Internal Revenue
bulletin

Bulletin No. 2007-45
November 5, 2007

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2007–64, page 953.

2007 base period T-bill rate. The "base period T-bill rate" for the period ending September 30, 2007, is published as required by section 995(f) of the Code.

Rev. Rul. 2007–66, page 956.

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 November 2007.

Rev. Proc. 2007–65, page 967.

This procedure under sections 704(b) and 45 of the Code provides the necessary requirements for partnerships to meet a safe harbor in allocating wind energy production tax credits.

Rev. Proc. 2007–66, page 970.

Cost-of-living adjustments for 2008. This procedure sets forth the cost-of-living adjustments to certain items for 2008 as required under various provisions of the Code and Service guidance. Rev. Procs. 90–12 and 2002–41 modified.

EMPLOYEE PLANS

Rev. Rul. 2007–65, page 949.

Employer's deduction for contributions; limitation on employer's deduction; welfare benefit funds. This ruling discusses whether an employer's deductions for contributions to a welfare benefit fund under section 419 of the Code are "qualified direct costs" with respect to premiums paid by a welfare benefit fund on cash value life insurance policies.

Notice 2007–83, page 960.

Abusive trust arrangements; cash value life insurance; welfare benefits. This notice identifies certain trust arrangements that claim to be welfare benefit funds and that utilize cash value life insurance policies, and substantially similar arrangements, as listed transactions.

Notice 2007–84, page 963.

Post-retirement medical and life insurance benefits; nondiscrimination; welfare benefit funds. This notice alerts taxpayers that the tax treatment of trusts providing post-retirement medical and life insurance benefits to owners and other key employees may not provide the tax benefits claimed.

Notice 2007–87, page 966.

2008 cost-of-living adjustments; retirement plans, etc. This notice sets forth certain cost-of-living adjustments effective January 1, 2008, applicable to the dollar limits on benefits under qualified defined benefit pension plans and to other provisions affecting (1) certain plans of deferred compensation and (2) "control employees." This notice also contains cost-of-living adjustments for several pension-related amounts in restating the data in News Release IR–2007–171 issued October 18, 2007.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 979.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2007–105, page 984.
The IRS has revoked its determination that Gregory and Vickie Iverson Charitable Supporting Organization, Salt Lake City, UT; The Scott Canepa Charitable Supporting Organization, Las Vegas, NV; Kyle Charitable Support Organization Trust, Austin, TX; Paul and Deborah Marvin Charitable Supporting Foundation, Salt Lake City, UT; Malecha Family Foundation, Apple Valley, MN; Shared Visions Foundation, Park City, UT; Harold B Lee Foundation, Woodland, UT; Missouri Basketball Club, Columbia, MO; Mahisekar Charitable Supporting Organization, Orland Park, IL; Georgetown Title Foundation, Sandy, UT; Buddy and Rita Gregory Charitable Supporting Organization, Lehi, UT; Keith & Anna Barton Charitable Supporting Organization, Lehi, UT; Asafo Global Trust Fund, Inc., Phoenix, AZ; White Wing Educational Dev Corp, New York, NY; AARO Credit Services, Costa Mesa, CA; Paul and Deborah Manning Charitable Supporting Org, Salt Lake City, UT; MOP Non-Profit, Inc., Sterling Heights, MI; Access Home Project, Inc., Los Angeles, CA; To Life Foundation, New York, NY; Miami Latin Film Festival, Miami, FL; Larry and Kelli Cotton Charitable Supporting Organization, Fort Worth, TX, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ESTATE TAX

Rev. Proc. 2007–66, page 970.
Cost-of-living adjustments for 2008. This procedure sets forth the cost-of-living adjustments to certain items for 2008 as required under various provisions of the Code and Service guidance. Rev. Procs. 90–12 and 2002–41 modified.

GIFT TAX

Rev. Proc. 2007–66, page 970.
Cost-of-living adjustments for 2008. This procedure sets forth the cost-of-living adjustments to certain items for 2008 as required under various provisions of the Code and Service guidance. Rev. Procs. 90–12 and 2002–41 modified.

EXCISE TAX

Rev. Proc. 2007–66, page 970.
Cost-of-living adjustments for 2008. This procedure sets forth the cost-of-living adjustments to certain items for 2008 as required under various provisions of the Code and Service guidance. Rev. Procs. 90–12 and 2002–41 modified.

ADMINISTRATIVE

T.D. 9359, page 931.
Final regulations under section 330 of title 31 of the U.S. Code provide amendments to the provisions of Circular 230 relating to various non-shelter items. This document reflects the Treasury Department and the IRS consideration of the comments received in response to the proposed regulations and the amendments to section 330 made by the American Jobs Creation Act of 2004, Public Law 108–357. The regulations also include conforming amendments to reflect the final regulations relating to best practices, covered opinions, and other written advice published as T.D. 9165, 2005–1 C.B. 357, and as T.D. 9201, 2005–1 C.B. 1153, but do not otherwise address those final regulations.

REG–138637–07, page 977.
Proposed regulations under section 330 of title 31 of the U.S. Code amends section 10.34 of Circular 230 relating to standards with respect to tax returns. On May 25, 2007, the President signed into law the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, which amended section 6694(a) of the Code by altering the standards of conduct that must be met to avoid imposition of the penalty for preparing a return that reflects an understatement of liability. The standards with respect to tax returns in section 10.34(a) of the regulations have been amended to reflect the changes to section 6694(a) made by the Small Business and Work Opportunity Act of 2007.

Notice 2007–85, page 965.
This notice provides that a material advisor required to file a completed Form 8918 by October 31, 2007, will be treated as satisfying the disclosure requirement of regulations section 301.6111–3(d) if the material advisor files Form 8264 instead. If Form 8918 is published on or before October 31, 2007, material advisors may choose to use either Form 8918 or Form 8264 for disclosures required to be filed by October 31, 2007. For disclosures required to be filed after October 31, 2007, material advisors must use Form 8918 (or successor form) unless instructed otherwise by the IRS. Reportable transactions disclosed on the Form 8264 should be disclosed in the manner described in Notice 2004–80, 2004–2 C.B. 963, and Notice 2005–22, 2005–1 C.B. 756.

Rev. Proc. 2007–66, page 970.
Cost-of-living adjustments for 2008. This procedure sets forth the cost-of-living adjustments to certain items for 2008 as required under various provisions of the Code and Service guidance. Rev. Procs. 90–12 and 2002–41 modified.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 1.—Tax Imposed

The Service provides inflation adjustments to the tax rate tables for individuals, trusts, and estates for taxable years beginning in 2008. In addition, the amounts of certain reductions allowed against the unearned income of minor children in computing the "kiddie tax" are adjusted. Also adjusted are the amounts used to determine whether a parent may elect to report the "kiddie tax" on the parent's return. See Rev. Proc. 2007-66, page 970.

Section 23.—Adoption Expenses

The Service provides inflation adjustments to the adoption credit allowed for the adoption of a child for taxable years beginning in 2008. The Service also provides inflation adjustments to the value used in calculating the modified adjusted gross income limitations used to determine the amount of adoption credit that is allowed in taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 24.—Child Tax Credit

The Service provides inflation adjustments for the value used in determining the amount of the credit that may be refundable beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 25A.—Hope and Lifetime Learning Credits

The Service provides inflation adjustments for the amount of qualified tuition and related expenses that are taken into account in determining the amount of the Hope Scholarship Credit for taxable years beginning in 2008, and for the amount of a taxpayer's modified adjusted gross income that is taken into account in determining the reduction in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise available. See Rev. Proc. 2007-66, page 970.

Section 25B.—Elective Deferrals and IRA Contributions by Certain Individuals

The Service provides inflation adjustments to the adjusted gross income amounts used to determine the applicable percentage for calculating the qualified retirement savings contributions credit that may be allowed for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 32.—Earned Income

The Service provides inflation adjustments to the limitations on the earned income credit for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

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 November 2007. See Rev. Rul. 2007-66, page 956.

The Service provides inflation adjustments to the amounts used to calculate the State housing credit ceiling used in determining the low-income housing credit for calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 59.—Other Definitions and Special Rules

The Service provides an inflation adjustment to the exemption amount used in computing the alternative minimum tax for a minor child subject to the "kiddie tax" for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 62.—Adjusted Gross Income Defined

The Service provides inflation adjustments to the amounts an eligible employer may pay in 2008 to certain welders and heavy equipment mechanics for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. See Rev. Proc. 2007-66, page 970.

Section 63.—Taxable Income Defined

The Service provides inflation adjustments to the standard deduction amounts (including the limitation in the case of certain dependents, and the additional standard deduction for the aged or blind) for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 68.—Overall Limitation on Itemized Deductions

The Service provides inflation adjustments to the overall limitation on itemized deductions for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 132.—Certain Fringe Benefits

The Service provides inflation adjustments to the limitations on the exclusion of income for a qualified transportation fringe benefit for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 135.—Income From United States Savings Bonds Used to Pay Higher Education Tuition and Fees

The Service provides inflation adjustments to the limitation on the exclusion of income from United States savings bonds for taxpayers who pay qualified higher education expenses for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 137.—Adoption Assistance Programs

The Service provides inflation adjustments to the maximum amount that can be excluded from an employee's gross income in connection with a qualified adoption assistance program for taxable years beginning in 2008. The Service also provides inflation adjustments to the amount used to calculate the modified adjusted gross income limitations used to determine the amount that can be excluded from an employee's gross income for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 146.—Volume Cap

The Service provides inflation adjustments to the amounts used to determine the State ceiling for the volume cap of private activity bonds for calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 148.—Arbitrage

26 CFR 1.148–5: Yield and valuation of investments.

The Service provides inflation adjustments for determining in the calendar year 2008 whether a broker's commission or similar fee with respect to the

acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable. The Service provides an inflation adjustment to the computation credit determined under section 1.148–3(d)(4) of the proposed Income Tax Regulations for bond years ending in 2008. See Rev. Proc. 2007-66, page 970.

Section 151.—Allowance of Deductions for Personal Exemptions

The Service provides inflation adjustments to the personal exemption and to the threshold amounts of adjusted gross income above which the exemption amount phases out for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 170.—Charitable, etc., Contributions and Gifts

The Service provides inflation adjustments to the "insubstantial benefit" guidelines for calendar year 2008. Under the guidelines, a charitable contribution is fully deductible even though the contributor receives "insubstantial benefits" from the charity. See Rev. Proc. 2007-66, page 970.

Section 179.—Election to Expense Certain Depreciable Business Assets

The Service provides inflation adjustments to the aggregate cost of section 179 property that a taxpayer may elect to treat as an expense for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 213.—Medical, Dental, etc., Expenses

The Service provides inflation adjustments to the limitation on the amount of eligible long-term care premiums includible in the term "medical care" for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 219.—Retirement Savings

The Service provides inflation adjustments to the applicable dollar amounts used to calculate the amount by which active participants must reduce the amount allowed as a deduction for qualified retirement contributions for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 220.—Archer MSAs

The Service provides inflation adjustments to the amounts used to determine whether a health plan is a "high deductible health plan" for purposes of determining whether an individual is eligible for a deduction for cash paid to a medical savings account for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 221.—Interest on Education Loans

The Service provides inflation adjustments to the income limitations used to determine the allowable deduction for interest on education loans for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 264.—Certain Amounts Paid in Connection With Insurance Contracts

When a welfare benefit fund is directly or indirectly a beneficiary under a life insurance policy within the meaning of section 264(a) of the Code, what are the limitations on an employer's deduction for contributions to the fund? See Rev. Rul. 2007-65, page 949.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2007. See Rev. Rul. 2007-66, page 956.

Section 330 (31 USC).—Best Practices for Tax Advisors

31 CFR 10.3: Who may practice.

T.D. 9359

DEPARTMENT OF THE TREASURY
Office of the Secretary
31 CFR Part 10

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who practice before the Internal Revenue Service (IRS). The amendments modify the general standards of practice before the IRS.

DATES: *Effective Date:* These regulations are effective September 26, 2007.

Applicability Date: For dates of applicability, see §§10.1(d), 10.2(b), 10.3(i), 10.4(e), 10.5(f), 10.6(p), 10.7(g), 10.22(c), 10.25(e), 10.27(d), 10.29(d), 10.30(e), 10.34(f), 10.50(e), 10.51(b), 10.52(b), 10.53(e), 10.60(d), 10.61(c), 10.62(d), 10.63(f), 10.65(c), 10.68(e), 10.70(c), 10.71(g), 10.72(g), 10.73(g), 10.76(e), 10.77(c), 10.78(d), 10.82(h), 10.90(b), and 10.91.

FOR FURTHER INFORMATION CONTACT: Matthew Cooper at (202) 622–4940.

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals or seek an injunction under section 7408 of the Internal Revenue Code.

The Secretary has published regulations governing the practice of representatives before the IRS in Circular 230 (31 CFR part 10). These regulations authorize the Director of the Office of Professional Responsibility to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under the Office of Professional Responsibility's jurisdiction, to institute proceedings to impose a monetary penalty or to censure, suspend or disbar a practitioner from practice before the IRS, to institute proceedings to disqualify appraisers, and to perform other duties necessary to carry out these functions.

On December 19, 2002, the Treasury Department and the IRS issued an

advance notice of proposed rulemaking (2002 ANPRM) (published in the I.R.B. as Announcement 2003–5, 2003–1 C.B. 397 (67 FR 77724)) requesting comments on amendments to the regulations relating to the Office of Professional Responsibility, unenrolled practice, eligibility for enrollment, sanctions and disciplinary proceedings, contingent fees and confidentiality agreements. On February 8, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 6421) proposed amendments to the regulations (REG–122380–02, 2006–1 C.B. 563) reflecting consideration of the comments received in response to the 2002 ANPRM and reflecting amendments to section 330 of title 31 made by the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (the Jobs Act). A public hearing was held on these proposals on June 21, 2006. Written public comments responding to the proposed regulations were received. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Revisions

Over 30 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection upon request. A number of these comments are summarized in this preamble. The scope of these regulations is limited to practice before the IRS. These regulations do not alter or supplant ethical standards that are otherwise applicable to practitioners.

Definitions—Practice Before the Internal Revenue Service

Section 10.2(a)(4) of the final regulations adopts the proposed change without modification. The final regulations provide that practice before the IRS comprehends all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS. Consistent with the Jobs Act amendment to section 330 of title 31, the final regulations provide that practice includes rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion. Several commentators stated that, notwithstanding the clarification provided by the Jobs Act, the rendition of tax advice is not, in and of itself, an act constituting practice before the IRS. The Treasury Department and IRS conclude that the rendering of written advice is practice before the IRS subject to Circular 230 when it is provided by a practitioner.

Who May Practice

Sections 10.3(a) and (b) of these final regulations clarify that an attorney or CPA is not required to file a Form 2848, *"Power of Attorney and Declaration of Representative",* with the IRS before rendering written advice covered under §10.35 or §10.37. As stated earlier in this preamble, the rendering of this advice is practice before the IRS when provided by a practitioner. Any practice before the IRS other than the rendering of written advice covered under §10.35 or §10.37 continues to require the attorney or CPA to file a Form 2848 with the IRS.

The notice of proposed rulemaking invited comments on a proposal from the Advisory Committee for Tax Exempt/Governmental Entities recommending that individuals who provide technical services to plan sponsors to maintain the tax qualified status of their retirement plans (retirement plan administrators) be authorized to practice provided they demonstrate the competency to do so.

The commentators supported this proposal provided that practice is limited to representing taxpayers with respect to qualified retirement plan issues. In light of the favorable comments and the immediate need for this program, the final regulations under §10.3(e) establish an enrolled retirement plan agent designation, subject to the limitations identified in these regulations.

These regulations generally limit the practice of enrolled retirement plan agents to representation with respect to issues arising under the following employee plan programs: (1) Employee Plans Determination Letter program; (2) Employee Plans Compliance Resolution System; and (3) Employee Plans Master and Prototype and Volume Submitter program. Enrolled retirement plan agents also are permitted to represent taxpayers generally with respect to IRS forms under the 5300 and 5500 series, which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

The Advisory Committee recommended the implementation of procedures for enrollment similar to the current enrolled agent program. The Treasury Department and IRS adopt that recommendation. Enrolled retirement plan agents will be subject to an examination to determine competency, a renewal process and continuing professional education requirements.

Enrollment Procedures

Sections 10.4, 10.5 and 10.6 of the regulations set forth the applicable procedures relating to the enrollment and renewal of enrollment of an enrolled agent. The final regulations adopt the proposed changes in these sections with one modification. Sections 10.5(b) and 10.6(d)(6) are revised to reflect the publishing of T.D. 9288, 2006–44 I.R.B. 794 (71 FR 58740), which establishes user fees for enrollment and renewal of this enrollment in 26 CFR part 300, on October 5, 2006. The procedures in §§10.4, 10.5, and 10.6 also are expanded to include the enrollment and renewal of enrollment for the new category of enrolled retirement plan agents.

Limited Practice Before the IRS

The final regulations do not adopt the provisions governing limited practice as proposed under §10.7. Accordingly, the authorization in §10.7(c)(viii), which allows an individual, who was not otherwise a practitioner, to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination, is retained. An unenrolled return preparer who prepared the taxpayer's return for the year under examination, therefore, may continue to negotiate with the IRS on behalf of that taxpayer during an examination or bind that taxpayer to a position during an examination. The unenrolled return preparer, however, may still not represent a taxpayer before any other office of the IRS, including Collection or Appeals; execute closing agreements, claims for refund, or

waivers; or otherwise represent taxpayers before the IRS unless authorized by §10.7(c)(1)(i) through (vii).

These final regulations do not adopt one commentator's suggestion that payroll reporting agents be allowed to represent taxpayers on a limited basis with respect to Federal tax deposits made by the payroll agents on behalf of their clients. Payroll agents have not demonstrated their qualifications to practice before the IRS as required under section 330(a)(2) of title 31. Payroll agents may assist, however, in the exchange of information with the IRS regarding a taxpayer's return if the taxpayer specifically authorizes the payroll agent to receive confidential tax information from the IRS through the use of a tax information authorization.

Practice by Former Government Employees, Their Partners and Their Associates

The final regulations adopt the proposed amendments to §10.25, with modification. The final regulations modify §10.25(b)(4) to prohibit, for a period of one year after Government employment is ended, former employees from appearing before, or communicating with the intent to influence, an employee of the Treasury Department with respect to a rule in which they were involved in developing. This modification is consistent with the scope of activities covered by 18 U.S.C. 207(a) and 207(c). Commentators generally supported the changes to §10.25 governing the restrictions on the practice of former Government employees, their partners, and their associates with respect to matters that the former Government employees participated in during the course of their Government employment.

Contingent Fees

The final regulations adopt the amendments as proposed in §10.27, with several modifications. Most commentators opposed further limitations on contingent fees under §10.27 and supported the withdrawal or significant modification of this section. Specifically, several commentators stated that the proposed rules were overly broad, improperly interfered with the practitioner-client relationship, and prohibited some small and middle market taxpayers from appropriately requesting refunds. Another group of commentators requested that contingent fees be allowed in situations in which IRS review of the taxpayer's position is probable and the fees do not provide an incentive for abuse (including interest and penalty reviews, private letter rulings, pre-filing agreements, advance pricing agreements, and requests for relief under section 9100).

The Treasury Department and the IRS continue to believe that a rule restricting contingent fees for preparing tax returns supports voluntary compliance with the Federal tax laws by discouraging return positions that exploit the audit selection process. In particular, the Treasury Department and IRS are concerned with the use of contingent fee arrangements in connection with claims for refund or amended returns filed late in the examination process. Balancing these concerns with the appropriate use of contingent fee arrangements in other situations, the final regulations permit a practitioner to charge a contingent fee for services rendered in connection with the IRS examination of, or challenge, to (i) an original tax return, or (ii) an amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination or a written challenge to the original tax return.

Based on comments received, the final regulations also permit the use of contingent fees for interest and penalty reviews because there is no exploitation of the audit lottery in these situations as they are generally completed on a post-examination basis. A practitioner, therefore, may charge a contingent fee for services rendered in connection with a claim for credit or refund filed in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

Finally, the final regulations adopt the amendment in proposed §10.27 which allows a practitioner to charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

To eliminate any adverse impact that the adoption of these final regulations could have on pending or imminent transactions, §10.27(d), as amended, will apply to fee arrangements entered into after March 26, 2008.

Conflicting Interests

The final regulations adopt the proposed amendments found in §10.29 with modification. Under the final regulations, a practitioner is required to obtain consent to the representation from each affected client in writing in order to represent the conflicting interests. The written consent may vary in form. The practitioner may prepare a letter to the client outlining the conflict, as well as the possible implications of the conflict, and submit the letter to the client for the client to countersign. Unlike American Bar Association model rule 1.7, which permits affected clients to provide informed consent verbally if the consent is contemporaneously documented by the practitioner in writing, a verbal consent followed by a confirmatory letter authored by the practitioner will not satisfy §10.29 unless the confirmatory letter is countersigned by the client. A number of commentators opposed the proposed rules on the grounds that it is arguably broader than American Bar Association model rule 1.7. The Treasury Department and IRS, however, conclude that the language in the final regulations is appropriate to protect taxpayer interests and protect settlements from future collateral attack. In order to provide greater flexibility to both the practitioner and client, the Treasury Department and IRS have revised the final regulations to allow the confirmation to be made within a reasonable period after the informed consent, but in no event later than 30 days. It is not the intent of the Treasury Department and IRS to sanction minor technical violations of this final §10.29 when there is little or no injury to a client, the public, or tax administration. For example, if a client fails to return the confirmatory writing to the practitioner, notwithstanding the practitioner's documented good faith effort to obtain the client's signature, the practitioner would not be subject to a sanction or monetary penalty provided the practitioner promptly withdrew from representation upon the failure to receive the client's written confirmation within a reasonable period.

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

Section 10.34 sets forth standards applicable to advice with respect to tax return positions and applicable to preparing or signing returns. These final regulations adopt §10.34 as proposed, with modifications.

On May 25, 2007, the President signed into law the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190), which amended several provisions of the Code to extend the application of the income tax return preparer penalties to all tax return preparers, alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return that reflects an understatement of liability, and increase applicable penalties. On June 11, 2007, the IRS released Notice 2007–54, 2007–27 I.R.B. 12 (see §601.601(d)(2)(ii)(*b*)), providing guidance and transitional relief for the return preparer provisions under section 6694 of the Code, as recently amended. The standards with respect to tax returns under §10.34(a) in these final regulations do not reflect amendments to the Code made by the Small Business and Work Opportunity Tax Act of 2007. Rather, the Treasury Department and the IRS are reserving §10.34(a) and (e) in these final regulations and are simultaneously issuing a notice of proposed rulemaking proposing to amend this part to reflect these recent amendments to the Code.

Several commentators requested that the Treasury Department and the IRS clarify the rule concerning advising a client to submit a document that contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation and a taxpayer's right to offer a good faith challenge to a rule or regulation. The language under §10.34(b)(2)(iii) now provides that a practitioner may not advise a client to submit a document to the IRS that contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document showing a good faith challenge to the rule or regulation.

Sanctions

The final regulations adopt the amendments under §10.50 authorizing the imposition of a monetary penalty in addition to, or in lieu of, any other sanction in accordance with section 822(a) of the Jobs Act. The Treasury Department and the IRS released Notice 2007–39, 2007–20 I.R.B. 1243 (see §601.601(d)(2)(ii)(*b*)), on April 23, 2007, which provides guidance for practitioners, employers, firms, and other entities that may be subject to monetary penalties. In addition, the notice requests comments from the public regarding rules and standards relating to the imposition of the monetary penalty. The regulations also contain conforming amendments to other provisions relating to sanctions, including modifications made by section 1219 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780). The Secretary of Treasury, or delegate, after due notice and opportunity for hearing, may now disqualify an appraiser who violates Circular 230 with or without the assessment of a section 6701 penalty against the appraiser.

Incompetence and Disreputable Conduct

Section 10.51 of the regulations defines disreputable conduct for which a practitioner may be sanctioned. A number of commentators stated that inclusion of "failure to sign a tax return" as a type of disreputable conduct is inappropriate unless the rule clarifies how the practitioner should appropriately handle competing duties, including section 6694 of the Internal Revenue Code or §10.34 of Circular 230. The Treasury Department and the IRS agree that there might be instances in which the failure to sign a return should not lead to discipline. Therefore, §10.51(a)(14) of the final regulations is modified to provide that failure to sign a return is not disreputable conduct if the failure is due to reasonable cause and not due to willful neglect. This change is consistent with the standard applied under section 6695(b) of the Code.

Conferences

The final regulations adopt the proposed rule in §10.61(a) relating to the ability of the Director of the Office of Professional Responsibility to confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. Commentators suggested that the practitioner, employer, firm or other entity, or an appraiser be provided with a right to a conference with the Office of Professional Responsibility. The commentators' suggestion was not adopted in light of the Office of Professional Responsibility's policy that it will not deny a first request for conference made by a practitioner, employer, firm or other entity, or an appraiser regarding allegations of misconduct. The Office of Professional Responsibility may conduct a conference by telephonic means or in person.

Service of Complaint

The final regulations adopt the rules related to service of the complaint as proposed. Proposed regulations in §10.63(d) provide that within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner provided by regulations. Commentators requested that the Director of the Office of Professional Responsibility furnish evidence not solely in support of the complaint, but also additional evidence collected during the course of investigating the conduct of the respondent, including any exculpatory evidence. Although not formalized in the regulations or the Internal Revenue Manual currently, the current practice of the Office of Professional Responsibility is to provide to the respondent upon request a copy of what informally is understood as the "OPR administrative file" prior to the filing of a complaint under §10.60. In general, the OPR administrative file contains material that the Office of Professional Responsibility considered in the course of determining whether to issue a final complaint. Some material related to the case, including but not limited to legal memoranda provided to the Office of Professional Responsibility by the Office of Chief Counsel will not be included in the OPR administrative file. The Treasury Department and IRS intend for the practice of releasing the OPR administrative file upon request to continue. This practice addresses in part commentators' concern that documents included in the investigatory file, including releasable

exculpatory evidence, be provided to the respondent. The IRS expects to issue Internal Revenue Manual provisions in the near future pertaining to the Office of Professional Responsibility's procedures for investigations. It is expected that those provisions will formalize the definition of the OPR administrative file and the current practice of providing it to the respondent upon request. In order to help ensure that a respondent has access to the evidence in support of OPR's position, as well as other evidence included in the investigatory file, the Treasury Department and IRS are considering ways in which the existing practice relating to the OPR administrative file can be formalized, and will consider addressing this issue in future published guidance.

Supplemental Charges

The final regulations adopt the rules on supplemental charges as proposed with minor revisions. Section 10.65 of the regulations provides that the Director of the Office of Professional Responsibility may file supplemental charges against a practitioner or appraiser by amending the complaint to reflect the additional charges if the practitioner or appraiser is given notice and an opportunity to prepare a defense to the supplemental charges.

Discovery, Hearings, and Publicity of Proceedings

The final regulations adopt the proposed changes to §§10.68, 10.71, and 10.72(a) through (c) without modification. Most commentators supported expanding the use of discovery in disciplinary proceedings. Most commentators also supported providing further procedural protections such as a guarantee of the right to cross-examine witnesses. Section 10.71(f) of the final regulations provides that no discovery other than that specifically provided in that section is permitted.

Section 10.72(d) regarding the publicity of disciplinary proceedings is adopted with modification. These final regulations provide that reports and decisions of the ALJ and appellate authority will be available for public inspection within 30 days after the agency's decision becomes final, subject to procedures to protect the identities of any third-party taxpayers. This publicity will provide greater transparency to the disciplinary process.

Although most commentators do not oppose disclosure if a sanction is imposed, commentators raised concerns about disclosure before the Secretary's decision is final. The concerns are that premature public disclosure will unfairly tarnish practitioners' reputations and that IRS proceedings lack the independent review and system of checks and balances found in State bar disciplinary proceedings. Several commentators specifically requested that an independent party outside of the IRS make a probable cause determination prior to disclosure.

Attorneys in the Office of Professional Responsibility review every allegation received by the office. If an allegation warrants investigation, the practitioner is provided with an opportunity to confer with the Office of Professional Responsibility regarding the allegation against the practitioner. After the conference, the Office of Professional Responsibility may close their investigation without action, or, if a violation of Circular 230 has occurred, attempt to reach an agreement with the practitioner on an appropriate sanction. If an agreement is not reached, the Office of Professional Responsibility sends the case to the Office of the Associate Chief Counsel (General Legal Services) for further action. An attorney in the Office of the Associate Chief Counsel (General Legal Services) thoroughly reviews the case file, and, if a violation of Circular 230 has occurred, the practitioner is offered one more opportunity to discuss the merits and settlement of the case before a formal complaint is filed. Only after the case has been reviewed by the Office of the Associate Chief Counsel (General Legal Services) and the practitioner has been offered this second opportunity to discuss and settle the case is a formal complaint filed.

In light of the concerns raised by commentators that premature public disclosure could potentially tarnish practitioners' reputations, the final regulations require that disclosure of the disciplinary decision be delayed until after the decision becomes final. This modification ensures that there is no potential premature tarnishing of a practitioner's reputation.

Decision of Administrative Law Judge

The final regulations do not adopt the proposed rules under §§10.77 and 10.78, which provided for a more streamlined process for deciding appeals of the Administrative Law Judges' decisions. The intent of this streamlined process was to provide a more timely process for deciding appeals. Numerous concerns were raised with the streamlined process, and, after consideration of the concerns, these final regulations keep the current rules under §§10.77 and 10.78 in effect. But to achieve a more timely review of any appeal, the regulations now provide that the Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal. The failure of the Secretary of the Treasury, or delegate, to meet this timeframe, as well as any other discretionary timeframe in subpart D, does not create a right of action for the practitioner.

Expedited Suspension

The final regulations adopt, with modification, the proposed amendments to §10.82. Final §10.82 expands the authority of the Office of Professional Responsibility to institute expedited suspension proceedings against practitioners who advance frivolous or obstructionist positions (after a sanction by a court of competent jurisdiction). The Treasury Department and the IRS continue to believe that the expedited suspension process is equitable and appropriate in the limited listed circumstances. The Office of Professional Responsibility completes an investigation of the issues prior to instituting an expedited proceeding and practitioners are entitled to a conference with the Office of Professional Responsibility upon request.

Several commentators expressed concern that expanding the authorized use of the expedited procedures to compliance cases further erodes a practitioner's rights to due process. After further consideration of this issue, final §10.82 does not expand the authority of the Office of Professional Responsibility to institute expedited suspension proceedings against practitioners who are not in compliance with their own Federal tax obligations (failure to file or pay a tax in 3 of the preceding 5 years, or in 4 of the preceding 7 periods).

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.), that these regulations will not have a significant economic impact on a substantial number of small entities. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations merely clarify those obligations in response to public comments, replace certain terminology to conform with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), make modifications to reflect amendments to section 330 of title 31 made by the Jobs Act, and make other modifications to reflect concerns about greater independence, transparency and due process. These regulations will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. A regulatory flexibility analysis, therefore, is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 31 CFR part 10 is amended to read as follows:

PART 10 — PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for 31 CFR part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et. seq.;* 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

Par. 2. In Part 10, remove the language "Director of Practice" where it appears and add, in its place, the language "Director of the Office of Professional Responsibility" in each of the following sections and paragraphs:

Section 10.5(c), (d) and (e);

Section 10.6(a)(5), (b), (g)(2)(iii), (g)(2)(iv), (g)(4), (j)(1), (j)(2), (j)(4), (k)(1), (k)(2) and (n);

Section 10.7(c)(2)(iii) and (d);

Section 10.20(b) heading, (b) and (c);

Section 10.60(b);

Section 10.63(c) heading, (c);

Section 10.64(a);

Section 10.66;

Section 10.69(a)(1) and (b);

Section 10.73(a);

Section 10.79(a), (b), (c) and (d);

Section 10.80;

Section 10.81;

Section 10.82(a), (c) introductory text, (c)(3), (d), (e), (f)(1) and (g).

Par. 3. Section 10.1 is revised to read as follows:

§10.1 Director of the Office of Professional Responsibility.

(a) *Establishment of office*. The Office of Professional Responsibility is established in the Internal Revenue Service. The Director of the Office of Professional Responsibility is appointed by the Secretary of the Treasury, or delegate.

(b) *Duties*. The Director of the Office of Professional Responsibility acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under the Director's jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to practitioners (and employers, firms or other entities, if applicable) and appraisers; and performs other duties as are necessary or appropriate to carry out the functions under this part or as are otherwise prescribed by the Secretary of the Treasury, or delegate.

(c) *Acting Director of the Office of Professional Responsibility*. The Secretary of the Treasury, or delegate, will designate an officer or employee of the Treasury Department to act as Director of the Office of Professional Responsibility in the absence of the Director or during a vacancy in that office.

(d) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 4. Section 10.2 is revised to read as follows:

§10.2 Definitions.

(a) As used in this part, except where the text provides otherwise—

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d) or (e) of §10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(b) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 5. Section 10.3 is amended by:

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

(2) Redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h) respectively.

(3) Adding new paragraphs (e) and (i).

The revisions and additions read as follows:

§10.3 Who may practice.

(a) *Attorneys*. Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.35 or §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(b) *Certified public accountants*. Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.35 or §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

* * * * *

(e) *Enrolled Retirement Plan Agents*—(1) Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as an enrolled retirement plan agent is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, enrolled retirement plan agents are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

* * * * *

(i) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 6. Section 10.4 is revised to read as follows:

§10.4 Eligibility for enrollment as enrolled agent or enrolled retirement plan agent.

(a) *Enrollment as an enrolled agent upon examination*. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination*. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled retirement plan agent to an applicant who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(c) *Enrollment of former Internal Revenue Service employees*. The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of the Office of Professional Responsibility on a form supplied by the Director of the Office of Professional Responsibility and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of the Office of Professional Responsibility, will provide the Director of the Office of Professional Responsibility with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan

agent based on an applicant's former employment with the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (b)(5) and (b)(6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least 3 of which occurred within the 5 years preceding the date of application, is the equivalent of 5 years continuous employment.

(d) *Natural persons*. Enrollment to practice may be granted only to natural persons.

(e) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 7. Section 10.5 is amended by revising the section heading and paragraphs (a) and (b) and adding paragraph (f) to read as follows:

§10.5 Application for enrollment as an enrolled agent or enrolled retirement plan agent.

(a) *Form; address*. An applicant for enrollment as an enrolled agent or enrolled retirement plan agent must apply as required by forms or procedures established and published by the Office of Professional Responsibility, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled and is the address to which all correspondence concerning enrollment will be sent.

(b) *Fee*. A reasonable nonrefundable fee will be charged for each application for enrollment as an enrolled agent filed with the Director of the Office of Professional Responsibility in accordance with 26 CFR 300.5. A reasonable nonrefundable fee will be charged for each application for enrollment as an enrolled retirement plan agent filed with the Director of the Office of Professional Responsibility.

* * * * *

(f) *Effective/applicability date*. This section is applicable to enrollment applications received on or after September 26, 2007.

Par. 8. Section 10.6 is amended by:

1. Revising the section heading.

2. Removing paragraph (a).

3. Redesignating paragraph (c) as paragraph (a).

4. Adding new paragraphs (c) and (p).

5. Revising paragraphs (d) introductory text, (d)(4), (d)(5), (d)(6), (d)(7), (e), (f)(1), (f)(2)(iv)(A), (g)(5), (k)(4), (k)(7) and (l).

The revisions and additions read as follows:

§10.6 Enrollment as an enrolled agent or enrolled retirement plan agent.

* * * * *

(c) *Change of address*. An enrolled agent or enrolled retirement plan agent must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility. This notification must include the enrolled agent's or enrolled retirement plan agent's name, prior address, new address, social security number or tax identification number and the date.

(d) *Renewal of enrollment*. To maintain active enrollment to practice before the Internal Revenue Service, each individual is required to have the enrollment renewed. Failure to receive notification from the Director of the Office of Professional Responsibility of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

* * * * *

(4) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(1), (2) or (3) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment. Applications for renewal as an enrolled retirement plan agent will be required of all enrolled retirement plan agents between April 1 and June 30 of every third year period subsequent to their initial enrollment.

(5) The Director of the Office of Professional Responsibility will notify the individual of the renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee will be charged for each application for renewal of enrollment as an enrolled agent filed with the Director of the Office of Professional Responsibility in accordance with 26 CFR 300.6. A reasonable nonrefundable fee will be charged for each application for renewal of enrollment as an enrolled retirement plan agent filed with the Director of the Office of Professional Responsibility.

(7) Forms required for renewal may be obtained by sending a written request to the Director of the Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or from such other source as the Director of the Office of Professional Responsibility will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(*b*)) and on the Internal Revenue Service webpage (*www.irs.gov*).

(e) *Condition for renewal: continuing professional education*. In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of the Office of Professional Responsibility, that he or she has satisfied the following continuing professional education requirements.

(1) *Definitions*. For purposes of this section—

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) The *effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment effective after December 31, 2006*—(i) *Requirements for enrollment cycle*. A minimum of 72 hours of continuing education credit must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year*. A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle*—(A) *In general*. Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete 2 hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics*. An individual who receives initial enrollment during an enrollment cycle must complete 2 hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(f) *Qualifying continuing education*—(1) *General*. (i) *Enrolled agents*. To qualify for continuing education credit for an enrolled agent, a course of learning must—

(A) Be a qualifying program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax preparation software and taxation or ethics);

(B) Be a qualifying program consistent with the Internal Revenue Code and effective tax administration; and

(C) Be sponsored by a qualifying sponsor.

(ii) *Enrolled retirement plan agents*. To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must—

(i) Be a qualifying program designed to enhance professional knowledge in qualified retirement plan matters;

(ii) Be a qualifying program consistent with the Internal Revenue Code and effective tax administration; and

(iii) Be sponsored by a qualifying sponsor.

(2) * * *

(iv) *Credit for published articles, books, etc*. (A) For enrolled agents, continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, tax preparation software, and taxation or ethics, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration. For enrolled retirement plan agents, continuing education credit will be awarded for publications on qualified retirement plan matters, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice as an enrolled retirement plan agent before the Internal Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration.

* * * * *

(g) * * *

(5) *Sponsor renewal*. (i) *In general*. A sponsor maintains its status as a qualified sponsor during the sponsor enrollment cycle.

(ii) *Renewal period*. Each sponsor must file an application to renew its status as a qualified sponsor between May 1 and July 31, 2008. Thereafter, applications for renewal will be required between May 1 and July 31 of every subsequent third year.

(iii) *Effective date of renewal*. The effective date of renewal is the first day of the third month following the close of the renewal period.

(iv) *Sponsor enrollment cycle*. The sponsor enrollment cycle is the three successive calendar years preceding the effective date of renewal.

* * * * *

(k) * * *

(4) Individuals placed in inactive enrollment status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are enrolled to practice before the Internal Revenue Service, or use the terms enrolled agent or enrolled retirement plan agent, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

* * * * *

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

(l) *Inactive retirement status*. An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

* * * * *

(p) *Effective/applicability date*. This section is applicable to enrollment effective on or after September 26, 2007.

Par. 9. Section 10.7 is amended by:

1. Revising paragraph (c)(2)(ii).

2. And adding paragraph (g).

The revisions and additions read as follows:

§10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

* * * * *

(c) * * *

(2) * * *

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under §10.50.

* * * * *

(g) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 10. Section 10.22 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§10.22 Diligence as to accuracy.

* * * * *

(b) *Reliance on others*. Except as provided in §§10.34, 10.35, and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 11. Section 10.25 is revised to read as follows:

§10.25 Practice by former government employees, their partners and their associates.

(a) *Definitions*. For purposes of this section—

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special Government employee as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and revenue procedures published in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(*b*)).

(b) *General rules*—(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may, subsequent to Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after Government employment is ended, communicate with or appear before, with the intent to influence, any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated in, or for which, within a period of one year prior to the termination of Government employment, the former government employee had official responsibility. This paragraph (b)(4) does not, however, preclude any former employee from appearing on one's own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific parties involving the application or interpretation of a rule with respect to that particular matter, provided that the representation is otherwise consistent with the other provisions of this section and the former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation*—(1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the Director of the Office of Professional Responsibility.

(d) *Pending representation*. The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 12. Section 10.27 is revised to read as follows:

§10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

(b) *Contingent fees*—(1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to—

(i) An original tax return; or

(ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

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

(1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective/applicability date.* This section is applicable for fee arrangements entered into after March 26, 2008.

Par. 13. Section 10.29 is revised to read as follows:

§10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if—

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if—

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

Par. 14. Section 10.30(a)(1) is revised and paragraph (e) is added to read as follows:

§10.30 Solicitation.

(a) *Advertising and solicitation restrictions.*

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents or enrolled retirement plan agents, in describing their professional designation, may not utilize the term of art "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent."

* * * * *

(e) *Effective/applicability date.* This section is applicable on September 26, 2007.

Par. 15. Section 10.34 is revised to read as follows:

§10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) [Reserved].

(b) *Documents, affidavits and other papers*—(1) A practitioner may not advise a

client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service—

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

(c) *Advising clients on potential penalties*—(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to—

(i) A position taken on a tax return if—

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients*. A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) [Reserved].

(f) *Effective/applicability date*. Section 10.34 is applicable to tax returns, documents, affidavits and other papers filed on or after September 26, 2007.

Par. 16. In §10.35(b)(1) remove the language "§10.2(e)" and add the language "§10.2(a)(5)" in its place.

Par. 17. Section 10.50 is revised to read as follows:

§10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar*. The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of §10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of §10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify*. The Secretary of Treasury, or delegate, after due notice and opportunity for hearing, may disqualify any appraiser for a violation of these rules as applicable to appraisers.

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Director of the Office of Professional Responsibility pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

(c) *Authority to impose monetary penalty*—(1) *In general*. (i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of such conduct.

(2) *Amount of penalty*. The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions*. Subject to paragraph (c)(2) of this section—

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to or in lieu of penalties imposed under paragraph (c)(1)(i) of this section.

(d) *Sanctions to be imposed*. The sanctions imposed by this section shall take into account all relevant facts and circumstances.

(e) *Effective/applicability date*. This section is applicable to conduct occurring on or after September 26, 2007, except paragraph (c) which applies to prohibited conduct that occurs after October 22, 2004.

Par. 18. Section 10.51 is revised to read as follows:

§10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct*. Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to—

(1) Conviction of any criminal offense under the Federal tax laws.

(2) Conviction of any criminal offense involving dishonesty or breach of trust.

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage, or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false or circulating or publishing malicious or libelous matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(13) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.

(b) *Effective/applicability date*. This section is applicable to conduct occurring on or after September 26, 2007.

Par. 19. Section 10.52 is revised to read as follows:

§10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under §10.50 if the practitioner—

(1) Willfully violates any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(a)(13)) violates §§10.34, 10.35, 10.36 or 10.37.

(b) *Effective/applicability date*. This section is applicable to conduct occurring on or after September 26, 2007.

Par. 20. Section 10.53 is revised to read as follows:

§10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service*. If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Director of the Office of Professional Responsibility of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests.

(b) *Other persons*. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the Director of the Office of Professional Responsibility or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a

written report of the suspected violation to the Director of the Office of Professional Responsibility.

(c) *Destruction of report*. No report made under paragraph (a) or (b) of this section shall be maintained by the Director of the Office of Professional Responsibility unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of the Office of Professional Responsibility must destroy the reports as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D*. The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the Director of the Office of Professional Responsibility's use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 21. Section 10.60 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with §10.62, institute a proceeding for a sanction described in §10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

* * * * *

(d) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 22. Section 10.61 is revised to read as follows:

§10.61 Conferences.

(a) *In general*. The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction*—(1) *In general*. In lieu of a proceeding being instituted or continued under §10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under §10.50.

(2) *Discretion; acceptance or declination*. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of this section. In any declination, the Director of the Office of Professional Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 23. Section 10.62 is revised to read as follows:

§10.62 Contents of complaint.

(a) *Charges*. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of the Office of Professional Responsibility or a person representing the Director of the Office of Professional Responsibility under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction*. The complaint must specify the sanction sought by the Director of the Office of Professional Responsiblity against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer*. The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date*. This section is applicable to complaints brought on or after September 26, 2007.

Par. 24. Section 10.63 is amended by:

1. Revising the section heading and paragraph (a)(4).

2. Redesignating paragraph (d) as paragraph (e).

3. Adding new paragraphs (d) and (f).

The revision and additions read as follows:

§10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) * * *

(4) For purposes of this section, *respondent* means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity, or appraiser.

* * * * *

(d) *Service of evidence in support of complaint*. Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

* * * * *

(f) *Effective/applicability date*. This section is applicable to complaints brought on or after September 26, 2007.

Par. 25. Section 10.65 is revised to read as follows:

§10.65 Supplemental charges.

(a) *In general*. The Director of the Office of Professional Responsibility may

file supplemental charges, by amending the complaint with the permission of the Administrative Law Judge, against the respondent, if, for example—

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

(b) *Hearing*. The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 26. Section 10.68 is revised to read as follows:

§10.68 Motions and requests.

(a) *Motions*—(1) *In general*. At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication*. Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non-moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith*. A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response*. Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument*—(1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders*. The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 27. Section 10.70 is amended by revising paragraphs (a) and (b)(6) and adding paragraph (c) to read as follows:

§10.70 Administrative Law Judge.

(a) *Appointment*. Proceedings on complaints for the sanction (as described in §10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) * * *

(6) Take or authorize the taking of depositions or answers to requests for admission;

* * * * *

(c) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 28(a). Section 10.73 is removed.

Par. 28(b). Sections 10.71 and 10.72 are redesignated as §§10.72 and 10.73, respectively.

Par. 29. New §10.71 is added to read as follows:

§10.71 Discovery.

(a) *In general*. Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of §10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframes for filing a request. A request for discovery, and objections, must be filed in accordance with §10.68. In response to a request for discovery, the Administrative Law Judge may order—

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

(b) *Depositions upon oral examination*—(1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matters.

(2) In ordering a deposition, the Administrative Law Judge will require reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

(3) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission*. Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the Administrative Law Judge.

(d) *Limitations*. Discovery shall not be authorized if—

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) The material sought is privileged or otherwise protected from disclosure by law;

(7) The material sought relates to mental impressions, conclusions, or legal theories of any party, attorney, or other representative, of a party prepared in anticipation of a proceeding; or

(8) The material sought is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply*. Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) *Other discovery*. No discovery other than that specifically provided for in this section is permitted.

(g) *Effective/applicability date*. This section is applicable to proceedings initiated on or after September 26, 2007.

Par. 30. Newly designated §10.72 is amended by:

1. Redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f), respectively.

2. Revising paragraph (a) and newly designated paragraph (d).

3. Adding new paragraphs (b), (c) and (g).

The additions and revisions read as follows:

§10.72 Hearings.

(a) *In general*—(1) *Presiding officer*. An Administrative Law Judge will preside at the hearing on a complaint filed under §10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing*. Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements*. (i) Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to 5 U.S.C. 556.

(iii) A hearing in a proceeding requested under §10.82(g) will be conducted *de novo*.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless—

(A) The Director of the Office of Professional Responsibility withdraws the complaint;

(B) A decision is issued by default pursuant to §10.64(d);

(C) A decision is issued under §10.82(e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under §10.68(d) or rules on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination*. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum*. Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing—

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity*—(1) *In general*. All reports and decisions of the Secretary of the Treasury, or delegate, including any reports and decisions of the Administrative Law Judge, under this Subpart D are, subject to the protective measures in paragraph (d)(4) of this section, public and open to inspection within 30 days after the agency's decision becomes final.

(2) *Request for additional publicity*. The Administrative Law Judge may grant a request by a practitioner or appraiser that all the pleadings and evidence of the disciplinary proceeding be made available for inspection where the parties stipulate in advance to adopt the protective measures in paragraph (d)(4) of this section.

(3) *Returns and return information*—(i) *Disclosure to practitioner or appraiser*. Pursuant to section 6103(l)(4) of the Internal Revenue Code, the Secretary of the Treasury, or delegate, may disclose returns and return information to any practitioner or appraiser, or to the authorized representative of the practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under this subpart D, but solely for use in the action or proceeding and only to the extent that the Secretary of the Treasury, or delegate, determines that the returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of the Treasury*.

Pursuant to section 6103(l)(4)(B) of the Internal Revenue Code, the Secretary of the Treasury, or delegate, may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under this subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information*. Recipients of returns and return information under this paragraph (d)(3) may use the returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information*. When providing returns or return information to the practitioner or appraiser, or authorized representative, the Secretary of the Treasury, or delegate, will—

(A) Redact identifying information of any third party taxpayers and replace it with a code;

(B) Provide a key to the coded information; and

(C) Notify the practitioner or appraiser, or authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under section 7431 of the Internal Revenue Code, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(3) is also a violation of this part.

(4) *Protective measures*—(i) *Mandatory protective order.* If redaction of names, addresses, and other identifying information of third party taxpayers may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that the identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.* (A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following—

(*1*) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(*2*) That a trade secret or other information not be disclosed, or be disclosed only in a designated way.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, the Administrative Law Judge may, on such terms or conditions as the Administrative Law Judge deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Public inspection of documents.* The Secretary of the Treasury, or delegate, shall ensure that all names, addresses or other identifying details of third party taxpayers are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to public inspection of such documents.

* * * * *

(g) *Effective/applicability date.* This section is applicable on September 26, 2007.

Par. 31. Newly designated §10.73 is amended by:

1. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

2. Revising paragraph (b) and newly designated paragraph (d).

3. Adding new paragraphs (c) and (g).

The revisions and additions read as follows:

§10.73 Evidence.

* * * * *

(b) *Depositions.* The deposition of any witness taken pursuant to §10.71 may be admitted into evidence in any proceeding instituted under §10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under §10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the pending action only and is not an admission by a party for any other purpose, nor may it be used against a party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

* * * * *

(g) *Effective/applicability date.* This section is applicable on September 26, 2007.

Par. 32. Section 10.76 is revised to read as follows:

§10.76 Decision of Administrative Law Judge.

(a) *In general*— (1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in §10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Director of the Office of Professional Responsibility, with a copy to the Director's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or del-

egate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

(e) *Effective/applicability date*. This section is applicable to proceedings initiated on or after September 26, 2007.

Par. 33. Section 10.77 is revised to read as follows:

§10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal*. Any party to the proceeding under this subpart D may file an appeal of the decision of the Administrative Law Judge with the Secretary of the Treasury, or delegate. The appeal must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal*. The appeal and brief must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the appeal to the Secretary of the Treasury or delegate who decides appeals. A copy of the appeal for review must be sent to any non-appealing party. If the Director of the Office of Professional Responsibility files an appeal, he or she will provide a copy of the appeal and certify to the respondent that the appeal has been filed.

(c) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 34. Section 10.78 is revised to read as follows:

§10.78 Decision on review.

(a) *Decision on review*. On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

(b) *Standard of review*. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed *de novo*. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) *Copy of decision on review*. The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the Director of the Office of Professional Responsibility and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 35. Section 10.82 is amended by:

1. Revising the section heading and paragraph (b).

2. Adding paragraph (h).

The revisions and addition read as follows:

§10.82 Expedited suspension.

* * * * *

(b) *To whom applicable*. This section applies to any practitioner who, within five years of the date a complaint instituting a proceeding under this section is served:

(1) Has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(a)(10).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to §10.79(d).

(4) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to any taxpayer's tax liability or relating to the practitioner's own tax liability, for—

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

* * * * *

(h) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 36. Section 10.90 is revised to read as follows:

§10.90 Records.

(a) *Roster*. The Director of the Office of Professional Responsibility will maintain, and may make available for public inspection in the time and manner prescribed by the Secretary of the Treasury, or delegate, rosters of—

(1) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under §10.61;

(2) Individuals (and employers, firms or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed;

(3) Disqualified appraisers; and

(4) Enrolled retirement plan agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under §10.61.

(b) *Other records*. Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable law.

(b) *Effective/applicability date*. This section is applicable on September 26, 2007.

Par. 37. Section 10.91 is revised to read as follows:

§10.91 Saving provision.

Any proceeding instituted under this part prior to July 26, 2002, for which a final decision has not been reached or for which judicial review is still available will not be affected by these revisions. Any proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, will apply subpart D and E or this part as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.

Linda E. Stiff,
Acting Deputy Commissioner for Services and Enforcement.

Approved September 19, 2007.

Robert Hoyt,
General Counsel,
Office of the Secretary.

(Filed by the Office of the Federal Register on September 25, 2007, 8:45 a.m., and published in the issue of the Federal Register for September 26, 2007, 72 F.R. 54540)

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 November 2007. See Rev. Rul. 2007-66, page 956.

Section 408A.—Roth IRAs

The Service provides inflation adjustments to the applicable dollar amounts used to calculate the amount by which a taxpayer must reduce the maximum amount allowed as contributions to Roth IRAs for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2007. See Rev. Rul. 2007-66, page 956.

Section 419.—Treatment of Funded Welfare Benefit Plans

26 CFR § 1.419–1T: Treatment of welfare benefit funds.
(Also, §§ 264, 7805; § 301.7805–1.)

Employer's deduction for contributions; limitation on employer's deduction; welfare benefit funds. This ruling discusses whether an employer's deductions for contributions to a welfare benefit fund under section 419 of the Code are "qualified direct costs" with respect to premiums paid by a welfare benefit fund on cash value life insurance policies.

Rev. Rul. 2007–65

ISSUES

(1) For purposes of determining the limitations on an employer's deduction for contributions to a welfare benefit fund under §§ 419 and 419A of the Internal Revenue Code (the "Code"), are premiums on cash value life insurance policies paid by the fund included in the fund's qualified direct cost if the benefit provided through the fund is life insurance coverage?

(2) For purposes of determining the limitations on an employer's deduction for contributions to a welfare benefit fund under §§ 419 and 419A, are premiums on cash value life insurance policies paid by the fund included in the fund's qualified direct cost if the benefit provided through the fund is other than life insurance coverage?

FACTS

Situation 1. Employer C maintains an employer-financed life insurance plan for the benefit of its employees. The life insurance provided to C's employees under the plan satisfies the definition of group-term life insurance for purposes of § 79 and is provided through a taxable trust. The plan does not provide permanent benefits within the meaning of § 1.79–0 of the Income Tax Regulations. The plan, which is not maintained pursuant to a collective bargaining agreement, provides that C will provide a stated amount of life insurance coverage for each employee while the employee is actively employed by C. No other benefits are provided to the employees under the plan or from the trust. The trustee has obtained a cash value life insurance policy on the life of each employee, where the amount of the death benefit under each policy equals the amount of the death benefit payable under the plan to the employee's beneficiary and the death benefit proceeds under each policy are payable to the beneficiary designated by the employee. The trust has retained all other policy rights. During the year, C contributes to the trust an amount equal to the aggregate premiums due on the life insurance policies payable by the trustee. The trust has no administrative expenses and no after-tax income (within the meaning of § 419(c)(4)) for the year. The taxable year for both C and the trust is the calendar year, and C uses the accrual method of accounting.

Situation 2. The facts are the same as in *Situation 1* except that, instead of group-term life insurance, the plan provides disability benefits to C's employees if they become disabled while they are actively employed by C. The trust is the owner and the named beneficiary of the life insurance policies held by the trust, which are intended to accumulate value to pay the disability benefits. The employees have no interest in the life insurance policies. During the taxable year, the trust distributed $x of disability benefits with respect to claims incurred during the year (and there were no benefits paid during the year with respect to any claims incurred in prior years).

LAW

Section 419 prescribes limits on the amount of deductions for contributions paid or accrued by an employer to a welfare benefit fund. The term "welfare benefit fund" is defined in § 419(e)(1) to mean any fund that is part of a plan of an employer, and through which the employer provides welfare benefits to employees or their beneficiaries. Section 419(e)(2) defines "welfare benefit" as any benefit other than a benefit with respect to which § 83(h), § 404 (determined without regard to § 404(b)(2)), or § 404A applies. Under § 419(e)(3), a "fund" is any organization described in § 501(c)(7), (9), (17) or (20); any trust, corporation, or other organization not exempt from tax imposed by chapter 1, subtitle A of the Code; or, to the extent provided in regulations, any account held for an employer by

any person (other than amounts described in § 419(e)(4)).

Under § 419(a) and (b), an employer's contributions to a welfare benefit fund are deductible in the taxable year in which paid but only if they would otherwise be deductible under Chapter 1 of the Code, and the amount of the deduction is limited to the welfare benefit fund's qualified cost for the taxable year. Pursuant to § 419(d), if the amount of the contributions paid by the employer during any taxable year to a welfare benefit fund exceeds this deduction limit, the excess is treated as an amount paid by the employer to the fund during the succeeding taxable year.

The term "qualified cost" is defined in § 419(c)(1) to generally mean, with respect to any taxable year, the sum of (i) the qualified direct cost for that taxable year, and (ii) any addition to a qualified asset account for the taxable year (but only to the extent the addition does not exceed the limit on the additions to the account under § 419A(b)). Under § 419(c)(2), the fund's qualified cost must be reduced by the fund's after-tax income for the taxable year (as defined in § 419(c)(4)). Under § 419(c)(5), no item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

The term "qualified direct cost" is generally defined in § 419(c)(3)(A) to mean, with respect to any taxable year, the aggregate amount (including administrative expenses) that would have been allowable as a deduction to the employer with respect to the benefits provided during the year if (i) such benefits were provided directly by the employer, and (ii) the employer used the cash receipts and disbursements method of accounting. Under § 419(c)(3)(B), a benefit is treated for this purpose as provided when that benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for a provision of chapter 1 of the Code excluding the benefit from gross income).

The term "qualified asset account" is defined in § 419A(a) to mean any account consisting of assets set aside to provide for the payment of disability benefits, medical benefits, supplemental unemployment compensation benefits or severance pay benefits, or life insurance benefits. Pursuant to § 419A(b), no additions to any qualified asset account may be taken into account under § 419(c)(1)(B) to the extent that the addition would result in the amount in the account exceeding the account limit specified in § 419A(c).

Section 419A(c)(1) provides that the account limit for any qualified asset account for any taxable year is generally the amount reasonably and actuarially necessary to fund claims incurred but unpaid (as of the close of the taxable year) for benefits referred to in § 419A(a), and administrative costs with respect to those claims. Section 419A(c)(2) allows an additional limited reserve for certain post-retirement medical and post-retirement life insurance benefits to be provided to covered employees. Section 419A(c)(3) through (c)(6) and § 419A(d) and (e) specify additional rules with regard to the account limit under §419A(c).

Under Q&A–6(a) of § 1.419–1T of the Temporary Income Tax Regulations, the qualified direct cost of a welfare benefit fund for any taxable year of the fund is the aggregate amount that would have been allowable as a deduction to the employer for benefits provided by the fund during the year (including insurance coverage for the year) if (i) those benefits were provided directly by the employer and (ii) the employer used the cash receipts and disbursements method of accounting and had the same taxable year as the fund. In this regard, a benefit is treated as provided when the benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for a provision excluding it from gross income). Under Q&A–6(c) of § 1.419–1T, the qualified direct cost of a welfare benefit fund does not include expenditures by the fund that would not have been deductible if they had been made directly by the employer. As an example of such an expenditure, the regulations provide that a fund's purchase of land for an employee recreational facility will not be treated as a qualified direct cost, noting that the purchase would not have been deductible under § 263 if made directly by the employer. Q&A–6(c) of § 1.419–1T also refers to §§ 264 and 274.

In its explanation of "qualified direct cost," the legislative history of § 419 states that the rules in other Code sections that generally limit deductions if an employer provides the plan benefits directly are "passed through" to limit deductions with respect to fund contributions. An example of this limitation is given for fund expenditures for insurance that would not have been deductible under § 264 if made directly by the employer. "[T]hus, no deductions are available to the employer with respect to such expenditures." *H.R. Rep. No. 432*, 98th Cong., 2d Sess. at 1277–78 (1984).

Section 264(a)(1) provides that no deduction is allowable for premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

Pursuant to § 61(a)(1), except as otherwise provided, gross income means all income from whatever source derived, including compensation for services, including fees, commissions, fringe benefits, and similar items. Gross income includes the value of any economic benefit conferred on an employee by his or her employer, whatever the form or mode by which it is effected. *Commissioner v. Smith*, 324 U.S. 177, 181 (1945), 1945 C.B. 49, 51. Accordingly, if an employer pays premiums on a life insurance policy that it owns and the death benefits are payable to an employee's beneficiaries, the value of the economic benefits provided to the employee, including the cost of current life insurance protection, is includible in the employee's gross income annually. This is true even if the employee only has rights with respect to all or a portion of the death proceeds and the employer retains all other rights and benefits under the policy. *See, e.g., Genshaft v. Commissioner*, 64 T.C. 282, 290 (1975), acq., 1976–2 C.B. 2; *Frost v. Commissioner*, 52 T.C. 89, 96 (1969). Special rules apply under § 1.61–22 for a split-dollar life insurance arrangement, as that term is defined in § 1.61–22(b), that is entered into or materially modified after September 17, 2003.

Section 79 generally provides an exclusion from an employee's gross income for the cost of group-term life insurance on the employee's life provided under a policy carried directly or indirectly by his or her employer (or employers), but only to the extent that the cost does not exceed the cost of $50,000 of coverage.

ANALYSIS

In *Situation 1*, the trust is a welfare benefit fund within the meaning of § 419(e). The qualified direct cost of the trust for the year involved is the aggregate amount (including administrative expenses) that would have been allowable as a deduction to C for the benefit provided by the trust during the year (current life insurance coverage) if the life insurance coverage had been provided directly by C, and if C had used the cash receipts and disbursements method of accounting. Under § 419(c)(3)(B), the life insurance coverage is treated as provided when it would be includible in the gross income of the employee if provided directly by the employer (or would be so includible absent the exclusion from gross income provided under § 79). Absent the § 79 exclusion, the cost of the current life insurance protection provided to C's employees for part or all of a year is includible in the employees' incomes for that year.

If C had provided the current life insurance coverage directly (that is, if C had not interposed a trust to obtain and hold the cash value life insurance policies, but instead had held the policies and paid the premiums itself), C would have retained ownership rights in each of the policies, including the right to withdraw funds from a policy's cash value or to surrender the policy for cash. As a result, C would have been, directly or indirectly, a beneficiary under the policies. Thus, § 264(a) would have precluded any deduction by C with respect to the premium payments if C had owned the policies directly. *See* Rev. Rul. 70–148, 1970–1 C.B. 60.

Under § 419(c)(3) and Q&A–6(c) of § 1.419–1T, the qualified direct cost of a welfare benefit fund does not include expenditures by the fund that would not have been deductible if they had been made directly by the employer. Accordingly, the trust's qualified direct cost for the taxable year in *Situation 1* does not include any amounts for premiums on the cash value life insurance policies paid by the trust. Further, because all the benefits provided by the plan are fully insured, no amounts are reasonably and actuarially necessary to fund claims incurred but unpaid for purposes of the account limit under § 419A(c)(1). Thus, the qualified cost is zero and no portion of C's contributions is deductible under § 419 for the taxable year.

The conclusions for *Situation 1* are the same regardless of whether the plan benefits are provided through a taxable trust, an exempt VEBA described in § 501(c)(9), or any other type of welfare benefit fund as defined in § 419(e). Also, the conclusions for *Situation 1* are the same regardless of whether the death proceeds are payable from the insurance company directly to the beneficiaries designated by the employees, or are payable to the trust or plan for the benefit of the employees' beneficiaries. Additionally, the conclusions for *Situation 1* are the same regardless of the number or amount of premiums, and regardless of the type of life insurance policy. Thus, the conclusions would apply, for example, to a variable policy, to a policy with level premiums payable to age 65, or to any other life insurance policy, if the trust is directly or indirectly a beneficiary under the policy. Further, the same rule applies if the employer, rather than the welfare benefit fund, is directly or indirectly a beneficiary under the policy.

The conclusion for *Situation 1* that no deduction is allowable with respect to the premium amounts would be the same if the plan were an arrangement subject to the regulations for split-dollar life insurance arrangements. See § 1.61–22 for the rules for split-dollar life insurance arrangements, including § 1.61–22(c)(1)(iii)(C) (providing that the employer is treated as the owner of a life insurance policy if the owner is a welfare benefit fund within the meaning of § 419(e)(1)); and § 1.61–22(f)(2)(ii) (concerning the nondeductibility of premium amounts by the employer under a split-dollar arrangement).

In *Situation 2*, the qualified direct cost of the trust for the taxable year is the aggregate amount (including administrative expenses) that would have been allowable as a deduction to C for the uninsured disability benefits provided by the trust during the year if the disability benefits had been provided directly by C, and if C had used the cash receipts and disbursements method of accounting. In this regard, the disability benefits are treated as provided when they would be includible in the gross income of the employees if provided directly by C (or would be includible in income absent a provision of the Code excluding them from income).

Under the facts of *Situation 2*, the trust paid $x during the year with respect to disability benefits incurred during the year (and no benefits were paid with respect to any claims incurred in prior years). These disability benefits are includible in an employee's income under § 105(a) when the benefits are received by the employee. If Employer C had used the cash receipts and disbursements method of accounting, and if C had provided the uninsured disability benefits directly (that is, if C had not interposed a trust to provide the disability benefits, but instead had paid the disability benefits to the employees itself), C would have been allowed a deduction for the year for the $x actually paid during the year. Thus, the fund's qualified direct cost for the year with respect to the benefits under the plan is $x. Furthermore, if C had purchased the cash value life insurance policies directly to accumulate assets to pay the uninsured disability benefits, § 264(a) would have precluded any deduction by C with respect to the premium payments because C would have retained ownership rights in the policies. Thus, the premium amounts paid by the trust are not included in the fund's qualified direct cost under § 419(c)(3). However, some of C's contribution amounts may be deductible as qualified cost in the taxable year as an addition to a qualified asset account for disability claims incurred but unpaid as of the close of the taxable year, but only if the amounts are otherwise deductible, and only to the extent they are reasonably and actuarially necessary to fund incurred but unpaid claims and satisfy the requirements of § 419A(c)(4) and (c)(5).

The conclusions for *Situation 2* are the same regardless of whether the plan benefits are provided through a taxable trust, an exempt VEBA described in § 501(c)(9), or any other type of welfare benefit fund as defined in § 419(e). Additionally, the conclusions for *Situation 2* are the same regardless of the type of assets, if any, purchased by the trustee to fund the disability benefits (other than the purchase of disability insurance to the extent the premiums paid for the insurance would otherwise be deductible by the employer if the employer had purchased it directly and the employer used the cash receipts and disbursement method of accounting).

The conclusion for *Situation 2* that the qualified direct cost does not include any amounts paid for life insurance premiums would be the same if the benefit or benefits provided under the plan were uninsured medical or severance benefits, or any other type of uninsured benefit.

HOLDINGS

(1) For purposes of determining the limitations on an employer's deduction for contributions to a welfare benefit fund under §§ 419 and 419A, if the benefit provided through the fund is life insurance coverage, premiums paid on cash value life insurance policies by the fund are not included in the fund's qualified direct cost whenever the fund is directly or indirectly a beneficiary under the policy within the meaning of § 264(a).

(2) For purposes of determining the limitations on an employer's deduction for contributions to a welfare benefit fund under §§ 419 and 419A, if the benefit provided through the fund is other than life insurance coverage, premiums paid on cash value life insurance policies by the fund are not included in the fund's qualified direct cost whenever the fund is directly or indirectly a beneficiary under the policy within the meaning of § 264(a). However, the fund's qualified direct cost includes amounts paid as welfare benefits by the fund during the taxable year for claims incurred during the year.

PROSPECTIVE APPLICATION

Pursuant to the authority contained in § 7805(b)(8) and § 301.7805–1 of the Procedure and Administration Regulations, with respect to Holding (1) the Commissioner has determined that for any taxable year of an employer ending before November 5, 2007, if a deduction is otherwise allowable, then to the extent set forth in the following paragraph, a deduction for contributions to a welfare benefit fund under an arrangement that is not subject to the regulations applicable to split-dollar life insurance arrangements will not be disallowed under § 419(b) and (c)(3) merely because the deduction would have been disallowed under § 264 had the employer provided the benefits directly.

In the case of an employer with a taxable year that is the calendar year, the amount of the deduction that will not be disallowed for a taxable year is the portion of the amounts that are otherwise disallowed under this revenue ruling that were reported (or would have been reported but for the exclusion under § 79) by the employer as the cost of insurance on each employee's Forms W–2 (or Forms 1099) for that year. In the case of an employer with a taxable year other than the calendar year, the deduction that will not be disallowed for a taxable year is the reported (and excluded) amounts described in the previous sentence that are properly allocable to the employer's taxable year. In either case, these amounts are to be determined without regard to any amendment to any Form W–2 or Form 1099 made after October 17, 2007.

REFERENCE TO LISTED TRANSACTIONS NOTICE

Some of the arrangements described in this revenue ruling and substantially similar arrangements (as well as certain other arrangements utilizing cash value life insurance policies for which an employer has deducted amounts as contributions to a welfare benefit fund) may be transactions that have been designated as listed transactions. See Notice 2007–83, this Bulletin. If a transaction is designated as a listed transaction, affected persons may be subject to additional penalties and disclosure responsibilities.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Betty J. Clary of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities) and Larry Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact Betty J. Clary at (202) 622–6080 (not a toll-free call) or Larry Isaacs at *RetirementPlanQuestions@irs.gov*.

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 November 2007. See Rev. Rul. 2007-66, page 956.

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 November 2007. See Rev. Rul. 2007-66, page 956.

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 November 2007. See Rev. Rul. 2007-66, page 956.

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 November 2007. See Rev. Rul. 2007-66, page 956.

Section 512.—Unrelated Business Taxable Income

The Service provides an inflation adjustment to the maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 513.—Unrelated Trade or Business

The Service provides an inflation adjustment to the maximum cost of a "low cost article" for taxable years beginning in 2008. Funds raised through a charity's distribution of "low cost articles" will not be treated as unrelated business income to the charity. See Rev. Proc. 2007-66, page 970.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2007. See Rev. Rul. 2007-66, page 956.

Section 685.—Treatment of Funeral Trusts

The Service provides an inflation adjustment to the maximum amount of contributions that may be made

to a qualified funeral trust for contracts entered in calendar year 2008. See Rev. Proc. 2007-66, page 970.

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 November 2007. See Rev. Rul. 2007-66, page 956.

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 November 2007. See Rev. Rul. 2007-66, page 956.

Section 877.—Expatriation to Avoid Tax

The Service provides an inflation adjustment to the amount used for calendar year 2008 to determine whether an individual's loss of United States citizenship had the avoidance of United States tax as one of its principal purposes. See Rev. Proc. 2007-66, page 970.

Section 911.—Citizens or Residents of the United States Living Abroad

The Service provides an inflation adjustment to the amount of foreign earned income that may be excluded from gross income for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 995.—Taxation of DISC Income to Shareholders

2007 base period T-bill rate. The "base period T-bill rate" for the period ending September 30, 2007, is published as required by section 995(f) of the Code.

Rev. Rul. 2007–64

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder's DISC-related deferred tax liability for the year and the "base period T-bill rate." Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 2007 is 4.87 percent.

Pursuant to section 6622 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder's taxable year (including a 52–53 week accounting period) for the 2007 base period T-bill rate. To compute the amount of the interest charge for the shareholder's taxable year, multiply the amount of the shareholder's DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder's taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder's taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 2006–54, 2006–45 I.R.B. 834, Rev. Rul. 2005–70, 2005–2 C.B. 919, Rev. Rul. 2004–99, 2004–2 C.B. 720, Rev. Rul. 2003–111, 2003–2 C.B. 1009, Rev. Rul. 2002–68, 2002–2 C.B. 808, Rev. Rul. 2001–56, 2001–2 C.B. 500, and Rev. Rul. 2000–52, 2000–2 C.B. 516.

DRAFTING INFORMATION

The principal author of this revenue ruling is David F. Bergkuist of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact David F. Bergkuist at (202) 622–3850 (not a toll-free call).

2007 ANNUAL RATE, COMPOUNDED DAILY

4.87 PERCENT

DAYS	FACTOR
1	.000133425
2	.000266867
3	.000400327
4	.000533805
5	.000667301
6	.000800815
7	.000934347
8	.001067896
9	.001201463
10	.001335048
11	.001468651
12	.001602271
13	.001735910
14	.001869566
15	.002003240
16	.002136932
17	.002270642
18	.002404370
19	.002538115
20	.002671878
21	.002805659
22	.002939458
23	.003073275
24	.003207110
25	.003340963
26	.003474833
27	.003608721
28	.003742627
29	.003876551
30	.004010493
31	.004144453
32	.004278431
33	.004412426
34	.004546440
35	.004680471
36	.004814520
37	.004948587
38	.005082672
39	.005216775
40	.005350895

2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT		2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT		2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT	
DAYS	FACTOR	DAYS	FACTOR	DAYS	FACTOR
41	.005485034	81	.010865279	121	.016274314
42	.005619191	82	.011000154	122	.016409910
43	.005753365	83	.011135046	123	.016545524
44	.005887557	84	.011269956	124	.016681156
45	.006021767	85	.011404885	125	.016816807
46	.006155996	86	.011539831	126	.016952475
47	.006290242	87	.011674795	127	.017088162
48	.006424506	88	.011809778	128	.017223866
49	.006558787	89	.011944778	129	.017359589
50	.006693087	90	.012079797	130	.017495330
51	.006827405	91	.012214833	131	.017631089
52	.006961740	92	.012349887	132	.017766866
53	.007096094	93	.012484960	133	.017902661
54	.007230465	94	.012620050	134	.018038474
55	.007364855	95	.012755159	135	.018174306
56	.007499262	96	.012890285	136	.018310155
57	.007633687	97	.013025430	137	.018446023
58	.007768130	98	.013160592	138	.018581909
59	.007902592	99	.013295773	139	.018717813
60	.008037071	100	.013430972	140	.018853735
61	.008171568	101	.013566188	141	.018989675
62	.008306083	102	.013701423	142	.019125633
63	.008440616	103	.013836676	143	.019261610
64	.008575166	104	.013971947	144	.019397605
65	.008709735	105	.014107236	145	.019533617
66	.008844322	106	.014242542	146	.019669648
67	.008978927	107	.014377867	147	.019805697
68	.009113549	108	.014513210	148	.019941765
69	.009248190	109	.014648571	149	.020077850
70	.009382849	110	.014783951	150	.020213953
71	.009517525	111	.014919348	151	.020350075
72	.009652220	112	.015054763	152	.020486215
73	.009786932	113	.015190196	153	.020622373
74	.009921663	114	.015325648	154	.020758549
75	.010056411	115	.015461117	155	.020894744
76	.010191177	116	.015596605	156	.021030956
77	.010325962	117	.015732110	157	.021167187
78	.010460764	118	.015867634	158	.021303436
79	.010595585	119	.016003176	159	.021439703
80	.010730423	120	.016138736	160	.021575988

2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT		2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT		2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT	
DAYS	FACTOR	DAYS	FACTOR	DAYS	FACTOR
161	.021712291	201	.027179367	241	.032675697
162	.021848613	202	.027316418	242	.032813481
163	.021984953	203	.027453487	243	.032951284
164	.022121311	204	.027590575	244	.033089105
165	.022257687	205	.027727681	245	.033226944
166	.022394081	206	.027864805	246	.033364802
167	.022530494	207	.028001948	247	.033502679
168	.022666925	208	.028139109	248	.033640573
169	.022803374	209	.028276288	249	.033778487
170	.022939841	210	.028413485	250	.033916418
171	.023076326	211	.028550701	251	.034054368
172	.023212830	212	.028687935	252	.034192336
173	.023349352	213	.028825187	253	.034330323
174	.023485892	214	.028962458	254	.034468328
175	.023622450	215	.029099747	255	.034606352
176	.023759027	216	.029237054	256	.034744394
177	.023895621	217	.029374380	257	.034882454
178	.024032234	218	.029511724	258	.035020533
179	.024168865	219	.029649086	259	.035158630
180	.024305515	220	.029786466	260	.035296746
181	.024442182	221	.029923865	261	.035434880
182	.024578868	222	.030061283	262	.035573033
183	.024715572	223	.030198718	263	.035711204
184	.024852295	224	.030336172	264	.035849393
185	.024989035	225	.030473644	265	.035987601
186	.025125794	226	.030611135	266	.036125827
187	.025262571	227	.030748644	267	.036264072
188	.025399366	228	.030886171	268	.036402335
189	.025536180	229	.031023717	269	.036540617
190	.025673012	230	.031161281	270	.036678917
191	.025809862	231	.031298863	271	.036817235
192	.025946730	232	.031436464	272	.036955572
193	.026083617	233	.031574083	273	.037093928
194	.026220522	234	.031711720	274	.037232302
195	.026357445	235	.031849376	275	.037370694
196	.026494386	236	.031987050	276	.037509105
197	.026631346	237	.032124743	277	.037647534
198	.026768324	238	.032262454	278	.037785982
199	.026905320	239	.032400183	279	.037924448
200	.027042334	240	.032537931	280	.038062933

2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT	
DAYS	FACTOR
281	.038201436
282	.038339958
283	.038478498
284	.038617057
285	.038755634
286	.038894229
287	.039032844
288	.039171476
289	.039310127
290	.039448797
291	.039587485
292	.039726192
293	.039864917
294	.040003660
295	.040142422
296	.040281203
297	.040420002
298	.040558820
299	.040697656
300	.040836511
301	.040975384
302	.041114276
303	.041253186
304	.041392115
305	.041531062
306	.041670028
307	.041809013
308	.041948016
309	.042087037
310	.042226077
311	.042365136
312	.042504213
313	.042643309
314	.042782423
315	.042921556
316	.043060708
317	.043199878
318	.043339066
319	.043478274
320	.043617499

2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT	
DAYS	FACTOR
321	.043756744
322	.043896006
323	.044035288
324	.044174588
325	.044313907
326	.044453244
327	.044592600
328	.044731974
329	.044871367
330	.045010779
331	.045150209
332	.045289658
333	.045429125
334	.045568611
335	.045708116
336	.045847639
337	.045987181
338	.046126741
339	.046266320
340	.046405918
341	.046545535
342	.046685170
343	.046824823
344	.046964495
345	.047104186
346	.047243896
347	.047383624
348	.047523371
349	.047663136
350	.047802920
351	.047942723
352	.048082544
353	.048222384
354	.048362243
355	.048502121
356	.048642017
357	.048781931
358	.048921865
359	.049061817
360	.049201787

2007 ANNUAL RATE, COMPOUNDED DAILY 4.87 PERCENT	
DAYS	FACTOR
361	.049341777
362	.049481785
363	.049621812
364	.049761857
365	.049901921
366	.050042004
367	.050182105
368	.050322226
369	.050462365
370	.050602522
371	.050742698

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 November 2007.

Rev. Rul. 2007–66

This revenue ruling provides various prescribed rates for federal income tax purposes for November 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. 2007–66 TABLE 1

Applicable Federal Rates (AFR) for November 2007

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	4.11%	4.07%	4.05%	4.04%
110% AFR	4.53%	4.48%	4.46%	4.44%
120% AFR	4.94%	4.88%	4.85%	4.83%
130% AFR	5.36%	5.29%	5.26%	5.23%
Mid-term				
AFR	4.39%	4.34%	4.32%	4.30%
110% AFR	4.83%	4.77%	4.74%	4.72%
120% AFR	5.28%	5.21%	5.18%	5.15%
130% AFR	5.72%	5.64%	5.60%	5.57%
150% AFR	6.62%	6.51%	6.46%	6.42%
175% AFR	7.74%	7.60%	7.53%	7.48%
Long-term				
AFR	4.89%	4.83%	4.80%	4.78%
110% AFR	5.38%	5.31%	5.28%	5.25%
120% AFR	5.88%	5.80%	5.76%	5.73%
130% AFR	6.38%	6.28%	6.23%	6.20%

REV. RUL. 2007–66 TABLE 2

Adjusted AFR for November 2007

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.40%	3.37%	3.36%	3.35%
Mid-term adjusted AFR	3.61%	3.58%	3.56%	3.55%
Long-term adjusted AFR	4.30%	4.25%	4.23%	4.21%

REV. RUL. 2007–66 TABLE 3

Rates Under Section 382 for November 2007

Adjusted federal long-term rate for the current month	4.30%
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.)	4.49%

REV. RUL. 2007–66 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for November 2007	
Appropriate percentage for the 70% present value low-income housing credit	8.08%
Appropriate percentage for the 30% present value low-income housing credit	3.46%

REV. RUL. 2007–66 TABLE 5	
Rate Under Section 7520 for November 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	5.2%

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 November 2007. See Rev. Rul. 2007-66, page 956.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

The Service provides an inflation adjustment to the maximum amount by which the value of certain farm and other qualified real property included in a decedent's gross estate may be decreased for purposes of valuing the estate of a decedent dying in calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 2503.—Taxable Gifts

The Service provides an inflation adjustment to the amount of gifts that may be made to a person in a calendar year without including the amount in taxable gifts for calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 2523.—Gift to Spouse

The Service provides an inflation adjustment to the amount of gifts that may be made in a calendar year to a spouse who is not a citizen of the United States without including the amount in taxable gifts for calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 4161.—Imposition of Tax

The Service provides an inflation adjustment to the amount of excise tax imposed for calendar year 2008 on the first sale by a manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows. See Rev. Proc. 2007-66, page 970.

Section 6033.—Returns by Exempt Organizations

The Service provides an inflation adjustment to the amount of dues certain exempt organizations with nondeductible lobbying expenditures can charge and still be excepted from reporting requirements for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 6039F.—Notice of Large Gifts Received From Foreign Persons

The Service provides an inflation adjustment to the amount of gifts received, in a taxable year from foreign persons, that triggers a reporting requirement for a United States person for taxable years beginning in 2008. See Rev. Proc. 2007-66, page 970.

Section 6323.—Validity and Priority Against Certain Persons

The Service provides inflation adjustments for calendar year 2008 to (1) the maximum amount of a casual sale of personal property below which a federal tax lien will not be valid against a purchaser of the property and (2) the maximum amount of a contract for the repair or improvement of certain residential property at or below which a federal tax lien will not be valid against a mechanic's lienor. See Rev. Proc. 2007-66, page 970.

Section 6334.—Property Exempt From Levy

The Service provides inflation adjustments to the value of certain property exempt from levy (fuel, provisions, furniture, household personal effects, arms for personal use, livestock, poultry, and books and tools of a trade, business, or profession) for calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 6601.—Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax

The Service provides an inflation adjustment to the amount used to determine the amount of interest charged on a certain portion of the estate tax payable in installments for the estate of a decedent dying in calendar year 2008. See Rev. Proc. 2007-66, page 970.

Section 7430.—Awarding of Costs and Certain Fees

The Service provides an inflation adjustment to the hourly limit on attorney fees incurred in calendar year 2008 that may be awarded in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty. See Rev. Proc. 2007-66, page 970.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2007. See Rev. Rul. 2007-66, page 956.

Section 7702B.—Treatment of Qualified Long-Term Care Insurance

The Service provides an inflation adjustment to the stated dollar amount for calendar year 2008 of the *per diem* limitation regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death

of a chronically ill individual. See Rev. Proc. 2007-66, page 970.

Section 7805.—Rules and Regulations

26 CFR 301.7805–1: Rules and regulations.

Whether a holding in Rev. Rul. 2007–65 will be applied retroactively. See Rev. Rul. 2007-65, page 949.

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 November 2007. See Rev. Rul. 2007-66, page 956.

Part III. Administrative, Procedural, and Miscellaneous

Abusive Trust Arrangements Utilizing Cash Value Life Insurance Policies Purportedly to Provide Welfare Benefits

Notice 2007–83

The Internal Revenue Service (IRS) and Treasury Department are aware of certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies that are being promoted to and used by taxpayers to improperly claim federal income and employment tax benefits. This notice informs taxpayers and their representatives that the tax benefits claimed for these arrangements are not allowable for federal tax purposes. This notice also alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies certain transactions using trust arrangements involving cash value life insurance policies, and substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. This notice further alerts persons involved with these transactions of certain responsibilities that may arise from their involvement with these transactions.

Concurrently with this notice, the IRS is publishing Rev. Rul. 2007–65 (concluding that for purposes of deductions allowable to an employer under § 419, a welfare benefit fund's qualified direct cost does not include premium amounts for cash value life insurance policies paid by the fund, whenever the fund is directly or indirectly a beneficiary under the policy within the meaning of § 264(a)), and Notice 2007–84 (describing trust arrangements involving purported welfare benefit funds that, in form, provide post-retirement medical and life insurance benefits to employees on a nondiscriminatory basis but, in operation, result in the owner or owners receiving all or a substantial portion of the post-retirement and other benefits, and all or a substantial portion of any assets distributed from the trust).

BACKGROUND

1. Promoted Arrangements

Trust arrangements utilizing cash value life insurance policies and purporting to provide welfare benefits to active employees are being promoted to small businesses and other closely held businesses as a way to provide cash and other property to the owners of the business on a tax-favored basis. The arrangements are sometimes referred to by persons advocating their use as "single employer plans" and sometimes as "419(e) plans." Those advocates claim that the employers' contributions to the trust are deductible under §§ 419 and 419A as qualified cost, but that there is not a corresponding inclusion in the owner's income.

A promoted trust arrangement may be structured either as a taxable trust or a tax-exempt trust, *i.e.*, a voluntary employees' beneficiary association (VEBA) that has received a determination letter from the IRS that it is described in § 501(c)(9). The plan and the trust documents indicate that the plan provides benefits such as current death benefit protection, self-insured disability benefits, and/or self-insured severance benefits to covered employees (including those employees who are also owners of the business), and that the benefits are payable while the employee is actively employed by the employer. The employer's contributions are often based on premiums charged for cash value life insurance policies. For example, contributions may be based on premiums that would be charged for whole life policies. As a result, the arrangements often require large employer contributions relative to the actual cost of the benefits currently provided under the plan.

Under these arrangements, the trustee uses the employer's contributions to the trust to purchase life insurance policies. The trustee typically purchases cash value life insurance policies on the lives of the employees who are owners of the business (and sometimes other key employees), while purchasing term life insurance policies on the lives of the other employees covered under the plan.

It is anticipated that after a number of years the plan will be terminated and the cash value life insurance policies, cash, or other property held by the trust will be distributed to the employees who are plan participants at the time of the termination. While a small amount may be distributed to employees who are not owners of the business, the timing of the plan termination and the methods used to allocate the remaining assets are structured so that the business owners and other key employees will receive, directly or indirectly, all or a substantial portion of the assets held by the trust.

Those advocating the use of these plans often claim that the employer is allowed a deduction under § 419(c)(3) for its contributions when the trustee uses those contributions to pay premiums on the cash value life insurance policies, while at the same time claiming that nothing is includible in the owner's gross income as a result of the contributions (or, if amounts are includible, they are significantly less than the premiums paid on the cash value life insurance policies). They may also claim that nothing is includible in the income of the business owner or other key employee as a result of the transfer of a cash value life insurance policy from the trust to the employee, asserting that the employee has purchased the policy when, in fact, any amounts the owner or other key employee paid for the policy may be significantly less than the fair market value of the policy. Some of the plans are structured so that the owner or other key employee is the named owner of the life insurance policy from the plan's inception, with the employee assigning all or a portion of the death proceeds to the trust. Advocates of these arrangements may claim that no income inclusion is required because there is no transfer of the policy itself from the trust to the employees.

2. Intent to Challenge Transactions

The IRS intends to challenge the claimed tax benefits for the above-described transactions for various reasons. Depending on the facts and circumstances of a particular arrangement, contributions to a purported welfare benefit fund on behalf of an employee who is a shareholder may properly be characterized as dividend income to the owner, the value of which is includible in the owner's gross

income, and for which amounts are not deductible by the corporation. *See Neonatology Associates v. Commissioner*, 299 F.3d 221 (3d Cir. 2002). Depending on the facts and circumstances of a particular arrangement, the arrangement may properly be characterized as a plan deferring the receipt of compensation for purposes of § 404(a)(5), resulting in the application of the rules under § 404(a)(5) governing the timing of any otherwise available deductions. *See Wellons v. Commissioner*, 31 F.3d 569 (7th Cir. 1994). In addition, an arrangement may properly be characterized as a nonqualified deferred compensation plan for purposes of § 409A. Application of § 409A may result in immediate inclusion of income and additional taxes to the employee, as well as income tax withholding liabilities to the employer. The facts and circumstances of a particular arrangement may result in it coming within the definition of a split-dollar life insurance arrangement, so that the tax consequences to the employer and the employees are subject to the rules governing those types of arrangements, including potentially § 409A. Under the economic benefit regime of the split-dollar life insurance arrangement rules set forth in § 1.61–22, the employee must include in income the full value of the economic benefits provided to the employee under the arrangement for the taxable year without a corresponding employer deduction.

If, based on the facts and circumstances, an arrangement described above is properly characterized as a welfare benefit fund for purposes of §§ 419 and 419A (rather than a dividend arrangement, a plan deferring the receipt of compensation, or a split-dollar life insurance arrangement), an employer is allowed a deduction for contributions to the trust or other welfare benefit fund only to the extent allowed under §§ 419 and 419A. Under §§ 419 and 419A, no deduction is allowed with respect to premiums paid for life insurance coverage provided to current employees if the welfare benefit fund or the employer is directly or indirectly a beneficiary under the life insurance policy within the meaning of § 264(a). In the promoted arrangements discussed above, the trust typically retains rights in the life insurance policies and is directly or indirectly a beneficiary under the policies, so that no deduction is allowed with respect to the life insurance premiums. *See* Situation 1 in Rev. Rul. 2007–65. Further, any deduction with respect to uninsured benefits (for example, uninsured medical, disability, or severance benefits) is not based on the premiums paid on the life insurance policies, but is generally limited to claims incurred and paid during the year.[1] *See* Situation 2 in Rev. Rul. 2007–65. Thus, contrary to the claims made by persons advocating the use of the arrangements discussed above, premiums on cash value life insurance policies paid through the trust are not a justification for claiming a deduction under §§ 419 and 419A.

Moreover, in appropriate cases, the IRS intends to challenge the value claimed by the taxpayer for property distributed from the trust, including cash value life insurance policies.

The above conclusions apply whether the trust used to provide the plan benefits is a taxable trust or a VEBA. While the trust may have received a determination letter stating the trust is exempt under § 501(c)(9), a letter of this type does not address the tax deductibility of contributions to the trust with respect to the employer nor the income inclusion with respect to the employees.

The IRS has previously identified certain other transactions that claim to be welfare benefit funds as listed transactions, concluding that the tax benefits claimed to be generated by these transactions are not allowable for federal income tax purposes. Notice 2003–24, 2003–1 C.B. 853, describes certain transactions purporting to meet the exception under § 419A(f)(5) for collectively bargained plans and identifies those and substantially similar transactions as listed transactions, and Notice 95–34, 1995–1 C.B. 309, describes transactions that purport to meet the 10-or-more employer plan exception under § 419A(f)(6). The transactions described in Notice 95–34 and substantially similar transactions have also been identified as listed transactions. See Notice 2004–67, 2004–2 C.B. 600.

LISTED TRANSACTIONS

1. Transactions Identified As Listed Transactions

Any transaction that has all of the following elements, and any transaction that is substantially similar to such a transaction, are identified as "listed transactions" for purposes of § 1.6011–4(b)(2) and §§ 6111 and 6112, effective October 17, 2007, the date this notice is released to the public.

(1) The transaction involves a trust or other fund described in § 419(e)(3) that is purportedly a welfare benefit fund.

(2) For determining the portion of its contributions to the trust or other fund that are currently deductible the employer does not rely on the exception in § 419A(f)(5)(A) (regarding collectively bargained plans).

(3) The trust or other fund pays premiums (or amounts that are purported to be premiums) on one or more life insurance policies and, with respect to at least one of the policies, value is accumulated either:

(a) within the policy (for example, a cash value life insurance policy); or

(b) outside the policy (for example, in a side fund or through an agreement outside the policy allowing the policy to be converted to or exchanged for a policy which will, at some point in time, have accumulated value based on the purported premiums paid on the original policy).

(4) The employer has taken a deduction for any taxable year for its contributions to the fund with respect to benefits provided under the plan (other than post-retirement medical benefits, post-retirement life insurance benefits, and child care facilities) that is greater than the sum of the following amounts:

(a) With respect to any uninsured benefits provided under the plan,

(i) an amount equal to claims that were both incurred and paid during the taxable year; plus

(ii) the limited reserves allowable under § 419A(c)(1) or (c)(3), as applicable; plus

(iii) amounts paid during the taxable year to satisfy claims incurred in a prior taxable year (but only to the extent that no deduction was taken for such amounts in a prior year); plus

[1] Limited deductions are allowable under §§ 419 and 419A for additions to certain reserves, including a reserve for claims incurred but unpaid as of the close of a taxable year.

(iv) amounts paid during the taxable year or a prior taxable year for administrative expenses with respect to uninsured benefits and that are properly allocable to the taxable year (but only to the extent that no deduction was taken for such amounts in a prior year).

(b) With respect to any insured benefits provided under the plan,

(i) insurance premiums paid during the taxable year that are properly allocable to the taxable year (other than premiums paid with respect to a policy described in (3)(a) or (b) above); plus

(ii) insurance premiums paid in prior taxable years that are properly allocable to the taxable year (other than premiums paid with respect to a policy described in (3)(a) or (b) above); plus

(iii) amounts paid during the taxable year or a prior taxable year for administrative expenses with respect to insured benefits and that are properly allocable to the taxable year (but only to the extent that no deduction was taken for such amounts in a prior year).

(c) For taxable years ending prior to November 5, 2007, with respect to life insurance benefits provided through policies described in (3)(a) and (b) above, the greater of the following amounts:[2]

(i) in the case of an employer with a taxable year that is the calendar year, the aggregate amounts reported by the employer as the cost of insurance with respect to such policies on the employees' Forms W–2 (or Forms 1099) for that year, plus an amount equal to the amounts that would have been reportable on the employees' Forms W–2 for that year, but for the exclusion under section 79 (relating to the cost of up to $50,000 of coverage); or, in the case of an employer with a taxable year other than the calendar year, the portions of the aggregate amounts reported by the employer on the Forms W–2 (or Forms 1099) as described in (i), above, (or that would have been reported absent the exclusion under § 79) that are properly allocable to the employer's taxable year; and

(ii) with respect to each employee insured under a cash value life insurance policy, the aggregate cost of insurance charged under the policy or policies with respect to the amount of current life insurance coverage provided to the employee under the plan (but limited to the product of the current life insurance coverage under the plan multiplied by the current year's mortality rate provided in the higher of the 1980 or 2001 CSO Table).

(d) The additional reserve, if any, under § 419A(c)(6) (relating to medical benefits provided through a plan maintained by a *bona fide* association), but only to the extent amounts are not already included above in this paragraph (4), and only to the extent that no deduction was taken for such amounts in a prior taxable year.

2. Participation in the Listed Transactions

Whether a taxpayer has participated in the listed transaction described in this notice will be determined under § 1.6011–4(c)(3)(i)(A). However, an individual who is not the employer will be treated as a participant for a taxable year if, and only if the individual owns, directly or indirectly, 20 percent or more of an entity, other than a C corporation, that is a participant in the listed transaction for the taxable year. For this purpose, indirect ownership is determined under rules similar to the rules of § 318 but without regard to the family attribution rules of § 318(a)(1).

3. Disclosure, List Maintenance, and Registration Requirements; Penalties; Other Considerations

In general, if a taxpayer has participated in a listed transaction, the rules of § 1.6011–4(e) determine when a disclosure statement must be filed by the taxpayer. However, if, under § 1.6011–4(e), a taxpayer is required to file a disclosure statement with respect to the listed transaction described in this notice after October 17, 2007, and prior to January 15, 2008, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure statement with the Office of Tax Shelter Analysis (OTSA) by January 15, 2008.

Some transactions described in Notice 95–34 and substantially similar transactions may be identified as a listed transaction in this notice also. It should be noted that, independent of their classification as "listed transactions" for purposes of § 1.6011–4(b)(2) and §§ 6111 and 6112, transactions that are the same as, or substantially similar to, the transaction identified in this notice may already be subject to the requirements of §§ 6011, 6111, 6112, or the regulations thereunder. Persons required to disclose these transactions under § 1.6011–4 and who fail to do so may be subject to the penalty under § 6707A.[3] Persons required to disclose or register these transactions under § 6111 who have failed to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of investors under § 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) may be subject to the penalty under § 6708(a).

In addition, the IRS may impose other penalties on persons involved in this transaction or substantially similar transactions (including the accuracy-related penalty under § 6662 or 6662A) and, as applicable, on persons who participate in the promotion or reporting of this transaction or substantially similar transactions (including the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701).

Further, under § 6501(c)(10), the period of limitations on assessment may be extended beyond the general three-year period of limitations for persons required to disclose transactions under § 1.6011–4 who fail to do so. See Rev. Proc. 2005–26, 2005–1 C.B. 965.

The IRS and the Treasury Department recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the types of transactions described in this notice. These taxpayers should consult with a tax advisor to ensure that their transactions are disclosed properly and to take appropriate corrective action.

DRAFTING INFORMATION

The principal authors of this notice are Larry Isaacs of the Employee Plans, Tax Exempt and Government Entities Division and Betty Clary of the Office

[2] For taxable years ending on or after November 5, 2007, the amount under this (4)(c) is zero.

[3] Section 6707A applies to returns and statements due after October 22, 2004. See Notice 2005–11, 2005–1 C.B. 493. The amount of the penalty under § 6707A with respect to a listed transaction is $100,000 in the case of a natural person and $200,000 in any other case.

of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Isaacs at *RetirementPlanQuestions@irs.gov* or Ms. Clary at (202) 622–6080 (not a toll-free call).

Trust Arrangements Purporting to Provide Nondiscriminatory Post-Retirement Medical and Life Insurance Benefits

Notice 2007–84

Sections 419 and 419A of the Internal Revenue Code set forth rules under which employers are permitted to make currently deductible contributions to welfare benefit funds in order to provide their retirees with medical and life insurance benefits. Businesses often maintain welfare benefit funds that comport with the intent of §§ 419 and 419A and do in fact provide meaningful medical and life insurance benefits to retirees on a nondiscriminatory basis, and make substantial contributions to those welfare benefit funds that are fully deductible. Such welfare benefit funds are outside the scope of this notice.

This notice addresses certain trust arrangements that are being promoted to and used by small businesses to avoid federal income and employment taxes. The arrangements described in this notice involve purported welfare benefit funds that, in form, provide post-retirement medical and life insurance benefits to employees on a nondiscriminatory basis, but that, in operation, will primarily benefit the owners or other key employees of the businesses. This notice alerts taxpayers and their representatives that the tax treatment of these arrangements may vary from the claimed tax treatment. The Internal Revenue Service (IRS) may issue further guidance to address these arrangements, and taxpayers should not assume that the guidance will be applied prospectively only.

Concurrently with this notice, the IRS is publishing Notice 2007–83, this Bulletin, which identifies as listed transactions certain transactions involving purported welfare benefit fund arrangements using cash value life insurance policies. The fact that an arrangement is described in this notice does not preclude it from also being a listed transaction under Notice 2007–83 where the arrangement provides benefits to active employees as well as to retired employees.

The IRS has previously identified certain other transactions that claim to be welfare benefit funds as listed transactions. Notice 2003–24, 2003–1 C.B. 853, describes certain transactions purporting to meet the exception under § 419A(f)(5) of the Internal Revenue Code for collectively bargained plans. Notice 95–34, 1995–1 C.B. 309, describes transactions that purport to meet the 10-or-more employer plan exception under § 419A(f)(6). Notice 2004–67, 2004–2 C.B. 600, includes transactions described in Notice 2003–24 and Notice 95–34, as well as substantially similar transactions, as listed transactions.

BACKGROUND

Promoted trust arrangements claiming to provide nondiscriminatory post-retirement medical benefits and post-retirement life insurance benefits have recently come to the attention of the IRS. These arrangements, among others, may be referred to by persons advocating the use of the plans as "single employer plans" or "419(e) plans." These purported welfare benefit arrangements are usually sold to small businesses and other closely held businesses as a way to provide post-retirement medical benefits, post-retirement life insurance, and cash and other property to the owners or other key employees of the business on a tax-favored basis through the use of a trust. Those advocating the use of these plans usually assert that the contributions are tax-deductible, but with no corresponding inclusion by the owner or other key employee. Some of these arrangements involve plans that previously had claimed to be 10-or-more employer plans under § 419A(f)(6); some others were established to receive policies transferred from terminating plans that claimed to be 10-or-more employer plans.

A promoted arrangement may involve either a taxable trust or a tax-exempt trust, *i.e.*, a voluntary employees' beneficiary association (VEBA) that has received a determination letter from the IRS that it is described in § 501(c)(9). The trust frequently uses the employer's contributions to purchase cash value life insurance policies on the lives of employees who are owners of the business and, sometimes, on the lives of other key employees.

The amount of the employer's deduction for contributions to one of these plans is often based on a calculation of a reserve associated with each of the plan participants. However, the calculation may be based on an unreasonable assumption that all of the covered employees will eventually receive post-retirement benefits under the plan, or may be based on other actuarial assumptions that either are not reasonable or are not permitted to be reflected in the reserve calculations for purposes of §§ 419 and 419A.

Under some arrangements, the plan documents may indicate that post-retirement benefits will be provided on a nondiscriminatory basis when, in fact, only a few employees (primarily the employees who are also owners of the business) will ever receive those benefits. To the extent a trust holds excess assets not needed to pay the original benefits, the owner will also receive a substantial portion of those assets. Under some arrangements, this will be accomplished through the use of "loans" to the owners. For some arrangements, the plan will be amended to provide benefits other than the plan's original post-retirement medical or life insurance benefits. For others, the plan will be terminated prior to the payment of the post-retirement benefits and the timing of the termination and the methods used to allocate the remaining assets are structured so that the owners and other key employees will receive, directly or indirectly, all or a substantial portion of the assets held by the trust.

Persons advocating the use of these plans claim that the employer's contributions for the post-retirement medical and life benefits are deductible under §§ 419 and 419A as additions to a qualified asset account. They may also claim that owners or other key employees receive the economic benefits from the contributions with little or no income inclusion.

LAW

Sections 419 and 419A prescribe limits on the amount of deductions for contributions paid or accrued by an employer

to a welfare benefit fund. A welfare benefit fund generally consists of a taxable or exempt trust, corporation, or other organization that is part of a plan of an employer through which the employer provides welfare benefits to employees or their beneficiaries. Under § 419, the employer's contributions to a welfare benefit fund are deductible only if they would otherwise be deductible under Chapter 1 of the Code, and the amount of the deduction is limited to the welfare benefit fund's qualified cost for the taxable year.

One component of qualified cost is a fund's qualified direct cost for the year, which is the amount (including administrative expenses) that would have been allowable as a deduction to the employer with respect to the benefits provided during the year if those benefits had been provided directly by the employer, and the employer had used the cash receipts and disbursements method of accounting. A second component of qualified cost is any addition to a qualified asset account for the taxable year, but only to the extent the addition does not exceed specified limits. Further, the qualified cost for the taxable year is reduced by the fund's after-tax income for the year.

Under § 419A(a), the term "qualified asset account" means any account consisting of assets set aside to provide for the payment of disability benefits, medical benefits, supplemental unemployment benefits or severance pay benefits, or life insurance benefits. Sections 419A(b) and 419A(c)(1) generally limit the additions to a qualified asset account to an amount that is reasonably and actuarially necessary to fund claims incurred but unpaid (as of the close of the taxable year) for the benefits referred to above, plus administrative costs with respect to those claims.

Section 419A(c)(2) allows additional limited reserves for post-retirement medical and post-retirement life insurance benefits. The reserves must be funded over the working lives of the covered employees and must be actuarially determined on a level basis using assumptions that are reasonable in the aggregate as necessary for the post-retirement benefits to be provided to the covered employees. For purposes of § 419A(c)(2), contributions to a reserve are deductible under § 419A only if the contributions are intended to actually accumulate for the purpose of funding the post-retirement benefits. *General Signal Corporation v. Commissioner*, 142 F.2d 546 (2d Cir. 1998).

Under § 419A(c)(2)(A), the reserve for post-retirement medical benefits is further limited by the requirement that it be determined on the basis of current medical costs. In addition, for post-retirement life insurance the maximum insurance coverage that can be taken into account with respect to any covered employee is $50,000 of coverage. Moreover, in the case of post-retirement benefits for or on behalf of a key employee (as defined in § 416(i)(1)), § 419A(d) requires that a separate account be established for any medical or life insurance benefits provided with respect to the key employee, and any medical or life insurance benefits provided with respect to the key employee after retirement may only be paid from the separate account. Under § 419A(e)(1), in order for reserves for post-retirement medical and life insurance benefits to be taken into account the plan must meet the nondiscrimination requirements of § 505(b) with respect to those benefits (even if those requirements do not otherwise apply to the plan).

A plan meets the nondiscrimination requirements of § 505(b) only if (i) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and (ii) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals. Under § 505(b)(3), in the case of any benefit for which another section of the Code provides nondiscrimination rules (*e.g.*, § 105(h) in the case of a self-insured medical reimbursement plan), those rules apply instead with respect to the benefit. Under §§ 105(h)(8) and 414(t), all employees who are treated as employed by a single employer under the rules of § 414(b), (c), or (m) are treated as employed by a single employer for purposes of §§ 105(h), 79, and 505.

Sections 104(a)(3) and 105(b), (c), and (d) exclude from gross income certain amounts received by an employee through accident and health insurance. Section 105(e) provides that for purposes of §§ 104 and 105, amounts received through an "accident and health plan for employees" are treated as amounts received through accident or health insurance. Thus, the plan must exist primarily for the benefit of employees, as opposed to shareholders. See, *e.g.*, *Larkin v. Commissioner*, 48 T.C. 629 (1967), *aff'd,* 394 F.2d 494 (1st Cir. 1968) (holding that the plan was merely a device to use corporate earnings to meet the anticipated medical needs of the shareholders).

Section 4976(a) imposes on an employer an excise tax in the amount of 100 percent of the amount of any disqualified benefit provided with respect to a welfare benefit fund maintained by the employer. Under § 4976(b)(1), a "disqualified benefit" means (i) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for the key employee under § 419A(d) and the payment is not from that employee's account; (ii) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of § 505(b) with respect to the benefit (whether or not the § 505(b) requirements apply to the plan); and (iii) any portion of a welfare benefit fund reverting to the benefit of the employer.

INTENT TO CHALLENGE ARRANGEMENTS

The IRS may challenge the claimed tax benefits for the above-described arrangements for various reasons. Depending on the facts and circumstances of a particular arrangement, contributions to a purported welfare benefit arrangement on behalf of an employee who is an owner may properly be characterized as dividends or as non-qualified deferred compensation subject to § 404(a)(5) or 409A (or both), or the arrangement may be subject to the rules for split-dollar life insurance arrangements. See Notice 2007–83.

If, based on the facts and circumstances, an arrangement described above is properly characterized as a welfare benefit fund, an employer's deductions for contributions to the welfare benefit trust or other fund are subject to the rules of §§ 419 and 419A. Under those rules, deductions for post-retirement medical and life benefits are subject to a number of limitations and requirements, including

the use of reasonable actuarial assumptions, the requirement that the plan meet the nondiscrimination requirements of § 505(b) (determined after application of the rules of § 414(b), (c), and (m)), a prohibition against considering future increases in medical costs, and a limit on the reserves for post-retirement life insurance benefits to the reserves that would apply with respect to $50,000 of coverage. Moreover, in order to obtain a deduction for reserves for post-retirement medical or life benefits, the taxpayer cannot get a deduction unless the employer actually intends to use the contributions for that purpose.

The tax benefit rule may require that some or all of the deductions taken by the employer in earlier years be included in its income in a later year in which an event occurs that is fundamentally inconsistent with the premise on which the deductions were initially based. (For a further discussion of the tax benefit rule, see *Hillsboro National Bank v. Commissioner*, 460 U.S. 370 (1983)).

Further, the IRS intends to challenge the claimed value of property distributed from a trust, including life insurance policies, whenever the property has not been properly valued by the taxpayer.

Finally, based on the facts and circumstances of a particular arrangement, some or all of the benefits or distributions provided to or for the benefit of employees who are also owners or other key employees may be disqualified benefits for purposes of § 4976 subjecting the employer to a 100% excise tax.

Taxpayers should be aware that the IRS may impose penalties on persons involved in these arrangements or similar arrangements (including the accuracy-related penalty under § 6662) and, as applicable, on persons who participate in the promotion or reporting of these arrangements or similar arrangements (including the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701).

The above rules apply whether the trust used to provide benefits under the arrangement is a taxable trust or a VEBA. While the trust may have received a determination letter stating the trust is exempt under § 501(c)(9), a letter of this type does not address the tax deductibility of contributions to the trust with respect to the employer, nor the income inclusion with respect to the employees.

DRAFTING INFORMATION

The principal authors of this notice are Larry Isaacs of the Employee Plans, Tax Exempt and Government Entities Division and Betty Clary of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Isaacs at *RetirementPlanQuestions@irs.gov* or Ms. Clary at (202) 622–6080 (not a toll-free call).

Form 8918 — Section 6111 Disclosures

Notice 2007–85

This notice provides guidance to material advisors required to file a disclosure statement by October 31, 2007, under § 301.6111–3 of the Procedure and Administration Regulations.

BACKGROUND

On August 3, 2007, the Internal Revenue Service and Treasury Department published final regulations under § 301.6111–3 in the Federal Register (72 FR 43157) providing the rules relating to the disclosure of reportable transactions by material advisors under section 6111 of the Internal Revenue Code. See T.D. 9351, 2007–38 I.R.B. 616. In general, these regulations apply to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, these regulations apply to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement on or after November 2, 2006.

The regulations provide that each material advisor, with respect to any reportable transaction, must file a return as described in § 301.6111–3(d). Section 301.6111–3(d) provides that each material advisor required to file a disclosure statement under § 301.6111–3 must file a completed Form 8918, "*Material Advisor Disclosure Statement*" (or successor form). The Form 8918 must be filed with the Office of Tax Shelter Analysis (OTSA) by the last day of the calendar month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure occur.

Prior to the publication of the final regulations, material advisors were required to disclose reportable transactions on Form 8264, "*Application for Registration of a Tax Shelter*." Notice 2004–80, 2004–2 C.B. 963, and Notice 2005–22, 2005–1 C.B. 756, described the manner in which the Form 8264 was to be completed.

INTERIM PROVISION

The next due date for disclosures by material advisors is October 31, 2007. As of the date of release of this notice, Form 8918 has not yet been published. The IRS anticipates that the Form 8918 will be published soon.

Due to the unavailability of Form 8918, a material advisor required to file a completed Form 8918 by October 31, 2007, will be treated as satisfying the disclosure requirement of § 301.6111–3(d) if the material advisor files Form 8264 instead. If Form 8918 is published on or before October 31, 2007, material advisors may choose to use either Form 8918 or Form 8264 for disclosures required to be filed by October 31, 2007. For disclosures required to be filed after October 31, 2007, material advisors must use Form 8918 (or successor form) unless instructed otherwise by the IRS. Reportable transactions disclosed on the Form 8264 should be disclosed in the manner described in Notice 2004–80 and Notice 2005–22.

EFFECTIVE DATE

This notice is effective October 16, 2007, the date this notice was released to the public.

DRAFTING INFORMATION

The principal author of this notice is Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Charles D. Wien at 202–622–3070 (not a toll-free call).

2008 Limitations Adjusted As Provided in Section 415(d), etc.[1]

Notice 2007–87

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415 also requires that the Commissioner annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments. Many of the limitations will change for 2008 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. However, for others, the limitation will remain unchanged. For example, the limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) remains unchanged at $15,500. This limitation affects elective deferrals to section 401(k) plans and to the Federal Government's Thrift Savings Plan, among other plans.

Cost-of-Living limits for 2008

Effective January 1, 2008, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) is increased from $180,000 to $185,000. For participants who separated from service before January 1, 2008, the limitation for defined benefit plans under § 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2007, by 1.0236.

The limitation for defined contribution plans under § 415(c)(1)(A) is increased from $45,000 to $46,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). These dollar amounts and the adjusted amounts are as follows:

The limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) remains unchanged at $15,500.

The annual compensation limit under §§ 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from $225,000 to $230,000.

The dollar limitation under § 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan is increased from $145,000 to $150,000.

The dollar amount under § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from $915,000 to $935,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from $180,000 to $185,000.

The limitation used in the definition of highly compensated employee under § 414(q)(1)(B) is increased from $100,000 to $105,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at $5,000. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at $2,500.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, is increased from $335,000 to $345,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at $500.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at $10,500.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations remains unchanged at $15,500.

The compensation amounts under § 1.61–21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes remains unchanged at $90,000. The compensation amount under § 1.61–21(f)(5)(iii) is increased from $180,000 to $185,000.

The Code also provides that several pension-related amounts are to be adjusted using the cost-of-living adjustment under § 1(f)(3). These dollar amounts and the adjustments are as follows:

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing a joint return is increased from $31,000 to $32,000; the limitation under § 25B(b)(1)(B) is increased from $34,000 to $34,500; and the limitation under § 25B(b)(1)(C) and (D) is increased from $52,000 to $53,000.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from $23,250 to $24,000; the limitation under § 25B(b)(1)(B) is increased from $25,500 to $25,875; and the limitation under § 25B(b)(1)(C) and (D) is increased from $39,000 to $39,750.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from $15,500 to $16,000; the limitation under § 25B(b)(1)(B) is increased from $17,000 to $17,250; and the limitation under § 25B(b)(1)(C) and (D) is increased from $26,000 to $26,500.

The applicable dollar amount under § 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from $83,000 to $85,000. The applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) is increased from $52,000 to $53,000. The applicable dollar amount under § 219(g)(7)(A) for a taxpayer who is not an active participant but whose

[1] Based on News Release IR–2007–171 dated October 18, 2007.

spouse is an active participant is increased from $156,000 to $159,000.

The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(I) for determining the maximum Roth IRA contribution for taxpayers filing a joint return or as a qualifying widow(er) is increased from $156,000 to $159,000.

The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from $99,000 to $101,000.

Administrators of defined benefit or defined contribution plans that have received favorable determination letters should not request new determination letters solely because of yearly amendments to adjust maximum limitations in the plans.

Drafting Information

The principal author of this notice is John Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the data in this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free call) between the hours of 8:30 a.m. and 4:30 p.m. Eastern time Monday through Friday. For information regarding the methodology used in arriving at the data in this notice, please e-mail Mr. Heil at *RetirementPlanQuestions@irs.gov*.

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: §§ 45, 704, 1.704–1.)

Rev. Proc. 2007–65

SECTION 1. PURPOSE

Notice 2006–88, 2006–42 I.R.B. 686, regarding Electricity Produced from Open-Loop Biomass, announced that the Internal Revenue Service (the "Service") would not rule on any issues under Subchapter K for partnerships claiming the credit under § 45 of the Internal Revenue Code. This revenue procedure establishes the requirements (the Safe Harbor) under which the Service will respect the allocation of § 45 wind energy production tax credits by partnerships in accordance with § 704(b). The Treasury Department and the Service intend for the Safe Harbor to simplify the application of § 45 to partners and partnerships that own and produce electricity from qualified wind energy facilities.

SECTION 2. BACKGROUND

Section 45 provides for a renewable electricity production credit in an amount equal to the product of 1.5 cents, multiplied by the kilowatt hours of electricity produced by the taxpayer from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and sold by the taxpayer to an unrelated person during the taxable year.

Section 45(c)(1) defines "qualified energy resources" to include wind. Section 45(d)(1) defines a "qualified facility" in the case of a facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2009.

Under Rev. Rul. 94–31, 1994–1 C.B. 16, with respect to electricity produced from wind energy, the term "facility" under § 45(d)(1) means each separate wind turbine, together with the tower on which the turbine is mounted and the supporting pad on which the tower is situated. Although § 45 does not define "placed in service," the term has been defined for purposes of the deduction for depreciation and the investment tax credit. For these purposes, property is considered to be placed in service in the taxable year that the property is placed in a condition or state of readiness and available for a specifically assigned function. See §§ 1.46–3(d)(1)(ii) and 1.167(a)–11(e)(1)(i) of the Income Tax Regulations.

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit is, except as otherwise provided in chapter 1 of subtitle A of Title 26, determined by the partnership agreement. Under § 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if (i) the partnership agreement does not provide for the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or (ii) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) lacks substantial economic effect.

Section 1.704–1(b)(4)(ii) provides that allocations of tax credits and tax credit recapture (except for § 38 property) are not reflected by adjustments to the partners' capital accounts. Thus, these allocations cannot have economic effect under § 1.704–1(b)(2)(ii)(*b*)(*1*), and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. If a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership taxable year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for the year, then the partners' interests in the partnership with respect to the credit (or the cost giving rise to it) are in the same proportion as the partners' respective distributive shares of the loss or deduction (and adjustments). See § 1.704–1(b)(5), Example 11. Section 1.704–1(b)(4)(ii) further provides that identical principles apply in determining the partners' interests in the partnership regarding tax credits, such as the credit under § 45, that arise from receipts of the partnership (whether or not taxable).

SECTION 3. SCOPE

The Safe Harbor in section 4 of this revenue procedure applies to any partnership (the "Project Company") between a project developer (the "Developer") and one or more investors, as defined in section 4.01 (the "Investors"), with the Project Company owning and operating the project containing the qualified energy facilities ("Wind Farm" and for purposes of this definition the term does not include energy produced from such Wind Farm). In addition to the Project Company, the Developer, and the Investors, wind energy transactions typically involve lenders, land owners, a turbine supplier, a construction contractor, power purchasers, and a project operator. In order to qualify for the Safe Harbor, all of the requirements set forth in section 4 of this revenue procedure must be met. This Safe Harbor will apply only if the Developer, Investors and Project Company satisfy each and every requirement in

section 4 of this revenue procedure. Furthermore, this revenue procedure applies only to partners or partnerships with § 45 production tax credits from renewable resources from wind. Thus, this revenue procedure does not apply to any other tax credits.

The Service generally will closely scrutinize a Project Company as a partnership or Investors as partners if a Project Company's partnership agreement does not satisfy each requirement of this revenue procedure. The Safe Harbor in this revenue procedure is to provide guidance to taxpayers establishing or participating in wind energy partnerships in lieu of taxpayers requesting a letter ruling. Therefore, the Service will not rule on any issues under Subchapter K for partnerships claiming the credit under § 45.

SECTION 4. SAFE HARBOR

.01 *Investors Defined*. Investors are partners in the Project Company whose investment return is reasonably anticipated to be derived from both § 45 credits and participation in operating cash flow.

.02 *Partners' Minimum Partnership Interest*. The Developer must have a minimum one percent interest in each material item of partnership income, gain, loss, deduction and credit at all times during the existence of the Project Company. Each Investor must have, at all times during the period it owns a partnership interest in the Project Company, a minimum interest in each material item of partnership income and gain equal to 5 percent of the Investor's percentage interest in partnership income and gain for the taxable year for which the Investor's percentage share of income and gain will be the largest, as adjusted for sales, redemptions or dilution of its interest.

.03 *Investor's Minimum Unconditional Investment*. On or before the later of the date the Wind Farm is placed in service or the date the Investor acquires its interest in the Project Company, the Investor must make a minimum unconditional investment in the Project Company (the "Investor Minimum Investment"). The Investor must maintain the Investor Minimum Investment throughout the duration of its ownership of its partnership interest in the Project Company, except that the Investor Minimum Investment can be reduced as a result of distributions of cash flow from the Project Company's operation of the Wind Farm or in connection with section 4.05. Contributions required to be made in the future will not be included in the Investor Minimum Investment until the contributions are actually made to the partnership. The Investor Minimum Investment must be equal to at least 20 percent of the sum of the fixed capital contributions plus reasonably anticipated contingent capital contributions required to be made by the Investor under the partnership agreement. The Investor must not be protected against loss of any portion of the Investor Minimum Investment through any arrangement, directly or indirectly, with the Developer, any other Investor, the turbine supplier or the power purchaser or any party related to the Developer, other Investors, turbine supplier or the power purchaser.

.04 *Contingent Consideration*. At least 75 percent of the sum of the fixed capital contributions plus reasonably anticipated contingent capital contributions to be contributed by an Investor with respect to an interest in the Project Company must be fixed and determinable obligations that are not contingent in amount or certainty of payment.

.05 *Purchase Rights*. Neither the Developer, the Investors nor any related parties may have a contractual right to purchase, at any time, the Wind Farm, any property included in the Wind Farm or an interest in the Project Company at a price less than its fair market value determined at the time of exercise of the contractual right to purchase, and provided further that the Developer (or any party related to the Developer) may not have a contractual right to purchase the Wind Farm or an interest in the Project Company earlier than 5 years after the qualified facility is first placed into service.

Any determination of the fair market value of the Wind Farm or an interest in the Project Company may take into account: (i) contracts or other arrangements creating rights or obligations (excluding power purchase agreements) only if such contracts or other arrangements creating rights or obligations are entered into in the ordinary course of the Wind Farm's business and are negotiated at arm's length with parties not related to the Project Company or Investors; and (ii) any power purchase contract only if such contract is entered into with parties not related to (within the meaning of § 45(e)(4)) to the Project Company.

.06 *Sale Rights*. The Project Company may not have a contractual right to cause any party to purchase the Wind Farm or any property included in the Wind Farm, excluding electricity, from the Project Company. An Investor may not have a contractual right to cause any party to purchase its partnership interest in the Project Company.

.07 *Guarantees and Loans*. No person may guarantee or otherwise insure the Investor the right to any allocation of the credit under § 45.

The Project Company must bear the risk that the available wind resource is not as great as anticipated or projected. The Developer, the turbine supplier, or any power purchaser may not provide a guarantee that the wind resource will be available at a certain level. A guarantee regarding wind resource availability may be provided by a third party not related to the Developer, the turbine supplier, any power purchaser, or any other project participant if the Project Company or an Investor directly pays the cost of or premium for such guarantee. For example, a weather derivative contract between the Project Company and an unrelated third party (such as an insurance company) is an acceptable guarantee.

A long-term power purchase agreement entered into between the Project Company and a party not related to the Project Company under § 45(e)(4) does not constitute a guarantee. However, a Take or Pay contract between related parties would constitute a guarantee and is not permissible. Any sale of electricity between related persons as defined in § 45(e)(4) will not qualify for the credit under § 45.

The Developer (or a party related to the Developer) may not lend any Investor the funds to acquire any part of the Investor's interest in the Project Company or guarantee any indebtedness incurred or created in connection with the acquisition of such Investor's interest in the Project Company.

.08 *Allocation of § 45 Production Tax Credits*. The § 45 credit must be allocated in accordance with § 1.704–1(b)(4)(ii).

.09 *Separate Activity for Purposes of § 469*. For purposes of the passive activity loss rules, under § 1.469–4(d)(4) each qualified facility will be treated as a sep-

arate activity for purposes of § 469 and that activity may not be grouped with any other activity, except other qualified wind facilities. Thus, generally, only entities not subject to § 469, and not individuals, will be able to offset non-project income with credits received as a passive investor in a partnership.

.10 *Definition of Related Party*. Except as otherwise provided, for purposes of this revenue procedure parties are related if they bear a relationship to each other that is specified in § 267(b) or 707(b)(1).

SECTION 5. EXAMPLES

.01 *Example 1*. The following is an example of a valid wind energy limited liability company that is classified as a partnership for federal tax purposes. Developer is a C corporation that owns and manages wind-based generation projects. Project Company is a limited liability company (LLC) that has been formed by Developer to develop, own and manage a renewable energy project that utilizes wind turbines to produce electricity from wind (the Project). Investor is a C corporation that invests in renewable energy projects primarily to benefit from § 45 credits. Developer has caused LLC to enter into, or has assigned to LLC, a number a contracts or agreements relating to the development of the Project.

Developer will own all of LLC during construction of the Project. Construction of the Project will be financed with $100x of construction financing. When construction of the Project is substantially complete, pursuant to a Membership Interest Purchase and Equity Capital Contribution Agreement, (1) Developer will contribute $15x to LLC, and (2) Investor will acquire newly issued membership interests from LLC in exchange for an upfront cash capital contribution in the amount of $10x which is 20% of Investor's total agreed capital contributions to LLC of $50x. Developer, as the developer of the Project, has not provided a guarantee to LLC or Investor regarding the level of the available wind resource at the Project or the amount of § 45 credits.

Pursuant to the limited liability company operating agreement (the "Operating Agreement"), Developer will have the right to manage LLC, subject to the right of Investor to consent to certain activities. Below is a chart and explanation that generally describes the distribution and allocation provisions applicable to Developer and Investor over various time periods.

	Developer		Investor	
	Cash	Gross Income/Loss and Section 45 Credits	Cash	Gross Income/Loss and Section 45 Credits
Period 1	100%	1%	0%	99%
Period 2	0%	1%	100%	99%
Period 3	95%	95%	5%	5%

During Period 1, 99% of LLC's gross income or loss and the § 45 credits will be allocated to Investor, and 100% of LLC's cash flows will be distributed to Developer. Period 1 will continue until the earlier of (i) such time that Developer has received aggregate cash distributions in an amount equal to the aggregate contributions made by Developer (*i.e.*, $15x) and (ii) a fixed outside date. Period 1 is expected to last four to six years. When Period 1 ends, Period 2 will begin.

During Period 2, 99% of LLC's gross income or loss and the § 45 credits will be allocated to, and 100% of LLC's cash flows will be distributed to Investor. Period 2 will continue until Investor has achieved an agreed after-tax internal rate of return (the "Flip Point"). Although the Flip Point might occur sooner, it is expected that the Flip Point will not occur until after the end of year 10 of the Project, at which time § 45 credits will no longer be available for the production and sale of electricity from the Project. Period 2 is expected to last four to six years. When Period 2 ends, Period 3 will begin. Moreover, upon the tenth anniversary of Investor's investment, Developer will have the option to purchase Investor's interest for its then-appraised fair market value. Assuming that option is not exercised, during Period 3, 5% of LLC's gross income or loss and § 45 credits will be allocated to, and 5% of LLC's cash flows will be distributed to, Investor; and 95% of LLC's gross income or loss and § 45 credits will be allocated to, and 95% of LLC's cash flows will be distributed to, Developer. Period 3 will continue for the remaining life of the Project.

.02 *Example 2*. The facts are the same as in *Example 1*, except Investor is initially allocated 99.5% of LLC's gross income or loss and § 45 credits. Under these facts, the wind energy limited liability company's classification as a valid partnership would be closely scrutinized by the Service. Likewise, if any other provision of this safe harbor is not followed for any wind energy partnerships, the Service will closely scrutinize the validity of such purported partnerships.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for transactions entered into on or after the date of publication in the Internal Revenue Bulletin. If a Project Company, Developer and Investor satisfied all the requirements of the Safe Harbor provided in section 4 of this revenue procedure for transactions entered into before the date of publication of this revenue procedure in the Internal Revenue Bulletin, the Service will not challenge the allocation of § 45 wind energy production tax credits by the partnership that are in accordance with § 704(b) for such taxable year(s).

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Vishal R. Amin and Richard T. Probst of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Vishal R. Amin or Richard T. Probst at (202) 622–3060 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.
(Also Part I, §§ 1, 23, 24, 25A, 25B, 32, 42, 59, 62, 63, 68, 132, 135, 137, 146, 148, 151, 170, 179, 213, 219, 220, 221, 408A, 512, 513, 685, 877, 911, 2032A, 2503, 2523, 4161, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148–3, 1.148–5.)

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SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2008.

SECTION 2. CHANGES

.01 The excise taxes imposed under § 4261(b) and (c), as enacted by the Airport and Airway Trust Fund Tax Reinstatement Act of 1997 and extended by § 149(a) of Pub. L. No. 110–92, 121 Stat. 989 (2007), apply to transportation taken through November 16, 2007, and to amounts paid on or before November 16, 2007, for transportation beginning after that date. Accordingly, the amounts in § 4261(b) and (c) are not included in this revenue procedure.

.02 For 2008, the inflation adjusted items in §§ 25B, 219, and 408A also will be included in a separate news release and related notice with other inflation adjusted amounts relating to pension and retirement accounts. For future years, these amounts will not be included in this revenue procedure but will appear only in the separate news release and related notice.

.03 For taxable years beginning after 2007, the inflation adjusted items for health savings accounts under § 223 are published no later than June 1 of the preceding calendar year. See § 223(g) and Rev. Proc. 2007–36, 2007–22 I.R.B. 1335. Accordingly, these items are not included in this revenue procedure.

.04 Section 1.148–3(d)(1)(iv) of the proposed Income Tax Regulations provides that on the last day of each bond year during which there are amounts allocated to gross proceeds of an issue that are subject to the rebate requirement, and on the final maturity date, there can be included as a payment a computation credit of $1,400 for any bond year ending in 2007. For bond years ending after 2007, the $1,400 computation credit will be adjusted for inflation pursuant to proposed § 1.148–3(d)(4). See section 3.17 of this revenue procedure.

SECTION 3. 2008 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2008, the tax rate tables under § 1 are as follows:

TABLE 1 — Section 1(a). — Married Individuals Filing Joint Returns and Surviving Spouses.

If Taxable Income Is:	*The Tax Is*:
Not over $16,050	10% of the taxable income
Over $16,050 but not over $65,100	$1,605 plus 15% of the excess over $16,050
Over $65,100 but not over $131,450	$8,962.50 plus 25% of the excess over $65,100
Over $131,450 but not over $200,300	$25,550 plus 28% of the excess over $131,450
Over $200,300 but not over $357,700	$44,828 plus 33% of the excess over $200,300
Over $357,700	$96,770 plus 35% of the excess over $357,700

TABLE 2 — Section 1(b). — Heads of Households.

If Taxable Income Is:	*The Tax Is*:
Not over $11,450	10% of the taxable income
Over $11,450 but not over $43,650	$1,145 plus 15% of the excess over $11,450
Over $43,650 but not over $112,650	$5,975 plus 25% of the excess over $43,650
Over $112,650 but not over $182,400	$23,225 plus 28% of the excess over $112,650
Over $182,400 but not over $357,700	$42,755 plus 33% of the excess over $182,400
Over $357,700	$100,604 plus 35% of the excess over $357,700

TABLE 3 — Section 1(c). — Unmarried Individuals (other than Surviving Spouses and Heads of Households).

If Taxable Income Is:	*The Tax Is*:
Not over $8,025	10% of the taxable income
Over $8,025 but not over $32,550	$802.50 plus 15% of the excess over $8,025
Over $32,550 but not over $78,850	$4,481.25 plus 25% of the excess over $32,550
Over $78,850 but not over $164,550	$16,056.25 plus 28% of the excess over $78,850
Over $164,550 but not over $357,700	$40,052.25 plus 33% of the excess over $164,550
Over $357,700	$103,791.75 plus 35% of the excess over $357,700

TABLE 4 — Section 1(d). — Married Individuals Filing Separate Returns.

If Taxable Income Is:	*The Tax Is*:
Not over $8,025	10% of the taxable income
Over $8,025 but not over $32,550	$802.50 plus 15% of the excess over $8,025
Over $32,550 but not over $65,725	$4,481.25 plus 25% of the excess over $32,550
Over $65,725 but not over $100,150	$12,775 plus 28% of the excess over $65,725
Over $100,150 but not over $178,850	$22,414 plus 33% of the excess over $100,150
Over $178,850	$48,385 plus 35% of the excess over $178,850

TABLE 5 — Section 1(e). — Estates and Trusts.

If Taxable Income Is:	*The Tax Is*:
Not over $2,200	15% of the taxable income
Over $2,200 but not over $5,150	$330 plus 25% of the excess over $2,200
Over $5,150 but not over $7,850	$1,067.50 plus 28% of the excess over $5,150
Over $7,850 but not over $10,700	$1,823.50 plus 33% of the excess over $7,850
Over $10,700	$2,764 plus 35% of the excess over $10,700

.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax").* For taxable years beginning in 2008, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $900. This amount is the same as the $900 standard deduction amount provided in section 3.11(2) of this revenue procedure. The same $900 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the

amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2008 must be more than $900 but less than $9,000.

.03 *Adoption Credit*. For taxable years beginning in 2008, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is $11,650. For taxable years beginning in 2008, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $11,650. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $174,730 and is completely phased out for taxpayers with modified adjusted gross income of $214,730 or more. (See section 3.15 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.04 *Child Tax Credit*. For taxable years beginning in 2008, the value used in § 24(d)(1)(B)(i) to determine the amount of credit under § 24 that may be refundable is $12,050.

.05 *Hope and Lifetime Learning Credits*.

(1) For taxable years beginning in 2008, the Hope Scholarship Credit under § 25A(b)(1) is an amount equal to 100 percent of qualified tuition and related expenses not in excess of $1,200 plus 50 percent of those expenses in excess of $1,200, but not in excess of $2,400. Accordingly, the maximum Hope Scholarship Credit allowable under § 25A(b)(1) for taxable years beginning in 2008 is $1,800.

(2) For taxable years beginning in 2008, a taxpayer's modified adjusted gross income in excess of $48,000 ($96,000 for a joint return) is used to determine the reduction under § 25A(d)(2)(A)(ii) in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise allowable under § 25A(a).

.06 *Elective Deferrals and IRA Contributions by Certain Individuals*. For taxable years beginning in 2008, the applicable percentage under § 25B(b) is determined based on the following amounts:

Modified Adjusted Gross Income						
Joint Return		*Head of Household*		*All Other Cases*		
Over	*Not Over*	*Over*	*Not Over*	*Over*	*Not Over*	*Applicable Percentage*
$ 0	$32,000	$ 0	$24,000	$ 0	$16,000	50%
$32,000	$34,500	$24,000	$25,875	$16,000	$17,250	20%
$34,500	$53,000	$25,875	$39,750	$17,250	$26,500	10%
$53,000		$39,750		$26,500		0%

.07 *Earned Income Credit*.

(1) *In general*. For taxable years beginning in 2008, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed.

	Number of Qualifying Children		
Item	*One*	*Two or More*	*None*
Earned Income Amount	$ 8,580	$12,060	$ 5,720
Maximum Amount of Credit	$ 2,917	$ 4,824	$ 438
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$15,740	$15,740	$ 7,160
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$33,995	$38,646	$12,880
Threshold Phaseout Amount (Married Filing Jointly)	$18,740	$18,740	$10,160
Completed Phaseout Amount (Married Filing Jointly)	$36,995	$41,646	$15,880

The instructions for the Form 1040 series provide tables showing the amount of the earned income credit for each type of taxpayer.

(2) *Excessive investment income*. For taxable years beginning in 2008, the earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds $2,950.

.08 *Low-Income Housing Credit*. For calendar year 2008, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) $2.00 multiplied by the State population, or (2) $2,325,000.

.09 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2008, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $6,400.

.10 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans*. For calendar year 2008, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to $15 per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41. If the employer provides fuel or otherwise reimburses fuel expenses, up to $9 per hour is deemed substantiated if paid under Rev. Proc. 2002–41.

.11 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2008, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$10,900
Heads of Households (§ 1(b))	$ 8,000
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$ 5,450
Married Individuals Filing Separate Returns (§ 1(d))	$ 5,450

(2) *Dependent*. For taxable years beginning in 2008, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $900, or (2) the sum of $300 and the individual's earned income.

(3) *Aged or blind*. For taxable years beginning in 2008, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,050. These amounts are increased to $1,350 if the individual is also unmarried and not a surviving spouse.

.12 *Overall Limitation on Itemized Deductions*. For taxable years beginning in 2008, the "applicable amount" of adjusted gross income under § 68(b), above which the amount of otherwise allowable itemized deductions is reduced under § 68, is $159,950 (or $79,975 for a separate return filed by a married individual).

.13 *Qualified Transportation Fringe*. For taxable years beginning in 2008, the monthly limitation under § 132(f)(2)(A), regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass, is $115. The monthly limitation under § 132(f)(2)(B), regarding the fringe benefit exclusion amount for qualified parking, is $220.

.14 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2008, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above $100,650 for joint returns and $67,100 for other returns. The exclusion is completely phased out for modified adjusted gross income of $130,650 or more for joint returns and $82,100 or more for other returns.

.15 *Adoption Assistance Programs*. For taxable years beginning in 2008, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is $11,650. For taxable years beginning in 2008, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is $11,650. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $174,730 and is completely phased out for taxpayers with modified adjusted gross income of $214,730 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.16 *Private Activity Bonds Volume Cap*. For calendar year 2008, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) $85 multiplied by the State population, or (2) $262,095,000.

.17 *General Arbitrage Rebate Rules*. For bond years ending in 2008, the amount of the computation credit determined under § 1.148–3(d)(4) of the proposed Income Tax Regulations is $1,430.

.18 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2008, under § 1.148–5(e)(2)(iii)(B)(*1*), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $34,000, and (B) 0.2 percent of the computational base (as defined in § 1.148–5(e)(2)(iii)(B)(*2*)) or,

if more, $3,000; and (2) the issuer does not treat more than $95,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.19 *Personal Exemption*.

(1) *Exemption amount*. For taxable years beginning in 2008, the personal exemption amount under § 151(d) is $3,500. The exemption amount for taxpayers with adjusted gross income in excess of the maximum phaseout amount is $2,333 for taxable years beginning in 2008.

(2) *Phaseout*. For taxable years beginning in 2008, the personal exemption amount begins to phase out at, and reaches the maximum phaseout amount after, the following adjusted gross income amounts:

Filing Status	*AGI – Beginning of Phaseout*	*AGI – Maximum Phaseout*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$239,950	$362,450
Heads of Households (§ 1(b))	$199,950	$322,450
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$159,950	$282,450
Married Individuals Filing Separate Returns (§ 1(d))	$119,975	$181,225

.20 *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2008, under § 179(b)(1) the aggregate cost of any § 179 property a taxpayer may elect to treat as an expense can not exceed $128,000. Under § 179(b)(2), the $128,000 limitation is reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the 2008 taxable year exceeds $510,000.

.21 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2008, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

Attained Age Before the Close of the Taxable Year	*Limitation on Premiums*
40 or less	$ 310
More than 40 but not more than 50	$ 580
More than 50 but not more than 60	$1,150
More than 60 but not more than 70	$3,080
More than 70	$3,850

.22 *Retirement Savings.*

(1) For taxable years beginning in 2008, the applicable dollar amount under § 219(g)(3)(B)(i) for taxpayers filing a joint return is $85,000. If the taxpayer's spouse is not an active participant, the applicable dollar amount for the spouse under § 219(g)(3)(B)(i) is $159,000 for taxable years beginning in 2008.

(2) For taxable years beginning in 2008, the applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (except for married taxpayers filing separately) is $53,000.

(3) The applicable dollar amount under § 219(g)(3)(B)(iii) for married taxpayers filing separately is $0.

.23 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2008, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $1,950 and not more than $2,900, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits does not exceed $3,850.

(2) *Family coverage*. For taxable years beginning in 2008, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $3,850 and not more than $5,800, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits does not exceed $7,050.

.24 *Interest on Education Loans*. For taxable years beginning in 2008, the $2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of $55,000 ($115,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $70,000 or more ($145,000 or more for joint returns).

.25 *Roth IRAs*.

(1) For taxable years beginning in 2008, the applicable dollar amount under § 408A(c)(3)(C)(ii)(I) for taxpayers filing a joint return is $159,000.

(2) For taxable years beginning in 2008, the applicable dollar amount under § 408A(c)(3)(C)(ii)(II) for all other taxpayers (except for married taxpayers filing separately) is $101,000.

(3) The applicable dollar amount under § 408A(c)(3)(C)(ii)(III) for married taxpayers filing separately is $0.

.26 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2008, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $139.

.27 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns*.

(1) *Low cost article*. For taxable years beginning in 2008, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of $9.10 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2008, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and modified by Rev. Proc. 92–102, 1992–2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are $9.10, $45.50, and $91, respectively.

.28 *Funeral Trusts*. For a contract entered into during calendar year 2008 for a "qualified funeral trust," as defined in § 685, the trust may not accept aggregate contributions by or for the benefit of an individual in excess of $9,000.

.29 *Expatriation to Avoid Tax*. For calendar year 2008, an individual with "average annual net income tax" of more than $139,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is subject to tax under § 877(b).

.30 *Foreign Earned Income Exclusion*. For taxable years beginning in 2008, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $87,600.

.31 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2008, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax can not exceed $960,000.

.32 *Annual Exclusion for Gifts*.

(1) For calendar year 2008, the first $12,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2008, the first $128,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.33 *Tax on Arrow Shafts*. For calendar year 2008, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is $0.43 per shaft.

.34 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2008, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98–19, 1998–1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is $97 or less.

.35 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2008, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the aggregate value of gifts received in a taxable year exceeds $13,561.

.36 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2008, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,320, or (2) a mechanic's lienor under § 6323(b)(7) that repaired or improved certain residential property if the contract price with the owner is not more than $6,600.

.37 *Property Exempt from Levy*. For calendar year 2008, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) can not exceed $7,900. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) can not exceed $3,950.

.38 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2008, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is $1,280,000.

.39 *Attorney Fee Awards*. For fees incurred in calendar year 2008, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $170 per hour.

.40 *Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts*. For calendar year 2008, the stated dollar amount of the *per diem* limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is $270.

SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2008.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2008 for purposes of sections 3.08 (low-income housing credit), 3.10 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.16 (private activity bond volume cap), 3.17 (general arbitrage rebate rules), 3.18 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.28 (funeral trusts), 3.29 (expatriation to avoid tax), 3.31 (valuation of qualified real property in decedent's gross estate), 3.32 (annual exclusion for gifts), 3.33 (tax on arrow shafts), 3.36 (persons against whom a federal tax lien is not valid), 3.37 (property exempt from levy), 3.38 (interest on a certain portion of the estate tax payable in installments), 3.39 (attorney fee awards), and 3.40 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Myers at (202) 622–4920 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Regulations Governing Practice Before the Internal Revenue Service

REG–138637–07

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed modifications of the regulations governing practice before the IRS (Circular 230). These proposed regulations affect individuals who practice before the IRS. The proposed amendments modify §10.34 of Circular 230 relating to standards with respect to tax returns.

DATES: Written or electronic comments and requests for a public hearing must be received by October 26, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138637–07), 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–138637–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138637–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Matthew S. Cooper at (202) 622–4940; concerning submissions of comments and request for a public hearing, Kelly Banks of the Publications and Regulation Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to §10.34 of Circular 230. Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published the regulations in Circular 230 (31 CFR part 10).

On May 25, 2007, the President signed into law the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190), which amended several provisions of the Internal Revenue Code to extend the application of the income tax return preparer penalties to all tax return preparers, alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return that reflects an understatement of liability, and increase applicable penalties. On June 11, 2007, the IRS released Notice 2007–54, 2007–27 I.R.B. 12 (see §601.601(d)(2)(ii)(*b*)), providing guidance and transitional relief for the return preparer provisions under section 6694 of the Internal Revenue Code, as recently amended.

Final regulations (T.D. 9359) are, simultaneously to these proposed regulations, being promulgated on September 26, 2007, modifying the general standards of practice before the IRS under Circular 230. Those final regulations finalize the standards with respect to documents, affidavits and other papers as proposed, with modifications. Those final regulations, however, do not finalize the standards with respect to tax returns under §10.34(a) and the definitions under §10.34(e) because of the amendments made by the Small Business and Work Opportunity Tax Act of 2007. Rather, the Treasury Department and the IRS are reserving §10.34(a) and (e) in those final regulations and are simultaneously issuing this notice of proposed rulemaking proposing to amend this part to reflect these recent amendments to the Code.

The Treasury Department and the IRS have determined that the professional standards under §10.34 of Circular 230 should conform with the civil penalty standards for return preparers. Previously, for example, on June 20, 1994 (T.D. 8545, 1994–2 C.B. 415 [59 FR 31523]), the regulations were modified to reflect more closely the rules under section 6694 and professional guidelines. The standards with respect to tax returns in §10.34(a) of these proposed regulations have been amended to reflect changes to section 6694(a) of the Internal Revenue Code made by the Small Business and Work Opportunity Tax Act of 2007.

Under §10.34(a) of these proposed regulations, a practitioner may not sign a tax return as a preparer unless the practitioner has a reasonable belief that the tax treatment of each position on the return would more likely than not be sustained on its merits, or there is a reasonable basis for each position and each position is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless (1) the practitioner has a reasonable belief that the position satisfies the more likely than not standard; or (2) the position has a reasonable basis and is adequately disclosed to the Internal Revenue Service. The definitions of "more likely than not" and "reasonable basis" under §10.34(e) also are proposed to be amended to reflect these changes in accordance with the well-established definitions of these terms under the section 6662 penalty regulations.

On June 11, 2007, the IRS released Notice 2007–54, 2007–27 I.R.B. 12 (see §601.601(d)(2)(ii)(*b*)), providing guidance and transitional relief for the return preparer provisions under section 6694 of

the Code, as recently amended. In order to apply §10.34 of these regulations consistently with the transitional relief under Notice 2007–54, §10.34(a) and (e) are proposed to apply to returns filed or advice provided on or after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2008.

Proposed Effective Date

These regulations are proposed to apply to returns filed or advice provided on or after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2008.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these regulations will not have a significant economic impact on a substantial number of small entities. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. The general requirements of these regulations are substantially the same as the recent Congressional amendments to section 6694 of the Code by the Small Business and Work Opportunity Tax Act of 2007. Practitioners already enroll in educational seminars or training programs to keep up to date with the latest changes to the Internal Revenue Code, the provisions of the Act, and Circular 230, and the proposed regulations will generally be covered as part of that training. These regulations will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. A regulatory flexibility analysis, therefore, is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses.

Comments and Requests for Public Hearing

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

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 10 is proposed to be amended to read as follows:

PART 10 — PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for 31 CFR part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et. seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

Par. 2. Section 10.34(a) and (e) are added and paragraph (f) is revised to read as follows:

§10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns.* A practitioner may not sign a tax return as a preparer unless the practitioner has a reasonable belief that the tax treatment of each position on the return would more likely than not be sustained on its merits (the more likely than not standard), or there is a reasonable basis for each position and each position is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner has a reasonable belief that the position satisfies the more likely than not standard; or

(2) The position has a reasonable basis and is adequately disclosed to the Internal Revenue Service.

* * * * *

(e) *Definitions.* For purposes of this section—

(1) *More likely than not.* A practitioner is considered to have a reasonable belief that the tax treatment of a position is more likely than not the proper tax treatment if the practitioner analyzes the pertinent facts and authorities, and based on that analysis reasonably concludes, in good faith, that there is a greater than fifty-percent likelihood that the tax treatment will be upheld if the IRS challenges it. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis.

(2) *Reasonable basis.* A position is considered to have a reasonable basis if it is reasonably based on one or more of the authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations. Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(3) *Frivolous.* A position is frivolous if it is patently improper.

(f) *Effective/applicability date.* Section 10.34(a) and (e) is applicable for returns filed or advice provided on or after the date that final regulations are published in

the **Federal Register**, but no earlier than January 1, 2008.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved September 19, 2007.

Robert Hoyt,
General Counsel,
Office of the Secretary.

(Filed by the Office of the Federal Register on September 25, 2007, 8:45 a.m., and published in the issue of the Federal Register for September 26, 2007, 72 F.R. 54621)

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

Announcement 2007-104

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

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

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attorney, certified public accountant, enrolled agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Dotson, Lewis S.	Mattoon, IL	Attorney	April 8, 2007
Adams, Jr., Joseph T.	Philadelphia, PA	Enrolled Agent	July 30, 2007
Cramer, George C.	Chicago, IL	CPA	July 30, 2007
Garlikov, Mark B.	Dayton, OH	Attorney	July 30, 2007
Grant, Elaine C.	Woodway, WA	Enrolled Agent	July 30, 2007
Rubesh, Leland	Gillette, WY	CPA	July 30, 2007
Schawe, Rudolph B.	Brenham, TX	Enrolled Agent	July 30, 2007
Sobel, Herbert L.	Elkins Park, PA	CPA	July 30, 2007
Welch, Frank G.	Stamford, CT	CPA	July 30, 2007
Ferguson, Charles E.	Naples, FL	CPA	July 31, 2007
Lim, Edgar E.	St. Louis, MO	Attorney	July 31, 2007

Name	Address	Designation	Date of Reinstatement
Sneathen, Lowell D.	Orange, CA	CPA	August 30, 2007
Smith, David B.	Kettering, OH	Enrolled Agent	September 9, 2007
Young, Ronald B.	Fairfield, CT	CPA	September 9, 2007
Sheiman, Alan P.	Sherman Oaks, CA	Enrolled Agent	September 14, 2007
DiSiena, Frank E.	Somers, NY	CPA	September 19, 2007
Leggio, Joseph J.	Katonah, NY	CPA	September 24, 2007

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Hunter, Richard	Moweaqua, IL	Enrolled Agent	Indefinite from July 16, 2007
Sheehy, William J.	Northville, MI	Attorney	Indefinite from July 16, 2007
Szwyd, Edward R.	Housatonic, MA	CPA	Indefinite from July 16, 2007
Lettieri, Louis E.	Red Bank, NJ	CPA	Indefinite from August 1, 2007
Stein, Jerold A.	Alpharetta, GA	CPA	Indefinite from August 1, 2007
Tutino, Philip R.	East Hampton, NY	CPA	Indefinite from August 1, 2007
Dorr, Mark A.	Gillette, WY	CPA	Indefinite from August 7, 2007
Nelson, Carole S.	Riverside, CA	Enrolled Agent	Indefinite from August 8, 2007

Name	Address	Designation	Date of Suspension
Siegel, Herbert	New City, NY	CPA	Indefinite from August 10, 2007
Taylor, Linda W.	Las Vegas, NV	CPA	Indefinite from August 15, 2007
Finkelstein, Meyer	Staten Island, NY	CPA	Indefinite from August 15, 2007
Schenck, Thomas M.	Tampa, FL	CPA	Indefinite from August 20, 2007
Shah, Sudhir P.	Richardson, TX	CPA	Indefinite from August 20, 2007
Bender, Elmer P.	Missoula, MT	CPA	Indefinite from August 31, 2007
Tselepis, John	Jarrettsville, MD	CPA	Indefinite from September 5, 2007
Perez, Ricardo L.	Cedar Lake, IN	CPA	Indefinite from September 10, 2007
Golden, Roberta A.	Framington, MA	Attorney	Indefinite from September 13, 2007
Ward, Thomas R.	St. Louis Park, MN	Attorney	Indefinite from September 13, 2007

Expedited Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Murphy, John F.	Wellsboro, PA	Attorney	Indefinite from June 28, 2007

Name	Address	Designation	Date of Suspension
Aakre, Steven K.	Hawley, MN	Attorney	Indefinite from July 11, 2007
Brogan, Jane K.	York, NE	Attorney	Indefinite from July 11, 2007
Clark, Clifford A.	Raleigh, NC	CPA	Indefinite from July 11, 2007
Downing, Jr., Eugene W.	Arlington, MA	Attorney	Indefinite from July 11, 2007
Kahn, Arthur M.	Woodstock, NY	Attorney	Indefinite from July 11, 2007
Kossmeyer, Carl F.	Town and Country, MO	CPA	Indefinite from July 11, 2007
Lee, John C.	Charlotte, NC	Attorney	Indefinite from July 11, 2007
McAvoy, Donald L.	Windermere, FL	CPA	Indefinite from July 11, 2007
McCabe, Edwin A.	Gloucester, MA	Attorney	Indefinite from July 11, 2007
O'Donnell, Judith R.	Westborough, MA	Attorney	Indefinite from July 11, 2007
Taylor, John G.	Lincoln, NE	Attorney	Indefinite from July 11, 2007
Turner, D. Scott	Mooresville, NC	Attorney	Indefinite from July 11, 2007
Csaszar, James J.	Columbus, OH	CPA	Indefinite from July 13, 2007
Fischer, Mark W.	Boulder, CO	Attorney	Indefinite from July 16, 2007
Behunin, Michael N.	Sandy, UT	Attorney	Indefinite from August 8, 2007

Name	Address	Designation	Date of Suspension
Carpenter, Jr., Darwin R.	Melbourne, FL	CPA	Indefinite from August 23, 2007
Gresham, James L.	Broken Arrow, OK	CPA	Indefinite from August 23, 2007
Krezminski, Allen D.	Milwaukee, WI	Attorney	Indefinite from August 23, 2007
Neary, Hugh M.	Ottumwa, IA	Attorney	Indefinite from August 23, 2007
Weiss, Randy A.	Potomac, MD	Attorney	Indefinite from August 23, 2007
Whiddon, Edward L.	Houston, TX	CPA	Indefinite from August 23, 2007
Hazen, Robert D.	Lindon, UT	CPA	Indefinite from August 29, 2007
Schafer, III, Harry J.	Edmond, OK	CPA	Indefinite from September 6, 2007
Pullin, Wendy F.	San Antonio, TX	CPA	Indefinite from September 24, 2007

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

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

Name	Address	Designation	Effective Date
Newton, Douglas M.	Fernandina Beach, FL	CPA	Indefinite from June 4, 2007
Snell, Barry A.	Santa Monica, CA	CPA	Indefinite from June 6, 2007
Khoury, Naif S.	Fort Smith, AR	Attorney	Indefinite from June 14, 2007

Name	Address	Designation	Effective Date
Bukovac, Jane	Alexandria, VA	Enrolled Agent	Indefinite from June 29, 2007
Kreke, David J.	Bartelso, IL	Enrolled Agent	Indefinite from July 12, 2007
Dunkley, John D.	San Antonio, TX	Enrolled Agent	Indefinite from July 27, 2007

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

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

Name	Address	Designation	Effective Date
Ruocchio, Robert	Havertown, PA	CPA	June 11, 2007
Turner, John S.	Paradise, CA	Enrolled Agent	June 15, 2007
Johnson, Ted R.	Frankfort, IN	Attorney	July 30, 2007
Ayers, Dani D.	Kelseyville, CA	Enrolled Agent	August 6, 2007

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

Announcement 2007–105

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November 5, 2007, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Gregory and Vickie Iverson Charitable Supporting Organization
Salt Lake City, UT

The Scott Canepa Charitable Supporting Organization
Las Vegas, NV

Kyle Charitable Support Organization Trust
Austin, TX

Paul and Deborah Marvin Charitable Supporting Foundation
Salt Lake City, UT

Malecha Family Foundation
Apple Valley, MN

Shared Visions Foundation
Park City, UT

Harold B Lee Foundation
Woodland, UT

Missouri Basketball Club
Columbia, MO

Mahisekar Charitable Supporting Organization
Orland Park, IL

Georgetown Title Foundation
Sandy, UT

Buddy & Rita Gregory Charitable Supporting Organization
Lehi, UT
Keith & Anna Barton Charitable Supporting Organization
Lehi, UT
Asafo Global Trust Fund, Inc.
Phoenix, AZ
White Wing Educational Dev Corp
New York, NY
AARO Credit Services
Costa Mesa, CA
Paul and Deborah Manning Charitable Supporting Org
Salt Lake City, UT
MOP Non-Profit, Inc.
Sterling Heights, MI
Access Home Project, Inc.
Los Angeles, CA
To Life Foundation
New York, NY
Miami Latin Film Festival
Miami, FL
Larry and Kelli Cotton Charitable Supporting Organization
Fort Worth, TX

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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