensen Beach, FL
Valley Falcons Youth Athletic Club, Sylmar, CA
William J. Gallion, Captiva, FL
Wolverine Management Foundation, Los Angeles, CA
Wrightco Educational Foundation, Claysburg, PA
Youth Programs Unlimited, Inc., Antioch, CA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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

Announcement 2007–43

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 23, 2007, 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.

EPASA-USA, Inc.
Ridgewood, NY
Morocco and the Casbah Dance Experience, Inc.
New York, NY
ABG Housing, Inc.
Orlando, FL
The Credit Network, Inc.
Silver Spring, MD
Global Mindlink Foundation, Inc.
Coral Springs, FL
Credit Debt Solutions, Inc.
Chevy Chase, MD
Skopos Charities, Inc.
San Jose, CA
Douglas R. & Patricia B. McKinnon Charitable Supporting Organization
Tomball, TX
The Dreamhouse Charity, Inc.
Wilsonville, OR
Dads Place Ministries, Inc.
Thurmont, MD
Potomac Forum, Ltd.
Potomac, MD
Community Housing and Land Development, Inc.
San Jose, CA
New Haven Shelter
Rancho Palos Verdes, CA

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 2007–1 through 2007–17

Announcements:

2007-1, 2007-1 I.R.B. *243*
2007-2, 2007-2 I.R.B. *263*
2007-3, 2007-4 I.R.B. *376*
2007-4, 2007-7 I.R.B. *518*
2007-5, 2007-4 I.R.B. *376*
2007-6, 2007-4 I.R.B. *376*
2007-7, 2007-4 I.R.B. *377*
2007-8, 2007-5 I.R.B. *416*
2007-9, 2007-5 I.R.B. *417*
2007-10, 2007-6 I.R.B. *464*
2007-11, 2007-6 I.R.B. *464*
2007-12, 2007-6 I.R.B. *465*
2007-13, 2007-7 I.R.B. *519*
2007-14, 2007-7 I.R.B. *519*
2007-15, 2007-8 I.R.B. *596*
2007-16, 2007-8 I.R.B. *597*
2007-17, 2007-8 I.R.B. *597*
2007-18, 2007-9 I.R.B. *625*
2007-19, 2007-7 I.R.B. *521*
2007-20, 2007-8 I.R.B. *599*
2007-21, 2007-9 I.R.B. *630*
2007-22, 2007-9 I.R.B. *631*
2007-23, 2007-10 I.R.B. *665*
2007-24, 2007-10 I.R.B. *681*
2007-25, 2007-10 I.R.B. *682*
2007-26, 2007-10 I.R.B. *682*
2007-27, 2007-11 I.R.B. *733*
2007-28, 2007-10 I.R.B. *683*
2007-29, 2007-11 I.R.B. *733*
2007-30, 2007-11 I.R.B. *734*
2007-31, 2007-12 I.R.B. *769*
2007-32, 2007-11 I.R.B. *734*
2007-33, 2007-13 I.R.B. *841*
2007-34, 2007-13 I.R.B. *842*
2007-35, 2007-15 I.R.B. *949*
2007-36, 2007-15 I.R.B. *953*
2007-37, 2007-15 I.R.B. *954*
2007-38, 2007-15 I.R.B. *954*
2007-39, 2007-15 I.R.B. *954*
2007-40, 2007-16 I.R.B. *978*
2007-41, 2007-16 I.R.B. *978*
2007-42, 2007-17 I.R.B. *1037*
2007-43, 2007-17 I.R.B. *1038*

Notices:

2007-1, 2007-2 I.R.B. *254*
2007-2, 2007-2 I.R.B. *254*
2007-3, 2007-2 I.R.B. *255*
2007-4, 2007-2 I.R.B. *260*
2007-5, 2007-3 I.R.B. *269*
2007-6, 2007-3 I.R.B. *272*

Notices— Continued:

2007-7, 2007-5 I.R.B. *395*
2007-8, 2007-3 I.R.B. *276*
2007-9, 2007-5 I.R.B. *401*
2007-10, 2007-4 I.R.B. *354*
2007-11, 2007-5 I.R.B. *405*
2007-12, 2007-5 I.R.B. *409*
2007-13, 2007-5 I.R.B. *410*
2007-14, 2007-7 I.R.B. *501*
2007-15, 2007-7 I.R.B. *503*
2007-16, 2007-8 I.R.B. *536*
2007-17, 2007-12 I.R.B. *748*
2007-18, 2007-9 I.R.B. *608*
2007-19, 2007-11 I.R.B. *689*
2007-20, 2007-9 I.R.B. *610*
2007-21, 2007-9 I.R.B. *611*
2007-22, 2007-10 I.R.B. *670*
2007-23, 2007-11 I.R.B. *690*
2007-24, 2007-12 I.R.B. *750*
2007-25, 2007-12 I.R.B. *760*
2007-26, 2007-14 I.R.B. *870*
2007-27, 2007-13 I.R.B. *814*
2007-28, 2007-14 I.R.B. *880*
2007-29, 2007-14 I.R.B. *881*
2007-30, 2007-14 I.R.B. *883*
2007-31, 2007-16 I.R.B. *971*
2007-32, 2007-17 I.R.B. *996*
2007-34, 2007-17 I.R.B. *996*
2007-35, 2007-15 I.R.B. *940*
2007-36, 2007-17 I.R.B. *1000*
2007-37, 2007-17 I.R.B. *1002*

Proposed Regulations:

REG-100841-97, 2007-12 I.R.B. *763*
REG-153037-01, 2007-15 I.R.B. *942*
REG-157711-02, 2007-8 I.R.B. *537*
REG-159444-04, 2007-9 I.R.B. *618*
REG-115403-05, 2007-12 I.R.B. *767*
REG-152043-05, 2007-2 I.R.B. *263*
REG-158677-05, 2007-16 I.R.B. *975*
REG-161919-05, 2007-6 I.R.B. *463*
REG-125632-06, 2007-5 I.R.B. *415*
REG-146247-06, 2007-16 I.R.B. *977*
REG-147144-06, 2007-10 I.R.B. *680*
REG-156779-06, 2007-17 I.R.B. *1015*
REG-157834-06, 2007-13 I.R.B. *840*

Revenue Procedures:

2007-1, 2007-1 I.R.B. *1*
2007-2, 2007-1 I.R.B. *88*
2007-3, 2007-1 I.R.B. *108*
2007-4, 2007-1 I.R.B. *118*
2007-5, 2007-1 I.R.B. *161*
2007-6, 2007-1 I.R.B. *189*
2007-7, 2007-1 I.R.B. *227*
2007-8, 2007-1 I.R.B. *230*

Revenue Procedures— Continued:

2007-9, 2007-3 I.R.B. *278*
2007-10, 2007-3 I.R.B. *289*
2007-11, 2007-2 I.R.B. *261*
2007-12, 2007-4 I.R.B. *354*
2007-13, 2007-3 I.R.B. *295*
2007-14, 2007-4 I.R.B. *357*
2007-15, 2007-3 I.R.B. *300*
2007-16, 2007-4 I.R.B. *358*
2007-17, 2007-4 I.R.B. *368*
2007-18, 2007-5 I.R.B. *413*
2007-19, 2007-7 I.R.B. *515*
2007-20, 2007-7 I.R.B. *517*
2007-21, 2007-9 I.R.B. *613*
2007-22, 2007-10 I.R.B. *675*
2007-23, 2007-10 I.R.B. *675*
2007-24, 2007-11 I.R.B. *692*
2007-25, 2007-12 I.R.B. *761*
2007-26, 2007-13 I.R.B. *814*
2007-27, 2007-14 I.R.B. *887*
2007-28, 2007-16 I.R.B. *974*
2007-29, 2007-17 I.R.B. *1004*

Revenue Rulings:

2007-1, 2007-3 I.R.B. *265*
2007-2, 2007-3 I.R.B. *266*
2007-3, 2007-4 I.R.B. *350*
2007-4, 2007-4 I.R.B. *351*
2007-5, 2007-5 I.R.B. *378*
2007-6, 2007-5 I.R.B. *393*
2007-7, 2007-7 I.R.B. *468*
2007-8, 2007-7 I.R.B. *469*
2007-9, 2007-6 I.R.B. *422*
2007-10, 2007-10 I.R.B. *660*
2007-11, 2007-9 I.R.B. *606*
2007-12, 2007-11 I.R.B. *685*
2007-13, 2007-11 I.R.B. *684*
2007-14, 2007-12 I.R.B. *747*
2007-15, 2007-11 I.R.B. *687*
2007-16, 2007-13 I.R.B. *807*
2007-17, 2007-13 I.R.B. *805*
2007-18, 2007-13 I.R.B. *806*
2007-19, 2007-14 I.R.B. *843*
2007-20, 2007-14 I.R.B. *863*
2007-21, 2007-14 I.R.B. *865*
2007-22, 2007-14 I.R.B. *866*
2007-23, 2007-15 I.R.B. *889*
2007-25, 2007-16 I.R.B. *956*
2007-26, 2007-16 I.R.B. *970*

Tax Conventions:

2007-23, 2007-10 I.R.B. *665*

Treasury Decisions:

9298, 2007-6 I.R.B. *434*
9299, 2007-6 I.R.B. *460*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–27 through 2006–52 is in Internal Revenue Bulletin 2006–52, dated December 26, 2006.

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

Bulletins 2007–1 through 2007–17

Notices:

2002-45
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

2005-29
Modified and superseded by
Notice 2007-4, 2007-2 I.R.B. *260*

2005-86
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

2005-98
Modified and superseded by
Notice 2007-26, 2007-14 I.R.B. *870*

2006-2
Modified and superseded by
Notice 2007-4, 2007-2 I.R.B. *260*

2006-13
Obsoleted by
T.D. 9315, 2007-15 I.R.B. *891*

2006-50
Amplified, clarified, and modified by
Notice 2007-11, 2007-5 I.R.B. *405*

2006-77
Clarified, modified, and amplified by
Notice 2007-36, 2007-17 I.R.B. *1000*

2006-87
Modified and supplemented by
Notice 2007-25, 2007-12 I.R.B. *760*

2007-19
Amended and supplemented by
Notice 2007-31, 2007-16 I.R.B. *971*

Proposed Regulations:

REG-208270-86
Corrected by
Ann. 2007-4, 2007-7 I.R.B. *518*

REG-121509-00
Corrected by
Ann. 2007-17, 2007-8 I.R.B. *597*

REG-139059-02
Corrected by
Ann. 2007-36, 2007-15 I.R.B. *953*
Ann. 2007-37, 2007-15 I.R.B. *954*

REG-141901-05
Corrected by
Ann. 2007-7, 2007-4 I.R.B. *377*

Proposed Regulations— Continued:

REG-142270-05
Corrected by
Ann. 2007-2, 2007-2 I.R.B. *263*

REG-125632-06
Corrected by
Ann. 2007-26, 2007-10 I.R.B. *682*

REG-127819-06
Corrected by
Ann. 2007-5, 2007-4 I.R.B. *376*

REG-136806-06
Corrected by
Ann. 2007-6, 2007-4 I.R.B. *376*
Hearing cancelled by
Ann. 2007-19, 2007-7 I.R.B. *521*

Revenue Procedures:

98-20
Superseded by
Rev. Proc. 2007-12, 2007-4 I.R.B. *354*

2000-38
Modified by
Rev. Proc. 2007-16, 2007-4 I.R.B. *358*

2000-42
Obsoleted in part by
T.D. 9315, 2007-15 I.R.B. *891*

2000-50
Modified by
Rev. Proc. 2007-16, 2007-4 I.R.B. *358*

2001-31
Superseded by
Rev. Proc. 2007-29, 2007-17 I.R.B. *1004*

2001-42
Modified and amplified by
Rev. Proc. 2007-19, 2007-7 I.R.B. *515*

2002-9
Modified and amplified by
Rev. Proc. 2007-14, 2007-4 I.R.B. *357*
Modified by
Rev. Proc. 2007-16, 2007-4 I.R.B. *358*

2004-11
Superseded by
Rev. Proc. 2007-16, 2007-4 I.R.B. *358*

2004-65
Modified and superseded by
Rev. Proc. 2007-20, 2007-7 I.R.B. *517*

2005-12
Superseded by
Rev. Proc. 2007-17, 2007-4 I.R.B. *368*

2005-51
Amplified by
Rev. Proc. 2007-25, 2007-12 I.R.B. *761*

Revenue Procedures— Continued:

2005-69
Superseded by
Rev. Proc. 2007-15, 2007-3 I.R.B. *300*

2005-74
Superseded by
Rev. Proc. 2007-24, 2007-11 I.R.B. *692*

2006-1
Superseded by
Rev. Proc. 2007-1, 2007-1 I.R.B. *1*

2006-2
Superseded by
Rev. Proc. 2007-2, 2007-1 I.R.B. *88*

2006-3
Superseded by
Rev. Proc. 2007-3, 2007-1 I.R.B. *108*

2006-4
Superseded by
Rev. Proc. 2007-4, 2007-1 I.R.B. *118*

2006-5
Superseded by
Rev. Proc. 2007-5, 2007-1 I.R.B. *161*

2006-6
Superseded by
Rev. Proc. 2007-6, 2007-1 I.R.B. *189*

2006-7
Superseded by
Rev. Proc. 2007-7, 2007-1 I.R.B. *227*

2006-8
Superseded by
Rev. Proc. 2007-8, 2007-1 I.R.B. *230*

2006-17
Obsoleted in part by
Rev. Proc. 2007-26, 2007-13 I.R.B. *814*

2006-35
Modified by
Rev. Proc. 2007-22, 2007-10 I.R.B. *675*

Revenue Rulings:

54-19
Obsoleted in part by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

55-132
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

56-462
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

56-518
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–27 through 2006–52 is in Internal Revenue Bulletin 2006–52, dated December 26, 2006.

Revenue Rulings— Continued:

57-505
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

58-370
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

58-500
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

69-141
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

69-212
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

69-587
Revoked by
Rev. Rul. 2007-12, 2007-11 I.R.B. *685*

71-477
Obsoleted by
Rev. Rul. 2007-14, 2007-12 I.R.B. *747*

75-161
Obsoleted by
Rev. Rul. 2007-8, 2007-7 I.R.B. *469*

76-188
Obsoleted by
Rev. Rul. 2007-8, 2007-7 I.R.B. *469*

78-330
Modified by
Rev. Rul. 2007-8, 2007-7 I.R.B. *469*

81-225
Clarified and amplified by
Rev. Rul. 2007-7, 2007-7 I.R.B. *468*

92-19
Supplemented in part by
Rev. Rul. 2007-10, 2007-10 I.R.B. *660*

96-51
Amplified by
Rev. Rul. 2007-12, 2007-11 I.R.B. *685*

2002-41
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

2003-43
Modified by
Notice 2007-2, 2007-2 I.R.B. *254*

2003-92
Clarified and amplified by
Rev. Rul. 2007-7, 2007-7 I.R.B. *468*

2003-102
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

Revenue Rulings— Continued:

2005-24
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

2005-76
Supplemented and superseded by
Rev. Rul. 2007-4, 2007-4 I.R.B. *351*

2006-36
Modified by
Notice 2007-22, 2007-10 I.R.B. *670*

Treasury Decisions:

9263
Corrected by
Ann. 2007-22, 2007-9 I.R.B. *631*

9276
Corrected by
Ann. 2007-20, 2007-8 I.R.B. *599*
Ann. 2007-21, 2007-9 I.R.B. *630*

9278
Corrected by
Ann. 2007-9, 2007-5 I.R.B. *417*
Ann. 2007-10, 2007-6 I.R.B. *464*

9286
Corrected by
Ann. 2007-8, 2007-5 I.R.B. *416*

9298
Corrected by
Ann. 2007-32, 2007-11 I.R.B. *734*

9303
Corrected by
Ann. 2007-25, 2007-10 I.R.B. *682*

U.S. GOVERNMENT PRINTING OFFICE
KEEPING AMERICA INFORMED

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Order Processing Code: 3465

Easy Secure Internet: bookstore.gpo.gov

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048–004–02467–5	Cum. Bulletin 1999–3	20.40	
	048–004–02462–4	Cum. Bulletin 2001–2 (Jul-Dec)	24.00	
	048–004–02480–2	Cum. Bulletin 2001–3	71.00	
	048–004–02470–5	Cum. Bulletin 2002–2 (Jul-Dec)	28.80	
	048–004–02486–1	Cum. Bulletin 2002–3	54.00	
	048–004–02483–7	Cum. Bulletin 2004–2 (July–Dec)	54.00	
	048–004–02488–8	Cum. Bulletin 2005–2	56.00	
			Total for Publications	

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	$247	
		Optional – Add $50 to open Deposit Account		
			Total for Subscriptions	
			Total for Publications and Subscriptions	

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

❑ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (_______) ____________________

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of $50 you can establish your Superintendent of Documents Deposit Account.

❑ **YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the $50 initial deposit.

VISA MasterCard DISCOVER NOVUS AMERICAN EXPRESS

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ SOD Deposit Account

❑ VISA ❑ MasterCard ❑ Discover/Novus ❑ American Express

(expiration date)

Thank you for your Order!

Authorizing signature

06/06

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

---

*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250–7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300