

Internal Revenue bulletin

Bulletin No. 2003-11
March 17, 2003

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. 2003-28, page 594.

Charitable contributions; patents. Under section 170(a) of the Code, a taxpayer's contribution to a qualified charity of: (1) a license to use a patent is not deductible if the taxpayer retains any substantial right in the patent; (2) a patent subject to a conditional reversion is not deductible unless the likelihood of the reversion is so remote as to be negligible; and (3) a patent subject to a license or transfer restriction generally is deductible, but the restriction reduces the amount of the charitable contribution for section 170 purposes.

Rev. Rul. 2003-29, page 587.

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act.

Rev. Proc. 2003-24, page 599.

Exceptions from loss transactions. This procedure provides that certain losses are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under section 1.6011-4(b)(5) of the regulations.

Rev. Proc. 2003-25, page 601.

Transactions with significant book-tax difference, exceptions. This procedure provides that certain book-tax differences are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under section 1.6011-4(b)(6) of the regulations.

Announcements of Disbarments and Suspensions begin on page 605.

Finding Lists begin on page ii.

EMPLOYEE PLANS

Announcement 2003-13, page 603.

Form 5310, Application for Determination for Terminating Plan. The Service announces that Form 5310 has been revised and is now available. This form is used to request determination letters for terminating qualified employee benefit plans.

EXEMPT ORGANIZATIONS

Announcement 2003-14, page 603.

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

ADMINISTRATIVE

Rev. Rul. 2003-27, page 597.

Employee stock ownership plan (ESOP). This ruling concerns basis adjustments of S corporation stock held by an employee stock ownership plan (ESOP).

Rev. Proc. 2003-23, page 599.

This document provides procedures under which a corporation's S status will not be terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA).



Department of the Treasury
Internal Revenue Service

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 consolidated 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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

Section 139.—Disaster Relief Payments

Taxpayers are informed of the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act. See Rev. Rul. 2003-29, on this page.

Section 165.—Losses

26 CFR 1.165-11: Election in respect of losses attributable to a disaster.
(Also § 139, 1033; 1.1033(1)-1.)

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act.

Rev. Rul. 2003-29

Under § 165(i) of the Internal Revenue Code, if a taxpayer suffers a loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5204c (1988 & Supp. V 1993) (the Act), the taxpayer may elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the tax-

able year in which the disaster occurred. For purposes of § 165(i), a disaster includes an event declared a major disaster or an emergency under the Act.

Section 1.165-11(e) of the Income Tax Regulations provides that the election to deduct a disaster loss for the preceding year must be made by filing a return, an amended return, or a claim for refund on or before the later of (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time to file the return) for the taxable year in which the disaster actually occurred, or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time to file the return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

The provisions of § 165(i) apply only to losses that are otherwise deductible under § 165(a). An individual taxpayer may deduct losses if they are incurred in a trade or business, if they are incurred in a transaction entered into for profit, or if they are casualty losses under § 165(c)(3).

A determination by the President that an area warrants assistance by the Federal Government under the Act is also relevant to § 139(a) (regarding the exclusion from gross income of certain qualified disaster relief payments) and § 1033(h) (regarding the deferral of gain realized upon the involuntary conversion of certain property).

The President has determined that, during 2002, the areas listed below have been adversely affected by disasters of sufficient severity and magnitude to warrant assistance by the Federal Government under the Act.

A cumulative list of the areas warranting assistance each year under the Act (beginning in 1998) is available at the Federal Emergency Management Agency (FEMA) Internet site at www.fema.gov. Accordingly, the Internal Revenue Service requests comments regarding the need for future publication of this revenue ruling. Comments should be submitted by May 1, 2003, either to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU (ITA)
Room 5041

or electronically via the Service internet site at: Notice.Comments@irs.counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

FURTHER INFORMATION

For further information regarding this revenue ruling, contact James R. Roy at (202) 622-4950 (not a toll-free call).

Disaster Area

Disaster Description

Disaster Date

Alabama

Counties of Baldwin and Mobile

FEMA-1438-DR
Tropical Storm Isidore

September 23-October 1

Counties of Barbour, Bibb, Blount, Calhoun, Cherokee, Cleburne, Cullman, Dale, DeKalb, Etowah, Fayette, Franklin, Greene, Hale, Henry, Houston, Jefferson, Lamar, Lawrence, Marion, Marshall, Morgan, Pickens, Shelby, St. Clair, Talladega, Tuscaloosa, Walker, and Winston

FEMA-1442-DR
Severe Storms and Tornadoes

November 5-12

| Disaster Area | Disaster Description | Disaster Date |
|---|--|------------------------------------|
| Alaska | | |
| Fairbanks North Star Borough, McGrath and Lime Village in the Iditarod Regional Education Attendance Area (REAA), Aniak, Crooked Creek, Red Devil, and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA, Alakanuk and Emmonak in the Lower Yukon REAA, and Ekwok and Stuyahok in the Southwest Region REAA. | FEMA-1423-DR Flooding | April 27–May 30 |
| Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough; the Regional Education Attendance Areas of Delta Greely, Alaska Gateway, Copper River, and Yukon-Koyukuk; the cities of Tetlin, Mentasta Lake, Nothway, Dot Lake, Chistochina, and Tanacross; and the unincorporated communities of Slana and Tok. | FEMA-1440-DR Earthquake | November 3–10 |
| Kenai Peninsula Borough, Kodiak Island Borough and Chignik Bay Area, to include Chignik Lake and Chignik Lagoon | FEMA-1445-DR Severe Winter Storms, Flooding, Coastal Erosion, and Tidal Surge | October 23–December 20 |
| Arizona | | |
| Counties of Apache, Coconino, Gila, and Navajo; and the Fort Apache Indian Reservation | FEMA-1422-DR Wildfires | June 18–July 7 |
| Arkansas | | |
| Counties of Ashley, Clay, Cleburne, Columbia, Craighead, Crittenden, Franklin, Greene, Independence, Jackson, Lincoln, Little River, Logan, Monroe, Poinsett, Prairie, Scott, Stone, White, and Woodruff | FEMA-1400-DR Severe storms and flooding | December 15, 2001–January 30, 2002 |
| Colorado | | |
| Counties of Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Larimer, Las Animas, Lincoln, Mesa, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summitt, Teller, Washington, Weld, and Yuma; the Southern Ute and Ute Mountain Reservations; and the Cities of Broomfield and Denver | FEMA-1421-DR Wildfires | April 23–June 6 |

| Disaster Area | Disaster Description | Disaster Date |
|---|--|----------------------|
| Guam | | |
| Territory of Guam | FEMA-1426-DR Typhoon Chata'an | July 5-6 |
| Territory of Guam | FEMA-1446-DR Super Typhoon Pongsona | December 8-16 |
| Illinois | | |
| Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Ford, Fayette, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Logan, McDonough, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Piatt, Pike, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Union, Vermillion, Wabash, Washington, Wayne, White, and Williamson | FEMA-1416-DR Severe Storms, Tornadoes, and Flooding | April 21-May 23 |
| Indiana | | |
| Counties of Brown, Crawford, Dearborn, Dubois, Franklin, Gibson, Greene, Hamilton, Jackson, Jefferson, Johnson, Knox, Marion, Martin, Montgomery, Ohio, Orange, Owen, Parke, Pike, Posey, Putnam, Sullivan, Switzerland, Union, Vermillion, Vigo, and Washington | FEMA-1418-DR Severe Storms, Tornadoes and Flooding | April 28-June 7 |
| Counties of Bartholomew, Blackford, Brown, Daviess, Decatur, Delaware, Fayette, Franklin, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Pike, Posey, Randolph, Rush, Shelby, Sullivan, Tipton, and Vanderburg | FEMA-1433-DR Severe Storms and Tornadoes | September 20 |
| Iowa | | |
| Counties of Allamakee, Benton, Buchanan, Cedar, Clayton, Clinton, Delaware, Des Moines, Dubuque, Fayette, Henry, Iowa, Jackson, Johnson, Jones, Lee, Linn, Louisa, Muscatine, Scott, and Winneshiek | FEMA-1420-DR Severe Storms and Flooding | June 3-25 |

| Disaster Area | Disaster Description | Disaster Date |
|--|---|------------------------|
| Kansas | | |
| Counties of Allen, Anderson, Barber, Bourbon, Butler, Chautauqua, Coffey, Cowley, Crawford, Douglas, Elk, Franklin, Greenwood, Johnson, Labette, Linn, Miami, Montgomery, Neosho, Osage, Sumner, Wilson, Woodson, and Wyandotte | FEMA-1402-DR Severe Winter Ice Storm | January 29-February 15 |
| Kentucky | | |
| Counties of Bath, Bell, Bourbon, Boyd, Breathitt, Carter, Clay, Elliott, Fleming, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Menifee, Montgomery, Morgan, Nicholas, Owsley, Perry, Powell, Rowan, Wayne, and Whitley | FEMA-1407-DR Severe Storms and Flooding | March 17-21 |
| Counties of Breathitt, Breckenridge, Crittenden, Edmondson, Floyd, Grayson, Green, Hancock, Hardin, Henderson, Hopkins, Laurel, Letcher, Marion, Martin, McLean, Meade, Ohio, Owsley, Pike, Rockcastle, Union, and Webster | FEMA-1414-DR Severe Storms, Tornadoes, and Flooding | April 27-May 10 |
| Louisiana | | |
| Parishes of East Baton Rouge, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, and Terrebonne | FEMA-1435-DR Tropical Storm Isidore | September 21-October 1 |
| Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Caldwell, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, LaSalle, Livingston, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Vernon, Washington, West Baton Rouge, and West Feliciana | FEMA-1437-DR Hurricane Lili | October 1-16 |
| Mariana Islands, Northern | | |
| Island of Rota | FEMA-1430-DR Typhoon Chata'an | July 4-5 |
| Island of Rota | FEMA-1447-DR Super Typhoon Pongsona | December 8-16 |
| Maryland | | |
| Counties of Calvert, Charles, and Dorchester | FEMA-1409-DR Tornado | April 28 |

| Disaster Area | Disaster Description | Disaster Date |
|---|--|------------------------|
| Michigan | | |
| Counties of Baraga, Gogebic, Houghton, Marquette, and Ontonagan | FEMA-1413-DR Flooding | April 10–May 9 |
| Micronesia, Federated States of | | |
| Yap State | FEMA-1417-DR Typhoon Mitag | February 27–March 3 |
| Chuuk State | FEMA-1427-DR Tropical Storm Chata'an, including Flooding, Mudslides, and Landslides | July 2–4 |
| Minnesota | | |
| Counties of Becker, Beltrami, Clay, Clearwater, Goodhue, Hubbard, Itasca, Kittson, McLeod, Pennington, Polk, Roseau, and Wright | FEMA-1419-DR Severe Storms, Flooding, and Tornadoes | June 9–28 |
| Mississippi | | |
| Counties of Amite, Hancock, Harrison, Jackson, Lincoln, Pearl River, Pike, and Stone | FEMA-1436-DR Hurricane Isidore | September 23–October 6 |
| Counties of Clay, Lafayette, Lowndes, Monroe, Noxubee, and Oktibbeha | FEMA-1443-DR Severe Storms and Tornadoes | November 10–11 |
| Missouri | | |
| Counties of Adair, Audrain, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Clark, Clay, Clinton, Cooper, Daviess, Grundy, Henry, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Linn, Livingston, Macon, Marion, Monroe, Morgan, Pettis, Platte, Ralls, Randolph, Ray, Saline, Scotland, Shelby, St. Clair, Sullivan, and Vernon | FEMA-1403-DR Severe Winter Ice Storm | January 29–February 13 |
| Counties of Adair, Barry, Barton, Bollinger, Boone, Butler, Camden, Cape Girardeau, Carroll, Carter, Cedar, Christian, Chariton, Clark, Cooper, Crawford, Dade, Dallas, De Kalb, Dent, Douglas, Dunklin, Greene, Grundy, Hickory, Howard, Howell, Iron, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Madison, Maries, Marion, Mercer, Miller, Mississippi, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Phelps, Pike, Polk, Pulaski, Ralls, Ray, Reynolds, Ripley, Schuyler, Scotland, Scott, Shannon, Shelby, St. Francois, St. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright | FEMA-1412-DR Severe Storms and Tornadoes | April 24–June 10 |

| Disaster Area | Disaster Description | Disaster Date |
|--|--|------------------------|
| Montana | | |
| Counties of Glacier, Hill, Liberty, Pondera, and Toole; and the Blackfeet Indian Reservation | FEMA-1424-DR Severe Storms and Flooding | June 8-21 |
| New York | | |
| County of Erie | FEMA-1404-DR Severe Winter Storm | December 24-29, 2001 |
| Counties of Cattaraugus, Chautauqua, Erie, Genesee, and Wyoming | FEMA-3170-EM Snowstorm | December 24-29, 2001 |
| Counties of Clinton and Essex | FEMA-1415-DR Earthquake | April 20 |
| North Carolina | | |
| Counties of Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mecklenburg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake | FEMA-1448-DR Severe Ice Storms | December 4-6 |
| North Dakota | | |
| Counties of Grand Forks, Pembina, Stutsman, Traill, and Walsh; and the Fort Berthold Indian Reservation | FEMA-1431-DR Severe Storms, Tornadoes, and Flooding | June 8-August 11 |
| Ohio | | |
| Counties of Hancock, Ottawa, Paulding, Putnam, Seneca, and Van Wert | FEMA-1444-DR Severe Storms and Tornadoes | November 10 |
| Oklahoma | | |
| Counties of Alfalfa, Beaver, Becker, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Creek, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, McClain, Noble, Nowata, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Rogers, Stephens, Texas, Tillman, Tulsa, Washington, Washita, Woods, and Woodward | FEMA-1401-DR Ice Storm | January 30-February 11 |
| Oregon | | |
| Counties of Coos, Curry, Douglas, Lane, and Linn | FEMA-1405-DR Severe Winter Storm with High Winds | February 7-8 |

| Disaster Area | Disaster Description | Disaster Date |
|---|---|------------------------|
| Tennessee | | |
| Counties of Anderson, Bedford, Bledsoe, Blount, Cannon, Claiborne, Clay, Cocke, Cumberland, Decatur, DeKalb, Dickson, Fentress, Giles, Grainger, Hancock, Hardin, Hawkins, Jackson, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, McNairy, Macon, Marshall, Maury, Meigs, Overton, Roane, Scott, Sevier, Van Buren, Warren, and Wayne | FEMA-1408-DR Severe Storms and Flooding | January 23-March 20 |
| Counties of Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Henderson, Madison, Marshall, Montgomery, Morgan, Rutherford, Scott, Sumner, and Tipton | FEMA-1441-DR Severe Storms, Tornadoes, and Flooding | November 9-12 |
| Texas | | |
| Counties of Atascosa, Bandera, Bee, Bexar, Blanco, Brown, Burnet, Caldwell, Calhoun, Callahan, Coleman, Comal, Dimmit, Duval, DeWitt, Eastland, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Jim Wells, Jones, Karnes, Kendall, Kerr, La Salle, Live Oak, McMullen, Medina, Nueces, Real, San Patricio, San Saba, Taylor, Travis, Uvalde, Victoria, Wilson, and Zavala | FEMA-1425-DR Severe Storms and Flooding | June 29-July 31 |
| Counties of Brazoria, Frio, Galveston, Jim Wells, La Salle, Live Oak, Matagorda, Nueces, San Patricio, Webb, and Wharton | FEMA-1434-DR Tropical Storm Fay | September 6-30 |
| Counties of Aransas, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, and San Patricio | FEMA-1439-DR Severe Storms, Tornadoes, and Flooding | October 24-November 15 |
| Vermont | | |
| Counties of Caledonia, Essex, Franklin, Lamoille, and Orleans | FEMA-1428-DR Severe Storms and Flooding | June 5-13 |
| Virginia | | |
| Counties of Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; and Independent City of Norton | FEMA-1406-DR Severe Storms and Flooding | March 17-20 |
| Counties of Buchanan and Tazewell | FEMA-1411-DR Severe Storms and Tornado | April 28-May 3 |
| West Virginia | | |
| Counties of Logan, McDowell, Mercer, Mingo, and Wyoming | FEMA-1410-DR Severe Storms, Flooding, and Landslides | May 2-20 |

Disaster Area**Disaster Description****Disaster Date****Wisconsin**

Counties of Adams, Clark, Dunn, Marathon, Marinette, Portage, Waushara, and Wood

FEMA-1429-DR
Severe Storms and Flooding

June 21-25

Counties of Barron, Burnett, Chippewa, Clark, Dunn, Langlade, Lincoln, Marathon, Polk, Portage, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Washburn, Waupaca, and Wood

FEMA-1432-DR
Severe Storms, Tornadoes, and Flooding

September 2-6

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

26 CFR 1.170-1: Charitable, etc., contributions and gifts; allowance of deduction. (Also §§ 170; 1.170A-7.)

Charitable contributions; patents. Under section 170(a) of the Code, a taxpayer's contribution to a qualified charity of: (1) a license to use a patent is not deductible if the taxpayer retains any substantial right in the patent; (2) a patent subject to a conditional reversion is not deductible unless the likelihood of the reversion is so remote as to be negligible; and (3) a patent subject to a license or transfer restriction generally is deductible, but the restriction reduces the amount of the charitable contribution for section 170 purposes.

Rev. Rul. 2003-28**ISSUES**

(1) Is a taxpayer's contribution to a qualified charity of a license to use a patent deductible under § 170(a) of the Internal Revenue Code if the taxpayer retains any substantial right in the patent?

(2) Is a taxpayer's contribution to a qualified charity of a patent subject to a conditional reversion deductible under § 170(a)?

(3) Is a taxpayer's contribution to a qualified charity of a patent subject to a license or transfer restriction deductible under § 170(a)?

FACTS

Situation 1. X contributes to University, an organization described in § 170(c) (qualified charity), a license to use a patent, but retains the right to license the patent to others.

Situation 2. Y contributes a patent to University subject to the condition that A, a faculty member of University and an expert in the technology covered by the patent, continue to be a faculty member of University during the remaining life of the patent. If A ceases to be a member of University's faculty before the patent expires, the patent will revert to Y. The patent will expire 15 years after the date Y contributes it to University. On the date of the contribution, the likelihood that A will cease to be a member of the faculty before the patent expires is not so remote as to be negligible.

Situation 3. Z contributes to University all of Z's interests in a patent. The transfer agreement provides that University may not sell or license the patent for a period of 3 years after the transfer. This restriction does not result in any benefit to Z, and under no circumstances can the patent revert to Z.

LAW AND ANALYSIS*Issue (1)*

Section 170(a) provides, subject to certain limitations, a deduction for any charitable contribution, as defined in § 170(c), payment of which is made within the taxable year.

Section 170(f)(3) denies a charitable contribution deduction for certain contributions of partial interests in property. Section 170(f)(3)(A) denies a charitable contribution deduction for a contribution of less than the taxpayer's entire interest in property unless the value of the interest contributed would be allowable as a deduction under § 170(f)(2) if the donor were to transfer the interest in trust.

Section 170(f)(2) allows a charitable contribution deduction, in the case of property that the donor transfers in trust, if the trust is a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. Further, § 170(f)(2) allows a deduction for the value of an interest in property (other than a remainder interest) that the donor transfers in trust if the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage, distributed yearly, of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying § 671.

By its terms, § 170(f)(3)(A) does not apply to, and therefore does not disallow a deduction for, a contribution of an interest that, even though partial, is the taxpayer's entire interest in the property. If, however, the property in which such partial interest exists was divided in order to create such interest, and thus avoid § 170(f)(3)(A), a deduction is not allowed. Section 1.170A-7(a)(2)(i) of the Income Tax Regulations.

Sections 170(f)(3)(B)(ii) and 1.170A-7(b)(1) allow a deduction under § 170 for a contribution not in trust of a partial interest that is less than the donor's entire interest in property if the partial interest is an undivided portion of the donor's entire interest. An undivided portion of a donor's entire interest in property consists of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property and in other property into which such property is converted. A charitable contribution in perpetuity of an interest in property not in trust does not constitute a contribution of an undivided portion of the

donor's entire interest if the donor transfers some specific rights and retains other substantial rights.

In enacting § 170(f)(3), Congress was concerned with situations in which taxpayers might obtain a double benefit by taking a deduction for the present value of a contributed interest while also excluding from income subsequent receipts from the donated interest. In addition, Congress was concerned with situations in which, because the charity does not obtain all or an undivided portion of significant rights in the property, the amount of a charitable contribution deduction might not correspond to the value of the benefit ultimately received by the charity. The legislative solution was to guard against the possibility that such problems might arise by denying a deduction in situations involving partial interests, unless the contribution is cast in certain prescribed forms. See H.R. Rep. No. 91-413 at 57-58 (1969), 1969-3 C.B. 200, 237-239; S. Rep. No. 91-552 at 87 (1969), 1969-3 C.B. 423, 479. The scope of § 170(f)(3) thus extends beyond situations in which there is actual or probable manipulation of the non-charitable interest to the detriment of the charitable interest, or situations in which the donor has merely assigned the right to future income. Rev. Rul. 88-37, 1988-1 C.B. 97.

Section 170(f)(3)(A) and § 1.170A-7(a)(1) treat a contribution of the right to use property that the donor owns, such as a contribution of a rent-free lease, as a contribution of less than the taxpayer's entire interest in the property. Similarly, if a taxpayer contributes an interest in motion picture films, but retains the right to make reproductions of such films and exploit the reproductions commercially, § 1.170A-7(b)(1)(i) treats the contribution as one of less than the taxpayer's entire interest in the property. In both cases, the taxpayer has not contributed an undivided portion of its entire interest in the property. Accordingly, neither contribution is deductible under § 170(a).

In *Situation 1*, *X* contributes a license to use a patent, but retains a substantial right, *i.e.*, the right to license the patent to others. The license granted to University is similar to the rent-free lease described in § 1.170A-7(a)(1) and the partial interest in motion picture films described in § 1.170A-7(b)(1)(i), in that it constitutes neither *X*'s entire interest in the patent, nor a fraction

or percentage of each and every substantial interest or right that *X* owns in the patent. As a result, the contribution in *Situation 1* constitutes a transfer of a partial interest, and no deduction under § 170(a) is allowable. The result would be the same if *X* had retained any other substantial right in the patent. For example, no deduction would be allowable if *X* had contributed the patent (or license to use the patent) solely for use in a particular geographic area while retaining the right to use the patent (or license) in other geographic areas.

Issue (2)

Section 1.170A-1(e) provides that if, as of the date of a gift, a transfer of property for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order for it to become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. Similarly, under § 1.170A-7(a)(3), if, as of the date of a gift, a transfer of property for charitable purposes may be defeated by the performance of some act or the happening of some event, no deduction is allowable unless the possibility that such act or event will occur is so remote as to be negligible.

In *Situation 2*, *Y*'s contribution of the patent is contingent upon *A* continuing as a member of University's faculty for an additional 15 years, the remaining life of the patent. On the date of the contribution, the possibility that *A* will cease to be a member of the faculty before the expiration of the patent is not so remote as to be negligible. Therefore, no deduction is allowable under § 170(a).

Issue (3)

Section 1.170A-1(c)(1) provides that if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e).

Section 1.170A-1(c)(2) provides that the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Rev. Rul. 85-99, 1985-2 C.B. 83, provides that when a donor places a restric-

tion on the marketability or use of property, the amount of the charitable contribution is the fair market value of the property at the time of the contribution determined in light of the restriction. See also *Cooley v. Commissioner*, 33 T.C. 223, 225 (1959), *aff'd per curiam*, 283 F.2d 945 (2d Cir. 1960).

In *Situation 3*, *Z* transfers to University all of *Z*'s interests in the patent with the restriction that University cannot transfer or license the patent for a period of 3 years after the transfer. Unlike the conditional reversion in *Situation 2*, the restriction on transfer or license is not a condition that can defeat the transfer. Thus, *Z*'s contribution is deductible under § 170(a), assuming all other applicable requirements of § 170 are satisfied, and subject to the percentage limitations of § 170. See Publication 526, *Charitable Contributions* (describing other requirements for, and limitations on, the deductibility of charitable contributions). Under § 1.170A-1(c), however, the restriction reduces what would otherwise be the fair market value of the patent, and therefore reduces the amount of *Z*'s charitable contribution. If *Z* had received a benefit in exchange for the contribution, the value of the benefit would further reduce the amount of *Z*'s charitable contribution. See § 1.170A-1(h); Rev. Rul. 67-246, 1967-2 C.B. 104. See also *Singer Co. v. United States*, 449 F.2d 413, 423-424 (Ct. Cl. 1971).

HOLDINGS

Under the facts of this revenue ruling:

(1) A taxpayer's contribution to a qualified charity of a license to use a patent is not deductible under § 170(a) if the taxpayer retains any substantial right in the patent.

(2) A taxpayer's contribution to a qualified charity of a patent subject to a conditional reversion is not deductible under § 170(a), unless the likelihood of the reversion is so remote as to be negligible.

(3) A taxpayer's contribution to a qualified charity of a patent subject to a license or transfer restriction is deductible under § 170(a), assuming all other applicable requirements of § 170 are satisfied, and subject to the percentage limitations of § 170, but the restriction reduces what would otherwise be the fair market value of the patent at the time of the contribu-

tion, and therefore reduces the amount of the charitable contribution for § 170 purposes.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Martin L. Osborne and Susan Kassell of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, contact Ms. Kassell at (202) 622-5020 (not a toll-free call).

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401-1: Qualified pension, profit-sharing, and stock bonus plans.

Is a corporation's S status terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA)? See Rev. Proc. 2003-23, page 599.

Section 402.—Taxability of Beneficiary of Employees' Trust

26 CFR 1.402(a)-1: Eligible rollover distributions: questions and answers.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under section 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under section 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

26 CFR 1.402(c)-2: Eligible rollover distributions: questions and answers.

Is a corporation's S status terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA)? See Rev. Proc. 2003-23, page 599.

Section 409.—Qualifications for Tax Credit Employee Stock Ownership Plans

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under section 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under section 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Is a corporation's S status terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA)? See Rev. Proc. 2003-23, page 599.

Section 511.—Imposition of Tax on Unrelated Business Income of Charitable, etc., Organizations

26 CFR 1.511-3: Provisions generally applicable to the tax on unrelated business income.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Section 512.—Unrelated Business Taxable Income

26 CFR 1.512(a)-1: Definition.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Section 1033.—Involuntary Conversions

26 CFR 1.1033-1: Involuntary conversions; non-recognition of gain.

Taxpayers are informed of the areas declared by the President to qualify as major disaster or emergency areas during 2002 under the Disaster Relief and Emergency Assistance Act. See Rev. Rul. 2003-29, page 587.

Section 1361.—S Corporation Defined

26 CFR 1.1361-1: S corporation defined.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Is a corporation's S status terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA)? See Rev. Proc. 2003-23, page 599.

Section 1366.—Pass-Thru of Items to Shareholders

26 CFR 1.1366-1: Shareholder's share of items of an S corporation.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Is a corporation's S status terminated by a direct rollover of stock from its employee stock ownership plan (ESOP) to a participant's individual retirement account (IRA)? See Rev. Proc. 2003-23, page 599.

Section 1367.—Adjustments to Basis of Stock of Shareholders, etc.

26 CFR 1.1367-1: Adjustments to basis of shareholder's stock in an S corporation. (Also §§ 402, 409, 511, 512, 1361, 1366, 4975; 1.402(a)-1.)

Employee stock ownership plan (ESOP). This ruling concerns basis adjustments of S corporation stock held by an employee stock ownership plan (ESOP).

Rev. Rul. 2003-27

ISSUES

(1) Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items?

(2) Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock?

FACTS

Corporation X, a calendar year S corporation, maintains plan Y, an ESOP, as defined in section 4975(e)(7) of the Internal Revenue Code (Code). Y holds 100 shares of X stock that it purchased on January 1, 2001, for \$10,000 with employer contributions. Y's *pro rata* share of X's income for X's 2001 taxable year is \$1,000 (comprised entirely of nonseparately computed income of \$10 per share), which Y properly reports on Form 5500, *Annual Return/Report of Employee Benefit Plan*. X makes no distributions to its shareholders during 2001.

A, an individual who is a U.S. citizen, is an employee of X and a participant in Y. Y holds five shares of X stock for the benefit of A from January 1 to December 31, 2001. On December 31, 2001, Y distributes the five shares of X stock to A, subject to A's right to require X to repurchase the shares under a fair valuation formula in accordance with § 409(h). On that date, the fair market value of the five shares is \$580.

LAW

Section 501(a) provides that an organization described in § 401(a) is exempt from tax under subtitle A of the Code. Section 401(a) provides that a trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries constitutes a qualified trust if the requirements of that section are satisfied.

Section 4975(e)(7) provides that an ESOP is a defined contribution plan (i) which is either a stock bonus plan which is qualified or a stock bonus and money purchase plan both of which are qualified under § 401(a), and which are designed to invest primarily in employer securities and (ii) which is otherwise defined in regulations prescribed by the Secretary. A plan is not treated as an ESOP unless it meets the requirements of § 409(h), § 409(o), and if applicable, § 409(n), § 409(p), and § 664(g), and, if the employer has a registration-type class of securities (as defined in § 409(e)(4)), it meets the requirements of section 409(e).

Section 511(a)(1) imposes a tax on the unrelated business taxable income (as defined in § 512(a)) of organizations described in § 511(a)(2), which includes organizations described in § 401(a). Section 512(e)(1) provides that if an organization described in § 1361(c)(6) holds stock in an S corporation, the interest is treated as an interest in an unrelated trade or business and, notwithstanding any other provisions of Part III of Subchapter F, all items of income, loss, or deduction taken into account under § 1366(a) and any gain or loss on the disposition of the stock in the S corporation are taken into account in computing the unrelated business taxable income of the organization. Section 512(e)(3) provides that § 512(e) does not apply to employer securities (within the meaning of § 409(l)) held by an ESOP described in § 4975(e)(7).

Section 1366(a)(1) provides that, in determining the tax of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends, there is taken into account the shareholder's *pro rata* share of the corporation's (i) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment

of which could affect the liability for tax of any shareholder and (ii) nonseparately computed income or loss.

Under § 1367(a)(1), the basis of each shareholder's stock in an S corporation is increased for any period by the sum of the following items determined with respect to that shareholder for such period: (i) items of income described in § 1366(a)(1)(A), (ii) any nonseparately computed income determined under § 1366(a)(1)(B), and (iii) the excess of the deductions for depletion over the basis of the property subject to depletion.

Under § 1367(a)(2), the basis of each shareholder's stock in an S corporation is decreased for any period (but not below zero) by the sum of the following items determined with respect to that shareholder for the period: (i) distributions by the corporation which were not includible in the income of the shareholder by reason of § 1368, (ii) the items of loss and deduction described in § 1366(a)(1)(A), (iii) any nonseparately computed loss determined under § 1366(a)(1)(B), (iv) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and (v) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under § 613A(c)(11)(B).

Section 402(a) provides that any amount distributed by an employees' trust described in § 401(a) that is exempt from tax under § 501(a) is taxable to the distributee in the taxable year of the distributee in which distributed, under § 72 (relating to annuities).

Section 402(e)(4)(B) provides that, for purposes of § 402(a) and § 72, in the case of any lump-sum distribution that includes securities of the employer corporation, there is excluded from gross income the net unrealized appreciation (NUA) attributable to that part of the distribution that consists of securities of the employer corporation.

Section 402(e)(4)(C) provides that NUA and the resulting adjustments to basis are determined in accordance with regulations prescribed by the Secretary.

Section 1.402(a)-1(b)(2) of the Income Tax Regulations provides that the amount of NUA in securities of the employer corporation that are distributed by the trust is

the excess of the market value of the securities at the time of distribution over the cost or other basis of the securities to the trust.

ANALYSIS

Stock of an S corporation held by an ESOP is subject to the same basis adjustments under § 1367(a) as stock held by any other S corporation shareholder. Accordingly, *Y* must increase its basis in *X* stock under § 1367(a)(1) for the items of income described in § 1366(a)(1). Specifically, *Y*'s *pro rata* share of *X*'s nonseparately computed income for *X*'s 2001 taxable year increases the basis of each share of *X* stock held by *Y* by \$10. Therefore, the basis of each of the five shares of *X* stock held by *Y* for the benefit of *A* is increased by \$10 from \$100 to \$110.

Under § 402(e)(4) and § 1.402(a)-1(b)(2), the amount of NUA in the *X* stock is \$30, the excess of the market value of the stock at the time of distribution (\$580) over *Y*'s adjusted basis in the stock (\$550). Unless *A* rolls the distributed stock over into an eligible retirement plan in accordance

with the rules of § 402(c), *A* will have \$550 of ordinary income as a result of the distribution.

HOLDINGS

(1) An employee stock ownership plan (ESOP) is required to adjust its basis in S corporation stock under § 1367(a) for the ESOP's *pro rata* share of the corporation's items.

(2) Upon the distribution of S corporation stock by an ESOP to a participant, the stock's net unrealized appreciation under § 402(e)(4) is determined using the ESOP's adjusted basis in the stock.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Craig Gerson of the Office of Associate Chief Counsel (Passthroughs and Special Industries), John Ricotta of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Steven Linder of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the S corporation aspects of the rev-

enue ruling, contact Mr. Gerson at (202) 622-3050 (not a toll-free call). For further information regarding the employee plans aspects of the revenue ruling, contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free call) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday or contact Mr. Linder at (202) 283-9888 (not a toll-free call).

Section 4975.—Tax on Prohibited Transactions

26 CFR 54.4975-7: Other statutory exemptions.

Is an employee stock ownership plan (ESOP) required to adjust its basis in S corporation stock under § 1367(a) of the Internal Revenue Code for the ESOP's *pro rata* share of the corporation's items? Upon the distribution of S corporation stock by an ESOP to a participant, is the stock's net unrealized appreciation under § 402(e)(4) determined using the ESOP's adjusted basis in the stock? See Rev. Rul. 2003-27, page 597.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 1.1362-2: Termination of election.
(Also §§ 401, 402, 409, 1361, 1362, 1366.)

Rev. Proc. 2003-23

SECTION 1. PURPOSE

Treasury and the Service have determined that it is consistent with the purposes of, and policies underlying, employee stock ownership plans (ESOPs) to enable an ESOP to direct certain rollovers of distributions of S corporation stock to an individual retirement plan (IRA) in accordance with a distributee's election without terminating the corporation's S election. Accordingly, if the requirements of this revenue procedure are satisfied, the Service will not treat a corporation's S election as terminated when an ESOP distributes stock of that corporation to a participant's IRA in a direct rollover.

SECTION 2. BACKGROUND

In 1996, Congress amended § 1361(b)(1)(B) of the Internal Revenue Code to make ESOPs (as defined in § 4975(e)(7)), along with other plans qualified under § 401(a), eligible S corporation shareholders. A fundamental purpose of an ESOP, including an ESOP that holds stock in an S corporation, is to provide participants with equity ownership in the employer corporation through participation in the ESOP, including through distributions of employer securities to participants. *See* S. Rep. 94-938 at 180, 1976-3 C.B. 218 (stating that an ESOP "is a technique of corporate finance designed to build beneficial equity ownership of shares in the employer corporation in its employees").

Section 409(h) generally requires that an ESOP provide for distributions in the form of employer securities. An ESOP meets the requirements of § 409(h)(1)(A) if a participant who is entitled to a distribution has the right to demand that his benefits be distributed in the form of employer securities. Section 409(h)(2)(B) provides that an ESOP maintained by an S corporation is permitted to provide for distributions only in cash or for distributions of employer securities subject to a repurchase requirement which meets the requirements of § 409(h)(1)(B).

Under § 401(a)(31) and A-1 of § 1.401(a)(31)-1 of the Income Tax Regulations, a qualified plan, including an ESOP, is required to permit the distributee of any eligible rollover distribution (as defined in § 402(c)(4)) to have the distribution paid in a direct rollover (as defined in A-3 of § 1.401(a)(31)-1) to an eligible retirement plan (as defined in § 402(c)(8)(B)) specified by the distributee. Therefore, an ESOP that holds S corporation stock and permits distributions in the form of employer securities is required to permit participants to elect to have any distribution of S corporation stock that is an eligible rollover distribution be paid in a direct rollover to an eligible retirement plan specified by the distributee, including an IRA. An IRA trustee or custodian, however, is not a permissible S corporation shareholder. *See* §§ 1361(b) and 1361(c)(6).

Under § 409(h)(2)(B), an ESOP that provides for distributions in the form of securities of an employer that is an S corporation is permitted to provide that the S corporation stock included in the distribution is subject to a repurchase requirement. Thus, an ESOP is permitted to provide that any stock in an S corporation that is distributed is subject to immediate repurchase by the S corporation on a direct rollover of the stock from the ESOP to an IRA.

SECTION 3. SCOPE

This revenue procedure sets forth certain requirements related to an ESOP's distribution of S corporation stock to a participant where the participant elects to have the S corporation stock distributed to an IRA in a direct rollover. If these requirements are satisfied, the Service will accept the position that the distribution does not affect the S corporation's election to be taxed as an S corporation.

SECTION 4. APPLICATION

The Service will accept the position that an S corporation's election is not affected as a result of an ESOP's distribution of S corporation stock where the participant directs that such stock be distributed to an IRA in a direct rollover, provided that:

.01 The terms of the ESOP require that the S corporation repurchase its stock immediately upon the ESOP's distribution of the stock to an IRA;

.02 The S corporation actually repurchases the S corporation stock contemporaneously with, and effective on the same day as, the distribution; and

.03 No income (including tax-exempt income), loss, deduction, or credit attributable to the distributed S corporation stock under § 1366 is allocated to the participant's IRA.

SECTION 5. DRAFTING INFORMATION

The principal authors of this revenue procedure are Craig Gerson of the Office of Associate Chief Counsel (Passthroughs and Special Industries), John Ricotta of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Steven Linder of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the S corporation aspects of the revenue procedure, contact Mr. Gerson at (202) 622-3050 (not a toll-free call). For further information regarding the employee plans aspects of the revenue procedure, contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free call) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday or contact Mr. Linder at (202) 283-9888 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part 1, §§ 6011, 6111, 6112; 1.6011-4, 301.6111-2, 301.6112-1.)

Rev. Proc. 2003-24

SECTION 1. PURPOSE

This revenue procedure provides that certain losses are not taken into account in determining whether a transaction is a reportable transaction for purposes of the

disclosure rules under § 1.6011-4(b)(5) of the Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer who participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transaction is a loss transaction. A loss transaction is defined in § 1.6011-4(b)(5).

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011-4 and/or material advisors that may be required to maintain lists under § 301.6112-1.

SECTION 4. APPLICATION

.01 *In general.* Losses from the sale or exchange of an asset with a qualifying basis under section 4.02 or losses described in section 4.03 of this revenue procedure are not taken into account in determining whether a transaction is a reportable transaction.

.02 *Sale or exchange of an asset with a qualifying basis.*

(1) *General rule.* A loss under § 165 of the Internal Revenue Code from the sale or exchange of an asset is not taken into account in determining whether a transaction is a loss transaction under § 1.6011-4(b)(5) if—

(a) the basis of the asset (for purposes of determining the loss) is a qualifying basis;

(b) the asset is not an interest in a passthrough entity (within the meaning of § 1260(c)(2));

(c) the loss from the sale or exchange of the asset is not treated as ordinary under § 988;

(d) the asset has not been separated from any portion of the income it generates; and

(e) the asset is not, and has never been, part of a straddle within the meaning of § 1092(c), excluding a mixed straddle under § 1.1092(b)-4T.

(2) *Qualifying basis.* For purposes of section 4 of this revenue procedure, a taxpayer's basis in an asset (less adjustments for any allowable depreciation, amortization, or casualty loss) is a qualifying basis if—

(a) the basis of the asset is equal to, and is determined solely by reference to, the amount (including any option premium) paid in cash by the taxpayer for the asset and for any improvements to the asset;

(b) the basis of the asset is determined under § 358 by reason of a transaction under § 355 or § 368, and the taxpayer's basis in the property exchanged in the transaction was described in this section 4.02(2);

(c) the basis of the asset is determined under § 1014;

(d) the basis of the asset is determined under § 1015, and the donor's basis in the asset was described in this section 4.02(2); or

(e) the basis of the asset is determined under § 1031(d), the taxpayer's basis in the property that was exchanged for the asset in the § 1031 transaction was described in this section 4.02(2), and any debt instrument issued or assumed by the taxpayer in connection with the § 1031 transaction is treated as a payment in cash under section 4.02(3) of this revenue procedure.

(3) *Debt instruments.* Except as provided below, an amount paid in cash will not be disregarded for purposes of section 4.02(2) of this revenue procedure merely because the taxpayer issued a debt instrument to obtain the cash. However, if the taxpayer has issued a debt instrument to the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, assumed a debt instrument (or took an asset subject to a debt instrument) issued by the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, or issued a debt instrument in exchange for improvements to an asset, the taxpayer will be treated as having paid cash for the asset or the improvement only if the debt instrument is secured by the asset and all amounts due under the debt instrument have been paid in cash no later than the time of the

sale or exchange of the asset (except in the case of stock or securities traded on an established securities market, the settlement date) for which the loss is claimed.

.03 *Other losses.* The following losses under § 165 are not taken into account in determining whether a transaction is a loss transaction under § 1.6011-4(b)(5):

(1) A loss from fire, storm, shipwreck, or other casualty, or from theft, under § 165(c)(3);

(2) A loss from a compulsory or involuntary conversion as described in §§ 1231(a)(3)(A)(ii) and 1231(a)(4)(B);

(3) A loss arising from any market-to-market treatment of an item under §§ 475, 1256, 1296(a), 1.446-4(e), 1.988-5(a)(6), or 1.1275-6(d)(2), provided that the taxpayer computes its loss by using a qualifying basis (as defined in section 4.02(2) of this revenue procedure) or a basis resulting from previously marking the item to market, or computes its loss by making appropriate adjustments for previously determined mark-to-market gain or loss as provided, for example, in § 475(a) or § 1256(a)(2);

(4) A loss arising from a hedging transaction described in § 1221(b), if the taxpayer properly identifies the transaction as a hedging transaction, or from a mixed straddle account under § 1.1092(b)-4T;

(5) A loss attributable to basis increases under § 860C(d)(1) during the period of the taxpayer's ownership;

(6) A loss attributable to the abandonment of depreciable tangible property that was used by the taxpayer in a trade or business and that has a qualifying basis under section 4.02(2) of this revenue procedure;

(7) A loss arising from the bulk sale of inventory if the basis of the inventory is determined under § 263A; or

(8) A loss that is equal to, and is determined solely by reference to, a payment of cash by the taxpayer (for example, a cash payment by a guarantor that results in a loss or a cash payment that is treated as a loss from the sale of a capital asset under § 1234A or § 1234B).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for transactions entered into on or after February 28, 2003. However, if a taxpayer applies § 1.6011-4 retroactively, as provided

in § 1.6011-4(h), to transactions entered into on or after January 1, 2003, then this revenue procedure will be effective January 1, 2003, for those transactions.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Tara P. Volungis of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis at (202) 622-3080 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, §§ 6011, 6111, 6112; 1.6011-4, 301.6111-2, 301.6112-1.)

Rev. Proc. 2003-25

SECTION 1. PURPOSE

This revenue procedure provides that certain book-tax differences are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under § 1.6011-4(b)(6) of the Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer who participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011-4(b)(6).

.02 Section 1.6011-4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011-4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011-4

and/or material advisors that may be required to maintain lists under § 301.6112-1.

SECTION 4. APPLICATION

Book-tax differences arising by reason of the following items are not taken into account in determining whether a transaction has a significant book-tax difference under § 1.6011-4(b)(6):

.01 Items to the extent a book loss or expense is reported before or without a loss or deduction for federal income tax purposes.

.02 Items to the extent income or gain for federal income tax purposes is reported before or without book income or gain.

.03 Depreciation, depletion under § 612, and amortization relating solely to differences in methods, lives (for example, useful lives, recovery periods), or conventions as well as differences resulting from the application of §§ 168(k), 1400I, or 1400L(b).

.04 Percentage depletion under § 613 or § 613A, and intangible drilling costs deductible under § 263(c).

.05 Capitalization and amortization under §§ 195, 248, and 709.

.06 Bad debts or cancellation of indebtedness income.

.07 Federal, state, local, and foreign taxes.

.08 Compensation of employees and independent contractors, including stock options and pensions.

.09 Charitable contributions of cash or tangible property.

.10 Tax exempt interest, including municipal bond interest.

.11 Dividends as defined in § 316 (including any dividends received deduction), amounts treated as dividends under § 78, distributions of previously taxed income under §§ 959 and 1293, and income inclusions under §§ 551, 951, and 1293.

.12 A dividends paid deduction by a publicly-traded REIT.

.13 Patronage refunds or dividends of cooperatives without a § 267 relationship to the taxpayer.

.14 Items resulting from the application of § 1033.

.15 Items resulting from the application of §§ 354, 355, 361, 367, 368, or 1031, if the taxpayer fully complies with the filing and reporting requirements for these sections, including any requirement in the regulations or in forms.

.16 Items resulting from debt-for-debt exchanges.

.17 Items resulting solely from the treatment as a sale, purchase, or lease for book purposes and as a financing arrangement for tax purposes.

.18 Treatment of a transaction as a sale for book purposes and as a nontaxable transaction under § 860F(b)(1)(A) for tax purposes, not including differences resulting from the application of different valuation methodologies to determine the relative value of REMIC interests for purposes of allocating tax basis among those interests.

.19 Items resulting from differences solely due to the use of hedge accounting for book purposes but not for tax purposes, the use of hedge accounting under § 1.446-4 for tax purposes but not for book purposes, or the use of different hedge accounting methodologies for book and tax purposes.

.20 Items resulting solely from (i) the use of a mark-to-market method of accounting for book purposes and not for tax purposes, (ii) the use of a mark-to-market method of accounting for tax purposes but not for book purposes, or (iii) in the case of a taxpayer who uses mark-to-market accounting for both book purposes and tax purposes, the use of different methodologies for book purposes and tax purposes.

.21 Items resulting from the application of § 1286.

.22 Inside buildup, death benefits, or cash surrender value of life insurance or annuity contracts.

.23 Life insurance reserves determined under § 807 and non-life insurance reserves determined under § 832(b).

.24 Capitalization of policy acquisition expenses of insurance companies.

.25 Imputed interest income or deductions under §§ 483, 1274, 7872, or 1.1275-4.

.26 Gains and losses arising under §§ 986(c), 987, and 988.

.27 Items excluded under § 883, § 921, or an applicable treaty from a foreign corporation's income that would otherwise be subject to tax under § 882.

.28 Section 481 adjustments.

.29 Inventory valuation differences whether attributable to differences in last-in, first-out (LIFO) computations or obsolescence reserves.

.30 Section 198 deductions for environmental remediation costs.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for transactions entered into on or after February 28, 2003. However, if a taxpayer applies § 1.6011-4 retroactively, as provided in § 1.6011-4(h), to transactions entered into

on or after January 1, 2003, then this revenue procedure will be effective January 1, 2003, for those transactions.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Charlotte Chyr of the Office of the Associate Chief Counsel (Passthroughs

and Special Industries). For further information regarding this revenue procedure, contact Ms. Chyr at (202) 622-3080 (not a toll-free call).

Part IV. Items of General Interest

Form 5310, *Application for Determination for Terminating Plan*, Revised November 2002

Announcement 2003-13

Form 5310, *Application for Determination for Terminating Plan*, which is used to request determination letters for terminating qualified employee benefit plans, has been revised. Among the changes to Form 5310 is the inclusion of questions relating to the nondiscrimination requirements of § 401(a)(4) and the minimum coverage requirements of § 410(b). Because of this change, Schedule Q (Form 5300), *Elective Determination Requests*, is not required to be filed with the revised Form 5310. Form 5310 applicants may still choose to file Schedule Q to broaden the scope of the determination letter to address certain other nondiscrimination requirements. Form 6088, *Distributable Benefits From Employee Pension Benefit Plans* (Rev. 6/97), is required to be filed with Form 5310 for most defined benefit plans and in certain other cases.

The revised Form 5310 and instructions may be ordered from IRS distribution centers by calling 1-800-TAX FORM. In addition, the form and instructions may be downloaded from http://www.irs.gov/forms_pubs/forms.html. Form 5310 may be filed as downloaded from the web site; *i.e.*, the requirement to provide a duplicate front page (or pink copy) has been eliminated.

Applicants may continue to file the prior (June 1997) revision of Form 5310 through September 30, 2003. Applicants who file the prior revision of Form 5310 should include the June 1998 revision of Schedule Q, if available, or the current (August 2001) revision of Schedule Q. An application for a determination letter for a terminating plan must either show that the plan satisfies the nondiscriminatory contributions or benefits requirements of § 401(a)(4) and the minimum coverage requirements of § 410(b) or establish that the plan meets the prior favorable letter conditions in section 12.04 of Rev. Proc. 2003-6, 2003-1 I.R.B. 191. The prior revision of Form 5310, when used

with the current revision of Schedule Q, will not direct the applicant to this requirement. Therefore, applicants who file the prior revision of Form 5310 with the current revision of Schedule Q are reminded to include the appropriate additional demonstrations or statements with respect to §§ 401(a)(4) and 410(b).

Foundations Status of Certain Organizations

Announcement 2003-14

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

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

Adilisha Baraza, Inc., Cleveland, OH
Aliso Niguel High School Dance Team,
Aliso Viejo, CA
Allies for Mentoring Asian Youth,
Minneapolis, MN
Amazon Productions, Inc., Denver, CO
American Children Foundation, Inc.,
Roswell, GA
Badger Excellence in Education
Foundation, Inc., Lafayette, LA
Bastrop Housing Opportunities
Corporation, Bastrop, TX
Caring & Sharing HFA, Inc.,
Newport News, VA
Charitable Endowments, Irvine, CA

Christian Village of Eastern Virginia,
Inc., Mechanicsville, VA
Christmas in May Chaska, Chaska, MN
Citizens Against Rural Exploitation
Nonprofit Corporation,
Elfin Forest, CA
Coast Watch Society,
Mount Vernon, WA
Community at the Crossroads, Inc.,
Eldersburg, MD
Comprehensive Community
Development, Inc., Bethesda, MD
Conscious Relationships Institute, Inc.,
Richmond, MA
Converse County Education Corporation,
Douglas, WY
Cuban Braille Mission for the Blind,
Glendale, CA
Del Mar Home and School Club,
Santa Cruz, CA
Distinguished Place of Honor, Inc.,
Houston, TX
Dotted Lines, Inc., Elsmere, KY
Eaglewing Theatre Company,
San Jose, CA
Eastern Carolina Public Radio,
Conifer, CO
Elsie Schulte Trust, Tallahassee, FL
Eternal Hope, Inc., Anthem, AZ
Fair Play, Inc., Sunland, CA
Family Builders, Berkeley, CA
Foundation for Excellence, Inc.,
Santa Clara, CA
Freedom Fund, Inc., Oakland, CA
Friends of Elmsford Shelter Animals,
Inc., Scarsdale, NY
Friends of Falling Waters, Inc.,
Chipley, FL
GDC Community Outreach, Inc.,
Jackson, MS
Greater Atlantic City Youth Association,
Inc., Atlantic City, NJ
Greendoors Rural Counseling Concerns,
Ltd., Clarksburg, WV
Health Language Center, Inc.,
Lafayette, CO
Hodari Society, Oakland, CA

Hope is Alive Outreach Ministry,
St. Louis, MO

Hopes and Dreams, Lake Oswego, OR

House of Angels, Inc.,
Silver Spring, MD

Ike Okoye Foundation for Children,
Selma, AL

Infrastructure Revitalization Institute,
McLean, VA

Institute for Health Care and Values,
Cincinnati, OH

International Mission of Nobody's
Children, Inc., San Bernadino, CA

Jes Lere-Hama Corp., Memphis, TN

Lakeland Orthodox Group, Inc.,
Jackson, MS

Las Vegas Clark County Library
Foundation, Las Vegas, NV

Lawnside Jaguars Midget Football
Organization, Lawnside, NJ

Leo Adler Memorial Parkway,
Baker City, OR

Let There Be Light, Inc., Denton, TX

LLM International Prayer Mission,
Sherman, TX

Maine Veterinary Education Foundation,
Rumford Center, ME

Mariposa Arts Foundation, Inc.,
Bayside, TX

Mel Davis Foundation, Inc.,
Montebello, NY

Memphis Community Development
Partnership, Inc., Memphis, TN

Metadox, Charlottesville, VA

Missouri River Frontier Museum,
Parkville, MO

Mt. Hermon Child Development Center,
Inc., Bishopville, SC

Native American Family Foundation,
Inc., Tucson, AZ

Negotiators Mentor, Inc., Littleton, CO

Oak Crest Properties, Diamond Bar, CA

Oil Ministries, Inc., Clarksville, IN

Oregon Pacific Research Institute,
Eugene, OR

Parents and Children Together, Inc.,
Bellows Falls, VT

Pathways Through Grief, Inc.,
Glenview, IL

Persona Zenobia Dance Ensemble,
Norristown, PA

Philadelphia Liver Transplant
Foundation, Blue Bell, PA

Prepared Table, Inc., Houston, TX

Qualified Amateur Sports Association,
Portland, OR

Reach Out International, Inc.,
Baton Rouge, LA

Renascence Community Health Care
Center, Inc., Miami, FL

Sacramento Community Clinic
Association, Inc., West
Sacramento, CA

Saving Face Foundation,
Miami Shores, FL

Serengeti Foundation, Austin, TX

South Fulton Affordable Housing
Development Corporation,
College Park, GA

Stars Booster, C/O Colorado
Gymnastics, Aurora, CO

Stoney Medical Dental Pharmaceutical
Society, Augusta, GA

Stratton-Petit Foundation,
Santa Monica, CA

Tae Foundation, San Carlos, CA

Threshold Development Corporation,
New York, NY

Trinidad Concerned Citizens for Reform,
Inc., Washington, DC

Truth Ministries, Inc., Zachary, LA

Ty Agee, Chicago, IL

Ultimate Marriage Ministries
International, Inc.,
Grand Ledge, MI

Victory Glory Convention, Atlanta, GA

Work Pride, Inc., Evanston, IL

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

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

Announcement 2003–15

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.

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 suspen-

sion from practice before the Internal Revenue Service:

| Name | Address | Designation | Effective Date |
|----------------|-------------|-------------|--|
| Cramer, George | Chicago, IL | CPA | January 18, 2003 to January 17, 2005 |

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 oppor-

tunity for a proceeding before an administrative law judge, the following in-

dividuals have been disbarred from practice before the Internal Revenue Service:

| Name | Address | Designation | Effective Date |
|--------------------------|-----------------|----------------|-------------------|
| Whalley, Christopher J. | Ellsworth, ME | Attorney | July 28, 2002 |
| Chapin, Frank L. | Sandpoint, ID | Enrolled Agent | August 13, 2002 |
| Engstrand Jr., Edward E. | Minneapolis, MN | CPA | November 2, 2002 |
| Fisher, Joanna | Portland, OR | Enrolled Agent | November 15, 2002 |

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 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 Profes-

sional 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 |
|----------------------|--------------------|----------------|--|
| Kuhajda, Ben | Plainfield, IL | CPA | August 26, 2002 to August 24, 2005 |
| Vaughn, James A. | Albuquerque, NM | CPA | October 1, 2002 to September 29, 2004 |
| McBroom, Byron | Manteca, CA | CPA | October 21, 2002 to October 19, 2006 |
| Jacobs, Robert | Philadelphia, PA | Attorney | October 21, 2002 to April 20, 2006 |
| Kwak, Jong | Beverly Hills, CA | Attorney | October 22, 2002 to October 20, 2003 |
| Smith, Frank L. | Brooksville, FL | Attorney | November 1, 2002 to October 30, 2005 |
| Schwartz, Kenneth J. | Woodland Hills, CA | Attorney | November 1, 2002 to February 27, 2006 |
| Agulnick, Barry W. | New York, NY | Attorney | November 1, 2002 to April 29, 2004 |
| O'Connor, Thomas P. | Palos Park, IL | CPA | November 1, 2002 to October 20, 2003 |
| Brand, Joe A. | Dundee, OH | CPA | November 18, 2002 to November 16, 2004 |
| Battino, Steven | Plainview, NY | CPA | November 25, 2002 to May 23, 2004 |
| Chipman, Ken | Farmington, NM | Enrolled Agent | December 1, 2002 to November 29, 2003 |

| Name | Address | Designation | Date of Suspension |
|-------------------|------------------|-------------|--|
| Kirgis, Grant A. | Rochester, MN | CPA | December 1, 2002 to May 30, 2003 |
| Welch, Frank | Stamford, CT | CPA | Indefinite from January 31, 2003 |
| Pickens, Valerie | Seattle, WA | CPA | January 1, 2003 to December 30, 2004 |
| Kidd, Roger F. | Philadelphia, PA | Attorney | January 20, 2003 to April 18, 2003 |
| Sullivan, Raymond | Sonoma, CA | Attorney | March 15, 2003 to November 14, 2003 |

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 |
|-------------------|----------------------|-------------|---|
| Pirro, Anthony G. | South Salem, NY | CPA | Indefinite from June 26, 2002 |
| Scott, Roger | Buffalo, NY | Attorney | Indefinite from August 12, 2002 |
| Patrick, George | Cheshire, CT | CPA | Indefinite from September 9, 2002 |
| Rochon, Jason B. | Lafayette, LA | Attorney | Indefinite from September 9, 2002 |
| Voccola, Edward | Hingham, MA | Attorney | Indefinite from October 18, 2002 |
| Linn, Charles B. | Croton-on-Hudson, NY | Attorney | Indefinite from October 18, 2002 |

| Name | Address | Designation | Date of Suspension |
|-----------------------|-----------------------|-------------|---|
| Lum, Eugene K.H. | Long Beach, CA | Attorney | Indefinite from October 18, 2002 |
| Gwilliam, Peter | Lynn, MA | CPA | Indefinite from October 28, 2002 |
| Herlehy, Jon L. | McHenry, IL | CPA | Indefinite from October 28, 2002 |
| Herndon, Henry | Pikeville, NC | CPA | Indefinite from November 1, 2002 |
| McCurry, Todd | Durham, NC | Attorney | Indefinite from November 25, 2002 |
| Adams, James L. | Breckenridge, CO | Attorney | Indefinite from November 25, 2002 |
| Cloer, Stewart | Plano, TX | Attorney | Indefinite from December 13, 2002 |
| Caruso, Robert | Saddle River, NJ | CPA | Indefinite from December 16, 2002 |
| Duru, Ike E. | Atlanta, GA | Attorney | Indefinite from January 10, 2003 |
| Pelletier, Richard A. | Bolton, CT | CPA | Indefinite from January 10, 2003 |
| Austin, Jack | Steamboat Springs, CO | CPA | Indefinite from January 10, 2003 |
| Gibson, Brian M. | Monroe, NY | Attorney | Indefinite from January 10, 2003 |
| Jackson, Robert | Mt. Juliet, TN | Attorney | Indefinite from January 10, 2003 |
| Tenzer, James L. | East Meadow, NY | Attorney | Indefinite from February 4, 2003 |

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Inter-

nal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

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

| Name | Address | Date of Resignation |
|---------------|---------------|---------------------|
| Korman, Linda | Las Vegas, NV | January 23, 2003 |

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 law 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 the 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.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–26 through 2002–52 is in Internal Revenue Bulletin 2003–1, dated January 6, 2003.

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² A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–26 through 2002–52 is in Internal Revenue Bulletin 2003–1, dated January 6, 2003.