Internal Revenue
bulletin

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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2007–50, page 311.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for August 2007.

T.D. 9329, page 312.

Final regulations under section 1502 of the Code simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their federal income tax returns.

T.D. 9332, page 300.
REG–138707–06, page 342.

Final, temporary, and proposed regulations under sections 883(a) and (c) of the Code relate to the exclusion from gross income of income derived by certain foreign corporations engaged in the international operation of ships or aircraft. The regulations introduce a new qualified U.S. person ownership test to replace the income inclusion test and provide corresponding documentation and reporting rules. The regulations also identify in regulations section 1.883–1(g) certain services as activities that are incidental to the international operation of ships or aircraft. They also explain in regulations section 1.883–1(h) that a foreign country may grant an equivalent exemption solely by means of an income tax convention. A public hearing on the proposed regulations is scheduled for October 24, 2007. Rev. Rul. 2001–48 and Notice 2006–43 modified.

REG–147171–05, page 334.

Proposed regulations under section 274 of the Code provide rules relating to the deduction for expenses for the use of business aircraft for entertainment of specified individuals. A public hearing is scheduled for October 25, 2007.

EMPLOYEE PLANS

T.D. 9331, page 298.

Final regulations amend section 408(a) of the Code with regard to the requirements under section 408(a) for non-bank trustees for deemed IRAs. The regulations under section 408(a) provide that the Commissioner may, in his discretion, allow governmental entities to act as qualified nonbank trustees for deemed IRAs which are part of the entities' qualified employer plan within the meaning of section 408(q).

Notice 2007–62, page 331.

This notice announces the intent of the Treasury Department and the Service to issue guidance under section 457 of the Code, which applies to nonqualified deferred compensation plans of state and local governments and tax exempt entities, concerning the definitions of a *bona fide* severance pay plan under section 457(e)(11) and a substantial risk of forfeiture under section 457(f)(1)(B). This notice also describes the guidance that the Treasury and the Service anticipate issuing and requests comments on the issues intended to be addressed by such guidance.

Announcement 2007–68, page 348.

This document contains numerous corrections to the preamble of final regulations (T.D. 9321, 2007–19 I.R.B. 1123) setting forth guidance on the application of section 409A to nonqualified compensation plans.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2007–67, page 345.
A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

T.D. 9329, page 312.
Final regulations under section 1502 of the Code simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their federal income tax returns.

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 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Proposed regulations provide rules relating to the valuation for income inclusion purposes of the entertainment use of business aircraft by specified individuals. See REG-147171-05, page 334.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 302.—Distributions in Redemption of Stock

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 331.—Gain or Loss to Shareholders in Corporate Liquidations

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 332.—Complete Liquidations of Subsidiaries

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 338.—Certain Stock Purchases Treated as Asset Acquisitions

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 351.—Transfer to Corporation Controlled by Transferor

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 355.—Distribution of Stock and Securities of a Controlled Corporation

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 368.—Definitions Relating to Corporate Reorganizations

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 381.—Carryovers in Certain Corporate Acquisitions

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

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

The adjusted applicable federal long-term rate is set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 408.—Individual Retirement Accounts

26 CFR 1.408–2: Individual retirement accounts.

T.D. 9331

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Deemed IRAs in Governmental Plans/Qualified Nonbank Trustee Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 408 of the Internal Revenue Code. The final regulations provide special rules for a governmental unit which seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan. These final regulations affect only such governmental units.

DATES: *Effective Date:* June 18, 2007.

Applicability Date: For dates of applicability, see §1.408–2(e)(8)(iv).

FOR FURTHER INFORMATION CONTACT: Linda L. Conway, 202–622–6090, or Cathy A. Vohs, 202–622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 408 of the Internal Revenue Code of 1986 (Code). On July 22, 2004, temporary and proposed regulations under section 408 were issued. A notice of proposed rulemaking (REG–101447–04, 2004–2 C.B. 344) was published in the **Federal Register** (69 FR 43786). The text of the temporary regulations also served as the text of the proposed regulations. The text of temporary §1.408–2(e)(8) was published in the same issue of the **Federal Register** (T.D. 9142, 2004–2 C.B. 302 [69 FR 43735]). The RIN published in connection with that notice of proposed rulemaking was 1545–BD07. However, due to technical difficulties that RIN is no longer valid and the RIN number of these final regulations is 1545–BG46. No comments were received regarding the proposed regulations.

Explanation of Provisions and Summary of Comments

These final regulations amend §1.408–2(e) of the regulations to provide that a governmental unit may serve as the trustee of any deemed IRA established by that governmental unit as part of its qualified employer plan if that governmental unit establishes to the satisfaction of the Commissioner that the manner in which it will administer the deemed IRA will be consistent with the requirements of section 408. These final regulations also provide special rules regarding the application of §1.408–2(e) to governmental units. These final regulations are adopted without substantive change from the proposed and temporary regulations. These final regulations are applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

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 regulation does 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 preceding these final 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 Linda L. Conway of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

* * * * *

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 1.408–2 (e)(8) is revised to read as follows:

§1.408–2 Individual retirement accounts.

* * * * *

(e) * * *

(8) *Special rules for governmental units*—(i) *In general*. A governmental unit that seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan must demonstrate to the satisfaction of the Commissioner that it is able to administer the trust in a manner that is consistent with the requirements of section 408. The demonstration must be made by written application to the Commissioner. Notwithstanding the requirement of paragraph (e)(1) of this section that a person must demonstrate by written application that the requirements of paragraphs (e)(2) through (e)(6) of this section will be met in order to qualify as a nonbank trustee, a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 need not demonstrate that all of these requirements will be met with respect to any individual retirement accounts maintained by that governmental unit pursuant to section 408(q). For example, a governmental unit need not demonstrate that it satisfies the net worth requirements of paragraph (e)(3)(ii) of this section if it demonstrates instead that it possesses taxing authority under applicable law. The Commissioner, in his discretion, may exempt a governmental unit from certain other requirements upon a showing that the governmental unit is able to administer the deemed IRAs in the best interest of the participants. Moreover, in determining whether a governmental unit satisfies the other requirements of paragraphs (e)(2) through (e)(6) of this section, the Commissioner may apply the requirements in a manner that is consistent with the applicant's status as a governmental unit.

(ii) *Governmental unit*. For purposes of this special rule, the term *governmental unit* means a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

(iii) *Additional rules*. The Commissioner may in revenue rulings, notices, or other guidance of general applicability provide additional rules for governmental units seeking approval as nonbank trustees.

(iv) *Effective/Applicability date*. This section is applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

§1.408–2T [Removed]

Par. 3. Section 1.408–2T is removed.

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

Approved June 2, 2007.

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

(Filed by the Office of the Federal Register on June 15, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 18, 2007, 72 F.R. 33387)

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 883.—Exclusions From Gross Income

26 CFR 1.883–1: Exclusion of income from the international operation of ships or aircraft.

T.D. 9332

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

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 883(a) and (c) of the Internal Revenue Code (Code), relating to the exclusion from gross income of income derived by certain foreign corporations engaged in the international operation of ships or aircraft. These regulations revise §1.883–3 of the final regulations, relating to the eligibility of controlled foreign corporations for the exclusion under section 883, following the repeal of section 954(a)(4) and (f) (foreign base company shipping provisions) by section 415 of the American Jobs Creation Act of 2004. In addition, these regulations provide certain additional guidance under section 883(a) and (c), including for foreign corporations that are organized in countries providing an exemption from taxation for certain shipping and air transport income solely through an income tax convention. The text of these temporary regulations also serves as the text of the proposed regulations (REG–138707–06) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on June 25, 2007.

Applicability Date: For dates of applicability, see §1.883–5T.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray, at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1667. Responses to these collections of information are mandatory.

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

For further information concerning these collections of information, where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

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

Background

1. *Section 883 and the Final Regulations*

Sections 883(a)(1) and (a)(2) of the Code generally provide that income from the international operation of ships or aircraft derived by a foreign corporation will be excluded from gross income and exempt from U.S. taxation if the foreign country in which the corporation is organized grants an equivalent exemption to corporations organized in the United States. Section 883(c)(1) provides that a foreign corporation cannot qualify for the section 883(a) exemption if 50 percent or more of the value of its stock is owned by individuals who are not residents of a country that grants an equivalent exemption to U.S. corporations. However, under section 883(c)(2), section 883(c)(1) does not apply to a foreign corporation that is a controlled foreign corporation as defined in section 957(a) (CFC). In addition, under section 883(c)(3), section 883(c)(1) does not apply to a foreign corporation whose stock is primarily and regularly traded on an established securities market in the United States or in a foreign country that grants an equivalent exemption to U.S. corporations.

On August 26, 2003, the IRS and the Treasury Department issued final regulations under section 883 in T.D. 9087, 2003–2 C.B. 781 [68 FR 51394]. The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft may exclude qualified income from gross income for purposes of U.S. Federal income taxation provided that the corporation can satisfy certain ownership and related substantiation and reporting requirements. A foreign corporation that meets these requirements is a "qualified foreign corporation." A foreign country that grants U.S. corporations an equivalent exemption from gross income is a "qualified foreign country." The final regulations also provide definitions of the terms "qualified income" and "equivalent exemption." In addition, the final regulations specify how a foreign corporation can satisfy the ownership and related substantiation and reporting requirements, and the information that the foreign corporation must include on its U.S. income tax return in order to claim an exemption.

In general, a foreign corporation must own or lease an entire ship or aircraft, and the ship or aircraft must carry cargo or passengers for hire, in order for the foreign corporation to be engaged in the operation of a ship or aircraft for this purpose. Section 1.883–1(e). Section 1.883–1(f) provides rules for determining whether income is derived from the international operation of a ship or aircraft. Section 1.883–1(g)(1) provides rules for determining whether certain activities of a foreign corporation that is engaged in the international operation of ships or aircraft are so closely related to that operation as to be considered incidental to the international operation of ships or aircraft. The final regulations provide a nonexclusive list of activities that are considered incidental to the international operation of ships or aircraft. Income from these incidental activities is deemed to be income derived from the international operation of a ship or aircraft for purposes of the exclusion under section 883. Section 1.883–1(g)(2) also provides a nonexclusive list of activities that are not incidental to the international operation of ships or aircraft. The final regulations reserve on whether services, including ground services, maintenance, catering, and other services, are considered incidental to the international operation of ships or aircraft.

Section 1.883–1(h) provides that an equivalent exemption may exist if a foreign country generally imposes no tax on income or specifically provides a domestic tax law exemption for income derived from the international operation of ships or aircraft. Alternatively, a foreign country may exchange a diplomatic note, or enter into an agreement, with the United States that provides for a reciprocal exemption for purposes of section 883. Section 1.883–1(h)(3)(i) generally provides that a foreign country that grants an exemption from taxation for income from the international operation of ships or aircraft solely through an income tax convention with the United States is not considered to grant an equivalent exemption. Thus, a corporation organized in such a country may not claim an exclusion under section 883, and can only claim available treaty benefits to exempt income derived from international transport.

The final regulations require that a foreign corporation must satisfy one of three stock ownership tests to satisfy the ownership requirements of section 883(c): a publicly-traded test in §1.883–2(a), a CFC stock ownership test in §1.883–3(a), or a qualified shareholder stock ownership test in §1.883–4(a). Under §1.883–3(a), a foreign corporation satisfies the CFC stock ownership test if it meets an "income inclusion test" and satisfies certain substantiation and reporting requirements under §1.883–3(c) and (d). The income inclusion test requires that more than 50 percent of the CFC's adjusted net foreign base company income (as defined in §1.954–1(d) and as increased or decreased by section 952(c)) derived from the international operation of ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations. Section 1.883–3(b). This rule prevents individuals residing in foreign countries that do not grant an equivalent exemption to U.S. corporations from benefiting from the section 883 exemption by owning a CFC through a domestic partnership, estate or trust.

Section 1.883–4 of the final regulations provides rules for when a foreign corporation satisfies the qualified shareholder stock ownership test. To satisfy this test, qualified shareholders must own (applying the attribution rules of §1.883–4(c)) more than 50 percent of the value of a foreign corporation's outstanding shares for half the number of days in the corporation's taxable year. The foreign corporation must also meet the substantiation and reporting requirements of §1.883–4(d) and (e). Under the reporting requirements of §1.883–4(e), a foreign corporation must attach a statement with certain information to its Form 1120–F, "*U.S. Income Tax Return of a Foreign Corporation*," including the names and addresses of individual shareholders with large shareholdings (at least 5 percent) in the foreign corporation.

2. *Elimination of Foreign Base Company Shipping Income*

Section 415 of the American Jobs Creation Act of 2004 (Public Law 108–357 (118 Stat. 1418) (AJCA) repealed section 954(a)(4) and (f), eliminating foreign base company shipping income as a type of foreign base company income, and there-

fore, as subpart F income. The repeal is effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which such taxable years of foreign corporations end. Section 423 of AJCA also delayed the applicability date of the final regulations under section 883(a) and (c) for one year, until taxable years beginning after September 24, 2004.

Commentators noted that the repeal of the foreign base company shipping provisions created uncertainty about the application of the income inclusion test for CFCs that no longer have foreign base company income.

On August 5, 2005, the IRS and the Treasury Department issued T.D. 9218, 2005–2 C.B. 503 [70 FR 45529], to conform the applicability date of the final regulations in light of section 423 of AJCA. The preamble to T.D. 9218 also acknowledged commentators' concerns regarding the application of the income inclusion test after the repeal of the foreign base company shipping provisions. The preamble stated that a CFC that satisfied the income inclusion test prior to the effective date of section 415 of AJCA would continue to satisfy that test after the effective date of the legislation, provided the CFC is able to demonstrate that if the foreign base company shipping provisions had not been repealed, more than 50 percent of the its current earnings and profits derived from the international operation of ships or aircraft would have been attributable to amounts includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations (pursuant to section 951(a)(1)(A) or another provision of the Code) for the taxable years of such persons in which the taxable year of the CFC ends.

The preamble to T.D. 9218 also stated that the IRS and the Treasury Department would issue regulations to clarify the application of the income inclusion test, and invited further comments on the most appropriate way to accomplish a clarification consistent with the principles of the existing section 883 regulations, and the repeal of the foreign base company shipping provisions.

3. *Issuance of Notice 2006–43*

The IRS and the Treasury Department received a number of comments in response to the preamble language in T.D. 9218 dealing with the income inclusion test. Generally, commentators stated that to require CFCs to calculate hypothetical amounts of subpart F income as though the foreign base company shipping provisions had not been repealed was too complex an approach to administer properly. Commentators proposed several alternative approaches they viewed as simpler to the approach described in T.D. 9218.

After considering these comments, the IRS and the Treasury Department issued Notice 2006–43, "Interim Guidance With Respect to the Application of Treas. Reg. §1.883–3," (2006–1 C.B. 921 (May 22, 2006)), which announced a new approach. Under the notice, a CFC would satisfy the stock ownership test of §1.883–1(c)(2) if it met a "qualified U.S. person ownership test" and satisfied revised substantiation and reporting requirements. To satisfy the qualified U.S. person ownership test, a corporation would be required to be a CFC for more than half the days of its taxable year, and more than 50 percent of the total value of the CFC's outstanding stock would have to be owned (within the meaning of section 958(a) as modified by the notice) by one or more qualified U.S. persons for more than half the days of its taxable year. See §601.601(d)(2).

These temporary regulations incorporate the rules of Notice 2006–43, with certain amendments, and respond to comments that have been received concerning other portions of the existing section 883 regulations.

4. *Additional Comments*

The following additional comments were received regarding the final regulations.

A. *Ground services*

The final regulations reserved on whether the performance of a variety of ground services should be treated as activities that are incidental to the international operation of ships or aircraft. Section 1.883–1(g)(3). The IRS and the Treasury Department have received a number of comments from the air transport industry requesting guidance under section 883 on the treatment of ground services, including cargo handling, maintenance services, catering, and customer service. Commentators have pointed to recent changes in the Commentaries to Article 8 (Shipping, Inland Waterways Transport and Air Transport) of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development (the OECD Model Convention) that clarify the circumstances under which certain services performed by an enterprise engaged in the operation of ships or aircraft in international traffic may be either ancillary or directly related to such operations, and thereby covered services for purposes of Article 8 of the OECD Model Convention.

B. *U.S. income tax conventions as equivalent exemptions*

Commentators have also suggested that countries that provide an exemption to U.S. corporations only through an income tax convention with the United States should be treated as granting an equivalent exemption for purposes of section 883. In support of their position, commentators cite the Senate Committee Report to the Tax Reform Act of 1986 (Public Law 99–514 (100 Stat. 2085)), which states:

> The committee intends that a country which, as a result of a treaty with the United States, exempts U.S. citizens and domestic corporations from tax in the country on income derived from the operation of ships or aircraft, has an equivalent exemption, even though the treaty technically contains certain additional requirements other than residence, such as U.S. registration or documentation of the ship or aircraft.

(S. Rep. No. 99–313, at 343–44 (1986))

Prior to 2001, a foreign country that provided an exemption from taxation for income from the international operation of ships or aircraft through an income tax convention was treated as granting an equivalent exemption for purposes of section 883. See Rev. Rul. 89–42, 1989–1 C.B. 234; Rev. Rul. 97–31, 1997–2 C.B. 77 (supplementing Rev. Rul. 89–42). In 2001, however, the IRS and the Treasury Department reconsidered this position, and concluded that an exemption under an

income tax convention could not constitute an equivalent exemption for purposes of section 883(a) because the Code and income tax conventions have different eligibility requirements, and provide exemptions that vary in scope. See Rev. Rul. 2001–48, 2001–2 C.B. 324 (modifying and superseding Rev. Rul. 97–31). The position taken in Rev. Rul. 2001–48 was incorporated into §1.883–1(h)(3)(i) of the final regulations. See §601.601(d)(2).

C. *Reporting requirements related to qualified shareholder stock ownership test*

In connection with the substantiation and reporting requirements for the qualified shareholder stock ownership test under §1.883–4(a), the IRS and the Treasury Department have continued to receive comments expressing concern over the requirement that the names and addresses of individual shareholders with large shareholdings (at least 5 percent) in corporations relying on this ownership test be disclosed on Form 1120–F. Recent comments have suggested that in lieu of providing such names and addresses, taxpayers should be permitted to submit a sworn statement by a U.S. tax practitioner subject to Circular 230 with their return that states that the taxpayer satisfies the qualified shareholder stock ownership test, and that the names and addresses of shareholders with large shareholdings are available for inspection by the IRS at the office of that such practitioner.

Explanation of Provisions

These temporary regulations incorporate the rules of Notice 2006–43 and also address a number of comments that have been received concerning other portions of the existing section 883 regulations.

1. *Modifications to the Income Inclusion Test*

These temporary regulations generally adopt the qualified U.S. person ownership test contained in Notice 2006–43. A CFC meets the qualified U.S. person ownership test in §1.883–3T(b)(1) only if more than 50 percent of the total value of all the outstanding stock of the CFC is owned (within the meaning of section 958(a), as modified in §1.883–3T(b)(4)), by one or more qualified U.S. persons. The term *qualified U.S. person* means a U.S. citizen, resident alien, domestic corporation, or domestic trust described in section 501(a). For purposes of applying the qualified U.S. person ownership test, the value of the stock of the CFC that is owned (directly or indirectly) through bearer shares is not taken into account in the numerator, but is taken into account in the denominator to determine the portion of the overall stock value that is owned by qualified U.S. persons. Section 1.883–3T(b)(3).

For purposes of applying the qualified U.S. person ownership test, the attribution rules of section 958(a) will apply to determine the ownership interests of qualified U.S. persons held through foreign entities. In addition, the temporary regulations extend the attribution rules of section 958(a) to domestic partnerships, domestic trusts not described in section 501(a), and domestic estates. In the case of these domestic entities, stock will be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders in such entities, respectively, applying the rules of section 958(a) as if the domestic partnership, estate, or trust were a foreign partnership, estate, or trust, respectively. The regulations also contain conforming changes to the substantiation and reporting provisions in this section to reflect the new qualified U.S. person ownership test for CFCs. A CFC that fails this test will not be a qualified foreign corporation unless it meets either the publicly-traded test of §1.883–2(a) or the qualified shareholder stock ownership test of §1.883–4(a).

2. *Activities Incidental to the International Operation of Ships or Aircraft*

The IRS and the Treasury Department recognize that guidance is needed on the extent to which ground services that are conducted by foreign corporations engaged in the international operation of ships or aircraft are so closely related to such operation that they are considered activities incidental to the international operation of ships or aircraft. Section 1.883–1T(g)(1)(xi) treats the provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hanger facilities as activities incidental to the international operation of a ship or aircraft. The regulations also make clear that such services will be treated as incidental, whether provided to another enterprise as part of a pooling arrangement, alliance, or other joint venture.

3. *Countries Providing an Exemption Only Through an Income Tax Convention*

In response to comments and further study, the IRS and the Treasury Department believe that it is appropriate to provide additional guidance on when a country that only provides for an exemption by means of an income tax convention with the United States will be considered as granting an equivalent exemption for purposes of section 883(a). Section 1.883–1(h)(1), which sets forth the various bases on which equivalent exemptions may be claimed, is broadened by §1.883–1T(h)(1)(ii) to include a domestic tax law exemption by income tax convention. Section 1.883–1T(h)(3) sets out the conditions under which an exemption under an income tax convention may constitute an equivalent exemption.

If a foreign country provides an exemption from tax under a shipping and air transport or gains article of an income tax convention with the United States, and it does not otherwise provide an equivalent exemption through a diplomatic note, domestic statutory law, or by generally not imposing income tax on foreign corporations engaged in the international operation of ships or aircraft, a corporation organized in that country may treat that income tax convention as providing an equivalent exemption for purposes of section 883, but only if the foreign corporation meets all the conditions for claiming benefits with respect to such income under the income tax convention, and the category of income for which the convention grants benefits is also described in §1.883–1(h)(2).

For example, if a foreign corporation is seeking an exemption with respect to non-incidental container-related income, it may not treat an exemption provided by an income tax convention for that type of income as an equivalent exemption, because that category of income is not listed in §1.883–1(h)(2). Equivalent exemptions are determined separately with respect to each category of income listed

in §1.883–1(h)(2). As a result, the foreign corporation may treat an exemption under an income tax convention with respect to another category of income that is listed in §1.883–1(h)(2) (for example, incidental bareboat charter income) as an equivalent exemption for purposes of section 883.

A foreign corporation that is entitled to treat an income tax convention as providing an equivalent exemption with respect to a particular category of income under §1.883–1T(h)(1)(ii) will not always qualify for an exclusion from gross income under section 883. For example, a corporation that is a resident of a foreign country for purposes of an income tax convention because that is where it is managed and controlled is not a qualified foreign corporation under §1.883–1(c)(1), and may not claim an exclusion from gross income under section 883, if it is not also organized in that country. Similarly, a foreign corporation that does not meet one of the stock ownership tests described in §1.883–1(c)(2) is not a qualified foreign corporation under §1.883–1(c)(1), and may not claim an exclusion from gross income under section 883, even though it would satisfy the limitation on benefits article under the relevant convention.

4. *Countries that Provide an Exemption Through an Income Tax Convention and by Other Means*

As provided in the final regulations, a foreign corporation that qualifies for an exemption from tax under an income tax convention and an equivalent exemption under section 883 through a diplomatic note, domestic statutory law, or by generally imposing no income tax on foreign corporations engaged in the international operation of ships or aircraft will continue to have the choice of whether to claim an exemption under the income tax convention or under section 883. Section 1.883–1T(h)(3)(ii)(A). If a foreign corporation chooses to claim an exemption under an income tax convention, it may also choose to claim an exemption under section 883 for any category of income listed in §1.883–1(h)(2), to the extent that such income is also exempt under an income tax convention. Section 1.883–1T(h)(3)(ii)(B).

The rules provided in §1.883–1(h)(3)(iii) of the final regulations for certain joint ventures also continue in modified form. A foreign corporation resident in a country that only provides an exemption through an income tax convention with the United States, and that participates in a joint venture entity that is fiscally transparent for U.S. tax purposes but not under the law of the treaty jurisdiction, will not be able to take advantage of the new rules on equivalent exemptions under income tax conventions, and must rely on §1.883–1T(h)(3)(iii).

5. *Reporting Requirements Related to Qualified Shareholder Stock Ownership Test*

Upon further study and review, the IRS and the Treasury Department have decided to bring the disclosure required under each of the stock ownership tests provided in §1.883–1(c)(2) into greater accord with the disclosure required for comparable stock ownership tests with similar tax policy objectives. For example, reporting in conjunction with the stock ownership tests found in the branch profits tax regulations and limitation on benefits articles in U.S. income tax conventions does not require the disclosure of certain shareholder names and addresses to the IRS. See §1.884–5 and Form 8833, "*Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*." Consequently, these regulations have eliminated the requirement that the names and addresses of shareholders in corporations relying on the various stock ownership tests in §1.883–1(c)(1) (that is, under the closely held exception to the publicly-traded test, the CFC stock ownership test, and the qualified shareholder stock ownership test) be disclosed on Form 1120–F. See §§1.883–2T(e), 1.883–3T(c), and 1.883–4T(d).

Foreign corporations will continue to have to report on Form 1120–F certain summary information regarding the shareholdings that are relied upon to satisfy the applicable stock ownership test (for example, aggregate percentage of interests held by shareholders by country of residence). Under new §1.883–1T(c)(3)(i)(G), they also will have to report whether any shareholder whose stock holdings are relied upon to meet an ownership test holds such stock either directly or indirectly through bearer shares. In addition, each qualified shareholder and intermediary (if any) must declare under penalties of perjury that its ownership interest in the foreign corporation or any corporate intermediary is not held through bearer shares. Conforming amendments to the substantiation and documentation requirements in §§1.883–2T(e) and 1.883–4T(d)(4) have been made.

Commentators suggested alternative methods for making the names and addresses of 5-percent shareholders available to the IRS. However, these methods were not adopted due to the complexity of the regimes proposed, and questions as to whether such approaches would in fact address the commentators' concerns. Instead, the IRS and the Treasury Department chose to rely on procedures already in place in §1.883–1(c)(3) and as modified by §1.883–1T(c)(3), which requires, among other things, that a foreign corporation obtain ownership statements to document and substantiate all representations it has made on Form 1120–F, and that it provide substantiating documentation in response to a written request from the Commissioner. Such information must be provided to the IRS within 30 days (rather than the 60 days allowed by §1.883–1(c)(3)) of a written request by the Commissioner, because the names and addresses of relevant shareholders will no longer be provided on the Form 1120–F by taxpayers. See §1.883–1T(c)(3).

The IRS and the Treasury Department believe that these revised reporting rules will simultaneously reduce disclosure concerns raised by taxpayers and encourage greater reporting of the information the IRS needs to administer section 883. The IRS and the Treasury Department also believe these changes, in conjunction with the remaining reporting requirements in §§1.883–2(f), 1.883–2T(f), 1.883–3T(d), 1.883–4(e), and 1.883–4T(e), will provide sufficient information to ensure the sound and efficient administration of section 883.

Effective Dates

See §1.883–5T(d) for effective date of these temporary regulations and §1.883–5T(e) for applicability dates that apply to these temporary regulations.

Effect on Other Documents

The following publications are modified as of June 25, 2007:

Notice 2006–43, 2006–1 C.B. 921 (May 22, 2006).

Rev. Rul. 2001–48, 2001–2 C.B. 324.

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 also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.883–0 is amended by:

1. Revising the entries for §1.883–1(g)(3) and (h)(3).

2. Revising the entry for §1.883–2(e)(2).

3. Revising the entries for §1.883–3.

4. Adding the entries for §1.883–5(d) and (e).

The revisions and additions read as follows:

§1.883–0 Outline of major topics.

* * * * *

§1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see the entry for §1.883–1T(g)(3).

* * * * *

(h) * * *

(3) [Reserved]. For further guidance, see the entries for §1.883–1T(h)(3).

* * * * *

§1.883–2 Treatment of publicly-traded corporations.

* * * * *

(e)(2) [Reserved]. For further guidance, see the entry for §1.883–2T(e)(2).

* * * * *

§1.883–3 Treatment of controlled foreign corporations.

[Reserved]. For further guidance, see the entry for §1.883–3T.

* * * * *

§1.883–5 Effective/applicability dates.

* * * * *

(d) [Reserved]. For further guidance, see the entry for §1.883–5T(d).

(e) [Reserved]. For further guidance, see the entry for §1.883–5T(e).

Par. 3. Section 1.883–0T is added to read as follows:

§1.883–0T Outline of major topics (temporary).

This section lists the major paragraphs contained in §§1.883–1T through 1.883–5T.

§1.883–1T Exclusion of income from the international operation of ships or aircraft (temporary).

(a) through (c)(3)(i) [Reserved]. For further guidance, see entries for §1.883–1(a) through (c)(3)(i).

(ii) Further documentation.

(A) General rule.

(B) Names and addresses of certain shareholders.

(c)(4) through (g)(2) [Reserved]. For further guidance, see entries for §1.883–1(c)(4) through (g)(2).

(3) Other services. [Reserved].

(g)(4) through (h)(2) [Reserved]. For further guidance, see entries for §1.883–1(g)(4) through (h)(2).

(3) Special rules with respect to income tax conventions.

(i) Countries with only an income tax convention.

(ii) Countries with both an income tax convention and an equivalent exemption.

(A) General rule.

(B) Special rule for simultaneous benefits under section 883 and an income tax convention.

(iii) Participation in certain joint ventures.

(iv) Independent interpretation of income tax conventions.

(h)(4) through (j) [Reserved]. For further guidance, see entries for §1.883–1(h)(4) through (j).

§1.883–2T Treatment of publicly-traded corporations (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see entries for §1.883–2(a) through (e)(1).

(2) Availability and retention of documents for inspection.

(f) [Reserved]. For further guidance, see entry for §1.883–2(f).

§1.883–3T Treatment of controlled foreign corporations (temporary).

(a) General rule.

(b) Qualified U.S. person ownership test.

(1) General rule.

(2) Qualified U.S. person.

(3) Treatment of bearer shares.

(4) Attribution of ownership through certain domestic entities.

(5) Examples.

(c) Substantiation of CFC stock ownership.

(1) In general.

(2) Ownership statements from qualified U.S. persons.

(3) Ownership statements from intermediaries.

(4) Three-year period of validity.

(5) Availability and retention of documents for inspection.

(d) Reporting requirements.

§1.883–5T Effective/applicability dates (temporary).

(a) through (c) [Reserved]. For further guidance, see entries for §1.883–5(a) through (c).

(d) Effective date.

(e) Applicability dates.

(f) Expiration date.

Par. 4. Section 1.883–1 is amended by:

1. Revising paragraphs (c)(3)(i)(D), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(3), (h)(1)(ii), and (h)(3).

2. Revising paragraphs (c)(3)(i)(G) and (c)(3)(i)(H).

3. Adding new paragraph (c)(3)(i)(I).

4. Adding paragraph (g)(1)(xi).

5. Revising paragraph (g)(3).

The revisions and additions read as follows:

§1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) [Reserved]. For further guidance, see §1.883–1T(c)(3)(i)(D).

* * * * *

(G) through (I) [Reserved]. For further guidance, see §1.883–1T(c)(3)(i)(G) through (I).

(ii) [Reserved]. For further guidance, see §1.883–1T(c)(3)(ii).

* * * * *

(g) * * *

(1) * * *

(ix) through (xi) [Reserved]. For further guidance, see §1.883–1T(g)(1)(ix) through (xi).

(2) * * *

(3) [Reserved]. For further guidance, see §1.883–1T(g)(3).

* * * * *

(h) * * *

(1) * * *

(ii) [Reserved]. For further guidance, see §1.883–1T(h)(1)(ii).

* * * * *

(3) [Reserved]. For further guidance, see §1.883–1T(h)(3).

* * * * *

Par. 5. Section 1.883–1T is added to read as follows:

§1.883–1T Exclusion of income from the international operation of ships or aircraft (temporary).

(a) through (c)(3)(i)(C) [Reserved]. For further guidance, see §1.883–1(a) through (c)(3)(i)(C).

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or an income tax convention between the United States and such country in the case of a corporation described in paragraphs (h)(3)(i) through (iii) of this section;

(c)(3)(i)(E) through (F) [Reserved]. For further guidance, see §1.883–1(c)(3)(i)(E) through (F).

(G) A statement that none of the foreign corporation's shares or shares of any intermediary entity, if any, that are held by qualified shareholders and relied on to satisfy any of the stock ownership tests described in §1.883–1(c)(2) are issued in bearer form;

(H) Any other information required under §1.883–2(f), §1.883–2T(f), §1.883–3T(d), §1.883–4(e), or §1.883–4T(e), as applicable; and

(I) Any other relevant information specified in Form 1120–F, "*U.S. Income Tax Return of a Foreign Corporation*," and its accompanying instructions.

(ii) *Further documentation*—(A) *General rule*. Except as provided in this paragraph (c)(3)(ii)(B), if the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under §1.883–2(f), §1.883–2T(f), §1.883–3T(d), §1.883–4(e), or §1.883–4T(e), as applicable, the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(B) *Names and addresses of certain shareholders*. If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each such individual's ownership statement, to substantiate the requirements of the exception to the closely-held test in the publicly-traded test in §1.883–2(e), the qualified shareholder stock ownership test in §1.883–4(a), or the qualified U.S. person ownership test in §1.883–3T(b), the foreign corporation must provide the documentation and substantiation within 30 days following the written request. If the foreign corporation does not provide the documentation and substantiation within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(c)(4) through (g)(1)(viii) [Reserved]. For further guidance, see §1.883–1(c)(4) through (g)(1)(viii).

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (and for this purpose, a period of five days or less shall be presumed to be short-term); and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and

the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hanger facilities.

(2) [Reserved]. For further guidance, see §1.883–1(g)(2).

(3) *Other services*. [Reserved].

(g)(4) through (h)(1)(i) [Reserved]. For further guidance, see §1.883–1(g)(4) through (h)(1)(i).

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

(h)(1)(iii) and (h)(2) [Reserved]. For further guidance, see §1.883–1(h)(1)(iii) and (h)(2).

(3) *Special rules with respect to income tax conventions*—(i) *Countries with only an income tax convention*. If a foreign country only provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention with the United States, a foreign corporation organized in that country may treat that exemption as an equivalent exemption for purposes of section 883, but only if—

(A) The foreign corporation meets all the conditions for claiming benefits with respect to such profits under the income tax convention; and

(B) The profits that are exempt pursuant to the income tax convention also fall within a category of income described in paragraphs (h)(2)(i) through (viii) of this section.

(ii) *Countries with both an income tax convention and an equivalent exemption*—(A) *General rule*. If a foreign country provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention, and that foreign country also provides an equivalent exemption under section 883 by some other means for one or more categories of income under paragraph (h)(2) of this section, the foreign corporation may choose annually whether to claim an exemption under section 883 or the income tax convention. Except as provided in this paragraph (h)(3)(ii)(B), any such choice will apply with respect to all categories of qualified income of the foreign corporation and cannot be made separately with respect to different categories of income. If a foreign corporation bases its claim for an exemption on section 883, it must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. If the foreign corporation bases its claim for an exemption on an income tax convention, it must satisfy all of the requirements for claiming benefits under the income tax convention. See §1.883–4(b)(3) for rules about satisfying the stock ownership test of §1.883–1(c)(2) using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(B) *Special rule for simultaneous benefits under section 883 and an income tax convention*. If a foreign corporation is organized in a foreign country that offers an exemption from tax under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, with respect to the same category of income, and the foreign corporation chooses to claim an exemption under an income tax convention under paragraph (h)(3)(ii)(A) of this section, it may simultaneously claim an exemption under section 883 with respect to a category of income exempt from tax by such other means if it satisfies the requirements of paragraphs (h)(3)(i)(A) and (B) of this section for each category of income, satisfies one of the stock ownership tests of paragraph (c)(2) of this section, and complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(iii) *Participation in certain joint ventures*. A foreign corporation resident in a foreign country that provides an exemption only through an income tax convention will not be precluded from treating that exemption as an equivalent exemption if it derives income through a participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture described in §1.883–1(e)(2), and the foreign corporation would be ineligible to claim benefits under the convention for that category of income solely because the joint venture was not fiscally transparent, within the meaning of §1.894–1(d)(3)(iii)(A), with respect to that category of income under the income tax laws of the foreign corporation's country of residence.

(iv) *Independent interpretation of income tax conventions*. Nothing in §§1.883–1 through 1.883–5, or in this section and §§1.883–2T through1.883–5T, affects the rights or obligations under any income tax convention. The definitions provided in §§1.883–1 through 1.883–5, or in this section and §§1.883–2T through 1.883–5T, shall not give meaning to similar terms used in any income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

1. Par. 6. Section 1.883–2 is amended by revising paragraphs (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

§1.883–2 Treatment of publicly-traded corporations.

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see §1.883–2T(e)(2).

(f) * * *

(3) [Reserved]. For further guidance, see §1.883–2T(f)(3).

(4) * * *

(ii) [Reserved]. For further guidance, see §1.883–2T(f)(4)(ii).

* * * * *

Par. 7. Section 1.883–2T is added to read as follows:

§1.883–2T Treatment of publicly-traded corporations (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see §1.883–2(a) through (e)(1).

(2) *Availability and retention of documents for inspection*. The documentation described in §1.883–2(e)(1) must be retained by the corporation seeking qualified foreign corporation status until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner

may request in writing in accordance with §1.883–1T(c)(3)(ii)(A) or (B), as applicable.

(f) through (f)(2) [Reserved]. For further guidance, see §1.883–2(f) through (f)(2).

(3) A description of each class of stock relied upon to meet the requirements of §1.883–2(d), including whether the class of stock is issued in registered or bearer form, the number of issued and outstanding shares in that class of stock as of the close of the taxable year, and the value of each class of stock in relation to the total value of all the corporation's shares outstanding as of the close of the taxable year;

(4) and (4)(i) [Reserved]. For further guidance, see §1.883–2(f)(4) and (f)(4)(i).

(ii) With respect to all qualified shareholders who own directly, or by application of the attribution rules in §1.883–4(c), stock in the closely-held block of stock upon which the corporation intends to rely to satisfy the exception to the closely-held test of §1.883–2(d)(3)(ii)—

(A) The total number of qualified shareholders, as defined in §1.883–4(b)(1);

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under §1.883–4(b)(2) (residence of individual shareholders) or §1.883–4(d)(3) (special rules for residence of certain shareholders); and

(C) The days during the taxable year of the corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock.

(5) [Reserved]. For further guidance, see §1.883–2(f)(5).

Par. 8. Section 1.883–3 is revised to read as follows:

§1.883–3 Treatment of controlled foreign corporations.

[Reserved]. For further guidance, see §1.883–3T.

Par. 9. Section 1.883–3T is added to read as follows:

§1.883–3T Treatment of controlled foreign corporations (temporary).

(a) *General rule*. A foreign corporation satisfies the stock ownership test of §1.883–1(c)(2) if it is a controlled foreign corporation (as defined in section 957(a)), satisfies the qualified U.S. person ownership test in paragraph (b) of this section, and satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A CFC that fails the qualified U.S. person ownership test of paragraph (b) of this section will not satisfy the stock ownership test of §1.883–1(c)(2) unless it meets either the publicly-traded test of §1.883–2(a) or the qualified shareholder stock ownership test of §1.883–4(a).

(b) *Qualified U.S. person ownership test*—(1) *General rule*. A foreign corporation will satisfy the requirements of the qualified U.S. person ownership test only if it—

(i) Is a CFC for more that half the days in the corporation's taxable year; and

(ii) More than 50 percent of the total value of its outstanding stock is owned (within the meaning of section 958(a) and paragraph (b)(4) of this section) by one or more qualified U.S. persons for more than half the days of the CFC's taxable year, provided such days of ownership are concurrent with the time period during which the foreign corporation satisfies the requirement in paragraph (b)(1)(i) of this section.

(2) *Qualified U.S. person*. For purposes of this section, the term *qualified U.S. person* means a U.S. citizen, resident alien, domestic corporation, or domestic trust described in section 501(a), but only if the person provides the CFC with an ownership statement as described in paragraph (c)(2) of this section, and the CFC meets the reporting requirements of paragraph (d) of this section with respect to that person.

(3) *Treatment of bearer shares*. For purposes of applying the qualified U.S. person ownership test, the value of the stock of a CFC that is owned (directly or indirectly) through bearer shares by qualified U.S. persons is not taken into account in the numerator of the fraction, but is taken into account in the denominator to determine the portion of the value of stock owned by qualified U.S. persons.

(4) *Attribution of ownership through certain domestic entities*. For purposes of applying the qualified U.S. person ownership test of paragraph (b)(1) of this section, stock owned, directly or indirectly, by or for a domestic partnership, domestic trust not described in section 501(a), or domestic estate, shall be treated as owned proportionately by its partners, beneficiaries, grantors, or other interest holders, respectively, applying the rules of section 958(a) as if such domestic entity were a foreign entity. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(5) *Examples*. The qualified U.S. person ownership test of paragraph (b)(1) of this section is illustrated in the following examples:

Example 1. Ship Co is a CFC for more than half the days of Ship Co's taxable year. Ship Co is organized in a qualified foreign country. All of its shares are owned by a domestic partnership for the entire taxable year. All of the partners in the domestic partnership are citizens and residents of foreign countries. Ship Co fails the qualified U.S. person ownership test of paragraph (b)(1) of this section because none of the value of Ship Co's stock is owned, applying the attribution rules of paragraph (b)(4) of this section, for at least half the number of days of Ship Co's taxable year, by one or more qualified U.S. persons. Therefore, Ship Co must satisfy the qualified shareholder stock ownership test of §1.883–4(a) in order to satisfy the stock ownership test of §1.883–1(c)(2), and be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC for more than half the days of its taxable year. Ship Co is organized in a qualified foreign country. Corp A, a foreign corporation whose stock is owned by a citizen and resident of a foreign country, owns 40 percent of the value of the stock of Ship Co for the entire taxable year. X, a domestic partnership, owns the remaining 60 percent of the value of the stock of Ship Co for Ship Co's entire taxable year. X is owned by 20 partners, all of whom are U.S. citizens and each of whom has owned a 5-percent interest in X for the entire taxable year of Ship Co. Ship Co satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section because 60 percent of the value of the stock of Ship Co is owned, applying the attribution of ownership rules of paragraph (b)(4) of this section, for at least half the number of days of Ship Co's taxable year by the partners of X, who are all qualified U.S. persons as defined in paragraph (b)(2) of this section. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of §1.883–1(c)(2).

Example 3. Ship Co is a foreign corporation organized in a qualified foreign country. Ship Co has two classes of stock, Class A representing 60 percent of the vote and value of all the shares outstanding of Ship Co, and Class B representing the remaining 40 percent of the vote and value of Ship Co. A, a U.S. citizen, holds for the entire taxable year all of the Class A stock, which is issued in bearer form, and B, a nonresident alien, owns all the Class B stock, which is in registered form. Ship Co cannot satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because A's bearer shares cannot be taken into account as being owned by a qualified U.S. person in determining if the qualified U.S. person ownership test has been met; the shares are, however, taken into

account in determining the total value of Ship Co's outstanding shares.

(c) *Substantiation of CFC stock ownership*—(1) *In general*. A foreign corporation that relies on this CFC test to satisfy the stock ownership test of §1.883–1(c)(2) must establish all the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section. Specifically, the CFC must obtain a written ownership statement, signed under penalties of perjury by an individual authorized to sign that person's Federal tax or information return, from—

(i) Each qualified U.S. person upon whose stock ownership it relies to meet this test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust, or estate), and mere legal owners or record holders acting as nominees standing in the chain of ownership between each such qualified U.S. person and the CFC, if any.

(2) *Ownership statements from qualified U.S. persons*. A qualified U.S. person ownership statement must contain the following information:

(i) The qualified U.S. person's name, permanent address, and taxpayer identification number.

(ii) If the qualified U.S. person owns shares directly in the CFC, the number of shares of each class of stock of the CFC owned by the qualified person, the period of time during the taxable year of the CFC when the person owned the stock, and a representation that its interest in the CFC is not held through bearer shares.

(iii) If the qualified person owns an indirect interest in the CFC through an intermediary described in paragraph (c)(1)(ii) of this section, the name of that intermediary, the amount and nature of the interest in the intermediary, the period of time during the taxable year of the CFC when the person held such interest, and, in the case of an interest in a foreign corporate intermediary, a representation that such interest is not held through bearer shares.

(iv) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(3) *Ownership statements from intermediaries*. An intermediary ownership statement required of an intermediary described in paragraph (c)(1)(ii) of this section must contain the following information:

(i) The intermediary's name, permanent address, and taxpayer identification number, if any.

(ii) If the intermediary directly owns stock in the CFC, the number of shares of each class of stock of the CFC owned by the intermediary, the period of time during the taxable year of the CFC when the intermediary owned the stock, and a representation that such interest is not held through bearer shares.

(iii) If the intermediary indirectly owns the stock of the CFC, the name and address of each intermediary standing in the chain of ownership between it and the CFC, the period of time during the taxable year of the CFC when the intermediary owned the interest, the percentage of interest it holds indirectly in the CFC, and, in the case of a foreign corporate intermediary, a representation that its interest is not held through bearer shares.

(iv) Any other information as specified in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(4) *Three-year period of validity*. The rules of §1.883–4(d)(2)(ii) apply for purposes of determining the validity of the ownership statements required under paragraph (c)(2) of this section.

(5) *Availability and retention of documents for inspection*. The documentation described in this paragraph (c) must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request in writing in accordance with §1.883–1T(c)(3)(ii).

(d) *Reporting requirements*. A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of §1.883–1(c)(2) must provide the following information in addition to the information required by §1.883–1(c)(3) to be included in its Form 1120–F, "*U.S. Income Tax Return of a Foreign Corporation*," for the taxable year. The information must be based upon the documentation received by the foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The percentage of the value of the shares of the CFC that is owned by all qualified U.S. persons identified in paragraph (c)(2) of this section, applying the attribution of ownership rules of paragraph (b)(4) of this section;

(2) The period during which such qualified U.S. persons held such stock;

(3) The period during which the foreign corporation was a CFC;

(4) A statement that the CFC is directly held by qualified U.S. persons and does not have any bearer shares outstanding or, in the alternative, that it is not relying on direct or indirect ownership of such shares to meet the qualified U.S. person ownership test; and

(5) Any other relevant information specified by Form 1120–F, and its accompanying instructions, or in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

Par. 10. Section 1.883–4 is amended by:

1. Revising paragraphs (d)(4)(i)(C) and (d)(4)(i)(D).

2. Removing paragraph (e)(2).

3. Redesignating paragraphs (e)(3) and (e)(4) as paragraphs (e)(2) and (e)(3), respectively, and revising them.

The revisions read as follows:

§1.883–4 Qualified shareholder stock ownership test.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) and (D) [Reserved]. For further guidance, see §1.883–4T(d)(4)(i)(C) and (D).

(e) * * *

(2) and (3) [Reserved]. For further guidance, see §1.883–4T(e)(2) and (3).

Par. 11. Section 1.883–4T is added to read as follows:

§1.883–4T Qualified shareholder stock ownership test (temporary).

(a) through (d)(4)(i)(B) [Reserved]. For further guidance, see §1.883–4(a) through (d)(4)(i)(B).

(C) If the individual directly owns stock in the corporation seeking qualified for-

eign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, with a statement that such shares are not issued in bearer form, and the period of time during the taxable year of the foreign corporation when the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate, or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of the interest of the individual in such intermediary, and, in the case of a corporate intermediary, a statement that such shares are not held in bearer form, and the period of time during the taxable year of the foreign corporation seeking qualified foreign corporation status when the individual held such interest;

(d)(4)(i)(E) through (e)(1) [Reserved]. For further guidance, see §1.883–4(d)(4)(i)(E) through (e)(1).

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of §1.883–4(a), the total number of such qualified shareholders as defined in §1.883–4(b)(1); the total percentage of the value of the outstanding shares owned, applying the attribution rules of §1.883–4(c), by such qualified shareholders by country of residence or organization, whichever is applicable; and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120–F, "*U.S. Income Tax Return of a Foreign Corporation*," and its accompanying instructions, or in guidance published by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

Par. 12. Section 1.883–5 is amended by revising the heading and adding paragraphs (d) and (e) to read as follows:

§1.883–5 Effective/applicability dates.

* * * * *

(d) through (e) [Reserved]. For further guidance, see §1.883–5T(d) through (e).

Par. 13. Section 1.883–5T is added to read as follows:

§1.883–5T Effective/applicability dates (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.883–5(a) through (c).

(d) *Effective date*. These regulations are effective on June 25, 2007.

(e) *Applicability dates*. Sections 1.883–1T, 1.883–2T, 1.883–3T, and 1.883–4T are applicable to taxable years of the foreign corporation beginning after June 25, 2007. Taxpayers may elect to apply §1.883–3T to any open taxable years of the foreign corporation beginning on or after December 31, 2004.

(f) *Expiration date*. The applicability of §§1.883–1T, 1.883–2T, 1.883–3T, and 1.883–4T expires on or before June 22, 2010.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In §602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
§1.883–1T	1545–1667
§1.883–2T	1545–1667
§1.883–3T	1545–1667
§1.883–4T	1545–1667
§1.883–5T	1545–1667
* * * * *	

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

Approved June 14, 2007.

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

(Filed by the Office of the Federal Register on June 22, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2007, 72 F.R. 34600)

Section 1081.—Nonrecognition of Gain or Loss on Exchanges or Distributions in Obedience to Orders of S.E.C.

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 1221.—Capital Asset Defined

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for August 2007.

Rev. Rul. 2007–50

This revenue ruling provides various prescribed rates for federal income tax purposes for August 2007 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2007–50 TABLE 1

Applicable Federal Rates (AFR) for August 2007

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	5.00%	4.94%	4.91%	4.89%
110% AFR	5.50%	5.43%	5.39%	5.37%
120% AFR	6.02%	5.93%	5.89%	5.86%
130% AFR	6.52%	6.42%	6.37%	6.34%
Mid-term				
AFR	5.09%	5.03%	5.00%	4.98%
110% AFR	5.61%	5.53%	5.49%	5.47%
120% AFR	6.13%	6.04%	6.00%	5.97%
130% AFR	6.65%	6.54%	6.49%	6.45%
150% AFR	7.69%	7.55%	7.48%	7.43%
175% AFR	8.99%	8.80%	8.71%	8.64%
Long-term				
AFR	5.31%	5.24%	5.21%	5.18%
110% AFR	5.84%	5.76%	5.72%	5.69%
120% AFR	6.39%	6.29%	6.24%	6.21%
130% AFR	6.93%	6.81%	6.75%	6.72%

REV. RUL. 2007–50 TABLE 2

Adjusted AFR for August 2007

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.75%	3.72%	3.70%	3.69%
Mid-term adjusted AFR	3.97%	3.93%	3.91%	3.90%
Long-term adjusted AFR	4.50%	4.45%	4.43%	4.41%

REV. RUL. 2007–50 TABLE 3	
Rates Under Section 382 for August 2007	
Adjusted federal long-term rate for the current month	4.50%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.50%

REV. RUL. 2007–50 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for August 2007	
Appropriate percentage for the 70% present value low-income housing credit	8.21%
Appropriate percentage for the 30% present value low-income housing credit	3.52%

REV. RUL. 2007–50 TABLE 5	
Rate Under Section 7520 for August 2007	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.2%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Section 1502.—Regulations

26 CFR 1.1502–13: Intercompany transactions.

T.D. 9329

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 301, and 602

Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that affect taxpayers filing Federal income tax returns. They simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. This document also makes conforming changes to certain current regulations.

DATES: *Effective Date:* These regulations are effective on June 14, 2007.

Applicability Date: For dates of applicability, see §§1.302–2(d), 1.302–4(h), 1.331–1(f), 1.332–6(e), 1.338–10(c), 1.351–3(f), 1.355–5(e), 1.368–3(e), 1.381(b)–1(e), 1.382–8(j)(4), 1.382–11(b), 1.1081–11(f), 1.1221–2(j), 1.1502–13(m), 1.1502–31(j), 1.1502–32(j), 1.1502–33(k), 1.1502–95(g), 1.1563–3(e) and 1.6012–2(k).

FOR FURTHER INFORMATION CONTACT: For all sections except §1.6012–2, Grid Glyer, (202) 622–7930; for §1.6012–2, William T. Sullivan (202) 622–7052 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2019.

The collection of information in these final regulations is in §§1.302–2, 1.302–4, 1.331–1, 1.332–6, 1.338–10, 1.351–3, 1.355–5, 1.368–3, 1.381(b)–1, 1.382–8, 1.382–11, 1.1081–11, 1.1221–2, 1.1502–13, 1.1502–31, 1.1502–32, 1.1502–33, 1.1502–95, 1.1563–3 and 1.6012–2. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of the fair market value of any property (including stock) received and the basis of any property (including stock) surrendered in the transaction described in such section.

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

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

Background

On May 30, 2006, the IRS and Treasury Department published temporary regulations (T.D. 9264, 2006–1 C.B. 1150) under

26 CFR part 1 and 26 CFR part 602. See 71 FR 30591. The IRS and Treasury Department issued a notice of proposed rulemaking (REG–134317–05, 2006–1 C.B. 1184) cross-referencing those temporary regulations on the same day. See 71 FR 30640.

In general, the regulations simplify, clarify, or eliminate reporting burdens for corporations and shareholders for certain transactions, including distributions, exchanges and reorganizations. They also eliminate impediments to the electronic filing of statements that taxpayers, primarily large corporations that are members of consolidated or controlled groups, are required to include on their Federal income tax returns.

These regulations were part of a series of regulations published by the IRS and Treasury Department that are designed to eliminate impediments to the electronic filing of forms and statements that taxpayers are required to include on their Federal income tax returns. See, for example, T.D. 9300, 2007–2 I.R.B. 246 [71 FR 71040], and T.D. 9243, 2006–1 C.B. 475 [71 FR 4276].

Explanation of Provisions

Except as provided in the following paragraph, this Treasury decision adopts the proposed regulations with no substantive changes. In addition, this Treasury decision removes the corresponding temporary regulations.

This Treasury decision does not adopt the following proposed regulations: §1.1502–35(c)(4)(i), §1.1502–76(b)(2)(ii)(D) and §1.1563–1(c)(2)(i) through (iii). These proposed regulations will be addressed as part of other guidance projects.

The IRS and Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. However, three questions were raised informally and are addressed in this preamble.

Sec. 1.302–2

The first question involves a reporting requirement under §1.302–2 (redemptions not taxable as dividends). Specifically, the question involved proposed §1.302–2(b)(2), which requires all "significant holders" receiving property from a corporation in exchange for the corporation's stock ("redemption exchanges") to include a brief information statement on their return. The statement sets forth certain information necessary to determine the proper treatment of the redemption exchange. Under proposed §1.302–2(b)(3)(i), a significant holder is any stockholder owning 5 percent or more of the stock of a publicly traded company and any stockholder owning 1 percent or more of the stock of a company that is not publicly traded.

The specific question raised was whether the statement is necessary in all redemption exchanges, whether the exchange is treated as a distribution that is essentially equivalent to a dividend or not. Under the proposed regulations, all redemption exchanges are subject to this reporting requirement. The IRS and Treasury Department determined that the simplified information to be provided in the statement is necessary for the identification and evaluation of redemptions that are essentially equivalent to dividends. Furthermore, the required information is information that taxpayers should already have or be prepared to produce. Finally, as noted in this preamble, the regulations limit any remaining burden by imposing the reporting requirement only on significant holders. For all these reasons, the IRS and Treasury Department have concluded that the requirement does not impose an unnecessary or inappropriate burden on taxpayers. Accordingly, the final regulations adopt the rule proposed in §1.302–2(b)(2) and do not limit the application of the reporting requirement.

Sec. 1.302–4

The second question involves a reporting requirement under §1.302–4 (termination of shareholder's interest). Specifically, the question involved the statement in proposed §1.302–4(a) regarding the waiver of family attribution. Under this section and section 302(c)(2), a redeeming shareholder can avoid being treated as receiving a dividend equivalent distribution by waiving the application of the family attribution rules of section 318(a)(1). Prior to the promulgation of §1.302–4T(a), §1.302–4(a)(1) provided that taxpayers were required to file family attribution waiver agreements and §1.302–4(a)(2) prescribed conditions under which a taxpayer that had failed to timely file the agreement could obtain an extension of time to file from the appropriate district director. Section 1.302–4T(a) removed the requirement that an agreement be filed as well as the instructions regarding late filing. Instead, that regulation provided that a statement must be filed and set forth the information that must be included. Section 1.302–4T(a) did not include instructions for late filers.

The specific question raised was whether the change affected taxpayers' ability to remedy late filing. The IRS and Treasury Department did not intend any change to taxpayers' ability to remedy late filing. However, the final regulations do not incorporate instructions for late filing because the statement required is a regulatory election and the late filing of all regulatory elections is addressed by §301.9100–1. Accordingly, such instructions are not necessary and could inadvertently imply that the general rules would not otherwise apply.

Sec. 1.6012–2

Finally, a question was also raised concerning the reporting requirements applicable to foreign insurance corporations electing under section 953(d) to be treated as domestic insurance corporations. Specifically, the question raised was whether such corporations have a reporting requirement.

Section 1.6012–2(c)(1)(i) requires that a domestic life insurance company file with its return a copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return, and a copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement. Section 1.6012–2(c)(2) similarly requires that a domestic nonlife insurance company file with its return a copy of its annual statement, including the underwriting and investment exhibit (or any successor thereto), for the year covered by such return. Section 953(d) provides that a foreign insurance company that satisfies the requirements of section 953(d), including the making of an election under section 953(d)(1)(D), shall be treated as a

domestic corporation for purposes of the Internal Revenue Code. Thus, a foreign insurance company that elects under section 953(d) to be treated as a domestic corporation generally is required under §1.6012–2(c)(1) or (2), as appropriate, to file with its return a copy of its annual statement. Under §1.6012–2(c)(5), the term "annual statement" includes a *pro forma* annual statement if the insurance company is not required to file the NAIC annual statement.

Because the reporting requirements of electing corporations are addressed in the current regulations, the IRS and Treasury Department are not modifying the regulations to address this point further.

Special Analysis

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 also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to §§1.302–2, 1.302–4, 1.331–1, 1.332–6, 1.351–3, 1.355–5, 1.368–3, 1.381(b)–1, 1.1081–11, 1.1563–3, and 1.6012–2. With respect to the collections of information in such sections, and with respect to §§1.338–10, 1.382–8, 1.382–11, 1.1221–2, 1.1502–13, 1.1502–31, 1.1502–32, 1.1502–33 and 1.1502–95, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect large corporations (which are members of either controlled or consolidated groups) and in the case of all corporations will substantially reduce or eliminate the existing reporting burden. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§1.302–2T, 1.302–4T, 1.331–1T, 1.332–6T, 1.338–10T, 1.351–3T, 1.355–5T, 1.368–3T, 1.381(b)–1T, 1.382–8T, 1.382–11T, 1.1081–11T, 1.1221–2T, 1.1502–13T, 1.1502–31T, 1.1502–33T, 1.1502–95T, 1.1563–3T and 1.6012–2T to read, in part, as follows:

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

Par. 2. Section 1.302–2 is amended by:

1. Adding headings to paragraphs (a), (b), (b)(1) and (c).

2. Revising paragraphs (b)(2) and (d).

3. Adding paragraphs (b)(3) and (b)(4).

The additions and revisions read as follows:

§1.302–2 Redemptions not taxable as dividends.

(a) *In general*. * * *

(b) *Redemption not essentially equivalent to a dividend*—(1) *In general*. * * *

(2) *Statement*. Unless §1.331–1(d) applies, every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the taxable year of such exchange a statement entitled, "STATEMENT PURSUANT TO §1.302–2(b)(2) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions*. For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (b)(2) of this section.

(4) *Cross reference*. See section 6043 of the Internal Revenue Code for requirements relating to a return by a liquidating corporation.

(c) *Basis adjustments*. * * *

(d) *Effective/applicability date*. Paragraphs (b)(2), (b)(3) and (b)(4) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraphs (b)(2), (b)(3) and (b)(4) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.302–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.302–2T [Removed]

Par. 3. Section 1.302–2T is removed.

Par. 4. Section 1.302–4 is amended by:

1. Revising paragraphs (a) and (h).

2. Adding headings to paragraphs (b), (c), (d), (e), (f), and (g) introductory text.

The additions and revisions read as follows:

§1.302–4 Termination of shareholder's interest.

(a) *Statement*. The agreement specified in section 302(c)(2)(A)(iii) shall be in the form of a statement entitled, "STATEMENT PURSUANT TO SECTION 302(c)(2)(A)(iii) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER OR RELATED PERSON, AS THE CASE MAY BE], A DISTRIBUTEE (OR RELATED PERSON) OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTING CORPORATION]." The distributee must include such statement on or with the distributee's first return for the taxable year in which the distribution described in section 302(b)(3) occurs. If the distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The distributee must represent in the statement—

(1) THE DISTRIBUTEE (OR RELATED PERSON) HAS NOT ACQUIRED, OTHER THAN BY BEQUEST OR INHERITANCE, ANY INTEREST IN THE CORPORATION (AS DESCRIBED IN SECTION 302(c)(2)(A)(i)) SINCE THE DISTRIBUTION; and

(2) THE DISTRIBUTEE (OR RELATED PERSON) WILL NOTIFY THE INTERNAL REVENUE SERVICE OF ANY ACQUISITION, OTHER THAN BY BEQUEST OR INHERITANCE, OF SUCH AN INTEREST IN THE CORPORATION WITHIN 30 DAYS AFTER THE ACQUISITION, IF THE ACQUISITION OCCURS WITHIN 10 YEARS FROM THE DATE OF THE DISTRIBUTION.

(b) *Substantiation information*. * * *

(c) *Stock of parent, subsidiary or successor corporation redeemed*. * * *

(d) *Redeemed shareholder as creditor*. * * *

(e) *Acquisition of assets pursuant to creditor's rights*. * * *

(f) *Constructive ownership rules applicable*. * * *

(g) *Avoidance of Federal income tax*. * * *

(h) *Effective/applicability date*. Paragraph (a) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (a) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.302–4 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.302–4T [Removed]

Par. 5. Section 1.302–4T is removed.

Par. 6. Section 1.331–1 is amended by:

1. Adding headings to paragraphs (a), (b), (c) and (e).

2. Revising paragraphs (d) and (f).

The additions and revisions read as follows:

§1.331–1 Corporate liquidations.

(a) *In general*. * * *

(b) *Gain or loss*. * * *

(c) *Recharacterization*. * * *

(d) *Reporting requirement*—(1) *General rule*. Every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the year of such exchange the statement described in paragraph (d)(2) of this section unless—

(i) The property is part of a distribution made pursuant to a corporate resolution reciting that the distribution is made in complete liquidation of the corporation; and

(ii) The issuing corporation is completely liquidated and dissolved within one year after the distribution.

(2) *Statement*. If required by paragraph (d)(1) of this section, a significant holder must include on or with such holder's return a statement entitled, "STATEMENT PURSUANT TO §1.331–1(d) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions*. For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (d)(1) of this section.

(4) *Cross reference*. See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(e) *Example*. * * *

(f) *Effective/applicability date*. Paragraph (d) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (d) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before

May 30, 2006, see §1.331–1 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.331–1T [Removed]

Par. 7. Section 1.331–1T is removed.

Par. 8. Section 1.332–6 is added to read as follows:

§1.332–6 Records to be kept and information to be filed with return.

(a) *Statement filed by recipient corporation*. If any recipient corporation received a liquidating distribution from the liquidating corporation pursuant to a plan (whether or not that recipient corporation has received or will receive other such distributions from the liquidating corporation in other tax years as part of the same plan) during the current tax year, such recipient corporation must include a statement entitled, "STATEMENT PURSUANT TO SECTION 332 BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION RECEIVING A LIQUIDATING DISTRIBUTION," on or with its return for such year. If any recipient corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the liquidating corporation;

(2) The date(s) of all distribution(s) (whether or not pursuant to the plan) by the liquidating corporation during the current tax year;

(3) The aggregate fair market value and basis, determined immediately before the liquidation, of all of the assets of the liquidating corporation that have been or will be transferred to any recipient corporation;

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the liquidation;

(5) The following representation: THE PLAN OF COMPLETE LIQUIDATION WAS ADOPTED ON [INSERT DATE (mm/dd/yyyy)]; and

(6) A representation by such recipient corporation either that—

(i) THE LIQUIDATION WAS COMPLETED ON [INSERT DATE (mm/dd/yyyy)]; or

(ii) THE LIQUIDATION IS NOT COMPLETE AND THE TAXPAYER HAS TIMELY FILED [INSERT EITHER FORM 952, "*Consent To Extend the Time to Assess Tax Under Section 332(b)*," OR NUMBER AND NAME OF THE SUCCESSOR FORM].

(b) *Filings by the liquidating corporation*. The liquidating corporation must timely file Form 966, "*Corporate Dissolution or Liquidation*," (or its successor form) and its final Federal corporate income tax return. See also section 6043 of the Code.

(c) *Definitions*. For purposes of this section:

(1) *Plan* means the plan of complete liquidation within the meaning of section 332.

(2) *Recipient corporation* means the corporation described in section 332(b)(1).

(3) *Liquidating corporation* means the corporation that makes a distribution of property to a recipient corporation pursuant to the plan.

(4) *Liquidating distribution* means a distribution of property made by the liquidating corporation to a recipient corporation pursuant to the plan.

(d) *Substantiation information*. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with a liquidation described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all distributed property, and relevant facts regarding any liabilities assumed or extinguished as part of such liquidation.

(e) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.332–6 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.332–6T [Removed]

Par. 9. Section 1.332–6T is removed.

Par. 10. Section 1.338–0 is amended by revising the entries for §§1.338–10(a)(4)(iii) and 1.338–10(c) and removing the entry for §1.338–10T to read as follows:

§1.338–0 Outline of topics.

* * * * *

§1.338–10 Filing of returns.

(a) * * *

(4) * * *

(iii) Procedure for filing a combined return.

* * * * *

(c) Effective/applicability date.

* * * * *

Par. 11. Section 1.338–10 is amended by revising paragraphs (a)(4)(iii) and (c) to read as follows:

§1.338–10 Filing of returns.

(a) * * *

(4) * * *

(iii) *Procedure for filing a combined return*. A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in §1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include a statement entitled, "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The statement must include—

(A) The name, address, and employer identification number of each target required to be included in the combined return; and

(B) The following declaration: EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN.

* * * * *

(c) *Effective/applicability date*. Paragraph (a)(4)(iii) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (a)(4)(iii) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.338–10 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.338–10T [Removed]

Par. 12. Section 1.338–10T is removed.

Par. 13. Section 1.351–3 is added to read as follows:

§1.351–3 Records to be kept and information to be filed.

(a) *Significant transferor*. Every significant transferor must include a statement entitled, "STATEMENT PURSUANT TO §1.351–3(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT TRANSFEROR," on or with such transferor's income tax return for the taxable year of the section 351 exchange. If a significant transferor is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the transferee corporation;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the property transferred by such transferor in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(b) *Transferee corporation*. Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.351–3(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEREE CORPORATION," on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(c) *Exception for certain transferee corporations*. The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

(d) *Definitions*. For purposes of this section:

(1) *Significant transferor* means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—

(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded, or

(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(e) *Substantiation information*. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.351–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.351–3T [Removed]

Par. 14. Section 1.351–3T is removed.

Par. 15. Section 1.355–0 is amended by removing the entry for §1.355–5T and adding an entry for §1.355–5.

The revision and addition read as follows:

§1.355–0 Outline of sections.

* * * * *

§1.355–5 Records to be kept and information to be filed.

(a) Distributing corporation.

(1) In general.

(2) Special rule when an asset transfer precedes a stock distribution.

(b) Significant distributee.

(c) Definitions.

(1) Significant distributee.

(2) Publicly traded stock.

(d) Substantiation information.

(e) Effective/applicability date.

* * * * *

Par. 16. Section 1.355–5 is added to read as follows:

§1.355–5 Records to be kept and information to be filed.

(a) *Distributing corporation*—(1) *In general*. Every corporation that makes a distribution (the distributing corporation) of stock or securities of a controlled corporation, as described in section 355 (or so much of section 356 as relates to section 355), must include a statement entitled, "STATEMENT PURSUANT TO §1.355–5(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING CORPORATION," on or with its return for the year of the distribution. If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The name and employer identification number (if any) of the controlled corporation;

(ii) The name and taxpayer identification number (if any) of every significant distributee;

(iii) The date of the distribution of the stock or securities of the controlled corporation;

(iv) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) distributed by the distributing corporation in the transaction; and

(v) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the transaction.

(2) *Special rule when an asset transfer precedes a stock distribution.* If the distributing corporation transferred property to the controlled corporation in a transaction described in section 351 or 368, as part of a plan to then distribute the stock or securities of the controlled corporation in a transaction described in section 355 (or so much of section 356 as relates to section 355), then, unless paragraph (a)(1)(v) of this section applies, the distributing corporation must also include on or with its return for the year of the distribution the statement required by §1.351–3(a) or 1.368–3(a). If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include the statement required by §1.351–3(a) or 1.368–3(a) on or with its return.

(b) *Significant distributee*. Every significant distributee must include a statement entitled, "STATEMENT PURSUANT TO §1.355–5(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT DISTRIBUTEE," on or with such distributee's return for the year in which such distribution is received. If a significant distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of the distributing and controlled corporations;

(2) The date of the distribution of the stock or securities of the controlled corporation; and

(3) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant distributee in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant distributee in the distribution or exchange.

(c) *Definitions*. For purposes of this section:

(1) *Significant distributee* means—

(i) A holder of stock of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the stock of the distributing corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock or securities of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder owned securities in such distributing corporation with a basis of $1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) *Substantiation information*. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(e) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.355–5 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.355–5T [Removed]

Par. 17. Section 1.355–5T is removed.

Par. 18. Section 1.368–3 is added to read as follows:

§1.368–3 Records to be kept and information to be filed with returns.

(a) *Parties to the reorganization*. The plan of reorganization must be adopted by each of the corporations that are parties thereto. Each such corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.368–3(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION A PARTY TO A REORGANIZATION," on or with its return for the taxable year of the exchange. If any such corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. However, it is not necessary for any taxpayer to include more than one such statement on or with the same return for the same reorganization. The statement must include—

(1) The names and employer identification numbers (if any) of all such parties;

(2) The date of the reorganization;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the assets, stock or securities of the target corporation transferred in the transaction; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with this reorganization.

(b) *Significant holders*. Every significant holder, other than a corporation a party to the reorganization, must include a statement entitled, "STATEMENT PURSUANT TO §1.368–3(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER," on or with such holder's return for the taxable year of the exchange. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of all of the parties to the reorganization;

(2) The date of the reorganization; and

(3) The fair market value, determined immediately before the exchange, of all the stock or securities of the target corporation held by the significant holder that is transferred in the transaction and such holder's basis, determined immediately before the exchange, in the stock or securities of such target corporation.

(c) *Definitions*. For purposes of this section:

(1) *Significant holder* means—

(i) A holder of stock of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder owned securities in such target corporation with a basis of $1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) *Substantiation information*. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the reorganization described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such reorganization.

(e) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.368–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.368–3T [Removed]

Par. 19. Section 1.368–3T is removed.

Par. 20. Section 1.381(b)–1 is amended by revising paragraphs (b)(3) and (e) to read as follows:

§1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(3) *Election*—(i) *Content of statements*. The statements referred to in paragraph (b)(2) of this section must be entitled, "ELECTION OF DATE OF DISTRIBUTION OR TRANSFER PURSUANT TO §1.381(b)–1(b)(2)," and must include: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTOR OR TRANSFEROR CORPORATION] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ACQUIRING CORPORATION] ELECT TO DETERMINE THE DATE OF DISTRIBUTION OR TRANSFER UNDER §1.381(b)–1(b)(2). SUCH DATE IS [INSERT DATE (mm/dd/yyyy)].

(ii) *Filing of statements*. One statement must be included on or with the timely filed Federal income tax return of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer. An identical statement must be included on or with the timely filed Federal income tax return of the acquiring corporation for its first taxable year ending after that date. If the distributor or transferor corporation, or the acquiring corporation, is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return.

* * * * *

(e) *Effective/applicability date*. Paragraph (b)(3) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (b)(3) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.381(b)–1 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.381(b)–1T [Removed]

Par. 21. Section 1.381(b)–1T is removed.

Par. 22. Section 1.382–1 is amended by:

1. Revising the entry for §1.382–8(c)(2).
2. Revising the entry for §1.382–8(e)(4).
3. Revising the entry for §1.382–8(h).
4. Revising the entry for §1.382–8(j)(4).
5. Removing the entry for §1.382–8T.
6. Adding the entry for §1.382–11.
7. Removing the entry for §1.382–11T.

The additions and revisions read as follows:

§1.382–1 Table of contents.

* * * * *

§1.382–8 Controlled groups.

* * * * *

(c) * * *

(2) Restoration of value.

* * * * *

(e) * * *

(4) Foreign component member.

(i) In general.

(ii) Exception.

* * * * *

(h) Time and manner of filing election to restore.

(1) Statements required.

(i) Filing by loss corporation.

(ii) Filing by electing member.

(iii) Agreement.

(2) Special rule for foreign component members.

(i) Deemed election to restore full value.

(ii) Election not to restore full value.

(iii) Agreement.

(3) Revocation of election.

* * * * *

(j) * * *

(4) Effective/applicability date.

* * * * *

§1.382–11 Reporting requirements.

(a) Information statement required.

(b) Effective/applicability date.

Par. 23. Section 1.382–8 is amended by revising paragraphs (c)(2), (e)(4), (h) and (j)(4) to read as follows:

§1.382–8 Controlled groups.

* * * * *

(c) * * *

(2) *Restoration of value*. After the value of the stock of each component member is reduced pursuant to paragraph (c)(1) of this section, the value of the stock of each component member is increased by the amount of value, if any, restored to the component member by another component member (the electing member) pursuant to this paragraph (c)(2). The electing member may elect (or may be deemed to elect under paragraph (h)(2)(i) of this section in the case of a foreign component member) to restore value to another component member in an amount that does not exceed the lesser of—

(i) The sum of—

(A) The value, determined immediately before the ownership change, of the electing member's stock (after adjustment under paragraph (c)(1) of this section and before any restoration of value under this paragraph (c)(2)); plus

(B) Any amount of value restored to the electing member by another component member under this paragraph (c)(2); or

(ii) The value, determined immediately before any ownership change, of the electing member's stock (without regard to any adjustment under this section) that is directly owned by the other component member immediately after the ownership change.

* * * * *

(e) * * *

(4) *Foreign component member*—(i) *In general*. Except as provided in paragraph (e)(4)(ii) of this section, foreign component member means a component member that is a foreign corporation.

(ii) *Exception*. A foreign component member shall not include a foreign corporation that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value pursuant to section 382(e)(3).

* * * * *

(h) *Time and manner of filing election to restore*—(1) *Statements required*— (i) *Filing by loss corporation*. The election to restore value described in paragraph (c)(2) of this section must be in the form set forth in this paragraph (h)(1)(i). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382–8(h)(1) TO ELECT TO RESTORE ALL OR PART OF THE VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE ELECTING MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH VALUE IS RESTORED]." The statement must include the amount of the value being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(1)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of this agreement as part of its records. See §1.6001–1(e).

(ii) *Filing by electing member*. An electing member must include a statement identical to the one described in paragraph (h)(1)(i) of this section on or with its income tax return (or with an amended return for that year filed on or before the due

date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (c)(2) of this section is made. If the electing member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing member (or the United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement*. Both the electing member and the corporation to which value is restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing member's stock (without regard to any adjustment under paragraph (c) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of this section with respect to stock of the electing member that is owned directly or indirectly by the corporation to which value is restored;

(D) State the amount of value that the electing member elects to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of this section.

(2) *Special rule for foreign component members*—(i) *Deemed election to restore full value*. Unless the election described in paragraph (h)(2)(ii) of this section is made for a foreign component member, each foreign component member of the controlled group is deemed to have elected to restore to each other component member the maximum value allowable under paragraph (c)(2) of this section, taking into account the limitations of this section.

(ii) *Election not to restore full value*. (A) A loss corporation may elect to reduce the amount of value restored from a foreign component member (the electing foreign component member) to another component member under paragraph (h)(2)(i) of this section in the form set forth in this paragraph (h)(2)(ii). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382–8(h)(2)(ii) TO ELECT NOT TO RESTORE FULL VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ELECTING FOREIGN COMPONENT MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH SUCH VALUE IS NOT TO BE RESTORED]." The statement must include the amount of the value not being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(2)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of the agreement as part of its records. See §1.6001–1(e).

(B) An electing foreign component member must include a statement identical to the one described in paragraph (h)(2)(ii)(A) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (h)(2)(ii)(A) of this section is made. If the electing foreign component member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing foreign component member (or United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement*. Both the electing foreign component member and the corporation to which full value is not restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing foreign component member's stock (without regard to any adjustment under paragraph (c) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of this section with respect to stock of the electing foreign component member that is owned directly or indirectly by the corporation to which value is not restored;

(D) State the amount of value that the electing foreign component member elects not to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of this section.

(3) *Revocation of election*. An election (other than the deemed election described in paragraph (h)(2)(i) of this section) made under this section is revocable only with the consent of the Commissioner.

* * * * *

(j) * * *

(4) *Effective/applicability date*. Paragraphs (c)(2), (e)(4) and (h) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraphs (c)(2), (e)(4) and (h) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.382–8 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.382–8T [Removed]

Par. 24. Section 1.382–8T is removed.

Par. 25. Section 1.382–11 is added to read as follows:

§1.382–11 Reporting requirements.

(a) *Information statement required*. A loss corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.382–11(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION," on or with its income tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift or other transaction described in §1.382–2T(a)(2)(i) occurs. The statement must include the date(s) of any owner shifts, equity structure shifts, or other transactions described in §1.382–2T(a)(2)(i), the date(s) on which any ownership change(s) occurred, and the amount of any attributes described in §1.382–2(a)(1)(i) that caused the corporation to be a loss corporation. A loss corporation may also be required to include certain elections on this statement, including—

(1) An election made under §1.382–2T(h)(4)(vi)(B) to disregard the deemed exercise of an option if the actual exercise of that option occurred within 120 days of the ownership change; and

(2) An election made under §1.382–6(b)(2) to close the books of the loss corporation for purposes of allocating income and loss to periods before and after the change date for purposes of section 382.

(b) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.382–2T as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.382–11T [Removed]

Par. 26. Section 1.382–11T is removed.

Par. 27. Section 1.1081–11 is added to read as follows:

§1.1081–11 Records to be kept and information to be filed with returns.

(a) *Distributions and exchanges; significant holders of stock or securities*. Every significant holder must include a statement entitled, "STATEMENT PURSUANT TO §1.1081–11(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER," on or with such holder's income tax return for the taxable year in which the distribution or exchange occurs. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the corporation from which the stock, securities, or other property (including money) was received by such significant holder;

(2) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant holder in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant holder in the distribution or exchange; and

(3) The date of the distribution or exchange.

(b) *Distributions and exchanges; corporations subject to Commission orders*. Each corporation which is a party to a distribution or exchange made pursuant to an order of the Commission must include on or with its income tax return for its taxable year in which the distribution or exchange takes place a statement entitled, "STATEMENT PURSUANT TO §1.1081–11(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING OR EXCHANGING CORPORATION." If the distributing or exchanging corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The date and control number of the Commission order, pursuant to which the distribution or exchange was made;

(2) The names and taxpayer identification numbers (if any) of the significant holders;

(3) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) transferred in the distribution or exchange; and

(4) The date of the distribution or exchange.

(c) *Sales by members of system groups*. Each system group member must include a statement entitled, "STATEMENT PURSUANT TO §1.1081–11(c) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SYSTEM GROUP MEMBER," on or with its income tax return for the taxable year in which the sale is made. If any system group member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The dates and control numbers of all relevant Commission orders;

(2) The aggregate fair market value and basis, determined immediately before the sale, of all stock or securities sold; and

(3) The date of the sale.

(d) *Definitions*. (1) For purposes of this section, *Commission* means the Securities and Exchange Commission.

(2) For purposes of this section, *significant holder* means a person that receives stock or securities from a corporation (the distributing corporation) pursuant to an order of the Commission, if, immediately before the transaction, such person—

(i) In the case of stock—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is publicly traded, or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is not publicly traded; or

(ii) In the case of securities, owned securities of the distributing corporation with a basis of $1,000,000 or more.

(3) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(4) For purposes of paragraph (b) of this section, *exchange* means exchange, expenditure, or investment.

(5) For purposes of paragraph (c) of this section, *system group member* means each corporation which is a member of a system group and which, pursuant to an order of the Commission, sells stock or securities received upon an exchange (pursuant to an order of the Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities.

(e) *Substantiation information*. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(f) *Effective/applicability date*. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.1081–11 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1081–11T [Removed]

Par. 28. Section 1.1081–11T is removed.

Par. 29. Section 1.1221–2 is amended by revising paragraphs (e)(2)(iv) and (j) to read as follows:

§1.1221–2 Hedging transactions.

* * * * *

(e) * * *

(2) * * *

(iv) *Making and revoking the election*. Unless the Commissioner otherwise prescribes, the election described in paragraph (e)(2) of this section must be made in a separate statement that provides, "[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1221–2(e)(2) (THE SEPARATE-ENTITY APPROACH)." The statement must also indicate the date as of which the election is to be effective. The election must be filed by including the statement on or with the consolidated group's income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated. The election may only be revoked with the consent of the Commissioner.

* * * * *

(j) *Effective/applicability date*. Paragraph (e)(2)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1221–2T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1221–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1221–2T [Removed]

Par. 30. Section 1.1221–2T is removed.

Par. 31. Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(E), (f)(6)(i)(C)(*2*) and (m) to read as follows:

§1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(E) *Election*. An election to apply paragraph (f)(5)(ii) of this section is made in a separate statement entitled, "[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1502–13(f)(5)(ii) FOR AN INTERCOMPANY TRANSACTION INVOLVING [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF T]." A separate election must be made for each such application. The election must be filed by including the statement on or with the consolidated group's income tax return for the year of T's liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application of paragraph (f)(5)(ii) of this section that are consistent with the purposes of such section. The statement must—

(*1*) Identify S's intercompany transaction and T's liquidation (or other transaction); and

(*2*) Specify which provision of paragraph (f)(5)(ii) of this section applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S's intercompany items and the amount deferred or offset as a result of paragraph (f)(5)(ii) of this section).

(6) * * *

(i) * * *

(C) * * *

(*2*) *Election*. The election described in paragraph (f)(6)(i)(C)(*1*) of this section must be made in a separate statement entitled, "ELECTION TO REDUCE BASIS OF P STOCK UNDER §1.1502–13(f)(6) HELD BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF MEMBER WHOSE BASIS IN P STOCK IS REDUCED]." The election must be filed by including the statement on or with the consolidated group's income tax return for the year in which the nonmember becomes a member. The statement must identify the member's basis in the P stock (taking into account the effect of this election) and the number of shares of P stock held by the member.

* * * * *

(m) *Effective/applicability date*. Paragraphs (f)(5)(ii)(E) and (f)(6)(i)(C)(*2*) of this section apply to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1502–13T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1502–13 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1502–13T [Removed]

Par. 32. Section 1.1502–13T is removed.

Par. 33. Section 1.1502–31 is amended by revising paragraphs (e)(2) and (j) to read as follows:

§1.1502–31 Stock basis after a group structure change.

* * * * *

(e) * * *

(2) *Election*. The election described in paragraph (e)(1) of this section must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER AS EXPIRING UNDER §1.1502–31(e)." The election must be filed by including the statement on or with the consolidated group's income tax return for the year that includes the group structure change. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire).

* * * * *

(j) *Effective/applicability date*. Paragraph (e)(2) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1502–31T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1502–31 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1502–31T [Removed]

Par. 34. Section 1.1502–31T is removed.

Par. 35. Section 1.1502–32 is amended by revising paragraphs (b)(4)(iv) and (j) to read as follows:

§1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(iv) *Election*. The election described in paragraph (b)(4) of this section must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AS EXPIRING UNDER §1.1502–32(b)(4)." The election must be filed by including a statement on or with the consolidated group's income tax return for the year S becomes a member. A separate statement must be made for each member whose loss carryover is deemed to expire. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire) and the basis of any stock reduced as a result of the deemed expiration.

* * * * *

(j) *Effective/applicability date*. Paragraph (b)(4)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1502–32T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1502–32 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1502–32T [Amended]

Par. 36. Section 1.1502–32T is amended by removing and reserving paragraphs (b)(4)(iv) and (j).

Par. 37. Section 1.1502–33 is amended by revising paragraphs (d)(5)(i)(D) and (k) to read as follows:

§1.1502–33 Earnings and profits.

* * * * *

(d) * * *

(5) * * *

(i) * * *

(D) If a method is permitted under paragraph (d)(4) of this section, provide the date and control number of the private letter ruling issued by the Internal Revenue Service approving such method.

* * * * *

(k) *Effective/applicability date*. Paragraph (d)(5)(i)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1502–33T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1502–33 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1502–33T [Removed]

Par. 38. Section 1.1502–33T is removed.

Par. 39. Section 1.1502–90 is amended by:

1. Revising the entry for §1.1502–95(e)(8).
2. Revising the entry for §1.1502–95(f).
3. Revising the entry for §1.1502–95(g).
4. Removing the entry for §1.1502–95T.

The revisions read as follows:

§1.1502–90 Table of contents.

* * * * *

§1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

* * * * *

(e) * * *

(8) Reporting requirements.

(i) Common Parent.

(ii) Former Member.

(iii) Exception.

(f) Filing the election to apportion the section 382 limitation and net unrealized built-in gain.

(1) Form of the election to apportion.

(i) Statement.

(ii) Agreement.

(2) Signing the agreement.

(3) Filing the election.

(i) Filing by the common parent.

(ii) Filing by the former member.

(4) Revocation of election.

(g) Effective/applicability date.

* * * * *

Par. 40. Section 1.1502–95 is amended by revising paragraphs (e)(8), (f) and (g) to read as follows:

§1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

* * * * *

(e) * * *

(8) *Reporting requirements*—(i) *Common Parent*. Except as provided in paragraph (e)(8)(iii) of this section, if a net unrealized built-in loss is allocated under paragraph (e) of this section, the common parent must include a statement entitled, "STATEMENT OF NET UNREALIZED BUILT-IN LOSS ALLOCATION PURSUANT TO §1.1502–95(e)," on or with its income tax return for the taxable year in which the former member(s) (or a new loss subgroup that includes that member) ceases to be a member. The statement must include—

(A) The name and employer identification number of the departing member;

(B) The amount of the remaining NUBIL balance for the taxable year in which the member departs;

(C) The amount of the net unrealized built-in loss allocated to the departing member; and

(D) A representation that the common parent has delivered a copy of the statement to the former member (or the common parent of the group of which the former member is a member) on or before the day the group files its income tax return for the consolidated return year that the former member ceases to be a member.

(ii) *Former Member*. Except as provided in paragraph (e)(8)(iii) of this section, the former member must include a statement on or with its first income tax return (or the first return in which the former member joins) that is filed after the close of the consolidated return year of the group of which the former member (or a new loss subgroup that includes that member) ceases to be a member. The statement will be identical to the statement filed by the common parent under paragraph (e)(8)(i) of this section except that instead of including the information described in paragraph (e)(8)(i)(A) of this section the former member must provide the name, employer identification number and tax year of the former common parent, and instead of the representation described in paragraph (e)(8)(i)(D) of this section the former member must represent that it has received and retained the copy of the statement delivered by the common parent as part of its records. See §1.6001–1(e).

(iii) *Exception*. This paragraph (e)(8) does not apply if the required information (other than the amount of the remaining NUBIL balance) is included in a statement of election under paragraph (f) of this section (relating to apportioning a section 382 limitation).

(f) *Filing the election to apportion the section 382 limitation and net unrealized built-in gain*—(1) *Form of the election to apportion*—(i) *Statement*. An election under paragraph (c) of this section must be made in the form set forth in this paragraph (f)(1)(i). The election must be made by the common parent and the party described in paragraph (f)(2) of this section. It must be filed in accordance with paragraph (f)(3) of this section and be entitled, "THIS IS AN ELECTION UNDER §1.1502–95 TO APPORTION ALL OR PART OF THE [INSERT THE CONSOLIDATED SECTION 382 LIMITATION, THE SUBGROUP SECTION 382 LIMITATION, THE LOSS GROUP'S NET UNREALIZED BUILT-IN GAIN, OR THE LOSS SUBGROUP'S NET UNREALIZED BUILT-IN GAIN, AS APPROPRIATE] IN THE AMOUNT OF [INSERT THE AMOUNT OF THE LOSS LIMITATION OR NET UNREALIZED BUILT-IN GAIN] TO [INSERT NAME(S) AND EMPLOYER IDENTIFICATION NUMBER(S) OF THE CORPORATION (OR THE CORPORATIONS THAT COMPOSE A NEW LOSS SUBGROUP) TO WHICH ALLOCATION IS MADE]." The statement must also indicate that an agreement, as described in paragraph (f)(1)(ii) of this section, has been entered into.

(ii) *Agreement*. Both the common parent and the party described in paragraph (f)(2) of this section must sign and date the agreement. The agreement must include, as appropriate—

(A) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation) or the loss group's (or loss subgroup's) net unrealized built-in gain;

(B) The amount of the departing member's (or loss subgroup's) pre-change net operating loss carryovers and the taxable years in which they arose that will be subject to the limitation that is being apportioned to that member (or loss subgroup);

(C) The amount of any net unrealized built-in loss allocated to the departing member (or loss subgroup) under paragraph (e) of this section, which, if recognized, can be a pre-change attribute subject to the limitation that is being apportioned;

(D) If a consolidated section 382 limitation (or subgroup section 382 limitation) is being apportioned, the amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the taxable year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(E) If any net unrealized built-in gain is being apportioned, the amount of the loss group's (or loss subgroup's) net unrealized built-in gain (as determined under paragraph (c)(2)(ii) of this section) that may be apportioned to members that ceased to be members during the consolidated return year;

(F) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(G) The amount of the loss group's (or loss subgroup's) net unrealized built-in gain that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section;

(H) If the former member is allocated any net unrealized built-in loss under para-

graph (e) of this section, the amount of any adjustment element apportioned to the former member that is attributable to recognized built-in gains (determined in a manner that will enable both the group and the former member to apply the principles of §1.1502–93(c)); and

(I) The name and employer identification number of the common parent making the apportionment.

(2) *Signing the agreement*. The agreement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns. If the allocation is made to a loss subgroup for which an election under §1.1502–91(d)(4) is made, and not separately to its members, the agreement under this paragraph (f) must be signed by the common parent and any member of the new loss subgroup by persons authorized to sign their respective income tax returns. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See §1.6001–1(e).

(3) *Filing of the election*—(i) *Filing by the common parent*. The election must be filed by the common parent of the group that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) or the loss group's net unrealized built-in gain (or loss subgroup's net unrealized built-in gain) by including the statement on or with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member.

(ii) *Filing by the former member*. An identical statement must be included on or with the first return of the former member (or the first return in which the former member, or the members of a new loss subgroup, join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election*. An election statement made under paragraph (c) of this section is revocable only with the consent of the Commissioner.

(g) *Effective/applicability date*. Paragraphs (e)(8) and (f) of this section apply to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see §1.1502–95T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see §1.1502–95 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1502–95T [Removed]

Par. 41. Section 1.1502–95T is removed.

Par. 42. Section 1.1563–3 is amended by revising paragraph (d)(2)(iv), adding paragraph (d)(2)(v) and revising (e) to read as follows:

§1.1563–3 Rules for determining stock ownership.

* * * * *

(d) * * *

(2) * * *

(iv) *Statement*. If the application of paragraph (d)(2)(ii) or (iii) of this section does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then such corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563–3(d)(2)(iv)." The statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(v) *Election*—(A) *Election filed*. An election filed under paragraph (d)(2)(iv) of this section is irrevocable and effective until paragraph (d)(2)(ii) or (iii) of this section applies or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed*. In the event no election is filed in accordance with the provisions of paragraph (d)(2)(iv) of this section, then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

* * * * *

(e) *Effective/applicability date*. Paragraph (d)(2)(iv) and (v) of this section apply to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (d)(2)(iv) and (v) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.1563–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.1563–3T [Removed]

Par. 43. Section 1.1563–3T is removed.

Par. 44. Section 1.6012–2 is amended by revising paragraphs (c) and (k) to read as follows:

§1.6012–2 Corporations required to make returns of income.

* * * * *

(c) *Insurance companies*—(1) *Domestic life insurance companies*—(i) *In general*. A life insurance company subject to tax under section 801 shall make a return on Form 1120–L, "*U.S. Life Insurance Company Income Tax Return*." Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks*. Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120, "*U.S. Corporation Income Tax Return*," and partial tax computed on Form 1120–L. The Form 1120–L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120–L.

(2) *Domestic nonlife insurance companies*. Every domestic insurance company other than a life insurance company shall make a return on Form 1120–PC, "*U.S. Property and Casualty Insurance Company Income Tax Return*." This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a *pro forma* annual statement), including the underwriting and investment exhibit (or any successor thereto) for the year covered by such return.

(3) *Foreign insurance companies*. The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the *pro forma* annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically*. If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or *pro forma* annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See §1.6001–1(e).

(5) *Definition*. For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a *pro forma* annual statement if the insurance company is not required to file the NAIC annual statement.

* * * * *

(k) *Effective/applicability date*. Paragraph (c) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.6012–2 as contained in 26 CFR part 1 in effect on April 1, 2006.

§1.6012–2T [Removed]

Par. 45. Section 1.6012–2T is removed.

§§1.302–4, 1.338(h)(10)–1, 1.382–2T, 1.382–6, 1.382–8, 1.1502–13, 1.1502–32, 1.1502–92, 1.1502–94, 1.1502–95, 1.1563–3, and 1.6043–2 [Amended]

Par. 46. For each entry in the "Location" column of the following table, remove the language in the "Remove" column and add the language in the "Add" column in its place:

Location	Remove	Add
The last sentence of the introductory text to §1.302–4	The rules described in paragraph (a) of §1.302–4T and in paragraphs (b) through (g) of this section apply in determining whether the specific requirements of section 302(c)(2) are met.	The following rules shall be applicable in determining whether the specific requirements of section 302(c)(2) are met:
§1.338(h)(10)–1(f)	§1.331–1T(d) and §1.332–6T	§1.331–1(d), and §1.332–6
§1.382–2T(a)(2)(ii)	§1.382–11T	§1.382–11
The last sentence of §1.382–2T(h)(4)(vi)(B)	paragraph (a) of §1.382–11T	§1.382–11(a)
The first sentence of §1.382–6(b)(2)(i)	§1.382–11T(a)	§1.382–11(a)
The second sentence of §1.382–8(a)	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382–8T	paragraph (c) of this section
The third sentence of §1.382–8(a)	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382–8T	paragraph (c) of this section
§1.382–8(c)(3)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section

Location	Remove	Add
The first sentence of §1.382–8(c)(4)	paragraphs (c)(1) and (c)(3) of this section and paragraph (c)(2) of §1.382–8T	paragraphs (c)(1), (2), and (3) of this section
§1.382–8(c)(5)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382–8T	this paragraph (c)
The fifth sentence of §1.382–8(f)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382–8T	paragraph (c) of this section
§1.382–8(g), *Example* (1)(b)(2)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382–8T	paragraph (c) of this section
The second sentence of §1.382–8(g), *Example* (1)(c)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382–8T	paragraph (c) of this section
§1.382–8(g), *Example* (2)(c)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section
The first sentence of §1.382–8(g), *Example* (2)(e)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section
§1.382–8(g), *Example* (3)(b)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section
§1.382–8(g), *Example* (3)(c)(1)(B)	paragraph (c)(1) of this section and paragraph (c)(2) of §1.382–8T	paragraphs (c)(1) and (2) of this section
The second sentence of §1.382–8(g), *Example* (4)(c)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section
The second sentence of §1.382–8(g), *Example* (5)(c)	paragraph (c)(2) of §1.382–8T	paragraph (c)(2) of this section
§1.1502–13(a)(6)(ii), *Matching rule*, Example 13.	Manufacturer incentive payments.	[Reserved]
The first sentence of §1.1502–32(b)(4)(v)(A)	paragraph (b)(4)(iv) of §1.1502–32T	paragraph (b)(4)(iv) of this section
The first sentence of §1.1502–32(b)(4)(v)(B)	paragraph (b)(4)(iv) of §1.1502–32T	paragraph (b)(4)(iv) of this section
§1.1502–92(e)(1)	§1.382–11T(a)	§1.382–11(a)
The first sentence of §1.1502–92(e)(2)	§1.382–11T(a)	§1.382–11(a)
The first sentence of §1.1502–94(d)	§1.382–11T(a)	§1.382–11(a)
The second sentence of §1.1502–94(d)	§1.382–11T(a)	§1.382–11(a)
The last sentence of §1.1502–95(b)(3)	paragraph (f) of §1.1502–95T	paragraph (f) of this section
The second sentence of §1.1563–3(d)(2)(i)	paragraphs (d)(2)(ii) and (iii) of this section, and paragraph (d)(2)(iv) of §1.1563–3T	paragraphs (d)(2)(ii), (iii) and (iv) of this section
The first sentence of §1.6043–2(a)	§1.332–6T(a), §1.368–3T(a), or §1.1081–11T	§1.332–6(b), 1.368–3(a), or 1.1081–11

PART 301—PROCEDURE AND ADMINISTRATION

Par. 46a. The authority citation for part 300 continues to read in part as follows:

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

Section 301.6011–5T also issued under 26 U.S.C. 6011.

§301.6011–5T [Amended]

Par. 46b. In the following table, remove the language in the "remove" column and add the text from the "add" column in its place.

Location	Remove	Add
The first sentence of §301.6011–5T(a) (**twice**)	paragraphs (a), (b) and (d) through (j) of §1.6012–2, and paragraph (c) of §1.6012–2T	§1.6012–2

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 47. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 48.

1. In §602.101(b), the following entries to the table are removed:

1.302–2T	1545–2019
1.302–4T	1545–2019
1.331–1T	1545–2019
1.332–6T	1545–2019
1.338–10T	1545–2019
1.351–3T	1545–2019
1.355–5T	1545–2019
1.368–3T	1545–2019
1.381(b)–1T	1545–2019
1.382–8T	1545–2019
1.382–11T	1545–2019
1.1081–11T	1545–2019
1.1221–2T	1545–2019
1.1502–13T	1545–2019
1.1502–31T	1545–2019
1.1502–32T	1545–2019
1.1502–33T	1545–2019
1.1502–95T	1545–2019
1.1563–3T	1545–2019
1.6012–2T	1545–2019

2. In §602.101(b), the following entries to the table are added:

1.332–6	1545–2019
1.351–3	1545–2019
1.355–5	1545–2019
1.368–3	1545–2019
1.382–11	1545–2019
1.1081–11	1545–2019

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

Approved June 4, 2007.

Eric Solomon,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on June 13, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 14, 2007, 72 F.R. 32794)

Section 1563.—Definitions and Special Rules

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9329, page 312.

Section 6012.—Persons Required to Make Returns of Income

Final regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or

with their Federal income tax returns. See T.D. 9329, page 312.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2007. See Rev. Rul. 2007-50, page 311.

Part III. Administrative, Procedural, and Miscellaneous

Excluded Bona Fide Severance Pay Plans Under § 457(e)(11) and Amounts Subject to a Substantial Risk of Forfeiture Under § 457(f)

Notice 2007–62

I. PURPOSE

This notice announces the intent of the Treasury Department (Treasury) and the Internal Revenue Service (Service) to issue guidance under § 457, which applies to nonqualified deferred compensation plans of state and local governments and tax-exempt entities, concerning the definitions of a *bona fide* severance pay plan under § 457(e)(11) and concerning the definition of substantial risk of forfeiture under § 457(f)(1)(B). This notice also describes the guidance that the Treasury and the Service anticipate issuing, which in many respects would be similar to the rules in the recent final regulations under § 409A, and requests comments on the issues intended to be addressed by such guidance.

II. BACKGROUND

Section 457 applies to nonqualified deferred compensation plans established by state and local government and tax-exempt employers. Three types of nonqualified deferred compensation plans are subject to § 457: (1) an eligible § 457(b) plan established by a state or local government employer; (2) an eligible § 457(b) plan established by any other tax-exempt entity that is not a governmental entity; and (3) any other deferred compensation plan established by either type of employer (an ineligible nonqualified deferred compensation plan). An ineligible nonqualified deferred compensation plan is subject to § 457(f). Section 457(f)(3)(A) provides that the term plan includes any agreement or arrangement.

Section 457(e)(11) states that § 457 does not apply to certain types of plans, including a *bona fide* severance pay plan. Section 457(f)(2) provides that the rules of § 457(f) do not apply to a qualified plan under § 401(a) or § 403(a), a § 403(b) annuity, a nonqualified annuity described in § 403(c), that portion of any plan which consists of a transfer of property described in § 83, that portion of any plan which consists of a trust to which § 402(b) applies, a qualified governmental excess benefit arrangement described in § 415(m), or that portion of any applicable employment retention plan described in § 457(f)(4).

Section 457(f)(1) provides that compensation under a nonqualified deferred compensation plan subject to § 457(f) is included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation. Section 457(f)(3)(B) provides that the rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual. Any amount deferred under a § 457(f) plan that is not subject to a substantial risk of forfeiture (*i.e.*, a vested amount) is currently included in gross income (even if not actually or constructively received), and the amount subsequently paid or made available is taxed under § 72. See § 1.457–11(c).

Section 409A applies to ineligible nonqualified deferred compensation plans maintained by tax-exempt and governmental employers, as well as to nonqualified deferred compensation plans maintained by taxable employers. Section 409A 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(d)(4) provides that the rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

Section 409A does not apply to qualified plans (as defined under § 219(g)(5), without regard to subparagraph (A)(iii) thereof), eligible deferred compensation plans under § 457(b), or qualified governmental excess benefit arrangements described in § 415(m). See § 1.409A–1(a)(2). However, § 409A applies to nonqualified (ineligible) deferred compensation plans to which § 457(f) applies, separately and in addition to the requirements applicable to such plans under § 457(f). See § 1.409A–1(a)(4). Section 409A(c) provides that nothing in § 409A prevents the inclusion of amounts in gross income under any other provision of the Code or any other rule of law earlier than the time provided in § 409A. Section 409A(c) further provides that any amount included in gross income under § 409A is not required to be included in gross income under any other Code provision or any other rule of law later than the time provided in § 409A.

Final regulations under § 409A were published on April 10, 2007 (72 FR 19234) and generally become applicable January 1, 2008.[1] Those regulations provide guidance on when a separation pay plan (as defined in § 1.409A–1(m)) is treated as not providing for a deferral of compensation for purposes of § 409A. See § 1.409A–1(b)(9). The regulations also define a substantial risk of forfeiture for purposes of § 409A. See § 1.409A–1(d).

III. BONA FIDE SEVERANCE PAY PLANS UNDER § 457(e)(11)

The Treasury and the Service anticipate issuing guidance providing that an arrangement is a *bona fide* severance pay plan under § 457(e)(11), and thus is not subject to the requirements of § 457, if: (1) the benefit is payable only upon involuntary severance from employment, (2) the amount payable does not exceed two times the employee's annual rate of pay (taking into account only pay that does not exceed the maximum amount that may be taken into account under a qualified plan pursuant to § 401(a)(17) for the year in which the employee has a severance from em-

[1] For general and transition guidance regarding the application of § 409A, see Notice 2005–1, 2005–2 C.B. 274, and Notice 2006–79, 2006–43 I.R.B. 763. See also Notice 2006–100, 2006–51 I.R.B. 1109, which provides guidance to employers and payers on their reporting and wage withholding for calendar years 2005 and 2006 with respect to deferrals of compensation and amounts includible in gross income under § 409A.

ployment), and (3) the plan provides that the payments must be completed by the end of the employee's second taxable year following the year in which the employee separates from service. With respect to the requirement that benefits be payable only upon involuntary severance from employment, it is anticipated that the guidance would include exceptions for window programs, collectively bargained separation pay plans, and certain reimbursement or in-kind benefit arrangements (similar to the exceptions in § 1.409A–1(b)(9)(ii), (iv), and (v)).

IV. SUBSTANTIAL RISK OF FORFEITURE UNDER § 457(f)

The Treasury and the Service further anticipate issuing guidance regarding a substantial risk of forfeiture for purposes of § 457(f)(3)(B) under rules similar to those set forth under § 1.409A–1(d).

Section 1.409A–1(d) provides that a right to an amount of compensation is subject to a substantial risk of forfeiture if entitlement to the amount is conditioned on the performance of substantial future services or the occurrence of a condition that is related to a purpose of the compensation and the possibility of forfeiture is substantial. For this purpose, if a service provider's entitlement to the amount is conditioned on the occurrence of the service provider's involuntary separation from service without cause, the right is subject to a substantial risk of forfeiture if the possibility of forfeiture is substantial. An amount is not subject to a substantial risk of forfeiture merely because the right to the amount is conditioned, directly or indirectly, upon refraining from the performance of services. Further, as described in § 1.409A–1(d)(1), the addition of any risk of forfeiture after the right to the compensation arises, or any extension of a period during which compensation is subject to a risk of forfeiture (sometimes referred to as a "rolling risk of forfeiture"), is generally disregarded for purposes of determining whether such compensation is subject to a substantial risk of forfeiture under § 409A.

Section 1.409A–1(d)(1) provides that an amount is not considered subject to a substantial risk of forfeiture beyond the date or time at which the recipient otherwise could have elected to receive the amount of compensation, unless the present value of the amount made subject to a risk of forfeiture is materially greater than the present value of the amount the recipient otherwise could have elected to receive absent such risk of forfeiture. This is because, absent tax considerations, a rational participant normally would not agree to subject a right to amounts that may be earned and payable as current compensation, such as salary payments, to a condition that subjects the right to the same payments to a real possibility of forfeiture. Accordingly, in this situation, agreement to subject the amount to a substantial risk of forfeiture indicates that the recipient of the compensation is confident that there is not a real risk of forfeiture and is only subjecting the amount to the purported risk of forfeiture as a means of avoiding taxation. Thus, amounts that an individual could have elected to receive under a salary deferral election generally cannot be made subject to a substantial risk of forfeiture under the rules of § 409A beyond the date or time the salary would otherwise have been received.

The Service and Treasury anticipate that upcoming guidance under § 457(f) will generally adopt the rules relating to substantial risk of forfeiture that are contained in § 1.409A–1(d).

As noted above, § 1.409A–1(d) provides that an amount of compensation is subject to a substantial risk of forfeiture if the entitlement to the amount is conditioned upon the occurrence of a condition related to a purpose of the compensation, and the possibility of forfeiture is substantial. Section 1.409A–1(d) further provides that a condition related to a purpose of the compensation must relate to the service provider's performance for the service recipient or the service recipient's business activities or organizational goals (for example, the attainment of a prescribed level of earnings or equity value of completion of an initial public offering). Comments are requested on whether any special rules should apply for purposes of § 457(f) with respect to this aspect of the definition of a substantial risk of forfeiture, taking into account that state and local government and tax-exempt entities to which § 457(f) applies generally do not have business activities or organizational goals that are comparable to profit-making entities.

V. INTERACTION OF §§ 409A AND 457(f) UNDER ANTICIPATED STANDARDS

Under the rules at § 1.409A–1(b)(4)(i) relating to short-term deferrals, a deferral of compensation for purposes of § 409A does not occur if the plan under which a payment is made does not provide for a deferred payment and the service provider actually or constructively receives such payment on or before the first day of the applicable 2½ month period. Under § 1.409A–1(a)(4), the inclusion in income of an amount under § 457(f) is treated as a payment of the amount for purposes of the short-term deferral rule contained in § 1.409A–1(b)(4).

If the standard for a substantial risk of forfeiture for purposes of § 409A described in Part IV of this notice is adopted, a substantial risk of forfeiture under § 457(f)(1)(B) could not lapse later than the date the substantial risk of forfeiture lapsed under § 409A and § 1.409A–1(d). Accordingly, if a participant under an ineligible plan under § 457(f) included an amount of deferred compensation in gross income when it ceased to be subject to a substantial risk of forfeiture under § 457(f), the amount generally would not be subject to § 409A because the right to the amount and the payment would qualify as a short-term deferral under § 1.409A–1(a)(4). However, the right to earnings on amounts that have previously been included under § 457(f) would be deferred compensation for purposes of § 409A unless the right to the earnings independently satisfied the requirements for an exclusion from coverage under § 409A.

VI. EFFECTIVE DATE AND RELIANCE

The Treasury and the Service anticipate that the guidance described in this notice would be prospective. With respect to periods before such guidance is issued, no inference should be made from the anticipated guidance described in this notice regarding either the definition of a *bona fide* severance pay plan for purposes of § 457(e)(11)(A)(i) or the determination of substantial risk of forfeiture for purposes of § 457(f). However, pending the issuance of further guidance, taxpayers may rely on the definition of a *bona fide* sev-

erance pay plan in the anticipated guidance described in section III of this notice for purposes of § 457(e)(11)(A)(i) and the rules regarding a substantial risk of forfeiture in the anticipated guidance described in the first two paragraphs of section IV of this notice for purposes of § 457(f). Comments are specifically requested as to the extent to which transition guidance regarding the application of § 457(f) would be necessary and appropriate, and what such transition guidance would provide.

This notice does not affect the application of § 409A or the guidance thereunder, including the determination of whether a plan is subject to § 409A and the application of the transition guidance issued under § 409A.

VII. REQUEST FOR COMMENTS

Treasury and the Service intend to issue guidance reflecting the definitions of a *bona fide* severance pay plan for purposes of § 457(e) and substantial risk of forfeiture for purposes of § 457(f), as described in Parts III and IV of this notice. Comments regarding these definitions, and any related issues that should be addressed under § 457, are requested.

Written comments should be submitted by October 15, 2007. Send submissions to CC:PA:LPD:PR, (Notice 2007–62), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Notice 2007–62), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Alternatively, comments may be submitted via the Internet at *notice.comments@irscounsel.treas.gov* (Notice 2007–62). All comments will be available for public inspection.

VIII. DRAFTING INFORMATION

The principal author of this notice is Cheryl Press of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury and the Service participated in its development. For further information regarding this notice, contact Ms. Press at (202) 622–6060 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Deductions for Entertainment Use of Business Aircraft

REG–147171–05

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the use of business aircraft for entertainment. These proposed regulations affect taxpayers that deduct expenses for entertainment, amusement, or recreation provided to specified individuals. This document also provides notice of a public hearing on these proposed regulations. The proposed regulations reflect amendments under the American Jobs Creation Act of 2004 (AJCA) and the Gulf Opportunity Zone Act of 2005 (GOZA).

DATES: Written comments must be received by September 13, 2007. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for October 25, 2007, at 10 a.m., must be received by October 4, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147171–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147171–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments via the internet at the Federal eRulemaking Portal at *www.regulations.gov* (IRS-REG–147171–05). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 274, Michael A. Nixon of the Office of Associate Chief Counsel (Income Tax & Accounting), (202) 622–4930; concerning the regulations under section 61, Lynne A. Camillo of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities), (202) 622–6040 (not toll-free numbers); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 274(e)(2) of the Internal Revenue Code (Code). Section 274(e)(2) was amended by section 907 of the AJCA, Public Law 108–357, and by section 403(mm) of the GOZA, Public Law 109–135. Both amendments are effective for certain expenses incurred after October 22, 2004. On May 27, 2005, the IRS and Treasury Department issued Notice 2005–45, 2005–1 C.B. 1228, providing interim guidance on amended section 274(e)(2) and inviting comments. Notice 2005–45 is effective for expenses incurred after June 30, 2005. Commentators submitted written and electronic comments responding to Notice 2005–45. The IRS and Treasury Department have reviewed and considered all the comments in the process of preparing these proposed regulations. See §601.601(d)(2)(ii)(*b*) of this chapter.

Generally, section 162(a) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under section 274(a)(1)(A), no deduction is allowed for an activity generally considered to be entertainment, amusement, or recreation, unless the taxpayer establishes that the activity is directly related to or (in certain cases) associated with the active conduct of the taxpayer's trade or business.

Section 1.274–2(b)(1) of the Income Tax Regulations provides that entertainment means any activity of a type generally considered to constitute entertainment, amusement, or recreation, such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf and athletic clubs, sporting events, and on hunting, fishing, vacation and similar trips. Similar activities relating solely to the taxpayer's family also may constitute entertainment. Entertainment may include an activity that satisfies the personal, living, or family needs of an individual, such as providing food and beverages or a hotel suite to a business customer or the customer's family. Entertainment does not include activities, however, that are clearly not regarded as constituting entertainment, such as the provision of supper money by an employer to an employee working overtime, the maintenance of a hotel room by an employer for lodging of an employee while in business travel status, or the use of an automobile in the active conduct of a trade or business even though also used for routine personal purposes such as commuting to and from work. Under §1.274–2(b)(1)(ii), an objective test is used to determine whether an activity is of a type generally considered to constitute entertainment.

Section 274(e) provides exceptions to the general disallowance provisions of section 274(a). Prior to amendment by the AJCA, section 274(e)(2) excepted expenses from section 274(a) "to the extent that the expenses are treated by the taxpayer" as compensation to the employee. Under prior law, section 274(e)(9) similarly excepted expenses to the extent that the expenses are treated by the taxpayer as income to persons who are not employees.

Section 274(o) provides that the Secretary shall prescribe regulations necessary to carry out the purposes of the section.

Generally, §1.61–21(b)(1) requires an employee to include in gross income the fair market value of a fringe benefit, such as an entertainment flight, after subtracting amounts paid, by or on behalf of the employee, for the fringe benefit, as well as amounts excluded from income by another section of the Code. If an employee takes a personal flight on an employer's aircraft, and the employer also provides a pilot, the general rule under §1.61–21(b)(6) is that

the fair market value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. If the employer does not provide a pilot, the general rule under §1.61–21(b)(7) is that the fair market value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to rent a comparable aircraft for that period in the geographic area in which the aircraft is used. The regulations do not permit valuation of a flight by reference to the employer's costs.

As an alternative to the general valuation rules just described, §1.61–21(g) provides that an employee's personal flights on an employer's aircraft may be valued using an optional special valuation rule, the non-commercial flight valuation rule. In order to use the non-commercial flight valuation rule, applying the applicable aircraft multiple from §1.61–21(g)(7), it is necessary to know the weight of the employer's aircraft, the number of miles for the flight being valued, and whether the employee receiving the benefit is a control employee within the meaning of §1.61–21(g)(8) or (9). The value of an employee's personal use of a company aircraft is computed by multiplying the Standard Industry Fare Level (SIFL) by the terminal charge to arrive at the value of the flight (the SIFL formula). SIFL is a cents-per-mile factor that, taken with the aircraft multiple and the terminal charge, is intended to approximate coach and first class fares on commercial aircraft.

The consistency rule set forth in §1.61–21(g)(14)(i) provides that a taxpayer who uses the SIFL formula in a calendar year to value any flight provided to an employee must use the SIFL formula to value all flights provided to employees during that calendar year. Notice 2005–45 advised taxpayers that the consistency rule in the regulations would be amended to permit taxpayers to value the entertainment use of aircraft by specified individuals (within the meaning of section 274(e)(2)(B)) under the fair market value rules of §1.61–21(b) but continue to value flights for other employees and for specified individuals not traveling for entertainment purposes using the SIFL formula.

In *Sutherland Lumber-Southwest, Inc. v. Comm'r*, 114 T.C. 197 (2000), *aff'd* 255 F.3d 495 (8th Cir. 2001), *acq.* 2002–1 C.B. xvii, the Tax Court held that the amount a taxpayer may deduct for the cost of entertainment-related flights under the section 274(e)(2) exception is not limited to the amount included in the income of the employees and corporate officers who took the flights. Rather, the court held that a taxpayer may deduct the full cost of an employee's or officer's non-business flight on the taxpayer's aircraft if the taxpayer includes in the recipient's income the value of the flights computed under the non-commercial flight valuation rule of §1.61–21. As a result, a deduction greater than the amount included in the recipient's income was allowable.

Section 907 of the AJCA was intended to overturn *Sutherland Lumber* in certain cases. H.R. Conf. Rep. No. 108–755, at 798 (2004). Specifically, as amended by the AJCA, the section 274(e)(2) and (9) exceptions to the section 274(a) disallowance apply in the case of a specified individual only "to the extent that the expenses do not exceed the amount of expenses" that are treated as compensation to the specified individual. A specified individual is any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. section 78p(a)) with respect to the taxpayer, or who would be subject to those requirements if the taxpayer were an issuer of equity securities referred to in that section. Section 274(e)(2)(B).

Thus, in the case of a specified individual, the section 274(e)(2) and (9) disallowance exceptions apply only to the extent that a taxpayer treats as compensation to the specified individual an amount equal to or greater than the amount of deductible entertainment expenses allocable to entertainment provided to the specified individual. Expenses allocable to entertainment provided to the specified individual that the taxpayer does not treat as compensation to the specified individual are disallowed.

Explanation of Provisions and Summary of Comments

1. *Definition of Entertainment*

a. *Distinction between entertainment and other personal use*

Notice 2005–45 references §1.274–2(b)(1) in defining entertainment. Commentators suggested that the proposed regulations should provide additional guidance on the meaning of "entertainment" in order to assist taxpayers in delineating between entertainment use and "nonentertainment" personal use. The proposed regulations do not adopt these comments because these rules are addressed in the existing regulations at §1.274–2(b)(1). Consistent with those regulations, entertainment does not include travel for reasons such as attending to business other than that of the employer, medical purposes, attending funerals, and participating in charitable activities.

b. *Primary purpose test*

Several commentators recommended that the proposed regulations adopt a purpose of the flight test that would characterize a flight as a business flight for all purposes if the primary purpose of the flight is business. Thus, under the recommendation, if the primary purpose of the flight were business, no amount would be disallowed for entertainment provided to specified individuals who are traveling for entertainment purposes. Conversely, if the primary purpose of the flight were entertainment, no amount would be allowed as an expense deduction with respect to individuals traveling for business. The proposed regulations do not adopt these comments. The IRS and Treasury Department believe that disregarding entertainment use by a specified individual would be contrary to Congressional intent in amending section 274(e)(2) to disallow expenses allocable to entertainment use of aircraft by specified individuals. Section 274(e)(2)(B) focuses on the recipient of the entertainment, amusement, or recreation, not the purpose of the employer providing the entertainment or the overall use of the aircraft.

c. *Use of aircraft for bona fide security purposes*

Several commentators suggested that entertainment use by a specified individual of an aircraft should not be treated as entertainment within the meaning of section 274 or subject to section 274(e)(2)(B) if there is a business need to use the aircraft to provide security, pursuant to §1.132–5(m). The proposed regulations do not adopt this comment. Section 1.132–5(m) merely computes the income inclusion for a fringe benefit. It reduces the income inclusion amount rather than eliminates it. It does not convert entertainment flights into business flights.

2. *Definition of Expenses*

a. *Fixed costs*

To calculate the amount of expenses for entertainment use of an aircraft, Notice 2005–45 provides that taxpayers must take into account all of the expenses of maintaining and operating the aircraft. Commentators recommended that entertainment expenses should not include fixed costs such as depreciation. Commentators noted that the legislative history refers to "aircraft operating costs" and "actual cost" and interpreted this language to mean that costs should be limited to variable costs. H. Conf. Rept. 108–755 at 798. Some commentators have suggested that incremental costs are the only costs that should be disallowed.

The proposed regulations do not adopt these comments. Industry use of the term "operating costs" generally refers to all costs, fixed and variable, including depreciation claimed on the taxpayer's tax return. Therefore, the IRS and Treasury Department believe that the use of the term "operating costs" in the legislative history does not reflect Congressional intent to apply section 274(e)(2) to variable costs only. Moreover, the term "aircraft operating costs" in the legislative history is consistent with use of that term in *Sutherland Lumber*, in which it referred to fixed and variable costs for purposes of section 274(e)(2).

b. *Depreciation*

Commentators suggested that disallowing accelerated depreciation (including the additional first-year depreciation under, for example, sections 168(k), 1400L(b), and 1400N(d)) would result in excessive amounts disallowed in early years and is inconsistent with Congressional intent to provide incentives for purchasing aircraft. In response to these comments, the proposed regulations permit a taxpayer to elect to calculate depreciation on a straight-line basis over the class life of an aircraft for all of the taxpayer's aircraft for the current year and all future years when calculating the amount of disallowed expenses.

c. *Aggregation of aircraft*

Notice 2005–45 permits taxpayers to calculate expenses separately for each aircraft or to aggregate the expenses of aircraft of similar cost profiles. For example, the expenses of turboprop aircraft may be aggregated (but may not be aggregated with the expenses of a jet aircraft) and the expenses of a two-engine jet aircraft may be aggregated (but may not be aggregated with the expenses of a four-engine jet aircraft).

Commentators requested that the proposed regulations provide more details on the definition of cost profile. In response to these comments, the proposed regulations provide additional characteristics that define similar cost profiles. Specific comments are requested on the appropriateness of these characteristics in defining similar cost profiles and on other characteristics that may be useful in determining criteria for aggregating aircraft.

3. *Allocation Methods*

Notice 2005–45 provides an occupied seat hour or mile formula to allocate expenses to entertainment flights provided to specified individuals. The formula multiplies the hours or miles flown by an aircraft by the number of occupied seats. Then a taxpayer aggregates all fixed and variable expenses to determine the total expenses paid or incurred during the taxable year with respect to an aircraft (or aggregated aircraft) and divides the amount of total expenses by total occupied seat hours or miles to determine the cost per occupied seat hour or mile. Once a taxpayer determines this cost, the taxpayer uses the cost to determine the expenses allocable to each specified individual's entertainment flight.

Commentators expressed concern that this formula may not produce accurate results and is administratively burdensome. The proposed regulations retain the occupied seat hour or mile formula, which allows averaging of fixed and variable costs and yields a simple formula for determining the cost of one occupied seat hour or mile. It does not require a determination of whether a flight is for entertainment of specified individuals or other uses or an allocation of entertainment and other costs for a particular flight. Once the taxpayer determines the cost per occupied seat hour or mile, the disallowance calculation is relatively easy and results in a cost for each occupied seat hour or mile allocable to each entertainment flight taken by a specified individual.

Nevertheless, in response to commentators' concerns, the proposed regulations provide the option of allocating expenses on a flight-by-flight basis as an alternative to using the occupied seat mile or hour formula. Under the flight-by-flight method, a taxpayer may aggregate all expenses for the taxable year and divide the amount of total expenses by the number of flight hours or miles for the taxable year to determine the cost per hour or mile. The taxpayer allocates expenses to each flight by multiplying the number of miles or hours for the flight by the expense per hour or mile and allocates expenses for the flight to the passengers on the flight per capita.

4. *Specified Individuals*

Notice 2005–45 applies to entertainment use of an aircraft provided to a specified individual of a taxpayer by a party related to the taxpayer within the meaning of sections 267(b) or 707(b). The notice also defines a specified individual as the recipient of entertainment provided to a spouse or family member of the specified individual or to another person because of the person's relationship to the specified individual, cf. §1.61–21(a)(4), and includes those entertainment flights within the potential disallowance of costs to the taxpayer. Commentators expressed concern that these provisions defined specified individual too broadly, exceeding the authority of the IRS and Treasury Department, and suggested that the definition be narrowed.

The proposed regulations do not adopt these comments. In the GOZA, Congress enacted technical corrections that clarify that the related party rules of sections 267(b) and 707(b) apply to section 274(e)(2). The IRS and Treasury Department conclude that Congress intended all entertainment flights to be subject to the section 274(e)(2) requirements. However, comments on how the regulations could define passengers aboard by virtue of a relationship with a specified individual are welcome. Finally, the proposed regulations define *officer* by reference to regulations at 17 CFR §240.16a–1(f) that implement section 16(a) of the Securities Exchange Act of 1934.

5. *Other*

a. *Determination of basis*

The proposed regulations provide that, if an amount disallowed is allocable to depreciation, §1.274–7 applies and the basis of the aircraft is not reduced for the amount of depreciation disallowed.

b. *Allocation of expenses pro rata*

Numerous commentators inquired how taxpayers should allocate disallowed expenses between fixed and variable expenses. In response to these comments, the proposed regulations provide that the expense disallowance provisions apply to expenses on a *pro rata* basis.

c. *Deadhead flights*

Notice 2005–45 provides that an aircraft returning empty from a flight after discharging passengers or traveling empty to pick up passengers (deadheading) is treated as having the same number and character of occupied seat hours or miles as the leg or legs of the trip on which passengers are aboard.

Commentators, citing confusion on the treatment of deadhead flights, have requested additional guidance, including safe harbors such as treating the empty flight as if it had the same composition as the prior or subsequent flight. The proposed regulations adopt these comments by providing more detail on how taxpayers should treat deadhead flights.

d. *Leasing of taxpayer aircraft*

Commentators requested guidance on the leasing of aircraft to unrelated third parties. In response to these requests, the proposed regulations provide guidance on the treatment of expenses allocable to taxpayers that charter their aircraft.

e. *Aircraft as entertainment facilities*

Notice 2005–45 addressed the treatment of expenses for the entertainment use of aircraft and did not address the effect of the amendment to section 274(e)(2) on the treatment of aircraft as entertainment facilities. Commentators asked how the entertainment facility disallowance under section 274(a)(1)(B) interacts with rules on aircraft used to provide specified individuals with entertainment.

Section 274(a)(1)(B) disallows all the expenses, direct and indirect, associated with the ownership and operation of an aircraft that is an entertainment facility, except for expenses for business travel and expenses that meet the exceptions of section 274(e). Thus, expenses for personal, nonentertainment travel (such as for medical purposes or attending funerals), as well as for entertainment travel, are disallowed, unless an exception such as 274(e)(2) applies.

The IRS and Treasury Department believe that Congress, in adding section 274(e)(2)(B), contemplated entertainment use of aircraft by specified individuals without specifically considering circumstances in which aircraft may be regarded as entertainment facilities. Therefore, these proposed regulations are limited to use of taxpayer-provided aircraft in entertainment activities under section 274(a)(1)(A), and do not provide rules relating to the application of section 274(e)(2)(B) in circumstances under which aircraft may be regarded as entertainment facilities under section 274(a)(1)(B). Comments are requested on whether the IRS and Treasury Department should issue guidance on aircraft as entertainment facilities and the content of the guidance.

f. *Fringe benefit consistency rules*

The proposed regulations relax the consistency rule of §1.61–21(g)(14)(i) to permit taxpayers to value the entertainment use of aircraft by specified individuals under the fair market value rules of §1.61–21(b), but continue to value flights for other employees and for specified individuals not traveling for entertainment using either the SIFL formula of §1.61–21(g) or the general (fair market value) rule of §1.61–21(b).

The proposed regulations preserve the consistency rule of §1.61–21(g)(14)(i) with respect to particular groups of employees (specified and non-specified individuals) and with respect to non-entertainment flights. Thus, if an employer values the entertainment use of aircraft by one specified individual under the fair market value rules of §1.61–21(b) in a calendar year, the employer must use the fair market value rules to value the entertainment use of aircraft by all specified individuals during that calendar year.

The existing consistency rules of §1.61–21(g)(14)(i) continue to apply for valuing the entertainment use of aircraft for other employees (non-specified individuals) and for valuing the personal use of aircraft by specified individuals not traveling for entertainment purposes. Thus, if an employer values the personal use of aircraft by any other employee or the non-entertainment personal use of aircraft by any specified individual using the SIFL formula of §1.61–21(g) in a calendar year, the employer must use the SIFL formula to value the personal use of aircraft by all other employees and the non-entertainment personal use of aircraft by all specified individuals during that calendar year. Similarly, if the employer values the personal use of aircraft by any other employee or the non-entertainment personal use of aircraft by any specified individual using the fair market value rules of §1.61–21(b) in a calendar year, the employer must use the fair market value rules to value the personal use of aircraft by all other employees and the non-entertainment personal use of aircraft by all specified individuals during that calendar year.

g. *Treatment as compensation to non-specified individuals*

The proposed regulations clarify that in order for a taxpayer to meet the requirements of section 274(e)(2) for expenses

treated as compensation, the taxpayer must include the proper amount as compensation to an employee on the taxpayer's return.

h. *Section 162(m)*

Notice 2005–45 provides that any amount for the entertainment use of an aircraft that is treated by the taxpayer as compensation to a specified individual who is also a covered employee is subject to section 162(m). Commentators disagreed with this conclusion. They opined that the deduction disallowance of section 274 relates to the expenses of the aircraft, not amounts treated as income to the employee, and that, under §1.162–25T, the expenses associated with providing the aircraft are not deducted by the employer as compensation. Thus, according to the commentators, expenses treated as compensation for purposes of section 274(e)(2) should not be subject to the deduction limitation of section 162(m). However, the IRS and Treasury Department believe that the deduction limitation of section 162(m) applies to amounts treated as compensation for purposes of section 274(e)(2). The legislative history of section 162(m) provides that the deduction limitation of section 162(m) applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash regardless of whether the remuneration is deducted as compensation. H.R. Conf. Rep. No. 103–213 (1993) at 585 (1993–3 C.B. 463). Any amount included in an employee's income for entertainment flights is remuneration for services and therefore is subject to section 162(m).

i. *Entertainment sold to customers*

Commentators requested clarification on whether section 274(e)(8), the exception to section 274(a) for entertainment sold to customers, applies to a taxpayer's expenses for providing an aircraft for the entertainment use of specified individuals. A commentator asserted that section 274(e)(8) excepts expenses of a flight from the section 274(a) disallowance to the extent a passenger pays full and fair consideration. The commentator suggested that expenses are excepted from the section 274(a) disallowance under section 274(e)(8) in three circumstances common in business aviation: (1) a lease of an aircraft without a pilot at a fair market value lease rate; (2) payment of a fair market value charter rate for an aircraft the taxpayer has enrolled under a charter certificate held by a charter company; and (3) payment of expenses allowed to be reimbursed in a time-sharing agreement under Federal Aviation Regulation 91.501(d), 14 CFR 91.501(d).

The proposed regulations do not address these issues, as rules implementing the section 274(e)(8) exception are provided in §1.274–2(f)(2)(ix). Therefore, it is outside the scope of these proposed regulations on the exceptions under section 274(e)(2) and (9). As stated in §1.274–2(f)(2)(ix), section 274(e)(8) applies only to taxpayers that are in the trade or business of providing entertainment to customers, and only to entertainment sold to customers. Therefore, the exception does not apply to expenses paid or incurred for entertainment provided to individuals by taxpayers that are not in the trade or business of providing entertainment.

j. *Charter Rate Safe Harbor*

As an alternative to determining actual expenses, the IRS and Treasury Department are considering whether the regulations should permit taxpayers to determine the amount of their expenses paid or incurred for entertainment flights by reference to charter rates. Under such a safe harbor, taxpayers could elect to treat as the amount of expenses for entertainment flights an undiscounted charter rate for each flight in lieu of calculating the actual expenses of each entertainment flight provided to specified individuals. Under the safe harbor, the undiscounted charter rate for the flight would be allocated to the individuals on the flight in lieu of the occupied seat or flight-by-flight allocation methods.

Under the charter rate method being considered, an undiscounted charter rate would be based on the amount that a person would pay in an arms-length transaction to charter the same or comparable aircraft for the same or comparable flight. A taxpayer would have to show that a charter rate used to value flights is a substantiated actual, published, undiscounted charter rate charged to the general public within 10 days before or after the taxpayer's flight by a qualified chartering company. A qualified chartering company would be a chartering company unrelated to the taxpayer (within the meaning of section 267(b) or 707(b)) that is in the trade or business of chartering aircraft and that operates and charters 10 or more aircraft to the general public during the taxable year. Leaseback arrangements or rates charged for off-peak usage, aircraft downtime, or by employers to their employees would not qualify under the safe harbor. A qualified chartering company would not include a chartering company that charters any aircraft to or for the use of a person (or an employee of the person) that owns any aircraft used by the chartering company. If a taxpayer elects the safe harbor, the taxpayer would have to use it for all entertainment flights on all of the taxpayer's aircraft for the current and all subsequent taxable years unless the taxpayer makes a proper revocation.

The proposed regulations do not include the safe harbor. Nonetheless, comments are requested on whether such a safe harbor, or other safe harbors, should be adopted. Comments are also requested on the availability of substantiated actual, published, undiscounted charter rates charged to the general public by companies that meet the requirements of a qualified chartering company.

Taxpayers may not use a charter rate to determine expenses allocable to entertainment flights unless and until a rule is adopted in final regulations.

Proposed Effective Date

The regulations, as proposed, apply to any taxable year beginning on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules in these proposed regulations or those provided in Notice 2005–45 for taxable years beginning before the publication of the Treasury decision. If Notice 2005–45 and the proposed regulations include different rules for the same particular issue, then the taxpayer may rely on either the rule set forth in Notice 2005–45 or the rule set forth in the proposed regulations. However, if the proposed regulations include a rule that was not included in Notice 2005–45, taxpayers may not rely on the absence of a rule in

Notice 2005–45 to apply a rule contrary to the proposed regulations.

Special Analyses

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 has also 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for October 25, 2007, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance 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.

Drafting Information

The principal authors of these proposed regulations are Michael A. Nixon and Christian T. Wood of the Office of Associate Chief Counsel (Income Tax & Accounting) and Lynne A. Camillo of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.274–9 also issued under 26 U.S.C. 274(o).* * *

Section 1.274–10 also issued under 26 U.S.C. 274(o).* * *

Par. 2. Section 1.61–21 is amended by revising paragraphs (g)(14)(i) and (ii) and adding paragraph (g)(14)(iii) to read as follows:

§1.61–21 Taxation of fringe benefits.

* * * * *

(g) * * *

(14) * * *

(i) *Use by employer*. Except as otherwise provided in paragraph (g)(13) or paragraph (g)(14)(iii) of this section or in §1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value any flight provided in a calendar year, the rule must be used to value all flights provided to all employees in the calendar year.

(ii) *Use by employee*. Except as otherwise provided in paragraph (g)(13) or (g)(14)(iii) of this section or in §1.132–5(m)(4), if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight provided by an employer in a calendar year, the rule must be used to value all flights provided to the employee by that employer in the calendar year.

(iii) *Exception for entertainment flights provided to specified individuals after October 22, 2004*. Notwithstanding the provisions of paragraph (g)(14)(i) of this section, an employer may use the general valuation rules of §1.61–21(b) to value the entertainment use of an aircraft by a specified individual. An employer who uses the general valuation rules of §1.61–21(b) to value any entertainment use of an aircraft by a specified individual in a calendar year must use the general valuation rules of §1.61–21(b) to value all entertainment use of aircraft provided to all specified individuals during that calendar year.

(A) *Specified individuals defined*. For purposes of paragraph (g)(14)(iii) of this section, *specified individual* is defined in section 274(e)(2)(B) and §1.274–9(b).

(B) *Entertainment defined*. For purposes of paragraph (g)(14)(iii) of this section, *entertainment* is defined in §1.274–2(b)(1).

* * * * *

Par. 3. Section 1.274–9 is added to read as follows:

§1.274–9 Entertainment provided to specified individuals.

(a) *In general*. No deduction is allowed for expenses for entertainment provided to a specified individual (as defined in paragraph (b) of this section) except to the extent that the expenses do not exceed the amount of the expenses treated as compensation to the specified individual, as provided in section 274(e)(2)(B) and (9) and §1.274–10. The amount disallowed is reduced by any amount that the specified individual reimburses a taxpayer for the entertainment.

(b) *Specified individual defined*. (1) A specified individual is an individual who is subject to section 16(a) of the Securities Act of 1934 with respect to the taxpayer, or an individual who would be subject to section 16(a) if the taxpayer were an issuer of equity securities referred to in that section. Thus, for example, a specified individual is an officer, director, or more than 10 percent owner of a corporation taxed under subchapter C or subchapter S, or a personal service corporation. A specified individual includes every individual who—

(i) Is the direct or indirect beneficial owner of more than 10 percent of any class of any registered equity (other than an exempted security);

(ii) Is a director or officer of the issuer of the security;

(iii) Would be the direct or indirect beneficial owner of more than 10 percent of any class of a registered security if the tax-

payer were an issuer of equity securities; or

(iv) Is comparable to an officer or director of an issuer of equity securities.

(2) For partnership purposes, a specified individual includes any partner that holds more than a 10 percent equity interest in the partnership, or any general partner, officer, or managing partner of a partnership.

(3) For purposes of this section, *officer* has the same meaning as in 17 C.F.R. §240.16a–1(f).

(4) A specified individual includes a director or officer of a tax-exempt entity.

(5) A specified individual of a taxpayer includes a specified individual of a party related to the taxpayer within the meaning of section 267(b) or section 707(b).

(6) For purposes of section 274(a), a specified individual is treated as the recipient of entertainment provided to a spouse or family member of the specified individual or to another individual because of the relationship of the spouse, family member or other individual to the specified individual. Thus, expenses allocable to entertainment provided to the spouse, family member, or other individual are attributed to the specified individual for purposes of determining the amount of disallowed expenses.

(c) *Entertainment use of aircraft by specified individuals*. For rules relating to entertainment use of aircraft by specified individuals, see §1.274–10.

(d) *Effective/applicability date*. This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.274–10 is added to read as follows:

§1.274–10 Special rules for aircraft used for entertainment.

(a) *Use of an aircraft for entertainment*—(1) *In general*. Under section 274(a) and this section, no deduction otherwise allowable under chapter 1 is allowed for expenses for the use of a taxpayer-provided aircraft for entertainment, except as provided in paragraph (a)(2) of this section.

(2) *Exceptions*—(i) *In general*. Paragraph (a)(1) of this section does not apply to deductions for expenses for business entertainment air travel or to deductions for expenses that meet the exceptions of section 274(e), §1.274–2(f), and this section.

(ii) *Expenses treated as compensation*—(A) *Employees*. Section 274(a), paragraphs (a) through (d) of §1.274–2, and paragraph (a)(1) of this section, in accordance with section 274(e)(2), do not apply (in the case of specified individuals, as provided in paragraph (a)(2)(ii)(C) of this section), to expenses for entertainment air travel provided to employees to the extent that a taxpayer—

(*1*) Properly treats the expenses with respect to the recipient of entertainment as compensation to an employee under chapter 1 and as wages to the employee for purposes of chapter 24; and

(*2*) Includes the proper amount in the employee's income under §1.61–21.

(B) *Persons who are not employees*. Section 274(a), paragraphs (a) through (e) of §1.274–2, and paragraph (a)(1) of this section, in accordance with section 274(e)(9), do not apply (in the case of specified individuals, as provided in paragraph (a)(2)(ii)(C) of this section), to expenses for entertainment air travel provided to persons who are not employees to the extent the expenses are includible in the income of those persons. This exception does not apply to any amount paid or incurred by the taxpayer that is required to be included in any information return filed by the taxpayer under part III of subchapter A of chapter 61 and is not so included.

(C) *Specified individuals*. Section 274(a) and paragraphs (a) through (d) of §1.274–2, in accordance with section 274(e)(2)(B), do not apply to expenses for entertainment air travel of a specified individual to the extent that the expenses do not exceed the sum of—

(*1*) The amount treated as compensation under paragraph (a)(2)(ii)(A) of this section or reported as income under paragraph (a)(2)(ii)(B) of this section to the specified individual; and

(*2*) Any amount the specified individual reimburses the taxpayer.

(b) *Definitions*. The definitions in this paragraph (b) apply for purposes of this section.

(1) *Entertainment*. For the definition of entertainment for purposes of this section, see §1.274–2(b)(1). Entertainment does not include personal travel that is not for entertainment purposes. For example, travel to attend a family member's funeral is not entertainment.

(2) *Entertainment air travel*. Entertainment air travel is any travel aboard a taxpayer-provided aircraft for entertainment purposes.

(3) *Business entertainment air travel*. Business entertainment air travel is any entertainment air travel aboard a taxpayer-provided aircraft that is directly related to the active conduct of the taxpayer's trade or business or related to an expenditure directly preceding or following a substantial and *bona fide* business discussion and associated with the active conduct of the taxpayer's trade or business. See §1.274–2(a)(1)(i) and (ii). Air travel is not business entertainment air travel merely because a taxpayer-provided aircraft is used for the travel as a result of a *bona fide* security concern under §1.132–5(m).

(4) *Taxpayer-provided aircraft*. A taxpayer-provided aircraft is any aircraft owned by, leased to, or chartered to, a taxpayer or any party related to the taxpayer (within the meaning of section 267(b) or section 707(b)).

(5) *Specified individual*. For rules relating to the definition of a specified individual, see §1.274–9.

(c) *Amount disallowed*. The amount disallowed under this section for an entertainment flight by a specified individual is the amount of expenses allocable to the entertainment flight of the specified individual under paragraph (e)(2)(ii)(D), (e)(3)(ii), or (f)(3) of this section, reduced (but not below zero) by the amount the taxpayer treats as compensation under paragraph (a)(2)(ii)(A) of this section or reports as income under paragraph (a)(2)(ii)(B) of this section to the specified individual, plus any amount the specified individual reimburses the taxpayer.

(d) *Expenses taken into account under this section*—(1) *Definition of expenses*. In determining the amount of expenses taken into account under this section, a taxpayer must take into account all of the expenses of operating the aircraft, including all fixed and variable expenses the taxpayer deducts in the taxable year. These expenses include, but are not limited to, salaries for pilots, maintenance personnel, and other personnel assigned to the aircraft; meal and lodging expenses of flight personnel; take-off and landing fees; costs for main-

tenance flights; costs of on-board refreshments, amenities and gifts; hangar fees (at home or away); management fees; costs of fuel, tires, maintenance, insurance, registration, certificate of title, inspection, and depreciation; and all costs paid or incurred for aircraft leased, or chartered, to or by the taxpayer.

(2) *Leases or charters to third parties*. Expenses allocable to a lease or charter of a taxpayer's aircraft to an unrelated third-party in a *bona-fide* business transaction for adequate and full consideration are not taken into account for purposes of the definition of expenses in paragraph (d)(1) of this section. Only expenses allocable to the charter period are not taken into account under this paragraph (d)(2).

(3) *Straight-line method permitted for determining depreciation disallowance under this section*—(i) *In general*. In lieu of the amount of depreciation deducted in the taxable year, solely for purposes of paragraph (d)(1) of this section, a taxpayer may elect to treat as its depreciation deduction the amount that would result from using the straight-line method of depreciation over the class life (as defined by section 168(g)(2) and taking into account the applicable convention under section 168(d)) of an aircraft, although the taxpayer uses another methodology to calculate depreciation for the aircraft under other sections of the Internal Revenue Code (for example, section 168). If the property is qualified property or 50-percent bonus depreciation property under section 168(k), qualified New York Liberty Zone property under section 1400L(b), or qualified Gulf Opportunity Zone property under section 1400N(d), depreciation for purposes of this straight-line election is determined on the unadjusted depreciable basis of the property. For purposes of this section, a taxpayer that elects to use the straight-line method and class life under this paragraph (d)(3) for any aircraft it operates must use that method for all taxpayer-provided aircraft it operates and must continue to use the method for the entire period the taxpayer uses any taxpayer-provided aircraft.

(ii) *Aircraft placed in service in earlier taxable years*. If the taxpayer elects to use this paragraph (d)(3) with respect to aircraft placed in service in taxable years before the current taxable year, the amount of depreciation is determined by applying the straight-line method of depreciation to the original cost (or, for property acquired in an exchange to which section 1031 applies, the basis of the aircraft as determined under section 1031(d)) and over the class life (taking into account the applicable convention under section 168(d)) of the aircraft as though the taxpayer used that methodology from the year the aircraft was placed in service.

(iii) *Manner of making and revoking election*. A taxpayer makes the election under this paragraph (d)(3) by filing an income tax return for the taxable year that determines the taxpayer's expenses for purposes of paragraph (d)(1) of this section by including depreciation as determined under this paragraph (d)(3). An election may be revoked only for compelling circumstances upon consent of the Commissioner by private letter ruling.

(4) *Aggregation of aircraft*—(i) *In general*. A taxpayer may aggregate the expenses of aircraft of similar cost profiles for purposes of calculating disallowed expenses under paragraph (c) of this section.

(ii) *Similar cost profiles*. Aircraft are of similar cost profiles if their operating costs per mile or per hour of flight are comparable. Aircraft must have the same engine type (jet or propeller) and the same number of engines to have similar cost profiles. Other factors to be considered in determining whether aircraft have similar cost profiles include, but are not limited to, payload, passenger capacity, fuel consumption rate, age, maintenance costs, and depreciable basis.

(e) *Allocation of expenses*—(1) *General rule*. For purposes of determining the expenses allocated to entertainment air travel of a specified individual under paragraph (a)(2)(ii)(C) of this section, a taxpayer must use either the occupied seat hours or miles method of paragraph (e)(2) of this section or the flight-by-flight method of paragraph (e)(3) of this section. A taxpayer must use the chosen method for all flights of all aircraft for the taxable year.

(2) *Occupied seat hours or miles method*—(i) *In general*. The occupied seat hours or miles method determines the amount of expenses allocated to a particular entertainment flight of a specified individual based on the occupied seat hours or miles for an aircraft for the taxable year. Under this method, a taxpayer may choose to use either occupied seat hours or miles for the taxable year to determine the amount of expenses allocated to entertainment flights of specified individuals, but must use occupied seat hours or miles consistently for all flights for the taxable year.

(ii) *Computation of the occupied seat hours or miles method*. The amount of expenses allocated to an entertainment flight taken by a specified individual is determined under the occupied seat hours or miles method by—

(A) Determining the total expenses for the year under paragraph (d)(1) of this section for the aircraft or group of aircraft (as determined under paragraph (d)(4) of this section), as applicable;

(B) Determining the total number of occupied seat hours or miles for the taxable year for the aircraft or group of aircraft by totaling the occupied seat hours or miles of all flights in the taxable year flown by the aircraft or group of aircraft, as applicable. The occupied seat hours or miles for a flight is the number of hours or miles flown for the flight multiplied by the number of seats occupied on that flight. For example, a flight of six hours with three passengers results in 18 occupied seat hours;

(C) Determining the cost per occupied seat hour or mile for the aircraft or group of aircraft, as applicable, by dividing the total expenses in paragraph (e)(2)(ii)(A) of this section by the total number of occupied seat hours or miles determined in paragraph (e)(2)(ii)(B) of this section; and

(D) Determining the amount of expenses allocated to an entertainment flight taken by a specified individual by multiplying the number of hours or miles of the flight by the cost per occupied hour or mile for that aircraft or group of aircraft, as applicable, as determined in paragraph (e)(2)(ii)(C) of this section.

(iii) *Allocation of expenses of multi-leg trips involving both business and entertainment legs*. A taxpayer that uses the occupied seat hours or miles allocation method must allocate the expenses of a trip by a specified individual that involves at least one segment for business and one segment for entertainment purposes between the business travel and the entertainment travel unless none of the expenses for the entertainment segment are disallowed. The entertainment cost of a multi-leg trip is the total cost of the flights

(by occupied seat hours or miles) over the cost of the flights that would have been taken without the entertainment segment or segments.

(iv) *Examples*. The following examples illustrate the provisions of this paragraph (e)(2):

Example 1. (i) A taxpayer-provided aircraft is used for Flights 1, 2, and 3, of 5 hours, 5 hours, and 4 hours, respectively, during the Taxpayer's taxable year. On Flight 1, there are four passengers, none of whom are specified individuals. On Flight 2, passengers A and B are specified individuals traveling for entertainment purposes and passengers C and D are not specified individuals. Taxpayer treats $1,200 as compensation to A, and B reimburses Taxpayer $500. On Flight 3, all four passengers (A, B, E, and F) are specified individuals traveling for entertainment purposes. The Taxpayer treats $1,300 each as compensation to A, B, E, and F. Taxpayer incurs $56,000 in expenses for the operation of the aircraft for the taxable year. The aircraft is operated for 56 occupied seat hours for the period (four passengers times 5 hours or 20 occupied seat hours for Flight 1, plus four passengers times 5 hours or 20 occupied seat hours for Flight 2, plus four passengers times 4 hours or 16 occupied seat hours for Flight 3). The cost per occupied seat hour is $1,000 ($56,000/56 hours).

(ii) For purposes of determining the amount disallowed (to the extent not treated as compensation or reimbursed), $5,000 ($1,000 X 5 hours) each is allocable with respect to A and B for Flight 2, and $4,000 ($1,000 X 4 hours) each is allocable with respect to A, B, E, and F for Flight 3.

(iii) For Flight 2, because Taxpayer treats $1,200 as compensation to A, and B reimburses Taxpayer $500, Taxpayer may deduct $1,700 of the cost of Flight 2 allocable to A and B. The deduction for the remaining $8,300 cost allocable to entertainment provided to A and B on Flight 2 is disallowed (with respect to A, $5,000 less the $1,200 treated as compensation, and with respect to B, $5,000 less the $500 reimbursed).

(iv) For Flight 3, because Taxpayer treats $1,300 each as compensation to A, B, E, and F, Taxpayer may deduct $5,200 of the cost of Flight 3. The deduction for the remaining $10,800 cost allocable to entertainment provided to A, B, E, and F on Flight 3 is disallowed ($4,000 less the $1,300 treated as compensation to each specified individual).

Example 2. (i) G, a specified individual, is the sole passenger on an aircraft on a two-hour flight from City A to City B for business purposes. G then travels on a three-hour flight from City B to City C for entertainment purposes, and returns from City C to City A on a four-hour flight. G's flights have resulted in nine occupied seat hours (two for the first segment, plus three for the second segment, plus four for the third segment). If G had returned directly to City A from City B, the flights would have resulted in four occupied seat hours.

(ii) Under paragraph (e)(2)(iii) of this section, five occupied seat hours are allocable with respect to G's entertainment (nine total occupied seat hours minus the four occupied seat miles that would have resulted if the travel had been a roundtrip business trip without the entertainment segment). If Taxpayer's cost per occupied seat hour for the year is $1,000, $5,000 is allocated with respect to G's entertainment use of the aircraft ($1,000 X five occupied seat hours). The amount disallowed is $5,000 minus any amount the Taxpayer treats as compensation to G or that G reimburses Taxpayer.

(3) *Flight-by-flight method*—(i) *In general*. The flight-by-flight method determines the amount of expenses allocated to a particular entertainment flight of a specified individual on a flight-by-flight basis by allocating expenses to individual flights and then to a specified individual traveling for entertainment purposes on that flight.

(ii) *Allocation of expenses*. A taxpayer using the flight-by-flight method must aggregate all expenses (as defined in paragraph (d)(1) of this section) for the taxable year for the aircraft or group of aircraft (as determined under paragraph (d)(4) of this section), as applicable, and divide the total amount of expenses by the number of flight hours or miles for the taxable year for that aircraft or group of aircraft, as applicable, to determine the cost per hour or mile. Expenses are allocated to each flight by multiplying the number of miles or hours for the flight by the cost per hour or mile. The expenses for the flight are then allocated to the passengers on the flight per capita. Thus, if three of five passengers are traveling for business and two passengers are specified individuals traveling for entertainment purposes, and the total expense allocated to the flight is $10,000, the expense allocable to each specified individual is $2,000.

(f) *Special rules*—(1) *Determination of basis*. If an amount disallowed is allocable to depreciation under paragraph (f)(2) of this section, the rules of §1.274–7 apply. In that case, the basis of an aircraft is not reduced for the amount of depreciation disallowed under this section.

(2) *Pro rata disallowance*. The expense disallowance provisions of this section are applied on a *pro rata* basis to all of the expenses disallowed by this section.

(3) *Deadhead flights*. (i) For purposes of this section, an aircraft returning without passengers after discharging passengers or flying without passengers to pick up passengers (deadheading) is treated as having the same number and character of passengers as the leg of the trip on which passengers are aboard for purposes of the allocation of expenses under paragraphs (e)(2) or (e)(3) of this section. For example, when an aircraft travels from point A to point B and then back to point A, and one of the legs is a deadhead flight, for determination of disallowed expenses, the aircraft is treated as having made both legs of the trip with the same passengers aboard for the same purposes.

(ii) When a deadhead flight does not occur within a roundtrip flight, but occurs between two unrelated flights involving more than two destinations (such as an occupied flight from point A to point B, followed by a deadhead flight from point B to point C, and then an occupied flight from point C to point A), the allocation of passengers and expenses to the deadhead flight occurring between the two occupied trips is based on the number of passengers on board for the two occupied legs of the flight, the character of the passengers on board (entertainment or nonentertainment purpose) and the length in hours or miles of the two occupied legs of the flight.

(g) *Effective/applicability date*. This section applies to taxable years beginning after the date 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 June 14, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 15, 2007, 72 F.R. 33169)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Exclusions From Gross Income of Foreign Corporations

REG–138707–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9332) that modify final regulations issued under section 883(a) and (c) of the

Internal Revenue Code (Code), relating to income derived by foreign corporations from the international operation of ships or aircraft. Those regulations revise §1.883–3 of the final regulations, relating to the treatment of controlled foreign corporations, following the repeal of section 954(a)(4) and (f) (foreign base company shipping provisions) by section 415 of the American Jobs Creation Act of 2004. In addition, those regulations provide guidance for foreign corporations organized in countries that provide an exemption from taxation solely through an income tax convention, and amend certain provisions in the current section 883 regulations. The text of those regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by September 24, 2007. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, October 24, 2007, at 10 a.m. must be received by Monday, September 24, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–138707–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138707–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–138707–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Patricia A. Bray, at (202) 622–3880; concerning submissions of comments and/or requests for a hearing, Kelly Banks, at (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1667.

Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 24, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§1.883–2(f), 1.883–3(c) and (d), and 1.883–4(e). This information is required to enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of ships or aircraft from gross income on its U.S. Federal income tax return. This information will also enable the IRS to monitor compliance with the provisions of the proposed regulations with respect to the stock ownership requirements of §1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income.

The collections of information are mandatory. The likely respondents are foreign corporations engaged in the international operation of ships or aircraft that wish to claim an exemption from U.S. tax under section 883, and certain of their shareholders owning (directly or indirectly) a majority of the value of the shares of such corporations.

Estimated total annual reporting/recordkeeping burden on foreign corporations: 1200 hours.

The estimated annual burden per respondent varies from 0 minutes to 3 hours, depending on the circumstances of the foreign corporation, with an estimated average of one hour.

Estimated number of respondents: 1,200.

Estimated annual frequency of responses: once.

Estimated total annual reporting burden on shareholders: 925 hours.

The estimated annual burden per respondent varies from 1 minute to one hour, depending on the circumstances of the shareholder or intermediary, with an estimated average of 30 minutes.

Estimated number of respondents: 1850.

Estimated annual frequency of shareholder or intermediary responses: once every three years if no information changes and once a year if a change in ownership information occurs.

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

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

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend 26 CFR part 1. Those regulations amend the income inclusion test in §1.883–3 of the final regulations issued in T.D. 9087, 2003–2 C.B. 781 [68 FR 51394]. Those regulations also address a number of comments that have

been received concerning other portions of the final section 883 regulations. The text of those regulations serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed 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. 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. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a significant number of U.S. small entities. This certification is based on the fact that these regulations apply solely to foreign corporations, and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 24, 2007, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 24, 2007, and an outline of the topics to be discussed and the time devoted to each topic (a signed original and eight (8) copies) by September 24, 2007. A period of 10 minutes will be allocated 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 proposed regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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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 1.883–0 is amended by revising the entries for §§1.883–1(g)(3) and (h)(3), 1.883–2(e)(2), 1.883–3, and 1.883–5(d) and (e) to read as follows:

§1.883–0 Outline of major topics.

* * * * *

§1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(g) * * *

(3) [The text of the proposed entry for §1.883–1(g)(3) is the same as the text of the entry for §1.883–1T(g)(3) published elsewhere in this issue of the Bulletin].

* * * * *

(h) * * *

(3) * * *

(i) through (iv) [The text of the proposed entries for §1.883–1(h)(3)(i) through (iv) is the same as the text of the entries for §1.883–1T(h)(3)(i) through (iv) published elsewhere in this issue of the Bulletin].

* * * * *

§1.883–2 Treatment of publicly traded corporations.

* * * * *

(e) * * *

(2) [The text of the proposed entry for §1.883–2(e)(2) is the same as the text of the entry for §1.883–2T(e)(2) published elsewhere in this issue of the Bulletin].

* * * * *

§1.883–3 Treatment of controlled foreign corporations.

* * * * *

[The text of the proposed entry for §1.883–3 is the same as the entry for §1.883–3T published elsewhere in this issue of the Bulletin].

§1.883–5 Effective/applicability dates.

* * * * *

(d) and (e) [The text of the proposed entries for §1.883–5(d) and (e) is the same as the text of the entries for §1.883–5T(d) and (e) published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.883–1 is amended by revising paragraphs (c)(3)(i)(D), (c)(3)(i)(G), (c)(3)(i)(H), (c)(3)(i)(I), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(1)(xi), (g)(3), (h)(1)(ii), and (h)(3) to read as follows:

§1.883–1 Exclusion of income from the international operation of ships or aircraft.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) [The text of the proposed amendment to §1.883–1(c)(3)(i)(D) is the same as the text of §1.883–1T(c)(3)(i)(D) published elsewhere in this issue of the Bulletin].

* * * * *

(G) through (I) [The text of the proposed amendments to §1.883–1(c)(3)(i)(G) through (I) is the same as the text of §1.883–1T(c)(3)(i)(G) through (I) published elsewhere in this issue of the Bulletin].

(ii) [The text of the proposed amendment to §1.883–1(c)(3)(ii) is the same as the text of §1.883–1T(c)(3)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(g) * * *

(1) * * *

(ix) through (xi) [The text of the proposed amendments to §1.883–1(g)(1)(ix) through (xi) is the same as the text of §1.883–1T(g)(1)(ix) through (xi) published elsewhere in this issue of the Bulletin].

* * * * *

(3) [The text of the proposed amendment to §1.883–1(g)(3) is the same as the text of §1.883–1T(g)(3) published elsewhere in this issue of the Bulletin].

* * * * *

(h) * * *

(1) * * *

(ii) [The text of the proposed amendment to §1.883–1(h)(1)(ii) is the same as the text of §1.883–1T(h)(1)(ii) published elsewhere in this issue of the Bulletin].

(2) * * *

(3) [The text of the proposed amendment to §1.883–1(h)(3) is the same as the text of §1.883–1T(h)(3) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 4. Section 1.883–2 is amended by revising paragraphs (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

§1.883–2 Treatment of publicly–traded corporations.

* * * * *

(e) * * *

(2) [The text of the proposed amendment to §1.883–2(e)(2) is the same as the text of §1.883–2T(e)(2) published elsewhere in this issue of the Bulletin].

(f) * * *

(3) [The text of the proposed amendment to §1.883–2(f)(3) is the same as the text of §1.883–2T(f)(3) published elsewhere in this issue of the Bulletin].

(4) * * *

(ii) [The text of the proposed amendment to §1.883–2(f)(4)(ii) is the same as the text of §1.883–2T(f)(4)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 5. Section 1.883–3 is revised to read as follows:

§1.883–3 Treatment of controlled foreign corporations.

[The text of this proposed section is the same as the text of §1.883–3T published elsewhere in this issue of the Bulletin].

Par. 6. Section 1.883–4 is amended by revising paragraphs (d)(4)(i)(C), (d)(4)(i)(D), (e)(2), and (e)(3) to read as follows:

§1.883–4 Qualified shareholder stock ownership test.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) and (D) [The text of the proposed amendments to §1.883–4(d)(4)(i)(C) and (D) is the same as the text of §1.883–4T(d)(4)(i)(C) and (D) published elsewhere in this issue of the Bulletin].

* * * * *

(e) * * *

(2) and (3) [The text of the proposed amendments to §1.883–4(e)(2) and (3) is the same as the text of §1.883–4T(e)(2) and (3) published elsewhere in this issue of the Bulletin].

Par. 7. Section 1.883–5 is amended by revising paragraphs (d) and (e) to read as follows:

§1.883–5 Effective/applicability dates.

* * * * *

(d) [The text of the proposed amendment to §1.883–5(d) is the same as the text of §1.883–5T(d) published elsewhere in this issue of the Bulletin].

(e) [The text of the proposed amendment to §1.883–5(e) is the same as the text of §1.883–5T(e) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on June 22, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2007, 72 F.R. 34650)

Foundations Status of Certain Organizations

Announcement 2007–67

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:

30815 Community Development Corporation, Inc., Hephzibah, GA
Abdur Rahim Memorial Community Project, Inc., Baltimore, MD
Abundance Ministries, Baton Rouge, LA
Acction, Inc., Baltimore, MD
Affordable Homes of Hampton Roads, Inc., Chesapeake, VA
Affordable Housing Real Estate Company, Shafter, CA
A G A P E Enterprises, Inc., Orlando, FL
Agroforestry Council International, Galveston, TX
All About Animals, Inc., San Angelo, TX
Allan D. Wapner Community Foundation, Ontario, CA
Allegany Council for the Arts, Inc., Belmont, NY
Amber Alert Foundation of Louisiana, Baton Rouge, LA
American Bosnian Center, Hayward, CA

American Children Across the Pacific, Gardena, CA
American Southeast Asian Literary & Educational Counseling, Inc., Lowell, MA
American Vietnamese Writers Artists Association, Inc., Sacramento, CA
Americans for Child Care Fighting Poverty a Not for Profit, Miami Beach, FL
Angels Touch Outreach Parental Services, San Jose, CA
Anointed Hands Ministries, Greensboro, NC
Aparem Foundation Corporation, Downey, CA
APEX Educational Institute, Inc., Rancho Cucamonga, CA
Ashley Foundation, Chicago, IL
Begin Again Ministry, Inc., Lynchburg, VA
Bethlehem Community Development Center, Woodbury, NJ
Big Fun in the Son Social Service Center, Parma, OH
Both Parents Matter, Inc., Pittsboro, NC
Boys & Girls Club of Hillsboro Texas, Inc., Hillsboro, TX
Brookshire Health Care, Inc., Atlanta, GA
California School Employees Association Institute for Public Education, San Jose, CA
Campus Community Services, Inc., Huntington Beach, CA
Careervision, Inc., Santa Barbara, CA
CEDI, St. Louis, MO
Center for Research in Vocational Education, Fremont, CA
Center of Excellence in Rural and Minority Health, Inc., Columbia, SC
Changing Faces Community CFC, Sauk Rapids, MN
Chinese-American Foundation for Youth Enrichment, Mineola, NY
Christian Medical College Alumni Association, Inc., Shreveport, LA
Christian Stewardship Ministries, Inc., Mitchellville, MD
Church of Jesus Christ Ministries, West Mifflin, PA
Cleveland Performing Arts Ministries, Inc., Chesterland, OH
Community Based Learning Solutions, Coronado, CA
Community Health Initiatives Center, Inc., Brooklyn, NY
Community Housing and Empowerment Connection, Inc., Newark, DE
Community Resources for Growth, Erie, PA
Community Services Enterprise, Spanaway, WA
Community Wellness Institute, Inc., Pittsburgh, PA
Conscious Action, Larkspur, CA
Crying in the Wilderness Church Ministries, Palmetto, GA
Crystal City Housing Education and Training Corporation, Crystal City, TX
Cuda One, Harlingen, TX
Cultural Connections International, Inc., Bellvale, NY
Daviess County Rural Housing Finance Corporation, Washington, IN
Delissa Development Corporation, Natchez, MS
Deliverance Tabernacle Economic Development, Inc., Pensacola, FL
Digital Volunteers, Inc., Washington, DC
Dolomite Royal Towers, Inc., Dolomite, AL
Dove Connection Ministries, San Diego, CA
Downtown Overland Park Foundation, Inc., Overland Park, KS
Eartha M M White Historical Museum, Inc., Jacksonville, FL
ED4U2, Little Rock, AZ
Empowerment Services, Inc., New Rochelle, NY
Endless Imagination Production Company, Incorporated, Los Angeles, CA
Extreme Sports Philanthropy Organization, Flint, MI
Ezras Chaveirim, Spring Valley, NY
Faith Visionary Services, Oakland, CA
Faiths Place Foundation, Chicago, IL
Family Education & Spiritual Center, Inc., St. Louis, MO
FCT Broken Wings, Inc., Oakland Park, FL
First Preferred Care, Inc., Jacksonville, FL
Foster City Reserve Police Officers Association, Foster City, CA
Foundation for Responsible Citizenry, Edmond, OK
Foundation for Sustainable Development With Human Values, Inc., Washington, DC
Foundation to Empower Marriage, Inc., Winter Springs, FL
Friends Enrichment Programs, Inc., Huntsville, AL
Friends of Justice in Hampshire County, Inc., Leeds, MA
Friends of the Homeless, Chicago, IL
Gberaga Community Development Corporation, Dallas, TX
Genesis Addiction Prevention Programs, Inc., Auburn, CA
George Washington Leadership Foundation, Columbia, SC
Global Friendship Mission, Inc., Everett, WA
Global Intercultural Guide-GIG, Olympia, WA
Good Faith Network, Inc., El Paso, TX
Good Start, Irving, TX
Gospel Music Hall of Fame Museum Foundation, Philadelphia, PA
Gospel Testimonial Ministries, Inc., Birmingham, AL
Greater Faith Housing Corporation, Buffalo, NY
Greenville Dream Center, Pelzer, SC
Grog Show, Inc., North Las Vegas, NV
Growing Season Ranch, Lyle, WA
Habakkuk Outreach Center, Inc., Franklin, VA
Harmony Homes, Inc., Bowling Green, OH
Healthy Images Producing Hope Opportunity and Prosperity, Inc., Cleveland, OH
Healthyliving Foundation, Inc., Jupiter, FL
Help The Blind American Fund, Incorporated, Centerport, NY
Helping Out Poverty Environments (H.O.P.E.) Community Development Corporation, Stockton, CA
Holy Tabernacle of Deliverance CDC, Inc., Columbus, OH
Housing for Appalachia People, Inc., Jonesville, VA
In Good Hands Ministry for Creative Arts and Spiritual Growth, Inc., Glen Cove, NY
Ineglect, Inc., Dickinson, TX
Inner City Excel Community Learning Center, Leavenworth, KS
International All-Ukrainian Charitable Foundation, Inc., Bronx, NY
International Basketball Association, Washington, DC
International Creole & Cajun Cultural Association, Church Point, LA
International Fibrosis Foundation, Inc., Little Rock, AR
International University Bremen Foundation of America, Inc., Boston, MA

International Womens Fellowship, Cary, NC
Invision Foundation, Inc., Clarkston, GA
Iry D. & Gwendolyn Herbert Life Enrichment Center, Incorporated, Riviera Beach, FL
Izzy Moving Dance Theatre, Covington, LA
Jail Ministries and Outreaches, Inc., Palatka, FL
JC Community Services, Incorporated, Mebane, NC
Jefferson County Junior Golf Association, Dandridge, TN
Joy of the Lord Community, Canton, MI
JTA Community Project, Inc., College Park, GA
Kingdom Work Enterprise, Inc., Canton, OH
Kingston Regional Senior Living Corp., Lake Katrine, NY
Laney-Walker Safe Haven Foundation, Inc., Augusta, GA
LCL Reintegration Institute, Midwest City, OK
L D M Wings of Eagles Ministries, Graham, NC
Le Collectif Trait D Union, Inc., Lanham, MD
Lewis Ministries, Inc., Columbus, GA
Liberty Community Development Corporation, Inc., Canton, MS
Life Stage Theatrical Troupe, Inc., Bowling Green, OH
Life Work Community Development Center, Detroit, MI
Living Faith Outreach, Inc., Norfolk, VA
Living Running Wells of Life International Outreach Ministries, Whittier, CA
Lofty Ideals, Inc., Florence, MS
Los Angeles Latino Diabetes Coalition, Los Angeles, CA
L O S T Lifeline Organized Search Teams, Clyde, OH
Low Income Family Training, Inc., Culver City, CA
MAC Resource & Transitional Center, Inc., Euclid, OH
Mahoney Research Library, Minden, LA
Marine Watch International, San Francisco, CA
Mars Exploration Learning Center, Isabella, PA
Medication Compliance Institute, Lakeside, CA
Miami Dade Community Services, Inc., Miami, FL
Michigan City Economic Development Foundation, Inc., Michigan City, IN
Midway Community Development Corporation, Midway, FL
Millennium Minds, Inc., Queens, NY
Mission of Hope 2000, Inc., New Hyde Park, NY
M & M Education and Training Center, Inc., Las Vegas, NV
Mount Moriah Outreach Ministries, Inc., Jackson, TN
Name Above All, Inc., Moncks Corner, SC
National Endowment for the Christian Arts, Inc., Fort Washington, MD
Naturopathic Medical Association of California, Anaheim, CA
New Beginning Group Home, Inc., Houston, TX
New Birth Ministries, Inc., Norfolk, VA
New Covenant Community Center, Inc., Bath, SC
New Foundation, Corona, CA
New Foundation Outreach Ministries, Inc., Thibodaux, LA
Next Step Mentoring Agency, Oklahoma City, OK
North Coast Humanities Council, Bayside, CA
Northside Women Outreach Center, Lake Charles, LA
Northwest Hereditary Disease Foundation, Everett, WA
Novasia, Inc., Memphis, TN
Nu Yu Enterprises, Inc., Brookline, MA
OIC Community Revitalization, Incorporated, Philadelphia, PA
One Hope, Fort Worth, TX
O T Transportation, Inc., Atco, NJ
Pamaque Clan of Coahuila Y Tejas Spanish Colonial Indian Missions, San Antonio, TX
Peace Education, Arlington, TX
People With Pride of Michigan, Inc., Riverside, CA
Phoenix Rising Tarot, Inc., Los Angeles, CA
Pilgrim House Productions, Inc., Los Angeles, CA
Polar Bear Communications Corporation, Dillingham, AK
Polk County Chamber of Commerce Foundation, Livingston, TX
Pony Angels, Inc., Carmel, CA
Power House Outreach Ministries, Inc., Horn Lake, MS
Prashanti Bhavan, Inc., Lake Mary, FL
Programs for Girls, Inc., Middleborough, MA
Project Outreach Unlimited, Inc., Omaha, NE
Project Youth, Inc., Lawndale, CA
Rainbow Children's Truss, Inc., Jonesboro, GA
Refuge & Educational Measures for Success & Publishing, Inc., Houston, TX
Renaissance Educational Services, Inc., San Bernardino, CA
Reproductive Counseling for Youth, Inc., Benowa Waters, Australia
Resistance International, Washington, DC
Retirement Clubs of New Jersey, Inc., Elizabeth, NJ
Rivers of Faith Ministries, Holly Springs, MS
Rocky Boy Health Board, Box Elder, MT
Rosewood Center for Wholeness, Columbia, SC
Sabine Community Health Center, Inc., Many, LA
Saginaw County Fatherhood Initiative Organization, Saginaw, MI
Salt of the Earth Outreach Ministries, East Hazel Crest, IL
San Diego Urban Economic Corporation, San Diego, CA
San Jose-Silicon Valley Center for Entrepreneurial Development, San Jose, CA
Saphires House, Ypsilanti, MI
Savy Education Services, Inc., Atlanta, GA
Send Home a Reading Experience, Inc., Windsor, VT
S F Pickwick, Baytown, TX
Sheila's Wish Foundation, Daytona Beach, FL
Show Them We Care STWC, Potomac, MD
Skills Building Training Centers of America, New Orleans, LA
Smile Foundation, Inc., Weatherford, TX
Southeastern Housing and Development Corporation, Miami, FL
Southern Wis. Mounted Search and Rescue, Mineral Point, WI
Southside Christian Charities, Inc., Jacksonville, FL
Street Light Ministries, Melrose, FL
Sunny Jordan Foundation, Shawnee, KS
Supporters of the Fleming County Public Library, Flemingsburg, KY
Sword of the Spirit Drug Outreach Center, Inc., New Orleans, LA
Tallapoosa Cornerstone, Inc., Tallapoosa, GA

Team Verox Group, Inc., Wilmington, DE
Thompson Land Development Nonprofit Housing Corporation, Detroit, MI
Top Hat Dancers, Inc., Canyon Country, CA
Trinity Liquidation Corporation, Inc., Cedartown, GA
Trinity Outreach, Decatur, GA
Trinity Village Foundation, Inc., Daphne, AL
True Fact Ministry, Altadena, CA
Trumpbours Corners Farm Museum, Saugerties, NY
Twisted Sister, Inc., Norman, OK
Unity Foundation International, Dayton, OH
Unity Housing Development Fund Corporation, Rochester, NY
Universal Research Publishing & Marketing, Inc., Southfield, MI
Uplift, Inc., Washington, DC
Upper Savannah Community Economic Development Corp., Greenwood, SC
Valley Mission Aviation, Inc., Broadway, VA
Veteran Connection, Akron, OH
Vidalia Choice Childcare, Inc., Vidalia, LA
Village Project, Sacramento, CA
Vine City Community Outreach Community Development Corporation, Atlanta, GA
Vision is Now, Inc., Cincinnati, OH
Vision Properties, Bolingbrook, IL
Wayne County Enrichment & Fitness Center, Goldsboro, NC
We Do Our Best At Recovery, Inc., 12 Steps, Baltimore, MD
Wesley Community Development Corporation, Houston, TX
West African Health Initiatives, Evanston, IL
White Star Horse Rescue & Rehabilitation, Mayfield, KY
Whitestone Village Revitalization Local Development Corp., Whitestone, NY
Woptura Medicine Society, Austin, TX
Wu-Kah-Ki Theatre Workshop, Newark, NJ
Zero2 Foundation, Matthews, NC
Zorya, Incorporated, Cos Cob, CT

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.

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

Announcement 2007–68

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This document contains corrections to final regulations (T.D. 9321, 2007–19 I.R.B. 1123) that were published in the **Federal Register** on Tuesday, April 17, 2007 (73 FR 19234), relating to section 409A.

DATES: This correction is effective April 17, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney, (202) 622–9639 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 409A of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 9321) contain errors that may prove misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9321), which were the subject of FR Doc. 07–1820, is corrected as follows:

1. On page 19235, column 3, in the preamble the paragraph heading III. the language "Definition of Nonqualified Deferred Compensation Plan", is corrected to read "Definition of Deferral of Compensation".

2. On page 19243, column 1, in the preamble, paragraph E., the last sentence in the first paragraph, the language "The final regulations adopt this suggestion, so long as the risk of forfeiture to which the stock is subject constitutes a substantial risk of forfeiture for purposes of section 409A." is corrected to read "The final regulations adopt this suggestion.".

3. On page 19243, column 2, paragraph G., line 2 from the bottom of the paragraph, the language "Q&A–7 and section II.E. of the preamble" is corrected to read "Q&A–7 and sections II.E. and VI.E. of the preamble.".

4. On page 19247, column 2, in the preamble, lines 3 and 4 from the bottom of the last paragraph, the language "limited period of time not to exceed one year following the initial existence of" is corrected to read "limited period of time not to exceed two years following the initial existence of".

5. On page 19258, column 2, in the preamble the tenth line from the bottom of the column, the language "average level of *bona fide* service" is corrected to read "average level of *bona fide* services".

6. On page 19264, column 1, in the preamble, paragraph D., line 9 from the bottom of the first paragraph, the language "with section 409A if the service" is corrected to read "with section 409A only if the service".

7. On page 19264, column 2, in the preamble, paragraph D., the last sentence of the top paragraph, the language "For a discussion of the ability to provide for different times and forms of payment due to different types of separations from service, including separations from service due to certain disabilities, see section VII.C. 4 of this preamble." is removed.

8. On page 19265, column 1, in the preamble under paragraph G., the third sentence of the paragraph, the language "The final regulations clarify that for these purposes, the availability of payments due to the unforeseeable emergency under any other nonqualified deferred compensation plan as defined for purposes of section 409A, including plans that would be nonqualified deferred compensation plans for purposes of section 409A except due to the effective date of the statute, or under any qualified plan (including any assets available by obtaining a loan under a qualified plan), need not be considered in determin-

ing whether an emergency is or may be relieved through other means." is corrected to read "The final regulations clarify that for these purposes, the availability of payments under any qualified plan (including any amount available by obtaining a loan under a qualified plan), or under any other nonqualified deferred compensation plan due to the unforeseeable emergency, including plans that would be nonqualified deferred compensation plans for purposes of section 409A except due to the effective date of the statute, need not be considered in determining whether an emergency is or may be relieved through other means.".

9. On page 19265, column 1, in the preamble under paragraph G., lines 1 through 5 from the bottom of the first paragraph, the language "qualified plan, from a grandfathered nonqualified deferred compensation plan, or from another nonqualified deferred compensation plan that is subject to section 409A." is corrected to read "qualified plan, or from another nonqualified deferred compensation plan (including a grandfathered plan) due to the unforeseeable emergency.".

10. On page 19267, column 2, in the preamble under paragraph B., lines 4 and 5 from the bottom of the column, the language "Where the change in control event consists of an asset purchase, the" is corrected to read "Solely for purposes of this rule, the".

11. On page 19270, column 2, in the preamble under paragraph A., lines 2, 3, and 4 from the top of the paragraph, the language "contributions, each up to the section 402(g) dollar limit on elective deferrals, are separate, additive limits and are not" is corrected to read "contributions is subject to two separate, additive limits and not".

12. On page 19272, column 1, in the preamble, the paragraph heading of paragraph XII., the language "Effective Date of Final Regulations" is corrected to read "Applicability Date of Final Regulations".

13. On page 19272, column 2, in the preamble under paragraph B., line 2, the language "effective January 1, 2008. For periods" is corrected to read "applicable January 1, 2008. For periods".

14. On page 19272, column 2, in the preamble, paragraph B., line 7 from the top of the first paragraph, the language "relief for periods before the effective" is corrected to read "relief for periods before the applicability".

15. On page 19272, column 2, in the preamble, paragraph B., line 3 from the top of the second paragraph, the language "becoming effective January 1, 2008, on" is corrected to read "becoming applicable January 1, 2008, on".

16. On page 19272, column 2, in the preamble, paragraph C., line 5 from the top of the paragraph, the language "rights issued before the effective date of" is corrected to read "rights issued before the applicability date of".

17. On page 19273, column 1, in the preamble, paragraph C., line 13 from the top of the second paragraph, the language "2005) or on or before the effective date" is corrected to read "2005) or on or before the applicability date".

18. On page 19273, column 1, in the preamble, paragraph C., line 16 from the bottom of the paragraph, the language "effective date of the regulations. In" is corrected to read "applicability date of the regulations. In".

19. On page 19273, column 2, in the preamble, paragraph D., line 4 of the second paragraph, the language "established before the effective date of" is corrected to read "established before the applicability date of".

20. On page 19273, column 2, in the preamble, paragraph E., line 7 of the first paragraph, the language "the time such regulations were effective." is corrected to read "the time such regulations were applicable.".

Guy R. Traynor,
Federal Register Liaison,
Publications & Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
Procedure & Administration).

(Filed by the Office of the Federal Register on July 12, 2007, 8:45 a.m., and published in the issue of the Federal Register for July 13, 2007, 72 F.R. 38477)

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.
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