

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. 98-27, page 4.

Spin-off of subsidiary, followed by its merger with unrelated corporation. Based on the enactment of section 1012 of the Taxpayer Relief Act of 1997, the Service will not apply *Court Holding* (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before the distribution under section 355(a) solely because of any postdistribution acquisition or restructuring of the distributed corporation, whether prearranged or not. Rev. Ruls. 96-30 and 75-406 obsolete. Rev. Rul. 70-225 modified.

Rev. Rul. 98-28, page 5.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1998.

EMPLOYEE PLANS

Notice 98-29, page 8.

Qualified plans; plan amendments. The Service is requesting comments from the public regarding several approaches under which exceptions under section 411(d)(6) of the Code for certain optional forms of benefit could be provided for defined contribution plans. The Service also requests comments regarding possible section 411(d)(6) relief for defined benefit plans.

Notice 98-32, page 23.

Weighted average interest rate update. Guidelines are set forth for determining for May 1998, the weighted aver-

age interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

EXEMPT ORGANIZATIONS

Announcement 98-44, page 24.

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

ADMINISTRATIVE

Notice 98-30, page 9.

Electronic funds transfer; failure to deposit penalty. This notice provides guidance relating to the waiver of the failure to deposit penalty under section 6656 of the Code for certain taxpayers first required to make federal tax deposits by electronic funds transfer beginning on or after July 1, 1997.

Notice 98-31, page 10.

Methods of accounting; involuntary changes. The Service is requesting comments on a proposed revenue procedure that, when finalized, will provide the procedures under sections 446(b) of the Code and section 1.446-1(b) of the regulations for changes in method of accounting initiated by the Service, and the procedures that the Service will use for accounting method issues raised and resolved by the Service on a nonaccounting-method-change basis.

Finding Lists begin on page 31.

Announcement of the Consent Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, etc., begins on page 27.

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries from Practice before the Internal Revenue Service begins on page 28.

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Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

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 of a permanent nature 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 proce-

dures 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 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.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, page 5.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, page 5.

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

26 CFR 1.355-2: *Limitations.*
(Also § 7805; 301.7805-1.)

Spin-off of subsidiary, followed by its merger with unrelated corporation.

Based on the enactment of section 1012 of the Taxpayer Relief Act of 1997, the Service will not apply *Court Holding* (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before the distribution under section 355(a) solely because of any postdistribution acquisition or restructuring of the distributed corporation, whether prearranged or not. Rev. Ruls. 96-30, 1996-1 C.B. 36, and 75-406, 1975-2 C.B. 125, obsolete. Rev. Rul. 70-225, 1970-1 C.B. 80, modified.

Rev. Rul. 98-27

PURPOSE

This revenue ruling obsoletes Rev. Ruls. 96-30, 1996-1 C.B. 36, and 75-406, 1975-2 C.B. 125, modified by Rev. Rul. 96-30. This revenue ruling also modifies Rev. Rul. 70-225, 1970-1 C.B. 80.

BACKGROUND

Rev. Rul. 96-30 applies the principles of *Commissioner v. Court Holding Co.*, 324 U.S. 331 (1945), to a distribution of controlled corporation stock by a publicly traded parent, followed by a merger of the

controlled corporation into an unrelated acquiring corporation. The former shareholders of the controlled corporation receive a 25 percent interest in the acquiring corporation. Based on all the facts and circumstances, the ruling concludes that the transaction satisfies the requirements of § 355 of the Internal Revenue Code. Rev. Rul. 96-30 also modifies the factually similar Rev. Rul. 75-406 by eliminating the implication that an independent, post-distribution shareholder vote to approve the acquisition of a controlled corporation is, by itself, enough to prevent application of the step transaction doctrine.

Section 1012(c) of the Taxpayer Relief Act of 1997 (the "Act"), Pub. L. No. 105-34, 111 Stat. 788, 916-17, amended the control requirements of §§ 351 and 368(a)(1)(D) to provide that, generally for transactions seeking qualification after August 5, 1997 under either provision and § 355, the shareholders of the distributing corporation must own stock possessing more than 50 percent of the voting power and more than 50 percent of the total value of the controlled corporation's stock immediately after the distribution. Sections 351(c) and 368(a)(2)(H). In addition, § 1012(a) of the Act amended § 355 by adding subsection (e), which provides rules for the recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with acquisitions of stock representing a 50 percent or greater interest in the distributing corporation or any controlled corporation. Section 1012(a) of the Act generally applies to distributions after April 16, 1997, pursuant to a plan (or series of related transactions) that involves an acquisition described in § 355(e)(2)(A)(ii) occurring after such date.

The Conference Report accompanying the legislation states, in part, that:

The House bill does not change the present-law requirement under section 355 that the distributing corporation must distribute 80 percent of the voting power and 80 percent of each other class of stock of the controlled corporation. It is expected that this requirement will be applied by the Internal Revenue Service taking account of the provisions of the proposal regarding plans that permit certain types of planned restructuring of the distributing corporation following the distribution, and to treat similar restructurings of the controlled corporation in a similar manner. Thus, the 80-percent control require-

ment is expected to be administered in a manner that would prevent the tax-free spin-off of a less-than-80-percent controlled subsidiary, but would not generally impose additional restrictions on post-distribution restructurings of the controlled corporation if such restrictions would not apply to the distributing corporation.

H.R. Rep. No. 105-220, at 529-30 (1997).

ANALYSIS

The application of *Court Holding* principles to determine whether the distributed corporation was a controlled corporation immediately before the distribution under § 355(a) imposes a restriction on postdistribution acquisitions or restructurings of a controlled corporation that is inconsistent with § 1012 of the Act. See § 1012(c) of the Act and H.R. Rep. No. 105-220, at 529-30. Accordingly, the Service will not apply *Court Holding* (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before the distribution under § 355(a) solely because of any postdistribution acquisition or restructuring of the distributed corporation, whether prearranged or not. In otherwise applying the step transaction doctrine, the Service will continue to consider all facts and circumstances. See, e.g., Rev. Rul. 63-260, 1963-2 C.B. 147. An independent shareholder vote is only one relevant factor to be considered.

HOLDING

Based on the enactment of § 1012 of the Act, the Service will not apply *Court Holding* (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before the distribution under § 355(a) solely because of any postdistribution acquisition or restructuring of the distributed corporation, whether prearranged or not.

EFFECT ON OTHER REVENUE RULINGS

Rev. Ruls. 96-30 and 75-406 are obsolete. Rev. Rul. 70-225 is modified to the extent inconsistent with this revenue ruling.

EFFECTIVE DATE

Pursuant to the authority of § 7805(b), this revenue ruling applies to distributions after April 16, 1997. However, this revenue ruling does not apply to a distribution pursuant to a plan (or series of related transactions) that involves an acquisition described in § 355(e)(2)(A)(ii) if the acquisition is pursuant to an agreement that was binding on April 16, 1997 and at all times thereafter, described in a ruling request submitted to the Service on or before that date, or described on or before that date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or restructuring. The previous sentence shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributed corporation.

DRAFTING INFORMATION

The principal author of this revenue ruling is Phoebe Bennett of the Office of Assistant Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Ms. Bennett at (202) 622-7750 or Brendan P. O'Hara at (202) 622-7530 (not toll free calls).

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 June 1998. See Rev. Rul. 98-28, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

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 June 1998. See Rev. Rul. 98-28, on this page.

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 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1998.

Rev. Rul. 98-28

This revenue ruling provides various prescribed rates for federal income tax purposes for June 1998 (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. 98-28 TABLE 1

Applicable Federal Rates (AFR) for June 1998

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.58%	5.50%	5.46%	5.44%
110% AFR	6.14%	6.05%	6.00%	5.98%
120% AFR	6.71%	6.60%	6.55%	6.51%
130% AFR	7.28%	7.15%	7.09%	7.05%
<i>Mid-Term</i>				
AFR	5.77%	5.69%	5.65%	5.62%
110% AFR	6.36%	6.26%	6.21%	6.18%
120% AFR	6.95%	6.83%	6.77%	6.73%
130% AFR	7.54%	7.40%	7.33%	7.29%
150% AFR	8.72%	8.54%	8.45%	8.39%
175% AFR	10.21%	9.96%	9.84%	9.76%
<i>Long-Term</i>				
AFR	6.02%	5.93%	5.89%	5.86%
110% AFR	6.63%	6.52%	6.47%	6.43%
120% AFR	7.25%	7.12%	7.06%	7.02%
130% AFR	7.86%	7.71%	7.64%	7.59%

REV. RUL. 98-28 TABLE 2

Adjusted AFR for June 1998

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
adjusted AFR	3.86%	3.82%	3.80%	3.79%
<i>Mid-term</i>				
adjusted AFR	4.43%	4.38%	4.36%	4.34%
<i>Long-term</i>				
adjusted AFR	5.15%	5.09%	5.06%	5.04%

REV. RUL. 98-28 TABLE 3

Rates Under Section 382 for June 1998

Adjusted federal long-term rate for the current month	5.15%
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)	5.15%

REV. RUL. 98-28 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for June 1998

Appropriate percentage for the 70% present value low-income housing credit	8.38%
Appropriate percentage for the 30% present value low-income housing credit	3.59%

REV. RUL. 98-28 TABLE 5

Rate Under Section 7520 for June 1998

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

7.0%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, page 5.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1998. See Rev. Rul. 98-28, page 5.

Section 7805.—Rules and Regulations

26 CFR 301.7805-1: Promulgation of regulations.

The revenue ruling provides that, based on the enactment of § 1012 of the Taxpayer Relief Act of 1997, the Service will not apply Court Holding (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before the distribution under § 355(a) solely because of any postdistribution acquisition or restructuring of the distributed corporation, whether prearranged or not. Rev. Ruls. 96-30, 1996-1 C.B. 36, and 75-406, 1975-2 C.B. 125, obsoleted. Rev. Rul. 70-225, 1970-1 C.B. 80, modified. See Rev. Rul. 98-28, page 5.

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 June 1998. See Rev. Rul. 98-28, page 5.

Part III. Administrative, Procedural, and Miscellaneous

Optional Forms of Benefit Under Defined Contribution Plans

Notice 98-29

Section 411(d)(6) of the Internal Revenue Code precludes qualified retirement plan amendments that have the effect of eliminating optional forms of benefit and further states, in § 411(d)(6)(B), that the Secretary may provide exceptions to this provision. The Internal Revenue Service and the Treasury Department are considering further guidance exercising this authority in order to address a number of concerns in this area. The Service and Treasury believe that any such relief should take into account the interests of participants and the practical needs of employers in effectively and efficiently providing retirement benefits for their employees, including the need to adapt plans to changing circumstances. The Service and Treasury are inviting comments on possible approaches before regulations are proposed.

BACKGROUND

Section 411(d)(6) generally provides that a plan is not treated as satisfying the requirements of § 411 if the accrued benefit of a participant is decreased by a plan amendment. Under § 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, § 411(d)(6)(B) permits the Service and Treasury to provide exceptions to this rule. This authority does not extend to a plan amendment that would have the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy.

Regulatory exceptions to the application of § 411(d)(6)(B) to optional forms of benefit generally have been developed to address certain specific practical problems. For example, § 1.411(d)-4, Q&A-3(b) of the Income Tax Regulations permits a transfer of a participant's entire nonforfeitable benefit between plans to be made at the election of the participant, without a requirement that the transferee

plan preserve all § 411(d)(6) protected benefits, but only if the participant is eligible to receive an immediate distribution and certain other conditions are satisfied.

The Service and Treasury recognize that the accumulation of a variety of payment choices under plans may increase the cost and complexity of plan operations. For example, an employer that initially adopted a plan form offered by a prototype sponsor may now be using a different prototype plan that offers a different array of distribution forms. The requirement to preserve the preexisting optional forms for benefits accrued up to the date of change in the prototype plan may present significant practical problems in certain cases.

Similar issues arise where employers merge with or acquire other businesses. These employers often face issues of whether to maintain separate plans, terminate one or more of the plans, or merge the plans. If an employer chooses to merge the plans, the resulting plan may accumulate a wide variety of optional forms, some of which may differ in insignificant ways or may entail special administrative costs. Because the existing elective transfer rule of § 1.411(d)-4, Q&A-3(b) applies only to terminated plans and to other situations in which a participant's benefits have become distributable, its applicability is limited.

Furthermore, it has become easier for individuals to duplicate the various payment choices available from qualified plans through other means. The Unemployment Compensation Amendments of 1992 substantially expanded participants' ability to transfer qualified plan distributions to individual retirement arrangements (IRAs) on a tax-deferred basis. Individuals who receive single-sum distributions from qualified plans frequently roll those distributions over directly to IRAs, under which distributions can be made in a wide variety of payment forms. There are also indications that the vast majority of participants in defined contribution plans who have a choice of options elect single-sum distributions, which are often rolled over to IRAs.

The Service and Treasury are weighing these considerations as they apply to vari-

ous circumstances and various benefit forms, and expect to propose regulations that would allow greater flexibility with respect to plan payment forms.

Any § 411(d)(6) relief provided would not provide exceptions from other requirements of the Code. For example, any such relief would not permit a money purchase pension plan to be amended to eliminate any distribution form required by §§ 401(a)(11) and 417, and would not affect the requirements of § 401(a)(31) (relating to direct rollovers).

POSSIBLE RELIEF FOR DEFINED CONTRIBUTION PLANS

Under one approach being considered, a plan amendment to a defined contribution plan would not violate § 411(d)(6) merely because the amendment eliminated alternative forms of payment if, after the amendment, each affected participant could elect between a single-sum distribution form and at least one extended payment form. The extended payment form condition would be satisfied if the plan offered at least one of the following three alternatives: (1) a single and a joint life annuity, (2) installments payable over a single and a joint life expectancy, or (3) in the case of a plan that did not previously provide for payment of benefits to the participant in any form described in (1) or (2), installments payable over the longest installment period permitted under the plan before the amendment. Such an approach would apply to a plan amendment eliminating or restricting the availability of an alternative form of payment only if the amendment did not apply to a participant whose distribution began before the date the amendment was adopted or within 90 days thereafter.

In addition to comments on this approach, comments are invited on possible variations, which might include providing that the extended payment form condition could be satisfied by installments for a fixed number of years (such as five, ten, or twenty years), or by a provision under which a participant could elect to receive any amount of the participant's account balance at any time, or not requiring an extended payment form.

Such an approach would not permit the elimination or restriction of other features relating to a distribution form, including the time of commencement, and the right to receive payments in cash or in kind, to receive a partial distribution, or to accelerate payments. Under such an approach, absent other § 411(d)(6) relief, these other features would have to be retained for both the single-sum and extended payment forms. For example, a participant would have to be able to receive payment (under both the single-sum and extended payment forms) beginning whenever payments could have begun under any alternative form of payment that has been eliminated or restricted.

Comments are also requested on other possible approaches, including the following approaches that some have suggested:

- Permitting amendments that eliminate optional forms of benefit with respect to which participant utilization is demonstrably very low. This approach would require resolution of a variety of questions. For example, it would raise practical issues of substantiation and would require rules for separating and combining optional forms of benefit (in order to measure the utilization of any one optional form). Other issues would include whether only utilization by retirees or some other class of participants should be taken into account as the basis for measurements (such as all participants retiring within a specified period), and how such a utilization approach might coordinate with other § 411(d)(6) relief.

- Permitting amendments that eliminate optional forms of benefit that apply with respect to no more than a small portion of participants' benefits (such as cases in which an optional form of benefit is inapplicable to benefits attributable to contributions made after a specific date and the prior benefits represent no more than a small percentage of a participant's total benefit).

- Permitting amendments that eliminate optional forms of benefit if the effective date of the amendment is deferred for some period of years.

The Service and Treasury are also considering whether it would be appropriate to develop additional relief for elective transfers between defined contribution plans. Such relief would apply under cer-

tain conditions, for example, where employees are transferred to a new controlled group in connection with an acquisition. This would permit employers to allow employees of an acquired business to elect to have their benefits transferred between defined contribution plans, even though the benefits may not yet be distributable. Comments are requested on this approach and on whether the approach should be limited to situations in which both plans are of the same type (for example, the approach would be available if both plans are profit-sharing plans with qualified cash or deferred arrangements), or whether the transferee plan should merely be required to retain the distribution restrictions and other relevant characteristics of the transferor plan.

DEFINED BENEFIT PLANS

Defined benefit plans have special characteristics, including benefit payment calculation specifications and possible retirement-type subsidies (for which § 411(d)(6)(B) does not authorize the issuance of regulatory relief). See also S. Rep. No. 575, 98th Cong., 2d Sess. 30 (1984) (addressing issues with respect to elimination of optional forms of benefit). These features are not characteristic of defined contribution plans and provide special protections to participants. Comments are invited on whether additional § 411(d)(6) relief is appropriate in the context of defined benefit plans and, if so, how any relief might adequately take account of the special characteristics of defined benefit plans.

COMMENTS REQUESTED

The Service and Treasury invite comments on the possible approaches described in this notice. It is anticipated that further guidance in this area would take the form of proposed regulations. Comments should be submitted by August 31, 1998, in writing, and should reference Notice 98-29. Comments may be submitted by mail to—

Internal Revenue Service

P.O. Box 7604

Ben Franklin Station

Attn: CC:CORP:T:R (Notice 98-29), Room 5226

Washington, DC 20044;

or may be hand delivered between the hours of 8 a.m. and 5 p.m. to

CC:DOM:CORP:R (Notice 98-29), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Alternatively, comments may be submitted via the Internet at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

DRAFTING INFORMATION

The principal authors of this notice are Linda Marshall of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Kenneth Conn of the Employee Plans Division. For further information regarding this notice, please contact Ms. Marshall at (202) 622-6030 or Mr. Conn at (202) 622-6214. These are not toll-free numbers.

Electronic Funds Transfer— Temporary Waiver of Failure to Deposit Penalty for Certain Taxpayers

Notice 98-30

This notice provides guidance relating to the waiver of penalties announced in News Release IR-98-28, issued March 31, 1998. In IR-98-28, the Internal Revenue Service announced that it will waive the failure to deposit penalty under § 6656 of the Internal Revenue Code for certain taxpayers first required to make federal tax deposits by electronic funds transfer beginning on or after July 1, 1997.

BACKGROUND

Section 6302(h)(1)(A) provides that the Secretary will prescribe regulations necessary for the development and implementation of an electronic funds transfer system for the collection of depository taxes. Section 6302(h)(2) provides a phase-in schedule for the system.

Section 31.6302-1(h) of the Employment Taxes and Collection of Income Tax at Source Regulations prescribes rules for implementing an electronic funds transfer system for the collection of depository taxes. Under the regulation, taxpayers are required to deposit taxes by electronic funds transfer if the amount of their depository taxes in a specified earlier year exceeds the applicable threshold amount. The regulation provides that taxpayers

with more than \$50,000 of federal employment tax deposits in calendar year 1995 must use electronic funds transfer to make deposits that are due on or after July 1, 1997 and relate to return periods beginning on or after January 1, 1997. Taxpayers with more than \$50,000 in employment tax deposits in calendar year 1996 must use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1998. In addition, taxpayers with no employment tax deposits but with more than \$50,000 in other federal tax deposits in either 1995 or 1996 must use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1998.

Section 6656(a) provides that in the case of any failure by any person to deposit taxes on the prescribed date in an authorized government depository, a penalty applies unless the failure is due to reasonable cause and not due to willful neglect. Rev. Rul. 95-68, 1995-2 C.B. 272, provides that, absent reasonable cause, a taxpayer that is required to deposit federal taxes by electronic funds transfer is subject to the 10 percent failure to deposit penalty if the taxpayer deposits the taxes by means other than electronic funds transfer.

Notice 97-43, 1997-30 I.R.B. 9, provides that, in the case of taxpayers first required to deposit electronically on or after July 1, 1997, the Internal Revenue Service will not impose the failure to deposit penalty under § 6656 solely for the failure to make the deposit electronically. This waiver applies only to deposit obligations incurred on or before December 31, 1997.

Section 931 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 881, provides that no penalty shall be imposed under the Internal Revenue Code solely by reason of a failure by a person to use the electronic fund transfer system established under § 6302(h) of the Code if (1) the person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and (2) the failure occurs before July 1, 1998.

TEMPORARY WAIVER OF PENALTY FOR CERTAIN TAXPAYERS

For taxpayers first required to make federal tax deposits electronically on or

after July 1, 1997, the Service will not impose the 10 percent § 6656 penalty solely for the failure to make those deposits by electronic funds transfer. However, a taxpayer will remain liable for the failure to deposit penalty under § 6656 (absent reasonable cause) if the taxpayer fails to make a required deposit (using either electronic funds transfer or a paper coupon) in a timely manner.

This waiver of the failure to deposit penalty applies only to deposit obligations incurred on or before December 31, 1998. The penalty waiver includes deposits made after December 31, 1998, provided the deposit obligation was incurred on or before December 31, 1998.

This waiver of the failure to deposit penalty does not apply to taxpayers that were required to begin using electronic funds transfer in 1995 or 1996.

DRAFTING INFORMATION

The principal author of this notice is Vincent G. Surabian of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding the penalty waiver, contact Mr. Surabian at (202) 622-4940 (not a toll-free call).

Service-Initiated Accounting Method Changes

Notice 98-31

This notice provides a proposed revenue procedure that, when finalized, will provide the procedures under § 446(b) of the Internal Revenue Code and § 1.446-1(b) of the Income Tax Regulations for changes in method of accounting initiated by the Internal Revenue Service, and the procedures that the Service will use for accounting method issues raised and resolved by the Service on a nonaccounting-method-change basis.

As part of these procedures, the proposed revenue procedure describes the discretion the Service may exercise in resolving an accounting method issue as an accounting method change or on a nonaccounting-method-change basis. Except as otherwise provided in published guidance, the proposed revenue procedure requires Examination to resolve any timing

issue as an accounting method change and to make the change in the earliest taxable year under examination with a § 481(a) adjustment and a 1-year § 481(a) adjustment period. The proposed revenue procedure does not alter the authority of Appeals or counsel for the government to resolve or settle any accounting method issues.

The Service intends to publish additional guidance making the Coordinated Examination Program (CEP) early referral process provided in Rev. Proc. 96-9, 1996-1 C.B. 575, available to non-CEP taxpayers for the resolution of accounting method issues. This will permit faster resolution of timing issues that non-CEP taxpayers want to refer to Appeals.

In addition, the Service intends to publish guidance that will delegate limited discretionary authority to Examination to resolve certain accounting method issues, allow taxpayers and the Service to resolve accounting method issues for taxable years beyond the years under examination, before Appeals, or before a federal court, and permit taxpayers under examination who otherwise cannot request certain voluntary changes in method of accounting from an impermissible method to request such changes without audit protection. The Service also intends to publish guidance that provides a model closing agreement for Service-initiated accounting method changes. This guidance will increase the number of accounting method issues that the Service may resolve earlier in the examination/appeals process, provide a more efficient use of Service and taxpayer resources, and facilitate greater uniformity in the Service's resolution of accounting method issues.

The Service welcomes comments on the proposed revenue procedure provided in this notice. Comments should be submitted by July 31, 1998, either to:

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:DOM:CORP:R (IT&A,
Branch 7), Room 5228

or electronically via:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the Service internet site).

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SECTION 1. PURPOSE

.01 *In general.* This revenue procedure provides the procedures under § 446(b) of the Internal Revenue Code and § 1.446-1(b) of the Income Tax Regulations for changes in method of accounting initiated by the Internal Revenue Service. This revenue procedure also provides the procedures that the Service will use for timing issues raised and resolved by the Service on a nonaccounting-method-change basis.

.02 *Voluntary compliance.* This revenue procedure provides terms and conditions for Service-initiated changes that are intended to encourage taxpayers to voluntarily request a change from an impermissible method of accounting prior to being contacted for examination. Under this approach, a taxpayer that is contacted for examination and required to change its method of accounting by the Service generally receives less favorable terms and conditions (for example, an earlier year of

change and a shorter § 481(a) adjustment period for a positive adjustment) than if the taxpayer had filed its request to change before the taxpayer was contacted for examination. See Rev. Proc. 97-27, 1997-1 C.B. 680, and Rev. Proc. 97-37, 1997-33 I.R.B. 18, which provide the procedures for voluntary requests to change an accounting method.

.03 *Procedures for Examination, Appeals, and counsel for the government for resolving timing issues.* This revenue

procedure sets forth procedures for Examination, Appeals, and counsel for the government to resolve timing issues. It does not alter Examination's authority to examine the returns of a taxpayer. It provides parameters for Examination to resolve timing issues, but does not limit or expand Examination's authority to resolve any issues under Delegation Order No. 236, Application of Appeals Settlement to Coordinated Examination Program Taxpayers, or Delegation Order No. 247, Authority of Examination Case Managers to Accept Settlement Offers and Execute Closing Agreements on Industry Specialization Program and International Field Assistance Program Issues. This revenue procedure does not alter the authority of Appeals or counsel for the government to resolve or settle any issues.

SECTION 2. BACKGROUND

.01 *Change in method of accounting defined.*

(1) Section 1.446-1(e)(2)(ii)(a) provides that a change in method of accounting includes a change in the overall plan of accounting for gross income or deductions, or a change in the treatment of any material item. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of the item as a deduction. In determining whether a taxpayer's accounting practice for an item involves timing, generally the relevant question is whether the practice permanently changes the amount of the taxpayer's lifetime income. If the practice does not permanently affect the taxpayer's lifetime income, but does or could change the taxable year in which income is reported, it involves timing and is therefore a method of accounting. See Rev. Proc. 91-31, 1991-1 C.B. 566.

(2) Although a method of accounting may exist under this definition without a pattern of consistent treatment of an item, a method of accounting is not adopted in most instances without consistent treatment. The treatment of a material item in the same way in determining the gross income or deductions in two or more consecutively filed tax returns (without regard to any change in status of the method as permissible or impermissible) represents consistent treatment of that item for purposes of § 1.446-1(e)(2)(ii)(a). If a taxpayer treats an item properly in the

first return that reflects the item, however, it is not necessary for the taxpayer to treat the item consistently in two or more consecutive tax returns to have adopted a method of accounting. If a taxpayer has adopted a method of accounting under these rules, the taxpayer may not change the method by amending its prior income tax returns(s). See Rev. Rul. 90-38, 1990-1 C.B. 57.

(3) A change in the characterization of an item may also constitute a change in method of accounting if the change has the effect of shifting income from one period to another. For example, a change from treating an item as income to treating the item as a deposit is a change in method of accounting. See Rev. Proc. 91-31.

(4) A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of tax liability (such as errors in computation of the foreign tax credit, net operating loss, percentage depletion, or investment credit). See § 1.446-1(e)(2)(ii)(b).

.02 *Method changes initiated by the Service.*

(1) Section 446(b) and § 1.446-1(b)(1) provide that if a taxpayer does not regularly employ a method of accounting that clearly reflects its income, the computation of taxable income must be made in the manner that, in the opinion of the Commissioner, does clearly reflect income.

(2) The Commissioner has broad discretion in determining whether a taxpayer's method of accounting clearly reflects income, and the Commissioner's determination must be upheld unless it is clearly unlawful. See *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522 (1979); *RCA Corp. v. United States*, 664 F.2d 881 (2nd Cir. 1981), *cert. denied*, 457 U.S. 1133 (1982).

(3) The Commissioner has broad discretion in selecting a method of accounting that the Commissioner believes properly reflects the income of a taxpayer once the Commissioner has determined that the taxpayer's method of accounting does not clearly reflect income, and the Commissioner's selection may be challenged only upon showing an abuse of discretion by the Commissioner. See *Wilkinson-Beane, Inc. v. Commissioner*,

420 F.2d 352 (1st Cir. 1970); *Standard Paving Company v. Commissioner*, 190 F.2d 330 (10th Cir.), *cert. denied*, 342 U.S. 860 (1951).

(4) The Commissioner has the discretion to change a taxpayer's method of accounting even though the Commissioner previously changed the taxpayer to the method if the Commissioner determines that the method of accounting does not clearly reflect the taxpayer's income. The Commissioner is not precluded from correcting mistakes of law in determining a taxpayer's tax liability, including the power to retroactively correct rulings or other determinations on which the taxpayer may have relied. See *Dixon v. United States*, 381 U.S. 68 (1965); *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180 (1957); *Massaglia v. Commissioner*, 286 F.2d 258 (10th Cir. 1961).

(5) The Commissioner does not have discretion, however, to require a taxpayer to change from a method of accounting that clearly reflects income to a method that, in the Commissioner's view, more clearly reflects income. See *Capitol Federal Savings & Loan v. Commissioner*, 96 T.C. 204 (1991); *W.P. Garth v. Commissioner*, 56 T.C. 610 (1971), *acq.*, 1975-1 C.B. 1.

(6) The Commissioner may change the accounting method of a taxpayer that is under examination, before an appeals office, or before a federal court, except as otherwise provided in published guidance. See, for example, section 9 of Rev. Proc. 97-27, which generally precludes the Service from changing a taxpayer's method of accounting for an item for prior taxable years if the taxpayer timely files a Form 3115 pursuant to Rev. Proc. 97-27 requesting to change its method of accounting for the item.

.03 *No right to retroactive method change.* Although the Commissioner is authorized to consent to a retroactive accounting method change, a taxpayer does not have a right to a retroactive change, regardless of whether the change is from a permissible or impermissible method. See generally, Rev. Rul. 90-38.

.04 *Service ordinarily will not initiate a taxpayer favorable method change.* Consistent with the policy of encouraging prompt voluntary compliance with proper tax accounting principles, the Service or-

dinarily will not initiate an accounting method change if the change will place the taxpayer in a position more favorable than the taxpayer's position would have been had the taxpayer not been contacted for examination. For example, an examining agent ordinarily will not initiate a change from an impermissible method that results in a negative § 481(a) adjustment. If the Service declines to initiate such an accounting method change, the district director will consent to the taxpayer requesting a voluntary change under Rev. Proc. 97-27. See section 6.01(4) of Rev. Proc. 97-27.

.05 Method change with a § 481(a) adjustment.

(1) *Need for adjustment.* Section 481(a) requires those adjustments necessary to prevent amounts from being duplicated or omitted to be taken into account when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding taxable year. When there is a change in method of accounting to which § 481(a) is applied, income for the taxable year preceding the year of change must be determined under the method of accounting that was then used, and income for the year of change and the following taxable years must be determined under the new method of accounting as if the new method had always been used.

Example. A taxpayer, although not permitted to use the cash receipts and disbursements method of accounting by § 448, uses the overall cash method and changes to an overall accrual method. The taxpayer has \$120,000 of income earned but not yet received (accounts receivable) and \$100,000 of expenses incurred but not yet paid (accounts payable) as of the end of the taxable year preceding the year of change. A positive § 481(a) adjustment of \$20,000 (\$120,000 accounts receivable less \$100,000 accounts payable) is required as a result of the change.

(2) *Adjustments attributable to pre-1954 years.* Section 481(a)(2) and § 1.481-3 provide that if the adjustments required by § 481(a) are attributable to a change in method of accounting not initiated by the taxpayer, no portion of any adjustments which is attributable to pre-1954 taxable years is taken into account in computing taxable income.

(3) *Adjustment period.* Section 481(c) and §§ 1.446-1(e)(3)(i) and 1.481-4 provide that the adjustment re-

quired by § 481(a) may be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer. Generally, in the absence of such an agreement, the § 481(a) adjustment is taken into account completely in the year of change, subject to § 481(b) which limits the amount of tax where the adjustment is substantial.

.06 Method change using a cut-off method. The Commissioner may determine that certain changes in method of accounting will be made without a § 481(a) adjustment, using a "cut-off method." Under a cut-off method, only the items arising on or after the beginning of the year of change are accounted for under the new method of accounting. Any items arising before the year of change continue to be accounted for under the taxpayer's former method of accounting. Because no items are duplicated or omitted from income when a cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

.07 Previous method change without consent. The Commissioner may require a taxpayer that has changed a method of accounting without the Commissioner's consent to change back to its former method. The Commissioner may do so even when the taxpayer changed from an impermissible to a permissible method. The change back to the former method may be made in the taxable year the taxpayer changed without consent, or if that year is closed by the running of the period of limitations, in the earliest open year. See *Commissioner v. O. Liquidating Corp.*, 292 F.2d 225 (3rd Cir.), cert. denied, 368 U.S. 898 (1961); *Handy Andy T.V. and Appliances, Inc.*, T.C. Memo. 1983-713.

.08 Penalties. Any otherwise applicable penalty for the failure of a taxpayer to change its method of accounting (for example, the accuracy-related penalty under § 6662 or the fraud penalty under § 6663) may be imposed if the Service initiates an accounting method change. See § 446(f). Additionally, the taxpayer's return preparer may also be subject to the preparer penalty under § 6694.

SECTION 3. DEFINITIONS

.01 Timing issue. The term "timing issue" means any issue regarding the pro-

priety of a taxpayer's method of accounting for an item. See the definition of change in method of accounting in § 1.446-1(e)(2)(ii)(a) and section 2.01 of this revenue procedure.

.02 Year of change. The year of change is the taxable year for which a change in method of accounting is effective, that is, the first taxable year the new method is used, even if no affected items are taken into account for that year. The year of change is also the first taxable year for complying with all the terms and conditions accompanying the change.

.03 Section 481(a) adjustment period. The § 481(a) adjustment period is the applicable number of taxable years for taking into account the § 481(a) adjustment required as a result of the change in method of accounting. The year of change is the first taxable year in the adjustment period and the § 481(a) adjustment is taken into account ratably over the number of taxable years in the adjustment period.

SECTION 4. SCOPE

Except as otherwise provided in published guidance, this revenue procedure applies to any accounting method change initiated by the Service, and to any timing issue raised and resolved by the Service on a nonaccounting-method-change basis.

SECTION 5. EXAMINATION DISCRETION TO RESOLVE TIMING ISSUES

.01 In general. Except as otherwise provided in published guidance (for example, Delegation Order No. 236), the discretion of an examining agent to resolve a timing issue is set forth in sections 5.02 through 5.05 of this revenue procedure. See section 10.01 of this revenue procedure for an example of the application of section 5 of this revenue procedure.

.02 Requirement to treat a timing issue as a method change. An examining agent proposing an adjustment with respect to a timing issue will treat the issue as a change in method of accounting.

.03 Requirement to apply the law to the facts. An examining agent changing a taxpayer's method of accounting will properly apply the law to the facts without taking into account the hazards of litigation when determining the new method of accounting.

.04 *Requirement to impose a § 481(a) adjustment.* An examining agent changing a taxpayer's method of accounting will impose a § 481(a) adjustment. The change may be made using a cut-off method only in rare and unusual circumstances when the examining agent determines that the taxpayer's books and records do not contain sufficient information to compute the adjustment and the adjustment is not susceptible to reasonable estimation.

.05 *Terms and conditions of change.* An examining agent changing a taxpayer's method of accounting will effect the change in the earliest taxable year under examination (or, if later, the first taxable year the method is considered impermissible) with a one-year § 481(a) adjustment period, subject to the computation of tax under § 481(b) (if applicable).

SECTION 6. APPEALS AND COUNSEL FOR THE GOVERNMENT DISCRETION TO RESOLVE TIMING ISSUES

.01 *Authority to resolve timing issues.* An appeals officer or counsel for the government may resolve a timing issue when it is in the interest of the government to do so.

.02 *Types of resolutions.*

(1) *In general.* An appeals officer or counsel for the government, to reflect the hazards of litigation, may resolve a timing issue by changing the taxpayer's method of accounting using compromise terms and conditions, or on a nonaccounting-method-change basis using either an alternative-timing or a time-value-of-money resolution. See sections 10.02 through 10.04 of this revenue procedure for examples of the application of section 6 of this revenue procedure.

(2) *Accounting method change with compromise terms and conditions.*

(a) *Treating a timing issue as a method change.* An appeals officer or counsel for the government resolving a timing issue may treat the issue as a change in method of accounting.

(b) *Requirement to apply the law to the facts.* An appeals officer or counsel for the government changing a taxpayer's method of accounting will properly apply the law to the facts without taking into account the hazards of litigation when determining the new method of accounting.

(c) *Using a § 481(a) adjustment or a cut-off method.* An appeals officer or counsel for the government changing a taxpayer's method of accounting may make the change using a § 481(a) adjustment or a cut-off method.

(d) *Terms and conditions of change.*

(i) *In general.* An appeals officer or counsel for the government changing a taxpayer's method of accounting may agree to terms and conditions that differ from those applicable to an Examination-initiated accounting method change. The appeals officer or counsel for the government may compromise the year of change (for example, by agreeing to a later year of change), the amount of the § 481(a) adjustment (for example, by agreeing to a reduced § 481(a) adjustment), or the § 481(a) adjustment period (for example, by agreeing to a longer § 481(a) adjustment period). If an appeals officer or counsel for the government agrees to compromise the amount of the § 481(a) adjustment, the agreement must be in writing.

(ii) *Limitation on year of change.* An appeals officer or counsel for the government changing a taxpayer's method of accounting ordinarily will not defer the year of change to later than the most recent taxable year under examination on the date of the agreement finalizing the change, and, in no event, will defer the year of change to later than the taxable year that includes the date of the agreement finalizing the change.

(3) *Alternative timing.* An appeals officer or counsel for the government may resolve a timing issue by not changing the taxpayer's method of accounting, and by the Service and the taxpayer agreeing to alternative timing for all or some of the items arising during, or prior to and during, the taxable years before Appeals or a federal court. The resolution of a timing issue on an alternative-timing basis for certain items will not affect the taxpayer's method of accounting for any items not covered by the resolution. For example, the Service and the taxpayer may agree that the taxpayer will capitalize the inventoriable costs incurred during 1995 that were deducted under the taxpayer's method of accounting. The taxpayer's inventoriable costs covered by the agreement must be capitalized and accounted

for under the taxpayer's inventory method. The inventoriable costs that are not covered by the agreement (that is, those costs incurred in taxable years prior and subsequent to 1995) are not affected by the resolution and thus, consistent with the taxpayer's method of accounting, must continue to be deducted.

(4) *Time-value of money.*

(a) *In general.* An appeals officer or counsel for the government may resolve a timing issue by not changing the taxpayer's method of accounting, and by the Service and the taxpayer agreeing that the taxpayer will pay the government a "specified amount" that approximates the time-value-of-money benefit the taxpayer has derived from using its method of accounting for the taxable years before appeals or a federal court (instead of the method of accounting determined by the appeals officer or counsel for the government to be the proper method of accounting), reduced by an appropriate factor to reflect the hazards of litigation. The specified amount is not interest under § 163(a), and may not be deducted or capitalized under any provision of the Code.

(b) *Computation of specified amount.*

(i) *In general.* An appeals officer or counsel for the government may use any reasonable manner to compute the specified amount, including the sample computation described in section 6.02(4)(b)(ii) of this revenue procedure.

(ii) *Sample computation.* Under the sample computation, the specified amount equals the sum of the time-value-of-money benefit (detriment) computed with respect to each taxable year before Appeals or a federal court. However, if the sum of the time-value-of-money benefit (detriment) computed with respect to each taxable year is negative, the specified amount will be zero and no refund will be made to the taxpayer. The time-value-of-money benefit (detriment) with respect to each taxable year before Appeals or a federal court equals the "hypothetical underpayment (overpayment)" (as defined in section 6.02(4)(b)(ii)(A) of this revenue procedure), multiplied by the "applicable time-value rate" (as defined in section 6.02(4)(b)(ii)(B) of this revenue procedure), compounded daily for the "applicable period" (as defined in section 6.02(4)(b)(ii)(C) of this revenue procedure).

(A) *Hypothetical underpayment (overpayment)*. The hypothetical underpayment (overpayment) for each taxable year before Appeals or a federal court is equal to the net increase or decrease in taxable income (including the § 481(a) adjustment) that would have been reflected on the return for the taxable year if the Service had changed the taxpayer's method of accounting (in the earliest taxable year before Appeals or a federal court, or, if later, the first taxable year the method is considered impermissible), multiplied by the applicable tax rate for the taxable year of the underpayment (overpayment). For this purpose, only adjustments associated with the change are taken into account. The applicable tax rate is the highest rate of income tax applicable to the taxpayer (for example, the highest rate in effect under section 1 for individuals or section 11 for corporations).

(B) *Applicable time-value rate*. The applicable time-value rate generally equals an average of the quarterly underpayment rates in effect under § 6621(a) for the applicable period. However, for a taxpayer that would be entitled to a deduction under § 163(a) for the specified amount if the specified amount were treated as interest arising from the underpayment of tax, the applicable time-value rate is computed at a reduced rate equaling an average of the quarterly underpayment rates in effect under § 6621(a) for the applicable period, multiplied by the excess of 100% over the applicable tax rate for the taxable year of the underpayment (overpayment).

(C) *Applicable period*. The applicable period begins on the due date (without regard to extensions) of the return for the taxable year of the underpayment (overpayment) and ends on the date on which the specified amount is paid.

SECTION 7. PROCEDURES FOR A SERVICE-INITIATED ACCOUNTING METHOD CHANGE

.01 *Requirement to notify of treatment as method change*.

(1) *In general*. An examining agent, appeals officer, or counsel for the government changing a taxpayer's method of accounting will provide notice that a timing issue is being treated as an accounting method change.

(2) *Form of notice*. The notice must be in writing. If the taxpayer and the Service execute a closing agreement finalizing the change, the notice will be provided in the closing agreement. If the taxpayer and the Service do not execute a closing agreement, the notice ordinarily will be provided in the examiner's report or the Form 870AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax and of Acceptance of Overpayment). However, the Service may also provide the notice in a preliminary notice of deficiency, a statutory notice of deficiency, a notice of claim disallowance, a notice of final administrative adjustment, a pleading (for example, a petition, complaint, or answer) or amendment thereto, or in any other similar writing provided to the taxpayer.

(3) *Content of notice*. The notice must include (a) a statement that the timing issue is being treated as an accounting method change or a clearly labeled § 481(a) adjustment, and (b) a description of the new method of accounting.

(4) *Method not established without notice*. The resolution of a timing issue will not establish a new method of accounting if the Service does not provide the notice required by section 7.01 of this revenue procedure. See section 9 of this revenue procedure for the procedures applicable if the Service does not provide this notice.

.02 *Finalizing a Service-initiated method change*.

(1) *In general*. To finalize a Service-initiated accounting method change, the taxpayer and the Service must execute a closing agreement under § 7121 in which the taxpayer agrees to the change and the terms and conditions of the change. In the absence of such an agreement, a Service-initiated accounting method change is final only upon the expiration of the period of limitations for filing a claim for refund under § 6511 for the year of change or the date of a final court order requiring the change.

(2) *Content of closing agreement*. A closing agreement finalizing a Service-initiated accounting method change must comply with the requirements of Rev. Proc. 68-16, 1968-1 C.B. 770, and must include a statement setting forth:

(a) the name, address, telephone number, and taxpayer identification num-

ber of any taxpayer included in the agreement;

(b) the timing issue(s) covered by the agreement;

(c) the taxable years covered by the agreement;

(d) the facts and representations upon which the taxpayer and the Service relied in reaching the agreement;

(e) the taxpayer's current method of accounting;

(f) the notification required by section 7.01 of this revenue procedure;

(g) the year of change;

(h) the § 481(a) adjustment and the § 481(a) adjustment period, or that a cut-off method is being used;

(i) any computations under § 481(b);

(j) the adjustments to taxable income necessary to reflect the new method (including the § 481(a) adjustment required as a result of the change), and any collateral adjustments to taxable income or tax liability resulting from the change for each of the taxable years covered by the agreement;

(k) the taxable years that are covered by the audit protection provided in section 7.04(3) of this revenue procedure;

(l) if appropriate, a condition requiring the taxpayer to file amended returns to reflect the change for any affected succeeding taxable years for which a federal income tax return has been filed as of the date of the closing agreement; and

(m) any other appropriate conditions for implementing the closing agreement, including any requirements for waiving restrictions on assessment and collection, paying any tax, abating any overassessment, or refunding or crediting any tax overpayment.

.03 *Implementing a Service-initiated method change*.

(1) *Years before the Service*. The Service will make the adjustments necessary to effect a Service-initiated accounting method change to the taxpayer's returns for the taxable years under examination, before Appeals, or before a federal court. These adjustments include the adjustments to taxable income necessary to reflect the new method (including the § 481(a) adjustment required as a result of the change), and any collateral adjustments to taxable income or tax liability resulting from the change.

(2) *Succeeding years for which returns have been filed.* If a Service-initiated accounting method change is finalized by a closing agreement, the Service may require the taxpayer to file amended returns to reflect the change for any affected succeeding taxable years for which a federal income tax return has been filed as of the date of the closing agreement. The amended returns must include the adjustments to taxable income and any collateral adjustments to taxable income or tax liability resulting from the change necessary to reflect the new method. The Service may require that the amended returns be filed prior to execution of the closing agreement finalizing the change. If the Service does not require the amended returns, the taxpayer should file such amended returns. If the Service does not require the amended returns and the taxpayer does not file the amended returns, the Service will make the adjustments necessary to reflect the change for affected succeeding taxable years when it examines the returns for those years. A taxpayer that files an amended return using the new method prior to the date a Service-initiated change becomes final must continue to use the new method on all subsequent returns, unless the taxpayer obtains the consent of the Commissioner to change from the new method or the Service changes the taxpayer from the new method on subsequent examination. See Rev. Rul. 90-38.

(3) *Future years.* The taxpayer must use the new method of accounting on all returns filed after the date that a Service-initiated accounting method change becomes final (see section 7.02 of this revenue procedure), unless the taxpayer obtains the consent of the Commissioner to change from the new method or the Service changes the taxpayer from the new method on subsequent examination. A taxpayer that files a return using the new method prior to the date a Service-initiated change becomes final must continue to use the new method on all subsequent returns, unless the taxpayer obtains the consent of the Commissioner to change from the new method or the Service changes the taxpayer from the new method on subsequent examination. If the taxpayer does not use the new method on any return filed prior to the date a Service-initiated change becomes final, and

does not file amended returns to reflect the change, the Service will make the adjustments necessary to reflect the change for the affected taxable years when it examines those returns.

.04 Effect of final Service-initiated method change.

(1) *New method established.* A Service-initiated change that is final establishes a new method of accounting within the meaning of § 446(e) and § 1.446-1(e). As a result, the taxpayer is required to use the new method of accounting for the year of change and for all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change from the new method or the Service changes the taxpayer from the new method on subsequent examination.

(2) *Subsequent examination.* Except as provided in section 7.04(3) of this revenue procedure, the Service is not precluded from changing the taxpayer from the new method of accounting if the Service determines that the new method does not clearly reflect the taxpayer's income.

(3) *Audit protection.*

(a) *In general.* A taxpayer that executes a closing agreement finalizing a Service-initiated accounting method change will not be required to change or modify the new method for any taxable year for which a federal income tax return has been filed as of the date of the closing agreement, provided that:

(i) the taxpayer has complied with all the applicable provisions of the closing agreement;

(ii) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact;

(iii) there has been no change in the material facts on which the closing agreement was based; and

(iv) there has been no change in the applicable law on which the closing agreement was based.

(b) *Limitations.* The Service may require the taxpayer to change or modify the new method in the earliest open taxable year if the taxpayer fails to comply with the applicable provisions of the closing agreement or upon a showing of the taxpayer's fraud, malfeasance, or misrepresentation of a material fact. The Service may require the taxpayer to change or modify the new method in the earliest open taxable year in which the material

facts have changed. The Service may also require the taxpayer to change or modify the new method in the earliest open taxable year in which the applicable law has changed. For this purpose, a change in the applicable law includes: (i) the enactment of legislation; (ii) a decision of the United States Supreme Court; (iii) the issuance of temporary or final regulations; or (iv) the issuance of a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin. Except in rare and unusual circumstances, a retroactive change in applicable law is deemed to occur when one of the events described in the preceding sentence occurs and not when the change in law is effective.

.05 Coordination with Examination. An appeals officer or counsel for the government changing a taxpayer's method of accounting will coordinate the resolution with Examination if the appeals officer or counsel for the government proposes to defer the year of change to any taxable year not before appeals or a federal court. Examination will advise the appeals officer or counsel for the government of any changes in material fact in any taxable year under examination and may comment on the proposed resolution, but the approval of the resolution by Examination is not required.

.06 Deemed cut-off method. If the Service does not impose a § 481(a) adjustment but otherwise provides the notice required by section 7.01 of this revenue procedure, the Service-initiated change will be treated as being made using a cut-off method, unless the Service and the taxpayer specifically have agreed in writing to compromise the amount of the § 481(a) adjustment.

SECTION 8. PROCEDURES FOR RESOLVING TIMING ISSUES ON A NONACCOUNTING-METHOD-CHANGE BASIS

.01 Closing agreement required. To resolve a timing issue raised by the Service on a nonaccounting-method-change basis, the Service and the taxpayer will execute a closing agreement under § 7121. If the timing issue is being resolved on an alternative-timing basis as described in section 6.02(3) of this revenue procedure, the taxpayer must agree to pay the government any taxes and interest due as a result

of the resolution. If the timing issue is being resolved on a time-value-of-money basis as described in section 6.02(4) of this revenue procedure, the taxpayer must agree to pay the government the specified amount as a result of the resolution. See section 9 of this revenue procedure for the procedures applicable if a closing agreement is not executed as required by section 8.01 of this revenue procedure.

.02 *Content of closing agreement.* A closing agreement finalizing the resolution of a timing issue on a nonaccounting-method-change basis must comply with the requirements of Rev. Proc. 68-16, and must include a statement setting forth:

(1) the name, address, telephone number, and taxpayer identification number of any taxpayer included in the agreement;

(2) the timing issue(s) covered by the agreement;

(3) the facts and representations upon which the taxpayer and the Service relied in reaching the agreement;

(4) that the Service is not changing the taxpayer's method of accounting;

(5) if the timing issue is being resolved on an alternative-timing basis as described in section 6.02(3) of this revenue procedure:

(a) the items covered by the closing agreement and the manner in which the items are to be accounted for in any affected taxable year;

(b) that any items not covered by the closing agreement are not affected by the closing agreement;

(c) that the Service is not precluded from changing the taxpayer's method of accounting in any open taxable year for the items not covered by the closing agreement;

(d) that if the taxpayer's method of accounting is changed (voluntarily or involuntarily) in a subsequent taxable year, the § 481(a) adjustment (if any) will be determined by reference to all items arising prior to the year of change, except those items covered by the closing agreement (that is, those items for which the closing agreement specifically provides the manner in which the items are to be accounted for); and

(e) if appropriate, a condition requiring the taxpayer to file amended returns to reflect the alternative-timing resolution for any affected succeeding

taxable years for which a federal income tax return has been filed as of the date of the closing agreement;

(6) if the timing issue is being resolved on a time-value-of-money basis as described in section 6.02(4) of this revenue procedure:

(a) the taxable years covered by the agreement;

(b) the computation of the specified amount as provided in section 6.02(4)(b) of this revenue procedure;

(c) that the specified amount is not interest under § 163(a) and may not be deducted or capitalized under any provision of the Code;

(d) that the Service is not precluded from changing the taxpayer's method of accounting in any open taxable year not covered by the closing agreement;

(e) that if the taxpayer's method of accounting is changed (voluntarily or involuntarily) in a subsequent taxable year, the § 481(a) adjustment (if any) will be determined by reference to all items arising prior to the year of change; and

(f) that if the Service changes the taxpayer's method of accounting in a subsequent taxable year and imposes a § 481(a) adjustment, the interest that is assessed on any underpayment or the interest that is due on any overpayment for the year of change will be treated as paid to the extent necessary to prevent the duplicate payment of the time-value-of-money benefit relating to the § 481(a) adjustment; and

(7) any other appropriate conditions for implementing the closing agreement, including any requirements for waiving restrictions on assessment and collection, paying any tax, abating any overassessment, or refunding or crediting any tax overpayment.

.03 *Implementing resolution of a timing issue on a nonaccounting-method-change basis.*

(1) *Resolution on an alternative-timing basis.*

(a) *Years before the Service.* The Service will make the adjustments necessary to effect an alternative-timing resolution for the taxable years before appeals or before a federal court. These adjustments include the adjustments to taxable income necessary to reflect the resolution and any collateral adjustments to taxable

income or tax liability resulting from the resolution.

(b) *Succeeding years for which returns have been filed.* The Service may require the taxpayer to file amended returns to reflect an alternative-timing resolution for any affected succeeding taxable years for which a federal income tax return has been filed as of the date of the closing agreement. The amended returns must include the adjustments to taxable income and any collateral adjustments to taxable income or tax liability resulting from the resolution necessary to reflect the resolution. The Service may require that the amended returns be filed prior to execution of the closing agreement finalizing the resolution. If the Service does not require the amended returns, the taxpayer should file such amended returns. If the Service does not require amended returns and the taxpayer does not file amended returns, the Service will make the adjustments necessary to reflect the resolution for affected succeeding taxable years when it examines the returns for those years.

(c) *Future years.* The taxpayer must reflect the alternative-timing resolution on the returns for any affected succeeding taxable years for which a return has not been filed as of the date of the closing agreement. The taxpayer must continue to file its returns on its current method of accounting for all items not covered by the closing agreement, unless the taxpayer obtains the consent of the Commissioner to change from its current method or the Service changes the taxpayer from its current method on subsequent examination.

(2) *Resolution on a time-value-of-money basis.* The taxpayer must pay the specified amount required by the time-value-of-money resolution. The Service will not change or otherwise propose adjustments to taxable income with respect to the taxpayer's method of accounting for the taxable years covered by the closing agreement. The taxpayer must continue to file its returns on its current method of accounting, unless the taxpayer obtains the consent of the Commissioner to change from its current method or the Service changes the taxpayer from its current method on subsequent examination.

.04 *Effect of resolving a timing issue on a nonaccounting-method-change basis.*

(1) *No change in method.* If the Service resolves a timing issue on a nonaccounting-method-change basis, the resolution does not constitute a change in method of accounting. If the timing issue is resolved on an alternative-timing basis, the taxpayer is required to use its current method of accounting for all items not covered by the closing agreement, unless the taxpayer obtains the consent of the Commissioner to change from its current method or the Service changes the taxpayer from its current method on subsequent examination. If the timing issue is resolved on a time-value-of-money basis, the taxpayer is required to continue to use its current method of accounting on all returns for taxable years subsequent to the years covered by the closing agreement, unless the taxpayer obtains the consent of the Commissioner to change from its current method or the Service changes the taxpayer from its current method on subsequent examination.

(2) *Subsequent change.*

(a) *Resolution on an alternative-timing basis.* If a timing issue is resolved on an alternative-timing basis, the Service is not precluded from changing the taxpayer's method of accounting in any open taxable year for any item not covered by the closing agreement.

(b) *Resolution on a time-value-of-money basis.* If a timing issue is resolved on a time-value-of-money basis, the Service is not precluded from changing the taxpayer's method of accounting in any open taxable year not covered by the closing agreement.

(3) *Effect of subsequent change.*

(a) *Resolution on an alternative-timing basis.* If a timing issue is resolved on an alternative-timing basis and the taxpayer's method of accounting is changed (voluntarily or involuntarily) in a subsequent taxable year, the § 481(a) adjustment (if any) will be determined by reference to all items arising prior to the year of change, except those items covered by the closing agreement (that is, those items for which the closing agreement specifically provides the manner in which the items are to be accounted for).

(b) *Resolution on a time-value-of-money basis.* If a timing issue is resolved on a time-value-of-money basis and the taxpayer's method of accounting is changed (voluntarily or involuntarily)

in a subsequent taxable year, the § 481(a) adjustment (if any) will be determined by reference to all items arising prior to the year of change. If the Service changes the taxpayer's method of accounting in a subsequent taxable year and imposes a § 481(a) adjustment, the interest that is assessed on any underpayment or the interest that is due on any overpayment for the year of change will be treated as paid to the extent necessary to prevent the duplicate payment of the time-value-of-money benefit relating to the § 481(a) adjustment.

SECTION 9. DEFAULT PROCEDURES

.01 *In general.* Section 9 of this revenue procedure applies to the resolution of any timing issue unless the Service provides the notice required by section 7.01 of this revenue procedure, or the Service resolves the timing issue on a nonaccounting-method-change basis and the Service and the taxpayer execute a closing agreement as required by section 8.01 of this revenue procedure. See section 10.05 of this revenue procedure for an example of the application of section 9 of this revenue procedure.

.02 *Effect of adjustments.* For timing issues resolved under section 9 of this revenue procedure:

(1) *No omission or duplication.* The Service and the taxpayer are required to treat all items in a manner that prevents the duplication or omission of items of income or deduction;

(2) *No change in method.* The resolution does not constitute a change in method of accounting. The taxpayer is required to continue to use its current method of accounting for all items not affected by the adjustments made by the Service, unless the taxpayer obtains the consent of the Commissioner to change from its current method or the Service changes the taxpayer from its current method on subsequent examination;

(3) *Subsequent change.* The Service is not precluded from changing the taxpayer's method of accounting in any open taxable year; and

(4) *Effect of subsequent change.* If the taxpayer's method of accounting is changed (voluntarily or involuntarily) in a subsequent taxable year, the § 481(a) adjustment (if any) will be determined by reference to all items arising prior to the year of change (including the items af-

ected by the adjustment made by the Service).

SECTION 10. EXAMPLES

.01 *Examination-initiated change.*

(1) *Facts.* A taxpayer that is a corporation deducted certain costs that, as a matter of law, should have been capitalized as part of the cost of a nondepreciable asset that was acquired in 1994. The taxpayer incurred and deducted \$1,000,000 of the costs in 1994, \$2,000,000 in each of 1995 and 1996, and \$5,000,000 in each of 1997 and 1998. The taxpayer is examined for the 1995 and 1996 taxable years (1995 is the earliest open year) and the examining agent discovers the taxpayer's impermissible method of accounting.

(2) *Effect.* Under section 5 of this revenue procedure, the examining agent is required to properly apply the law to the facts and change the taxpayer to the capitalization method of accounting for the costs for 1995. The examining agent will provide the notice required by section 7.01 of this revenue procedure. The examining agent will impose a § 481(a) adjustment of \$1,000,000 (representing the \$1,000,000 of the costs deducted in 1994) the entire amount of which will be taken into account in computing taxable income in 1995. The examining agent will also disallow the deductions of \$2,000,000 in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 is increased by \$5,000,000 (representing the \$1,000,000 § 481(a) adjustment and the disallowance of the \$2,000,000 of deductions in each of 1995 and 1996). The method change (once final) is effective for 1995. Thus, the taxpayer is required to capitalize the costs in 1995 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

.02 *Appeals resolution of timing issue as a method change with compromise terms and conditions.*

(1) *Facts.* The facts are the same as in section 10.01 of this revenue procedure, except that the issue of whether the costs should be capitalized is referred to Appeals. The appeals officer believes there is substantial merit to the Service's position that the costs must be capitalized as a matter of law, but believes there are

hazards of litigation. The appeals officer and the taxpayer agree to resolve the timing issue by changing the taxpayer's method of accounting for the costs, but with compromise terms and conditions to reflect the hazards of litigation.

(2) *Effect.* Under section 6.02 of this revenue procedure, when the appeals officer changes the taxpayer's method of accounting, the appeals officer is required to properly apply the law to the facts and change the taxpayer to the capitalization method of accounting for the costs. The appeals officer will provide the notice required by section 7.01 of this revenue procedure.

The appeals officer may make the change using the cut-off method. If the appeals officer makes the change in 1995 using the cut-off method, the appeals officer will disallow the deductions of \$2,000,000 in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 will be increased by \$4,000,000 (representing the disallowance of the \$2,000,000 of deductions in each of 1995 and 1996). The method change (once final) is effective for 1995. Thus, the taxpayer is required to capitalize the costs in 1995 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

Alternatively, the appeals officer may compromise the amount of the § 481(a) adjustment. If the appeals officer makes the change in 1995 and agrees to reduce the § 481(a) adjustment by 25%, the appeals officer will impose a § 481(a) adjustment of \$750,000 (representing 75% of the amount of the costs deducted in 1994), the entire amount of which will be taken into account in computing taxable income in 1995. The appeals officer will disallow the deductions of \$2,000,000 in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 will be increased by \$5,000,000 (representing the unreduced § 481(a) adjustment of \$1,000,000 and the disallowance of the \$2,000,000 of deductions in each of 1995 and 1996). The method change (once final) is effective for 1995. Thus, the taxpayer is required to capitalize the costs in 1995 and all subsequent taxable years, unless the taxpayer obtains the con-

sent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

As another alternative, the appeals officer may compromise the year of change and/or the § 481(a) adjustment period. For example, the appeals officer may agree to make the change in 1996 with a two-year § 481(a) adjustment period. The appeals officer will impose a § 481(a) adjustment of \$3,000,000 (representing the \$1,000,000 of costs deducted in 1994 and the \$2,000,000 of costs deducted in 1995) one-half of which will be taken into account in computing taxable income in each of 1996 and 1997. The appeals officer will disallow the deduction of \$2,000,000 in 1996. The taxpayer's basis in the property as of the end of 1996 will be increased by \$5,000,000 (representing the \$3,000,000 § 481(a) adjustment and the disallowance of the \$2,000,000 of deductions in 1996). The method change (once final) is effective for 1996. Thus, the taxpayer is required to capitalize the costs in 1996 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

.03 *Appeals resolution of timing issue on an alternative-timing basis.*

(1) *Facts.* The facts are the same as in section 10.02 of this revenue procedure, except that the appeals officer and the taxpayer agree to resolve the issue on an alternative-timing basis as described in section 6.02(3) of this revenue procedure and they enter into a closing agreement as required by section 8.01 of this revenue procedure. The timing issue is resolved by providing in the closing agreement that the taxpayer will deduct 50% of the costs incurred in 1995 and 1996 and capitalize the other 50% of the costs incurred in those years.

(2) *Effect.* The appeals officer will disallow \$1,000,000 of the deductions in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 is increased by \$2,000,000 (representing the disallowance of the \$1,000,000 of deductions in each of 1995 and 1996). The taxpayer's current method of accounting for the costs is not changed. Thus, the taxpayer is required to continue to deduct

the costs not covered by the closing agreement (that is, the costs incurred in 1994 and the costs incurred in 1997 and all subsequent taxable years), unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination. If the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$1,000,000 (including the amount of the costs deducted in 1994 which are not covered by the closing agreement and excluding the amount of the costs deducted in 1995 and 1996 because the costs are covered by the closing agreement). The Service will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by an additional \$6,000,000 (representing the \$1,000,000 § 481(a) adjustment and the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

Alternatively, the timing issue may be resolved by providing in the closing agreement that the taxpayer will capitalize \$1,000,000 of the costs incurred in each of 1995 and 1996 (when the closing agreement is silent as to the manner in which the other \$1,000,000 of costs incurred in each of 1995 and 1996 are to be accounted for). The results for 1995 and 1996 will be the same as under the closing agreement in the original facts described in section 10.03(1) of this revenue procedure. That is, the appeals officer will disallow \$1,000,000 of the deduction in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 is increased by \$2,000,000 (representing the disallowance of the \$1,000,000 of deductions in each of 1995 and 1996). Because the taxpayer's current method of accounting for the costs is not changed, the taxpayer is required to continue to deduct the costs not covered by the closing agreement (that is, the costs incurred in 1994, the remaining \$1,000,000 of costs incurred in each of 1995 and 1996, and the

costs incurred in 1997 and all subsequent taxable years). However, if the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$3,000,000 (including the \$1,000,000 of the costs deducted in 1994, and the remaining \$2,000,000 of the costs deducted in 1995 and 1996 because the costs are not items covered by the closing agreement). The Service will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by an additional \$8,000,000 (representing the \$3,000,000 § 481(a) adjustment and the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

Assuming, in the alternative, that the timing issue is resolved by providing in the closing agreement that, for the costs incurred in 1994 through 1996, the taxpayer will deduct 50% of the costs and capitalize the other 50% of the costs, and will increase taxable income by \$500,000 in 1995 (representing the disallowance of \$500,000 of costs in 1994). The appeals officer will disallow \$1,000,000 of the deductions in each of 1995 and 1996. The taxpayer's basis in the property as of the end of 1996 is increased by \$2,500,000 (representing the disallowance of the \$500,000 of deductions in 1994 and the \$1,000,000 of deductions in each of 1995 and 1996). The taxpayer's current method of accounting for the costs is not changed. Thus, the taxpayer is required to continue to deduct the costs not covered by the closing agreement (that is, the costs incurred in 1997 and all subsequent taxable years), unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination. If the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$0 (excluding the amount of the costs deducted in 1994 through 1996 because the manner in which the costs are to be accounted for is specifically covered by the closing agreement). The Service

will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by an additional \$5,000,000 (representing the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

.04 Appeals resolution of timing issue on time-value-of-money basis.

(1) *Facts.* The facts are the same as section 10.02 of this revenue procedure, except that the appeals officer and the taxpayer agree to settle the issue on a time-value-of-money basis as described in section 6.02(4) of this revenue procedure. The taxpayer files its return on a calendar year basis. The appeals officer believes that an appropriate factor to reflect the hazards of litigation is 25%. The taxpayer pays the specified amount on May 15, 1998. The highest marginal tax rate applicable to the taxpayer for 1995 and 1996 is 35% and the quarterly large corporation underpayment rates in effect for January 1, 1996 through June 30, 1998 are: 11%, 10%, 11%, 11%, 11%, 11%, 11%, 11%, 11%, 10%. The specified amount under section 6.02(4) of this revenue procedure would be deductible under § 163(a) by the taxpayer if it were treated as interest expense arising from an underpayment of tax.

(2) *Computation of specified amount.* The hypothetical underpayment of tax for 1995 is \$1,050,000, computed as follows: the net increase in taxable income of \$3,000,000 (representing the § 481(a) adjustment of \$1,000,000 and the disallowance of the deduction of \$2,000,000 computed as if Examination had changed the taxpayer's method in 1995) multiplied by the applicable tax rate of 35%. The hypothetical underpayment of tax for 1996 is \$700,000, computed as follows: the net increase in taxable income of \$2,000,000 (representing the disallowance of the deduction of \$2,000,000 computed as if Examination had changed the taxpayer's method in 1995) multiplied by the applicable tax rate of 35%.

The applicable time-value rate for 1995 is 7.02%, which is computed as follows: The applicable period for 1995 is March 15, 1996 (the due date of the return) to May 15, 1998 (the date the specified amount is paid). The underpayment rates in effect for the applicable period are 11%, 10%, 11%, 11%, 11%, 11%, 11%, 11%, 11%, and 10%. The average underpayment rate in effect for the applicable period is 10.8% $[(11+10+11+11+11+11+11+11+11+10)/10]$. The applicable after-tax time-value rate is 7.02%, computed by multiplying the average underpayment rate by one minus the applicable tax rate $[10.8\% * (1-.35)]$.

The applicable time-value rate for 1996 is 7.04%, which is computed as follows: The applicable period for 1996 is March 15, 1997 (the due date of the return) to May 15, 1998 (the date the specified amount is paid). The underpayment rates in effect for the applicable period are 11%, 11%, 11%, 11%, 11%, and 10%. The average underpayment rate in effect for the applicable period is 10.83% $[(11+11+11+11+11+10)/6]$. The applicable after-tax time-value rate is 7.04%, computed by multiplying the average underpayment rate by one minus the applicable tax rate $[10.83\% * (1-.35)]$.

The time-value-of-money benefit for each taxable year is computed by using the following formula:

$$U * \{[1+(r/365)]^n - 1\}$$

where U = hypothetical underpayment for the taxable year
r = the applicable time-value rate
n = the number of days in the applicable period

The time-value-of-money benefit for 1995 is \$172,512, computed as follows: $\$1,050,000 * \{[1+(.0702/365)]^{791} - 1\}$. The time-value-of-money benefit for 1996 is \$59,939, computed as follows: $\$700,000 * \{[1+(.0704/365)]^{426} - 1\}$.

The specified amount is the sum of the time-value-of-money benefit for 1995 and 1996 reduced by 25% to reflect the hazards of litigation. The specified amount is \$174,338 computed as follows: $(\$172,512 + \$59,939) * (1-.25)$.

(3) *Effect.* The Service will not propose any adjustments to taxable income with respect to the taxpayer's method of accounting for the costs for 1995 and 1996. The taxpayer's basis in the prop-

erty as of the end of 1996 is not changed. The taxpayer's current method of accounting for the costs is not changed. Thus, the taxpayer is required to continue to deduct the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination. If the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$5,000,000 (representing the \$1,000,000 of the costs deducted in 1994 and the \$2,000,000 of costs deducted in each of 1995 and 1996). The Service will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by \$10,000,000 (representing the \$5,000,000 § 481(a) adjustment and the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

The interest on the taxpayer's deficiency (which reflects the inclusion of the \$5,000,000 § 481(a) adjustment in taxable income) for 1997 is \$100,000. A portion of the \$100,000 of interest will be treated as paid to the extent necessary to prevent duplicate payment of the time-value-of-money benefit relating to the § 481(a) adjustment. The interest on the deficiency for 1997 includes the time-value-of-money benefit attributable to the § 481(a) adjustment for the period March 15, 1998, through the date of payment of the deficiency. The taxpayer previously paid the Service the time-value-of-money benefit attributable to \$3,000,000 of the § 481(a) adjustment for the period March 15, 1996, through May 15, 1998, and \$2,000,000 of the § 481(a) adjustment for the period March 15, 1997 through May 15, 1998. The interest on the deficiency for 1997 attributable to the overlap period of March 15, 1998, through May 15, 1998, is \$20,073, computed as follows:

$$A * t * \{[1+(r/365)]^n-1\}$$

where A = the § 481(a) adjustment

t = highest marginal tax rate applicable to the taxpayer

r = the applicable time-value rate (computed for the overlap period)
n = the number of days in the overlap period
\$5,000,000 * .35 *
 $\{[1+(.06825/365)]^{61}-1\}$

The \$20,073 is reduced by 25% (the factor used by the appeals officer to reflect the hazards of litigation). The Service will treat the \$15,055 as a payment toward the \$100,000 of interest on the taxpayer's deficiency for 1997.

.05 Default procedures.

(1) *Facts.* The facts are the same as section 10.01 of this revenue procedure, except that the examining agent does not provide the notice required by section 7.01 of this revenue procedure. Specifically, the examining agent disallows the deductions of \$2,000,000 in each of 1995 and 1996, but does not compute the § 481(a) adjustment of \$1,000,000 or otherwise provide notice that the timing issue is being treated as an accounting method change.

(2) *Effect.* The taxpayer's basis in the property as of the end of 1996 is increased by \$4,000,000 (representing the disallowance of the \$2,000,000 of deductions in each of 1995 and 1996). The taxpayer's current method of accounting for the costs is not changed. Thus, the taxpayer is required to continue to deduct the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination. If the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$1,000,000 (representing the \$1,000,000 of the costs deducted in 1994). The Service will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by an additional \$6,000,000 (representing the \$1,000,000 § 481(a) adjustment and the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on

subsequent examination.

Assume that the examining agent disallows the deductions of \$2,000,000 in each of 1995 and 1996 and computes the § 481(a) adjustment of \$1,000,000, but does not label the § 481(a) adjustment or otherwise provide notice that the timing issue is being treated as an accounting method change. The taxpayer's basis in the property as of the end of 1996 is increased by \$5,000,000 (representing the \$1,000,000 adjustment and the disallowance of the \$2,000,000 of deductions in each of 1995 and 1996). The taxpayer's current method of accounting for the costs is not changed. Thus, the taxpayer is required to continue to deduct the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination. If the Service changes the taxpayer's method in 1997, the Service will compute a § 481(a) adjustment of \$0 (excluding the \$1,000,000 of the costs deducted in 1994 and the \$2,000,000 of the costs deducted in each of 1995 and 1996 because the costs were accounted for in the prior adjustments). The Service will also disallow the deduction of \$5,000,000 in 1997. The taxpayer's basis in the property as of the end of 1997 will be increased by an additional \$5,000,000 (representing the disallowance of the \$5,000,000 deduction in 1997). The method change (once final) is effective for 1997. Thus, the taxpayer is required to capitalize the costs in 1997 and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner to change the method or the Service changes the taxpayer from the method on subsequent examination.

SECTION 11. INQUIRIES

Inquiries regarding this revenue procedure may be addressed to the Commissioner of Internal Revenue, Attention: CC:DOM:IT&A, 1111 Constitution Avenue, NW, Washington D.C. 20224.

SECTION 12. EFFECTIVE DATE

.01 *In general.* Except as provided in section 12.02 of this revenue procedure, this revenue procedure is effective for:

(1) examiner's reports issued on or after [insert date that is 90 days from the

date this revenue procedure is published in the Internal Revenue Bulletin]; and

(2) Forms 870AD and closing agreements executed on or after [insert date that is 90 days from the date this revenue procedure is published in the Internal Revenue Bulletin] (regardless of when the underlying examiner's report was issued).

.02 *Transition rule.* The Service and the taxpayer may agree to apply this revenue procedure to closing agreements executed on or after [insert the date this revenue procedure is published in the Internal Revenue Bulletin].

DRAFTING INFORMATION

The principal authors of this notice and proposed revenue procedure are Robert

A. Testoff and Dwight N. Mersereau of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice and proposed revenue procedure, contact Mr. Testoff on (202) 622-4990 or Mr. Mersereau on (202) 622-4970 (not toll-free calls).

Weighted Average Interest Rate Update

Notice 98-32

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of

interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for April 1998 is 5.92 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 106% Permissible Range	90% to 110% Permissible Range
May	1998	6.63	5.97 to 7.03	5.97 to 7.29

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding

this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7473 (also not a toll-free number).

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 98-44

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:

- A A Raiders Youth Sports Organization, Pasadena, MD
ACAP Austin Cen-Tex, Austin, TX
AGAPE Outreach Ministries Incorporated, Yeadon, PA
Aman Inc., New Orleans, LA
Amateur Sports Foundation, Omaha, NE
American Dance Theatre, Dallas, TX
Animals Have Rights Too, Warren, MI
Arts for Education Inc., Half Moon Bay, CA
Atrium Society, Houston, TX
Ballinger Meals on Wheels Inc., Ballinger, TX
Barbara Loey Child Development Centers Inc., Concord, CA
Bayc Inc., Osseo, MN
Bike-a-Thon Inc., Dayton, OH
Blackwater Preservation Society, Blackwater, MO
Boone County Courthouse Square, Columbia, MO
Bradshaw Mountain Babe Ruth Association, Dewey, AZ
Camden County College Foundation Inc., Blackwood, NJ
Camp All American Inc., Duluth, GA
Center for Peacekeeping Studies, Washington, DC
Chicago Allcity Performing Arts Parent Group, Forest Park, IL
Childrens Assistance Programs Inc., Berea, OH
Clay County Economic Development Organization Inc., Brazil, IN
Concerned Black Men of Lufkin Texas Inc., Lufkin, TX
Cread, Sierra Vista, AZ
Dalo Ministries Corp., Deer Trail, CO
Delaware Mental Health Consumer Coalition Inc., Wilmington, DE
Earth Day New Jersey Inc., Bloomfield, NJ
East Pennsboro Aquatic Association, Mechanicsburg, PA
El Paso Soap Box Derby Inc., El Paso, TX
Elmwood Park Education Association Philanthropic Fund, Elmwood Park, NJ
Empower Incorporated, Albuquerque, NM
Family Tyes Inc., Pittsburgh, PA
First Choice Community Services Inc., Dallas, TX
Fort Bridger Historical Rendezvous Site, Rock Springs, WY
Foundation for Women in Need of General Services, Inman, SC
Friends of Southern University-Shreveport, Shreveport, LA
Glacier Foundation Non Profit Housing Association, Seattle, WA
Grand Rapids E C Foundation Inc., Marne, MI
Greater Dallas Hispanic Community Services Corporation, Dallas, TX
Griffith School PTG, Ferguson, MO
His Touch Ministries Inc., Houston, TX
Hopkins County Aquatics Club Inc., Madisonville, KY
Houston Storytellers Guild, Houston, TX
Indianapolis Childrens Theatre Inc., Indianapolis, IN
Lake County Symphony Board Inc., Leesburg, FL
Leedom Parent Teacher Organization, Ridley Park, PA
Lisle Community Band, Lisle, IL
Los Alamos School District Educational Foundation Corporation, Los Alamos, CA
Los Gatos-Saratoga Girls Softball Association, Los Gatos, CA
Made Alive Ministries, Westminster, MD
Make-a-Wish Foundation International, Phoenix, AZ
Marion Harding Academic Boosters, Marion, OH
Mental Health Consumer Advocates of North Dakota, Bismarck, ND
Meriwether Lewis Institute Inc., Helena, MT
Michigan Music Education Multicultural Committee, Ann Arbor, MI
Mississippi River Coalition Inc., Memphis, TN
Missouri River Raiders, Liberty, MO
Moms of Tierra Verde Inc., St. Petersburg, FL
Montessori School of Herndon Parents Teachers Association, Herndon, VA
Mt. Royal String Orchestra, Baltimore, MD
National Tar Wars, Denver, CO
Nebraska Association of Child Care Workers, Lincoln, NE
Nehemiah Youth Mission, Philadelphia, PA
Nightingale Productions, Philadelphia, PA
NJEA Frederick L Hipp Foundation for Excellence in Education, Trenton, NJ
North Bergen Education Association Philanthropic Fund, Neptune, NJ
North Shore Community Theater, Wilmette, IL
North Valley-Milpitas Bobby Sox Softball, San Jose, CA
OBU Global Options Inc., Shawnee, OK
Okemos High School Parent Group, Okemos, MI
On a Roll Inc., Phoenix, AZ
On Our Own Inc., Chicago, IL
Operation Phone Home a Non-Profit Corporation, Philadelphia, PA
Oregon Community Theater, Oregon, OH
Other Opera Company, Bethesda, MD
Our God Reigns Mission Inc., Paradise, CA
Our Lady of Tenderness Fraternity Inc., Dallas, TX
Outreach Latin America, Kalamazoo, MI
ORA Productions, Inc., Pittsford, NY
Oakland International Dragon Boat Racing Association Inc., Oakland, CA
Ocean Shores Kiwanis Club Foundation, Ocean Shores, WA
116th Pennsylvania Volunteer Infantry Company B, Monmouth, OR
Operation Field Trip, Los Angeles, CA
Operation-Safe Community, Rowland Heights, CA

Operation Uplift, Oakland, CA
 Opus Seven Opera Company of Detroit,
 Detroit, MI
 Orange County Korean Senior Citizens
 Association, Garden Grove, CA
 Othello Huskie Hoop Club, Othello, WA
 Our Lady of Nazareth Life Association,
 Corp., West Park, NY
 Outback Christian Ministries, Vista, CA
 OV Homes for the Aged, Los Angeles,
 CA
 PMGS Imhotep Scholarship Foundation,
 Inglewood, CA
 PQ Aquatics Corporation, Poway, CA
 Pacific Islanders Outreach Inc., East Palo
 Alto, CA
 Pacific Northwest Passages, Langley, WA
 Palm Beach India Association, Palm
 Beach Gardens, FL
 Palos Verdes High School Grad Nite
 Committee, Torrance, CA
 Pan African Aid & Development Corp.,
 New York, NY
 Pan American Bank Scholarship
 Foundation, Los Angeles, CA
 Parent Organization of Williams Porter
 Elementary School Inc., Mesa, AZ
 Parents and Educators in Action at
 Kamiakin, Kennewick, WA
 Participation Puget Sound, Seattle, WA
 Partners in Plastic Recovery, Inc.,
 Bardonia, NY
 Pasadena AIDS Resource Center,
 Altadena, CA
 Paso Robles Foundation for Cultural
 Arts, Paso Robles, CA
 Pawtucket Babe Ruth League, Pawtucket,
 RI
 Pax Christi Southern California, San
 Pedro, CA
 Peel Foundation, Oklahoma City, OK
 People Educating Through Art Creativity
 and Entertainment, Dayton, OH
 People First of Otero County,
 Alamogordo, NM
 People for Progress Incorporated,
 Banning, CA
 Peoples Crisis Center, Shamokin, PA
 Personal Safety Institute, Kirkland, WA
 Pets are Wonderful Support of Chicago
 Inc., Chicago, IL
 Philadelphia Homes Project CDC,
 Philadelphia, PA
 Phoenix Creation Group, Inc., New York,
 NY
 Pierce County Womens Center, Tacoma,
 WA
 Philipinyana TV Magazine, Renton, WA
 Pinellas Homestead Project Inc.,
 Gulfport, FL
 Polar Bears Alive, Fresno, CA
 Port Charlotte Lions Club Foundation,
 Inc., Port Charlotte, FL
 Posterity, Chicago, IL
 Postwar Enviro-Life Research &
 Restoration Society Inc., Fullerton, CA
 Powerhouse Ministries Unlimited Inc.,
 Gloverville, SC
 Pownal Education Foundation, Pownal,
 ME
 Prison To Success Program, San Quentin,
 CA
 Professional Business Leadership
 Council, Glen Carbon, IL
 Project New Beginning, Troy, NY
 Project Turnaround Inc., Pocatello, ID
 Protect the Child Foundation, Inc.,
 Norwood, MA
 Quakemobile Inc., San Jose, CA
 Queen City Performing Arts Organization
 Inc., Cincinnati, OH
 Queen of the Apostles Mission
 Association, Inc., Englewood, CO
 Quincy After School Child Care, Inc.,
 Quincy, MA
 RAAD, Moses Lake, WA
 R A D Educational Programs,
 Carbondale, CO
 RCT Christian Renewal Ministries Inc.,
 Cleveland, OK
 RH Project Inc., Louisville, KY
 Reach for Peace Foundation, Kansas
 City, KS
 Reach Out Christian Community Center,
 Detroit, MI
 Reach Out Foundation Inc., Jackson, MS
 Reaching the Worlds Families for Christ,
 Inc., Woodbury, TN
 R E A D Incorporated of America,
 Stockbridge, MI
 Real Estate Ministries of Dallas Inc.,
 Dallas, TX
 Real Hope Ministries Inc., Canyon, TX
 Real World Foundation Inc., Lanham,
 MD
 Realtors Who Care Inc., Muskegon, MI
 Recovery Support Services Inc.,
 Minneapolis, MN
 Recovery Television Network, Inc.,
 Naples, FL
 Recovery Way of Oklahoma Inc.,
 Wellington, KS
 Recycle Bicycles Corporation Inc.,
 Washington, DC
 Recycled Baseball Items Inc., Houston,
 TX
 Recycling Collection Center of San
 Antonio, San Antonio, TX
 Red and Black Booster Club, Franklin,
 PA
 Red Nose Hotline Inc., Lauderhill, FL
 Red Oak Area Outreach Center Inc., Red
 Oak, TX
 Red Octopus Productions Inc., Little
 Rock, AR
 Redblock Report Inc., Jackson, MI
 Redeeming the Time Ministries
 Incorporated, Roswell, GA
 Redeeming the Time Youth Ministries,
 Raleigh, NC
 Redemption, Ann Arbor, MI
 Redfield Athletic Association, Redfield,
 AR
 Register Volunteer Fire Department, Inc.,
 Register, GA
 Rehoboth Bay Foundation, Rehoboth
 Beach, DE
 Reinvestment Partnership Corporation,
 Warren, OH
 Relief International, Chicago, IL
 Retired Educational Consulting Service,
 New Rochelle, NY
 Reverence for Life, Royal Oak, MI
 Rheems Ambulance Company Inc.,
 Rheems, PA
 Rialto Youth Soccer League, Rialto, CA
 Riccardi Elementary Parent Teacher
 Organization, Saugerties, NY
 Richland School District Education
 Foundation, Johnstown, PA
 Richmond Area Christian Services,
 Mechanicsville, VA
 Richmond PC Users Group, Richmond,
 VA
 Ride for the Future Inc., Denver, CO
 Ridgecrest Camp Alumni and Friends,
 Winston Salem, NC
 Ridgeview Community Association Inc.,
 Hickory, NC
 RISD Rotary D-FY-IT Inc., Dallas, TX
 Rise Inc., Washington, DC
 Rise Up Sanford Incorporated, Sanford,
 FL
 Rising Star Dance Ensemble, Howell, NJ
 Rising Sun Foundation, Media, PA
 Risk, Allentown, PA
 Ritchie County Humane Society Inc.,
 Harrisville, WV
 River Falls Scouting Inc., River Falls,
 WI
 River Valley Skippers Incorporated,
 Parkersburg, WV
 Riverdale Home for Furry Friends Inc.,
 St. Augustine, FL

Riverview Estates Resident Development Corporation, Cleveland, OH
Riviera Productions Inc., Biloxi, MS
Riyans International Childrens Foundation, Inc., Hollyhill, FL
Roadbuilders Mission, Houston, TX
Roanoke Valley Animal Foundation Incorporated, Roanoke, VA
Robert E Snow Memorial Mathematics Trust, Sturgis, MI
Robert F. Kennedy Institute of Community and Family Medicine, Redondo Beach, CA

Robert J. Stoller Foundation, Los Angeles, CA
Robert W. Coleman Parent Action Board Corporation, Baltimore, MD
Robinson House, Highland Park, MI
Rochdale Village Sport and Fitness Organization, Jamaica, NY
Rockaway Area Chamber of Commerce Community Projects Inc., Rockaway, NJ
Rockwood Farm, Adrian, MI
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 the Consent Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 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 disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Ser-

vice matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public ac-

countant, enrolled agent, or enrolled actuary, and date or 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 or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

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

Name	Address	Designation	Date of Suspension
Soulides, James C.	Berwyn, IL	CPA	January 1, 1998 to June 30, 2000
Bujan, Frank	Orland Park, IL	CPA	January 1, 1998 to June 30, 2000
Field, Edward L.	Topeka, KS	CPA	January 27, 1998 to April 26, 1999
Cito, Paul J.	West Orange, NJ	CPA	February 21, 1998 to May 20, 1999
Sproul, Jerry	Idaho Falls, ID	CPA	February 25, 1998 to October 24, 1998
Hunt, Russell	Pauls Valley, OK	CPA	March 1, 1998 to June 30, 1998
Oertli, William	Rochester, MN	CPA	March 4, 1998 to March 3, 2000
Maynard, Richard	Reno, NV	CPA	March 10, 1998 to March 9, 2002
McDonald, Bill	Reno, NV	Attorney	March 10, 1998 to March 9, 2002
Komendant, Howard	Passaic, NJ	CPA	March 10, 1998 to September 9, 1998
Kwiatek, Fabian A.	Silver Spring, MD	CPA	March 16, 1998 to March 15, 2001
Brown, Patricia	DeKalb, IL	CPA	March 16, 1998 to September 15, 1999
Marshall, Robert	Woodland Hills, CA	Attorney	March 18, 1998 to November 17, 2000
Baloun, Donald J.	Palatine, IL	CPA	March 25, 1998 to November 24, 1998
Goldman, Harold J.	Summit, NJ	CPA	March 27, 1998 to September 26, 1998
Garner, Darrow C.	Austin, TX	CPA	April 1, 1998 to March 20, 2000
Klein, Charles U.	Dunedin, FL	CPA	April 1, 1998 to September 30, 1999
Morgan, Robert I.	Brownsville, VT	Attorney	April 2, 1998 to April 1, 2000
Teel, Jeffrey J.	Hollis, NH	CPA	April 2, 1998 to April 1, 2001
Hancock, Randall M.	Gardendale, AL	CPA	Indefinite from April 13, 1998
Allison Jr., Dale A.	Blairsville, GA	Attorney	April 15, 1998 to July 14, 2001
Gogel, William A.	North Hills, NY	Attorney	April 21, 1998 to April 20, 2002
Bose, Gautem	Oak Brook, IL	CPA	May 1, 1998 to April 30, 2001
Woods, W. Rex	Belleville, KS	CPA	May 1, 1998 to January 31, 1999
Monahan, John	Seattle, WA	Attorney	May 1, 1998 to April 30, 2001
Swartz, Lewis A.	Syosset, NY	CPA	May 1, 1998 to April 30, 2002

Name	Address	Designation	Date of Suspension
Eckert, Bruce G.	Cleveland, OH	CPA	May 2, 1998 to May 1, 1999
Rozanski, Lawrence J.	Pittsburg, PA	CPA	June 1, 1998 to May 30, 2000
Mangum, Carl E.	Morris Plains, NJ	CPA	July 1, 1998 to December 31, 1999
Reeser, Richard M.	Thornton, CO	CPA	July 1, 1998 to September 30, 1999
Bailey, Thomas O.	Dallas, TX	CPA	July 1, 1998 to June 30, 2001
Johnson, Kenneth E.	Forest Lake, MN	CPA	July 1, 1998 to November 30, 1999
Deren, Joseph	Lackawanna, NY	Attorney	July 1, 1998 to June 30, 2001

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice 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 any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are

prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, en-

rolled agent, or enrolled actuary, and date or 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 or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individual has been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
McDonald, Milton	Stone Mountain, GA	Attorney	Indefinite from February 24, 1998
Parsons, Gary D.	Chattanooga, TN	CPA	Indefinite from February 24, 1998
Buchanan, Steven	Phoenix, AZ	Attorney	Indefinite from February 24, 1998
Caplan, Alan	San Francisco, CA	Attorney	Indefinite from February 24, 1998
Delany, R. Emmet	Ridgefield, CT	Attorney	Indefinite from February 24, 1998
Hirsch, Sheldon	Brooklyn, NY	CPA	Indefinite from February 24, 1998
Newman, Peter R.	Syosset, NY	Attorney	Indefinite from February 24, 1998
Land, Gary	Fayetteville, AR	Enrolled Agent	Indefinite from February 24, 1998
Hunt, William D.	Tulsa, OK	Attorney	Indefinite from February 24, 1998
Hamilton, Robert	Corpus Christie, TX	Attorney	Indefinite from February 24, 1998
Rabinowitz, Emile	Minnetonka, MN	Enrolled Agent	Indefinite from February 24, 1998
McCaffrey, Michael	Wheaton, IL	CPA	Indefinite from February 24, 1998
Eisenstein, Joel	St. Charles, MO	Attorney	Indefinite from February 24, 1998

Name	Address	Designation	Date of Suspension
Cannavo Jr., Joseph S.	St. Louis, MO	Attorney	Indefinite from February 24, 1998
Tilker, Robert M.	Fairfax, VA	CPA	Indefinite from February 24, 1998
Toms, James H.	Hendersonville, NC	Attorney	Indefinite from February 24, 1998
Everett, Kenneth	New York, NY	Attorney	Indefinite from February 24, 1998
Frederick, Charles	Elk Grove,	Enrolled Agent	Indefinite from March 13, 1998
Artho, David	Lubbock, TX	CPA	Indefinite from March 18, 1998
Seale, Forrest I.	San Antonio, TX	CPA	Indefinite from March 18, 1998
Yancey, Quinton E.	Stephens City, VA	CPA	Indefinite from March 18, 1998
Hunnicut, Benjamin	Reseda, CA	CPA	Indefinite from March 18, 1998
Finkel, Merle	Beverly Hills, CA	CPA	Indefinite from March 18, 1998
Mullay, Carl P.	Swoyersville, PA	CPA	Indefinite from March 18, 1998
Cunning, Dennis A.	Molalla, OR	CPA	Indefinite from March 18, 1998
Adamson, Steven A.	Nampa, ID	Attorney	Indefinite from April 14, 1998
Bowman, David W.	Colorado Springs, CO	Attorney	Indefinite from April 21, 1998
Beezley, Jack L.	Dallas, TX	Attorney	Indefinite from April 21, 1998
Cunningham, Andrew	Hatfield, PA	CPA	Indefinite from April 28, 1998
Palmquist, Craig S.	Seattle, WA	Attorney	Indefinite from April 21, 1998
Ross, Mark J.	Columbus, OH	Attorney	Indefinite from April 21, 1998
Madoch, Lawrence	Elgin, IL	CPA	Indefinite from April 21, 1998
Taylor, George M.	Springfield, IL	Attorney	Indefinite from April 21, 1998
Casey, Kenneth J.	Corte Madera, CA	CPA	Indefinite from April 21, 1998
Akolt III, John P.	Denver, CO	Attorney	Indefinite from April 21, 1998
Dowdy, Frank	Huntsville, AL	CPA	Indefinite from April 28, 1998
Eckert, Bruce G.	Cleveland, OH	CPA	May 2, 1998 to May 1, 1999
Rozanski, Lawrence J.	Pittsburgh, PA	CPA	June 1, 1998 to May 30, 2000
Mangum, Carl E.	Morris Plains, NJ	CPA	July 1, 1998 to December 31, 1999
Reeser, Richard M.	Thornton, CO	CPA	July 1, 1998 to September 30, 1999
Bailey, Thomas O.	Dallas, TX	CPA	July 1, 1998 to June 30, 2001
Johnson, Kenneth E.	Forest Lake, MN	CPA	July 1, 1998 to November 30, 1999
Deren, Joseph	Lackawanna, NY	Attorney	July 1, 1998 to June 30, 2001

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 ap-

plies 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 Contribution 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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Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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