

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.

SPECIAL ANNOUNCEMENT

Announcement 2008-94, page 964.

The Twenty-First Annual Institute on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and the George Washington University Law School, will be held on December 8 and 9, 2008, at the J.W. Marriott Hotel in Washington, D.C.

INCOME TAX

T.D. 9422, page 898.

Final regulations under section 1361 of the Code contain guidance on S corporations with respect to the American Jobs Creation Act of 2004 (AJCA) and the Gulf Opportunity Zone Act of 2005 (GOZA). The regulations clarify certain shareholder rules. The regulations provide certain S corporation stock disposition rules for various trusts. The regulations describe information that needs to be provided in the electing small business trust (ESBT) election statement if an ESBT has certain powers. The regulations clarify the definition of a potential current beneficiary of an ESBT in certain situations. The regulations provide that the Commissioner may provide relief for inadvertent qualified subchapter S subsidiary (QSub) terminations and inadvertently invalid QSub elections. The regulations provide for the treatment of losses when S corporation stock is transferred between spouses or incident to divorce. Notice 2005-91 obsoleted.

REG-143544-04, page 947.

Proposed regulations under section 336(e) of the Code provide rules that, when finalized, would permit taxpayers to make an election to treat certain sales, exchanges, and distributions of

another corporation's stock as taxable sales of that corporation's assets.

Notice 2008-83, page 905.

Section 382. This notice concerns the application of section 382(h) of the Code to banks.

Notice 2008-86, page 925.

Extension of replacement period for livestock sold on account of drought. This notice explains the circumstances under which the 4-year replacement period under section 1033(e)(2) of the Code is extended for livestock sold on account of drought. The Appendix to this notice contains a list of the counties that experienced exceptional, extreme, or severe drought during the preceding 12-month period ending August 31, 2008. Taxpayers may use this list to determine if an extension is available.

Notice 2008-88, page 933.

This notice provides that the Treasury Department and the IRS will treat a tax-exempt "qualified tender bond" (as defined in Notice 2008-41) or "tax-exempt commercial paper" (as defined in section 2 of this notice) that is purchased by its "governmental issuer" (as defined in Notice 2008-41) on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if the governmental issuer holds the bond until not later than December 31, 2009. This notice also extends the final date for the purchase of bonds pursuant to a qualified tender right, and the final date on which covered waivers of interest rate caps are disregarded, to December 31, 2009. Notice 2008-41 amended and supplemented.

(Continued on the next page)

Finding Lists begin on page ii.



Rev. Proc. 2008–61, page 934.

This procedure provides areas affected by section 409A of the Code in which rulings will not be issued. Rev. Proc. 2008–3 modified and amplified.

Rev. Proc. 2008–63, page 946.

This procedure provides guidance with respect to the application of section 1058(a) of the Code to situations in which securities are originally transferred pursuant to an agreement that meets the requirements of section 1058(b), the transferee subsequently defaults under the agreement as a direct or indirect result of its bankruptcy (or the bankruptcy of an affiliate), and as soon as is commercially practicable (but in no event more than 30 days following the default), the transferor applies collateral provided pursuant to the agreement to the purchase of identical securities.

Announcement 2008–95, page 964.

This announcement contains clarification to filing procedures for Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically. These changes are effective immediately. Announcement 2008–19 superseded.

EMPLOYEE PLANS

Notice 2008–85, page 905.

This notice provides updated static mortality tables to be used in applying the minimum funding requirements to single employer defined benefit pension plans that do not choose to use generational mortality tables and are not approved to use employer-specific substitute mortality tables. These mortality tables are also used for multiemployer plans for purposes of applying certain funding requirements. These tables apply for purposes of calculating the funding target and other items for valuation dates occurring during the calendar years 2009 through 2013.

Notice 2008–87, page 930.

This notice provides relief for funding deadlines and other requirements for plans in certain counties affected by Hurricane Ike. Relief is provided pursuant to section 7508A(b) of the Code for certain plans affected by a Presidentially declared disaster.

Rev. Proc. 2008–61, page 934.

This procedure provides areas affected by section 409A of the Code in which rulings will not be issued. Rev. Proc. 2008–3 modified and amplified.

Rev. Proc. 2008–62, page 935.

This document sets forth the procedure by which the sponsor of a defined benefit plan, other than a multiemployer plan, may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with section 430(h)(3)(C) of the Code and section 303(h)(3)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. Rev. Proc. 2007–37 updated.

ADMINISTRATIVE

Announcement 2008–91, page 963.

This document contains a correction to final and temporary regulations (T.D. 9417, 2008–37 I.R.B. 693) relating to the averaging of farm and fishing income in computing income tax liability.

Announcement 2008–92, page 963.

This document contains a correction to proposed regulations (REG–161695–04, 2008–37 I.R.B. 699) relating to the averaging of farm and fishing income in computing income tax liability.

Announcement 2008–95, page 964.

This announcement contains clarification to filing procedures for Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically. These changes are effective immediately. Announcement 2008–19 superseded.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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 103.—Interest on State and Local Bonds

A notice amends and supplements Notice 2008-41, 2008-15 I.R.B. 742 (April 14, 2008), by: (1) providing that the Treasury Department and the IRS will treat a tax-exempt “qualified tender bond” (as defined in Notice 2008-41) or “tax-exempt commercial paper” (as defined in § 2 of this notice) that is purchased by its “governmental issuer” (as defined in Notice 2008-41) on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if the governmental issuer holds the bond until not later than December 31, 2009; and (2) extending the final date for the purchase of bonds pursuant to a qualified tender right, and the final date on which covered waivers of interest rate caps are disregarded, to December 31, 2009. See Notice 2008-88, page 933.

Section 336.—Gain or Loss Recognized on Property Distributed in Complete Liquidation

26 CFR 1.336-1: General principles, nomenclature, and definitions for a section 336(e) election.

A proposed rule states that if as a result of the deemed purchase of a corporation’s assets pursuant to a section 336(e) election, there would be both a qualified stock purchase and a qualified stock disposition of the stock of a subsidiary of that corporation, only an election under a section 336(e) election may be made with respect to the purchase. See REG-143544-04, page 947.

Section 338.—Certain Stock Purchases Treated as Asset Acquisitions

26 CFR 1.338-1: General principles; status of old target and new target.
26 CFR 1.338-5: Adjusted grossed-up basis.

A proposed rule states that if as a result of the deemed purchase of a corporation’s assets pursuant to a section 336(e) election, there would be both a qualified stock purchase and a qualified stock disposition of the stock of a subsidiary of that corporation, only an election under a section 336(e) election may be made with respect to the purchase. See REG-143544-04, page 947.

Section 1058.—Transfers of Securities Under Certain Agreements

This revenue procedure provides guidance with respect to the application of § 1058(a) of the Internal Revenue Code to situations in which securities are originally transferred pursuant to an agreement that meets the requirements of § 1058(b), the transferee subsequently defaults under the agreement as a direct or indirect result of its bankruptcy (or the bankruptcy of an affiliate), and as soon as is commercially practicable (but in no event more than 30 days following the default), the transferor applies collateral provided pursuant to the agreement to the purchase of identical securities. See Rev. Proc. 2008-63, page 946.

Section 1361.—S Corporation Defined

26 CFR 1.1361-1: S corporation defined.

T.D. 9422

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

S Corporation Guidance Under AJCA of 2004 and GOZA of 2005

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding certain changes made to the rules governing S corporations under the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The final regulations replace obsolete references in the current regulations and allow taxpayers to make proper use of the provisions that made changes to prior law. The final regulations include guidance on the S corporation family shareholder rules, the definitions of “powers of appointment” and “potential current beneficiaries” (PCBs) with regard to electing small business trusts (ESBTs), the allowance of suspended losses to the spouse or former spouse of an S corporation shareholder,

and relief for inadvertently terminated or invalid qualified subchapter S subsidiary (QSub) elections. The final regulations affect S corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective on August 14, 2008.

Applicability Dates: For dates of applicability, see §§1.1361-4(a)(9)(ii), 1.1361-6, 1.1362-4(g) and 1.1366-5.

FOR FURTHER INFORMATION CONTACT: Charles J. Langley, Jr., (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2114.

The collection of information is required by §1.1361-1(m)(2)(ii)(A) of these final regulations. This information is required to enable the IRS to verify whether the corporation is an eligible S corporation.

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) concerning S corporations under sections 1361, 1362, and 1366 of the Internal Revenue Code (Code). These sections were amended by sections 231, 232, 233, 234, 235, 236, 237, 238, and 239 of the American Jobs Creation Act of 2004 (Public Law 108-357, 118 Stat. 1418) (the 2004 Act) and sections 403 and 413 of the

Gulf Opportunity Zone Act of 2005 (Public Law 109-135) (the 2005 Act). This document does not address other amendments made by the 2004 Act or the 2005 Act. In addition, this document contains additional amendments to the regulations under Code section 1362 necessary to conform the regulations to the changes made by section 1305(a) of the Small Business Job Protection Act of 1996 (Public Law 104-188, 110 Stat. 1755) (the 1996 Act).

On September 28, 2007, a notice of proposed rulemaking and a notice of public hearing (REG-143326-05, 2007-43 I.R.B. 873) were published in the **Federal Register** (72 FR 55132).

No one requested to speak at the public hearing. Accordingly, the public hearing scheduled for January 16, 2008, was cancelled in a notice published in the **Federal Register** (73 FR 1131) on January 7, 2008. No one submitted written or electronic comments, which were due by December 27, 2007. Thus, the proposed regulations are adopted as revised by this Treasury decision, which make only administrative or ministerial changes to the proposed regulations.

The proposed regulations conformed references in the regulations to the specific numbers of S corporation shareholders permissible under section 1361. For purposes of determining the number of shareholders of an S corporation under Code section 1361(b)(1)(A), the proposed regulations provided rules relating to stock owned by family members.

Pursuant to section 1361(c)(2)(A)(vi), the proposed regulations provided rules regarding limited instances in which individual retirement accounts (including Roth IRAs), qualify as eligible shareholders of banks or depository institution holding companies.

The proposed regulations provided that a disposition of the S corporation stock by a QSST shall be treated as a disposition by the income beneficiary for purposes of applying sections 465 and 469 to the income beneficiary of a QSST.

The proposed regulations described information that is required to be included in the ESBT election statement if the trust includes a power of appointment or other power to make distributions to certain organizations. The proposed regulations provided rules under which a person that may receive a distribution under a power

of appointment will not be treated as a PCB. Also, the proposed regulations provided rules under which a class of organizations described in section 1361(c)(6) will be treated as one PCB if the fiduciary has a power (other than a power of appointment) to make distributions to one or more members of the class. Also, the proposed regulations provided rules that any person who first met the definition of a PCB one year before the disposition by an ESBT of all of the stock of the S corporation will not be treated as a PCB or a shareholder of the S corporation.

The proposed regulations provided that the Commissioner may provide relief for inadvertent invalid elections to be an S corporation or QSub or for inadvertent terminations of valid elections to be an S corporation or QSub and described the requirements to obtain that relief.

Finally, with regard to a transfer of stock under Code section 1041(a), between spouses or incident to a divorce, the proposed regulations provided for the treatment of losses or deductions with respect to the transferred shares that are subject to the basis limitation under Code section 1366(d)(1).

Summary of Comments and Explanation of Revisions

No comments were received. All revisions are administrative or ministerial and substantively conform to the proposed regulations.

Effect on Other Documents

The following publication is obsoleted as of August 14, 2008:

Notice 2005-91, 2005-2 C.B. 1164.

Effective Applicability Date

These regulations are effective on August 14, 2008.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it has been determined that these regulations

are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) because the collection of information required by these regulations is imposed on electing small business trusts and such entities are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Additionally, the information collection burden imposed on the electing small business trusts is minimal. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Charles J. Langley, Jr. of the Office of Associate Chief Counsel (Passthroughs and Special Industries).

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Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1361-0 is amended by adding a new entry in the table of contents for §1.1361-1(e)(3) to read as follows:

§1.1361-0 Table of contents.

* * * * *

§1.1361-1 S Corporation defined.

* * * * *

(e) * * *

(3) Special rules relating to stock owned by members of a family.

Par. 3. Section 1.1361-1 is amended by:

1. Revising paragraphs (b)(1)(i) and (e)(1).

2. Adding paragraphs (e)(3), (h)(1)(vii), and (h)(3)(i)(G).

3. Adding a new sentence to the end of paragraphs (j)(8) and (k)(2)(i).

4. Revising paragraphs (m)(2)(ii)(A), (m)(4)(iii), and (m)(4)(vi).

5. Revising paragraphs (m)(8), *Example 2* and *Example 7*.

6. Revising the seventh sentence of paragraph (m)(8), *Example 5*.

7. Adding paragraphs (m)(8), *Example 8* and *Example 9*.

8. Adding a sentence to the end of paragraph (m)(9).

The revisions and additions read as follows:

§1.1361-1 S Corporation defined.

* * * * *

(b) * * * (1) * * *

(i) More than the number of shareholders provided in section 1361(b)(1)(A);

* * * * *

(e) *Number of shareholders*—(1) *General rule.* A corporation does not qualify as a small business corporation if it has more than the number of shareholders provided in section 1361(b)(1)(A). Ordinarily, the person who would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation) is considered to be the shareholder of the corporation. For example, if stock (owned other than by a husband and wife or members of a family described in section 1361(c)(1)) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is generally considered to be a shareholder of the corporation. (For special rules relating to stock owned by husband and wife or members of a family, see paragraphs (e)(2) and (3) of this section, respectively; for special rules relating to restricted stock, see paragraphs (b)(3) and (6) of this section.) The person for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent is considered to be the shareholder of the corporation for purposes of this paragraph (e) and paragraphs (f) and (g) of this section. For example, a partnership may be a nominee of S corporation stock for a person who qualifies as a shareholder of an S corporation. However, if the partnership is the beneficial owner of the stock, then the partnership is the shareholder, and the corporation does not qualify as a small business corporation. In addition, in the case of stock held for a minor under a uniform transfers to minors act or similar statute, the minor and not the custodian is the shareholder. Except as otherwise provided in paragraphs

(h) and (j) of this section, and for purposes of this paragraph (e) and paragraphs (f) and (g) of this section, if stock is held by a decedent's estate or a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate or trust (and not the beneficiaries of the estate or trust) is considered to be the shareholder; however, if stock is held by a subpart E trust (which includes a voting trust) or an electing QSST described in section 1361(d)(1), the deemed owner of the trust is considered to be the shareholder. If stock is held by an ESBT described in section 1361(c)(2)(A)(v), each potential current beneficiary of the trust shall be treated as a shareholder, except that the trust shall be treated as the shareholder during any period in which there is no potential current beneficiary of the trust. If stock is held by a trust described in section 1361(c)(2)(A)(vi), the individual for whose benefit the trust was created shall be treated as the shareholder. See paragraph (h) of this section for special rules relating to trusts.

* * * * *

(3) *Special rules relating to stock owned by members of a family*—(i) *In general.* For purposes of paragraph (e)(1) of this section, stock owned by members of a family is treated as owned by one shareholder. Members of a family include a common ancestor, any lineal descendant of the common ancestor (without any generational limit), and any spouse (or former spouse) of the common ancestor or of any lineal descendants of the common ancestor. An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than six generations removed from the youngest generation of shareholders who would be members of the family determined by deeming that individual as the common ancestor. For purposes of this six-generation test, a spouse (or former spouse) is treated as being of the same generation as the individual to whom the spouse is or was married. This test is applied on the latest of the date the election under section 1362(a) is made for the corporation, the earliest date that a member of the family (determined by deeming that individual as the common ancestor) holds stock in the corporation, or October 22, 2004. For this purpose, the date the election under section 1362(a) is made for the corporation is the effective

date of the election, not the date it is signed or received by any person. The test is only applied as of the applicable date, and lineal descendants (and spouses) more than six generations removed from the common ancestor will be treated as members of the family even if they acquire stock in the corporation after that date. The members of a family are treated as one shareholder under this paragraph (e)(3) solely for purposes of section 1361(b)(1)(A), and not for any other purpose, whether under section 1361 or any other provision. Specifically, each member of the family who owns or is deemed to own stock must meet the requirements of sections 1361(b)(1)(B) and (C) (regarding permissible shareholders) and section 1362(a)(2) (regarding shareholder consents to an S corporation election). Although a person may be a member of more than one family under this paragraph (e)(3), each family (not all of whose members are also members of the other family) will be treated as one shareholder. For purposes of this paragraph (e)(3), any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by that individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(ii) *Certain entities treated as members of a family.* For purposes of this paragraph (e)(3), the estate or trust (described in section 1361(c)(2)(A)(ii) or (iii)) of a deceased member of the family will be considered to be a member of the family during the period in which the estate or such trust (if the trust is described in section 1361(c)(2)(A)(ii) or (iii)), holds stock in the S corporation. The members of the family also will include—

(A) In the case of an ESBT, each potential current beneficiary who is a member of the family;

(B) In the case of a QSST, the income beneficiary who makes the QSST election, if that income beneficiary is a member of the family;

(C) In the case of a trust created primarily to exercise the voting power of stock transferred to it, each beneficiary who is a member of the family;

(D) The individual for whose benefit a trust described in section 1361(c)(2)(A)(vi) was created, if that individual is a member of the family;

(E) The deemed owner of a trust described in section 1361(c)(2)(A)(i) if that deemed owner is a member of the family; and

(F) The owner of an entity disregarded as an entity separate from its owner under §301.7701-3 of this chapter, if that owner is a member of the family.

* * * * *

(h) * * * (1) * * *

(vii) *Individual retirement accounts.* In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of October 22, 2004. Individual retirement accounts (including Roth IRAs) are not otherwise eligible S corporation shareholders.

* * * * *

(3) * * * (i) * * *

(G) If stock in an S corporation bank or depository institution holding company is held by an individual retirement account (including a Roth IRA) described in paragraph (h)(1)(vii) of this section, the individual for whose benefit the trust was created shall be treated as the shareholder.

* * * * *

(j) * * *

(8) * * * However, solely for purposes of applying sections 465 and 469 to the income beneficiary, a disposition of S corporation stock by a QSST shall be treated as a disposition by the income beneficiary.

* * * * *

(k) * * * (2) * * *

(i) * * * Paragraphs (b)(1)(i), (e)(1), (e)(3), (h)(1)(vii), (h)(3)(i)(G), and the fifth sentence of paragraph (j)(8) are effective on August 14, 2008.

* * * * *

(m) * * * (2) * * *

(ii) * * *

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently holds stock. If the trust includes a power described in paragraph (m)(4)(vi)(B) of this

section, then the election statement must include a statement that such a power is included in the instrument, but does not need to include the name, address, or taxpayer identification number of any particular charity or any other information regarding the power.

* * * * *

(4) * * *

(iii) *Special rule for dispositions of stock.* Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of the stock which it holds in an S corporation, then, with respect to that corporation, any person who first met the definition of a potential current beneficiary during the 1-year period ending on the date of such disposition is not a potential current beneficiary and thus is not a shareholder of that corporation.

* * * * *

(vi) *Currently exercisable powers of appointment and other powers—*(A) *Powers of appointment.* A person to whom a distribution may be made during any period pursuant to a power of appointment (as described for transfer tax purposes in section 2041 and §20.2041-1(b) of this chapter

and section 2514 and §25.2514-1(b) of this chapter) is not a potential current beneficiary unless the power is exercised in favor of that person during the period. It is immaterial for purposes of this paragraph (m)(4)(vi)(A) whether such power of appointment is a “general power of appointment” for transfer tax purposes as described in §§20.2041-1(c) and 25.2514-1(c) of this chapter. The mere existence of one or more powers of appointment during the lifetime of a power holder that would permit current distributions from the trust to be made to more than the number of persons described in section 1361(b)(1)(A) or to a person described in section 1361(b)(1)(B) or (C) will not cause the S corporation election to terminate unless one or more of such powers are exercised, collectively, in favor of an excessive number of persons or in favor of a person who is ineligible to be an S corporation shareholder. For purposes of this paragraph (m)(4)(vi)(A), a “power of appointment” includes a power, regardless of by whom held, to add a beneficiary or class of beneficiaries to the class of potential current beneficiaries, but generally does not include a power held by

a fiduciary who is not also a beneficiary of the trust to spray or sprinkle trust distributions among beneficiaries. Nothing in this paragraph (m)(4)(vi)(A) alters the definition of “power of appointment” for purposes of any provision of the Internal Revenue Code or the regulations.

(B) *Powers to distribute to certain organizations not pursuant to powers of appointment.* If a trustee or other fiduciary has a power (that does not constitute a power of appointment for transfer tax purposes as described in §§20.2041-1(b) and 25.2514-1(b) of this chapter) to make distributions from the trust to one or more members of a class of organizations described in section 1361(c)(6), such organizations will be counted collectively as only one potential current beneficiary for purposes of this paragraph (m), except that each organization receiving a distribution also will be counted as a potential current beneficiary. This paragraph (m)(4)(vi)(B) shall not apply to a power to currently distribute to one or more particular charitable organizations described in section 1361(c)(6). Each of such organizations is a potential current beneficiary of the trust.

* * * * *

(8) * * *

Example 2. (i) *Invalid potential current beneficiary.* Effective January 1, 2005, Trust makes a valid ESBT election. On January 1, 2006, A, a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within one year after January 1, 2006. As of January 1, 2006, A is the potential current beneficiary of Trust and therefore is treated as a shareholder of the S corporation. Because A is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2006. Relief may be available under section 1362(f).

(ii) *Invalid potential current beneficiary and disposition of S stock.* Assume the same facts as in *Example 2* (i) except that within one year after January 1, 2006, trustee of Trust disposes of all Trust’s S corporation stock. A is not considered a potential current beneficiary of Trust and therefore is not treated as a shareholder of any S corporation in which Trust previously held stock.

* * * * *

Example 5. * * * Trust-2 itself will not be counted toward the shareholder limit of section 1361(b)(1)(A). * * *

* * * * *

Example 7. *Potential current beneficiaries and powers of appointment.* M creates Trust from which A has a right to all net income and funds it with S corporation stock. A also has a currently exercisable power to appoint income or principal

to anyone except A, A's creditors, A's estate, and the creditors of A's estate. The potential current beneficiaries of Trust for any period will be A and each person who receives a distribution from Trust pursuant to A's exercise of A's power of appointment during that period.

Example 8. Power to distribute to an unlimited class of charitable organizations not pursuant to a power of appointment. M creates Trust from which A has a right to all net income and funds it with S corporation stock. In addition, the trustee of Trust, who is not A or a descendant of M, has the power to make discretionary distributions of principal to the living descendants of M and to any organizations described in section 1361(c)(6). The potential current beneficiaries of Trust for any period will be A, each then-living descendant of M, and each exempt organization described in section 1361(c)(6) that receives a distribution during that period. In addition, the class of exempt organizations will be counted as one potential current beneficiary.

Example 9. Power to distribute to a class of named charitable organizations not pursuant to a power of appointment. M creates Trust from which A has a right to all net income and funds it with S corporation stock. In addition, the trustee of Trust, who is not A or a descendant of M, has the power to make discretionary distributions of principal to the living descendants of M and to X, Y, and Z, each of which is an organization described in section 1361(c)(6). The potential current beneficiaries of Trust for any period will be A, X, Y, Z, and each living descendant of M.

(9) *Effective/applicability date.* * * * Paragraphs (m)(2)(ii)(A), (m)(4)(iii) and (vi), and (m)(8), *Example 2, Example 5, Example 7, Example 8, and Example 9* of this section are effective on August 14, 2008.

Par. 4. Section 1.1361-4 is amended by revising paragraph (a)(1) and adding new paragraph (a)(9) to read as follows:

§1.1361-4 Effect of QSub election.

(a) *Separate existence ignored*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3), (a)(6), (a)(7), (a)(8), and (a)(9) of this section, for Federal tax purposes—

(i) A corporation that is a QSub shall not be treated as a separate corporation; and

(ii) All assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and items of income, deduction, and credit of the S corporation.

* * * * *

(9) *Information returns*—(i) *In general.* Except to the extent provided by the Secretary or Commissioner in guidance (including forms or instructions), paragraph (a)(1) of this section shall not apply to part III of

subchapter A of chapter 61, relating to information returns.

(ii) *Effective/applicability date.* This paragraph (a)(9) is effective on August 14, 2008.

* * * * *

Par. 5. Section 1.1361-6 is amended by revising the first sentence to read as follows:

§1.1361-6 Effective date.

Except as provided in §§1.1361-4(a)(3)(iii), 1.1361-4(a)(5)(i), 1.1361-4(a)(6)(iii), 1.1361-4(a)(7)(ii), 1.1361-4(a)(8)(ii), 1.1361-4(a)(9), and 1.1361-5(c)(2), the provisions of §§1.1361-2 through 1.1361-5 apply to taxable years beginning on or after January 20, 2000; however, taxpayers may elect to apply the regulations in whole, but not in part (aside from those sections with special dates of applicability), for taxable years beginning on or after January 1, 2000, provided all affected taxpayers apply the regulations in a consistent manner. * * *

Par. 6. Section 1.1362-0 is amended by revising the heading of the table of contents for §1.1362-4 and adding a new entry in the table of contents for §1.1362-4(g) to read as follows:

§1.1362-0 Table of contents.

* * * * *

§1.1362-4 Inadvertent terminations and inadvertently invalid elections.

* * * * *

(g) *Effective/applicability date.*

* * * * *

Par. 7. Section 1.1362-4 is amended by:

1. Revising the section heading and paragraphs (a), (b), (c), (d), and (f).

2. Adding paragraph (g).

The addition and revisions read as follows:

§1.1362-4 Inadvertent terminations and inadvertently invalid elections

(a) *In general.* A corporation is treated as continuing to be an S corporation or a QSub (or, an invalid election to be either an S corporation or a QSub is treated as valid) during the period specified by the Commissioner if—

(1) The corporation made a valid election under section 1362(a) or section 1361(b)(3) and the election terminated or the corporation made an election under section 1362(a) or section 1361(b)(3) that was invalid;

(2) The Commissioner determines that the termination or invalidity was inadvertent;

(3) Within a reasonable period of time after discovery of the terminating event or invalid election, steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or to acquire the required shareholder consents; and

(4) The corporation and shareholders agree to adjustments that the Commissioner may require for the period.

(b) *Inadvertent termination or inadvertently invalid election.* For purposes of paragraph (a) of this section, the determination of whether a termination or invalid election was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination or invalid election was inadvertent. The fact that the terminating event or invalidity of the election was not reasonably within the control of the corporation and, in the case of a termination, was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination or invalidity of the election was inadvertent.

(c) *Corporation's request for determination of an inadvertent termination or invalid election.* A corporation that believes that the termination or invalidity of its election was inadvertent may request a determination from the Commissioner that the termination or invalidity of its election was inadvertent. The request is made in the form of a ruling request and should set forth all relevant facts pertaining to the event or circumstance including, but not limited to, the facts described in paragraph (b) of this section, the date of the corporation's election (or intended election) under section 1362(a) or 1361(b)(3), a detailed explanation of the event or circumstance

causing the termination or invalidity, when and how the event or circumstance was discovered, and the steps taken under paragraph (a)(3) of this section.

(d) *Adjustments.* The Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation or QSub during the period specified by the Commissioner. In the case of stock held by an ineligible shareholder that causes an inadvertent termination or invalid election for an S corporation under section 1362(f), the Commissioner may require the ineligible shareholder to be treated as a shareholder of the S corporation during the period the ineligible shareholder actually held stock in the corporation. Moreover, the Commissioner may require protective adjustments that prevent the loss of any revenue due to the holding of stock by an ineligible shareholder (for example, a nonresident alien).

* * * * *

(f) *Status of corporation.* The status of the corporation after the terminating event or invalid election and before the determination of inadvertence is determined by the Commissioner. Inadvertent termination or inadvertent invalid election relief may be granted retroactively for all years for which the terminating event or circumstance giving rise to invalidity is effective, in which case the corporation is treated as if its election was valid or had not terminated. Alternatively, relief may be granted only for the period in which the corporation became eligible for subchapter S or QSub treatment, in which case the corporation is treated as a C corporation or, in the case of a QSub with an inadvertently terminated or invalid election, as a separate C corporation, during the period for which the corporation was not eligible for its intended status.

(g) *Effective/applicability date.* Paragraphs (a), (b), (c), (d), and (f) of this section are effective on August 14, 2008.

Par. 8. Section 1.1366-0 is amended by adding new entries in the table of contents for §1.1366-2(a)(5)(i), (a)(5)(ii) and (a)(5)(iii) to read as follows:

§1.1366-0 Table of contents.

* * * * *

§1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) * * *

(5) * * *

(i) *In general.*

(ii) *Exceptions for transfers of stock under section 1041(a).*

(iii) *Examples.*

Par. 9. Section 1.1366-2(a)(5) is amended by:

1. Redesignating paragraph (a)(5) as (a)(5)(i).

2. Adding a heading and revising the first sentence of paragraph (a)(5)(i).

3. Adding paragraphs (a)(5)(ii) and (a)(5)(iii).

The revisions and additions read as follows:

§1.1366-2 Limitations on deduction of passthrough items of an S corporation to its shareholders.

(a) *In general.* * * *

(5) *Nontransferability of losses and deductions—(i) In general.* Except as provided in paragraph (a)(5)(ii) of this section, any loss or deduction disallowed under paragraph (a)(1) of this section is personal to the shareholder and cannot in any manner be transferred to another person. * * *

(ii) *Exceptions for transfers of stock under section 1041(a).* If a shareholder transfers stock of an S corporation after December 31, 2004, in a transfer described in section 1041(a), any loss or deduction with respect to the transferred stock that is disallowed to the transferring shareholder under paragraph (a)(1) of this section shall be treated as incurred by the corporation in the following taxable year with respect to the transferee spouse or former spouse. The amount of any loss or deduction with respect to the stock transferred shall be determined by prorating any losses or deductions disallowed under paragraph (a)(1) of this section for the year of the transfer between the transferor and the spouse or former spouse based on the stock ownership at the beginning of the following taxable year. If a transferor claims a deduction for losses in the taxable year of transfer, then under paragraph (a)(4) of this section, if the transferor's *pro rata* share of the losses and deductions in the year of transfer ex-

ceeds the transferor's basis in stock and the indebtedness of the corporation to the transferor, then the limitation must be allocated among the transferor spouse's *pro rata* share of each loss or deduction, including disallowed losses and deductions carried over from the prior year.

(iii) *Examples.* The following examples illustrate the provisions of paragraph (a)(5)(ii) of this section:

Example 1. A owns all 100 shares in X, a calendar year S corporation. For X's taxable year ending December 31, 2006, A has zero basis in the shares and X does not have any indebtedness to A. For the 2006 taxable year, X had \$100 in losses that A cannot use because of the basis limitation in section 1366(d)(1) and that are treated as incurred by the corporation with respect to A in the following taxable year. Halfway through the 2007 taxable year, A transfers 50 shares to B, A's former spouse in a transfer to which section 1041(a) applies. In the 2007 taxable year, X has \$80 in losses. On A's 2007 individual income tax return, A may use the entire \$100 carryover loss from 2006, as well as A's share of the \$80 2007 loss determined under section 1377(a) (\$60), assuming A acquires sufficient basis in the X stock. On B's 2007 individual income tax return, B may use B's share of the \$80 2007 loss determined under section 1377(a) (\$20), assuming B has sufficient basis in the X stock. If any disallowed 2006 loss is disallowed to A under section 1366(d)(1) in 2007, that loss is prorated between A and B based on their stock ownership at the beginning of 2008. On B's 2008 individual income tax return, B may use that loss, assuming B acquires sufficient basis in the X stock. If neither A nor B acquires any basis during the 2007 taxable year, then as of the beginning of 2008, the corporation will be treated as incurring \$50 of loss with respect to A and \$50 of loss with respect to B for the \$100 of disallowed 2006 loss, and the corporation will be treated as incurring \$60 of loss with respect to A and \$20 with respect to B for the \$80 of disallowed 2007 loss.

Example 2. Assume the same facts as *Example 1*, except that during the 2007 taxable year, A acquires \$10 of basis in A's shares in X. For the 2007 taxable year, A may claim a \$10 loss deduction, which represents \$6.25 of the disallowed 2006 loss of \$100 and \$3.75 of A's 2007 loss of \$60. The disallowed 2006 loss is reduced to \$93.75. As of the beginning of 2008, the corporation will be treated as incurring half of the remaining \$93.75 of loss with respect to A and half of that loss with respect to B for the remaining \$93.75 of disallowed 2006 loss, and if B does not acquire any basis during 2007, the corporation will be treated as incurring \$56.25 of loss with respect to A and \$20 with respect to B for the remaining disallowed 2007 loss.

* * * * *

Par. 10. Section 1.1366-5 is amended by adding a new sentence at the end to read as follows:

§1.1366-5 *Effective/applicability date.*

* * * Sections 1.1366-2(a)(5)(i), (ii) and (iii) are effective on August 14, 2008.

PART 602—OMB CONTROL
NUMBERS UNDER THE PAPERWORK
REDUCTION ACT

Par. 12. Section 602.101, paragraph (b)
is amended by adding the entry in numeri-
cal order to the table to read as follows:

(b) * * *

Par. 11. The authority citation for part
602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 OMB Control numbers.

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1361-1	1545-2114
* * * * *	

Sherri L. Brown,
*Acting Deputy Commissioner for
Services and Enforcement.*

Approved August 5, 2008.

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

(Filed by the Office of the Federal Register on August 13,
2008, 8:45 a.m., and published in the issue of the Federal
Register for August 14, 2008, 73 F.R. 47526)

Section 1362.—Election; Revocation; Termination

Final regulations provide guidance regarding cer-
tain changes made to the rules governing S corpora-
tions under the American Jobs Creation Act of 2004
and the Gulf Opportunity Zone Act of 2005. The
regulations replace obsolete references in the current
regulations and allow taxpayers to make proper use
of the provisions that made changes to prior law. See
T.D. 9422, page 898.

Section 1366.—Pass-Thru of Items to Shareholders

Final regulations provide guidance regarding cer-
tain changes made to the rules governing S corpora-
tions under the American Jobs Creation Act of 2004
and the Gulf Opportunity Zone Act of 2005. The
regulations replace obsolete references in the current
regulations and allow taxpayers to make proper use
of the provisions that made changes to prior law. See
T.D. 9422, page 898.

Part III. Administrative, Procedural, and Miscellaneous

Application of Section 382(h) to Banks

Notice 2008-83

SECTION 1. OVERVIEW

The Internal Revenue Service and Treasury Department are studying the proper treatment under section 382(h) of the Internal Revenue Code (Code) of certain items of deduction or loss allowed after an ownership change to a corporation that is a bank (as defined in section 581) both immediately before and after the change date (as defined in section 382(j)). As described below under the heading Reliance on Notice, such banks may rely upon this guidance unless and until there is additional guidance.

SECTION 2. TREATMENT OF DEDUCTIONS UNDER SECTION 382(h)

For purposes of section 382(h), any deduction properly allowed after an ownership change (as defined in section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall not be treated as a built-in loss or a deduction that is attributable to periods before the change date.

SECTION 3. RELIANCE ON NOTICE

Corporations described in section 1 of this notice may rely on the treatment set forth in this notice, unless and until there is additional guidance.

SECTION 4. SCOPE

This notice does not address the application of any provision of the Code other than section 382.

The principal author of this notice is Mark S. Jennings of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, contact Mark S. Jennings at (202) 622-7750 (not a toll-free call).

Updated Static Mortality Tables for the Years 2009 Through 2013

Notice 2008-85

This notice provides the static mortality tables to be used under § 430(h)(3)(A) of the Internal Revenue Code (Code) and § 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974 (ERISA). These tables apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar years 2009 through 2013.

This notice also includes a modified “unisex” version of the mortality tables for use in determining minimum present value under § 417(e)(3) of the Code and § 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in calendar years 2009 through 2013.

BACKGROUND

Section 412 of the Code provides minimum funding requirements that generally apply for defined benefit plans. The Pension Protection Act of 2006, Public Law 109-280 (PPA), makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA, specifies the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans pursuant to § 412. Section 430(a) defines the minimum required contribution for a defined benefit plan that is not a multiemployer plan by reference to the plan’s funding target for the plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under § 430. Under § 430(h)(3)(A), except as provided in § 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under § 430. Those tables are to be based on the actual experience of pension

plans and projected trends in such experience.

Section 430(h)(3)(C) provides that, upon request by a plan sponsor and approval by the Secretary, substitute mortality tables that meet the applicable requirements may be used in lieu of the standard mortality tables provided under § 430(h)(3)(A). Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to § 430(h)(3)(A) or the substitute mortality tables under § 430(h)(3)(C).

Determination of Minimum Funding Requirements under § 430

On July 31, 2008, the IRS issued final regulations under § 430(h)(3), at 73 FR 44632 (T.D. 9419, 2008-40 I.R.B. 790). These regulations provide for mortality tables, based on the tables contained in the RP-2000 Mortality Tables Report¹, adjusted for mortality improvement using Projection Scale AA as recommended in that report. Section 1.430(h)(3)-1 generally requires the use of separate tables for nonannuitant and annuitant periods for large plans (those with over 500 participants as of the valuation date). Sponsors of small plans (those with 500 or fewer participants as of the valuation date) are permitted to use a combined table that applies the same mortality rates to both annuitants and nonannuitants.

Section 1.430(h)(3)-1 of the final regulations outlines the methodology that the IRS will use to establish mortality tables as provided under § 430(h)(3)(A). The mortality tables set forth in § 1.430(h)(3)-1 are based on expected mortality as of 2000 and reflect the impact of expected improvements in mortality. The regulations permit plan sponsors to apply the projection of mortality improvement in either of two ways: through use of static tables that are updated annually to reflect expected improvements in mortality, or through use of

¹ The RP-2000 Mortality Tables Report was released by the Society of Actuaries in July, 2000. Society of Actuaries, RP-2000 Mortality Tables Report, at <http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/>.

generational tables. The regulations include static mortality tables for use in actuarial valuations as of valuation dates occurring in 2008 and provide that the mortality tables for valuation dates occurring in future years are to be provided in the Internal Revenue Bulletin.

Application of These Tables for Other Purposes under the Funding Rules

Section 1.412(l)(7)–1(a), issued February 2, 2007, provides that for plan years beginning on or after January 1, 2008, the mortality tables described in § 430(h)(3)(A) are to be used to determine current liability under § 412(l)(7) of the Code for nondisabled participants. This is relevant for plans for which the effective date of § 430 is delayed, pursuant to sections 104 through 106 of PPA.

Section 1.431(c)(6)–1 of the final regulations, issued July 31, 2008, provides that the same mortality assumptions that apply for purposes of § 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the full-funding rules of § 431(c)(6). For this purpose, a multiemployer plan is permitted to apply either the annually-adjusted static mortality tables or the generational mortality tables.

Application of Mortality Tables for Minimum Present Value Requirements under § 417(e)(3)

Section 417(e)(3) generally provides that the present value of certain benefits

under a qualified pension plan (including single-sum distributions) cannot be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Under § 1.417(e)–1(d)(1), these rules must also be used to compute the present value of a plan benefit for purposes of determining whether consent for a distribution is required under § 411(a)(11)(A).

For plan years beginning on or after January 1, 2008, § 417(e)(3)(B) defines the term “applicable mortality table” as the mortality table specified for the plan year under § 430(h)(3)(A) (without regard to § 430(h)(3)(C) or (D)), modified as appropriate by the Secretary.

Rev. Rul. 2007–67, 2007–48 I.R.B. 1047, provides that, except as otherwise stated in future guidance, the applicable mortality table under § 417(e)(3) for 2008 is based on a fixed blend of 50% of the static male combined mortality rates and 50% of the static female combined mortality rates promulgated under § 1.430(h)(3)–1(c)(3) of the proposed regulations (which have since been issued as final regulations). The applicable mortality table for purposes of § 417(e)(3) is not a generational table. Rev. Rul. 2007–67 also provides that the applicable mortality table for a given year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year. Rev. Rul. 2007–67 further states that the § 417(e)(3) applicable mortality table for each subsequent year will be published in future guidance and, except as provided in that future guidance, will be determined from the

§ 430(h)(3)(A) tables on the same basis as the applicable mortality table for 2008. This notice sets forth the § 417(e)(3) applicable mortality table for distributions with annuity starting dates that occur during stability periods that begin during calendar years 2009 through 2013.

STATIC MORTALITY TABLES FOR YEARS 2009 THROUGH 2013

The static mortality tables that apply under § 430(h)(3)(A) for valuation dates occurring in years 2009 through 2013 are set forth in the appendix to this notice. The mortality rates in these tables have been developed from the base rates, projection factors, and weighting factors set forth in § 1.430(h)(3)–1, using the blending techniques described in the preamble to those regulations.

The static mortality tables that apply under § 417(e)(3) for distributions with annuity starting dates occurring during stability periods beginning in years 2009 through 2013 are set forth in the appendix to this notice in the column labeled “Unisex.” These tables were derived from the tables used for § 430(h)(3)(A) following the procedures set forth in Rev. Rul. 2007–67.

Drafting Information

The principal author of this notice is Carolyn E. Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact Ms. Zimmerman at retirementplanquestions@irs.gov.

APPENDIX

Mortality tables for 2009

Valuation dates occurring during 2009

**Distributions subject to § 417(e)(3) with annuity starting dates during
stability periods beginning in 2009**

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2009 Non- Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Non- Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Table for Distributions Subject to § 417(e)(3)
1	0.000392	0.000392	0.000392	0.000352	0.000352	0.000352	0.000372
2	0.000265	0.000265	0.000265	0.000229	0.000229	0.000229	0.000247
3	0.000220	0.000220	0.000220	0.000171	0.000171	0.000171	0.000196
4	0.000171	0.000171	0.000171	0.000128	0.000128	0.000128	0.000150
5	0.000157	0.000157	0.000157	0.000116	0.000116	0.000116	0.000137
6	0.000150	0.000150	0.000150	0.000108	0.000108	0.000108	0.000129
7	0.000144	0.000144	0.000144	0.000102	0.000102	0.000102	0.000123
8	0.000133	0.000133	0.000133	0.000091	0.000091	0.000091	0.000112
9	0.000129	0.000129	0.000129	0.000086	0.000086	0.000086	0.000108
10	0.000131	0.000131	0.000131	0.000087	0.000087	0.000087	0.000109
11	0.000135	0.000135	0.000135	0.000088	0.000088	0.000088	0.000112
12	0.000140	0.000140	0.000140	0.000091	0.000091	0.000091	0.000116
13	0.000148	0.000148	0.000148	0.000095	0.000095	0.000095	0.000122
14	0.000160	0.000160	0.000160	0.000105	0.000105	0.000105	0.000133
15	0.000170	0.000170	0.000170	0.000115	0.000115	0.000115	0.000143
16	0.000179	0.000179	0.000179	0.000123	0.000123	0.000123	0.000151
17	0.000190	0.000190	0.000190	0.000131	0.000131	0.000131	0.000161
18	0.000199	0.000199	0.000199	0.000134	0.000134	0.000134	0.000167
19	0.000209	0.000209	0.000209	0.000132	0.000132	0.000132	0.000171
20	0.000218	0.000218	0.000218	0.000130	0.000130	0.000130	0.000174
21	0.000231	0.000231	0.000231	0.000127	0.000127	0.000127	0.000179
22	0.000243	0.000243	0.000243	0.000129	0.000129	0.000129	0.000186
23	0.000260	0.000260	0.000260	0.000134	0.000134	0.000134	0.000197
24	0.000275	0.000275	0.000275	0.000140	0.000140	0.000140	0.000208
25	0.000295	0.000295	0.000295	0.000148	0.000148	0.000148	0.000222
26	0.000327	0.000327	0.000327	0.000160	0.000160	0.000160	0.000244
27	0.000339	0.000339	0.000339	0.000167	0.000167	0.000167	0.000253
28	0.000348	0.000348	0.000348	0.000176	0.000176	0.000176	0.000262
29	0.000365	0.000365	0.000365	0.000186	0.000186	0.000186	0.000276

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2009 Non-Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Non-Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Table for Distributions Subject to § 417(e)(3)
30	0.000394	0.000394	0.000394	0.000207	0.000207	0.000207	0.000301
31	0.000442	0.000442	0.000442	0.000253	0.000253	0.000253	0.000348
32	0.000498	0.000498	0.000498	0.000289	0.000289	0.000289	0.000394
33	0.000559	0.000559	0.000559	0.000317	0.000317	0.000317	0.000438
34	0.000622	0.000622	0.000622	0.000342	0.000342	0.000342	0.000482
35	0.000685	0.000685	0.000685	0.000364	0.000364	0.000364	0.000525
36	0.000746	0.000746	0.000746	0.000385	0.000385	0.000385	0.000566
37	0.000802	0.000802	0.000802	0.000405	0.000405	0.000405	0.000604
38	0.000834	0.000834	0.000834	0.000426	0.000426	0.000426	0.000630
39	0.000863	0.000863	0.000863	0.000451	0.000451	0.000451	0.000657
40	0.000890	0.000890	0.000890	0.000491	0.000491	0.000491	0.000691
41	0.000919	0.000947	0.000919	0.000539	0.000539	0.000539	0.000729
42	0.000955	0.001060	0.000956	0.000593	0.000593	0.000593	0.000775
43	0.000996	0.001230	0.000999	0.000652	0.000652	0.000652	0.000826
44	0.001046	0.001456	0.001053	0.000716	0.000716	0.000716	0.000885
45	0.001102	0.001739	0.001116	0.000763	0.000767	0.000763	0.000940
46	0.001152	0.002078	0.001177	0.000810	0.000869	0.000811	0.000994
47	0.001206	0.002474	0.001246	0.000857	0.001021	0.000861	0.001054
48	0.001263	0.002926	0.001323	0.000927	0.001224	0.000937	0.001130
49	0.001322	0.003435	0.001408	0.001002	0.001478	0.001022	0.001215
50	0.001383	0.003998	0.001501	0.001111	0.001782	0.001145	0.001323
51	0.001444	0.004067	0.001575	0.001232	0.001900	0.001271	0.001423
52	0.001507	0.004085	0.001684	0.001402	0.002112	0.001455	0.001570
53	0.001614	0.004142	0.001855	0.001598	0.002386	0.001673	0.001764
54	0.001732	0.004196	0.002049	0.001824	0.002716	0.001930	0.001990
55	0.001911	0.004344	0.002414	0.002083	0.003105	0.002277	0.002346
56	0.002138	0.004580	0.002913	0.002385	0.003565	0.002722	0.002818
57	0.002404	0.004898	0.003347	0.002669	0.004047	0.003138	0.003243
58	0.002714	0.005327	0.003864	0.002918	0.004542	0.003548	0.003706
59	0.002997	0.005782	0.004386	0.003191	0.005105	0.004026	0.004206
60	0.003312	0.006332	0.005013	0.003485	0.005722	0.004593	0.004803
61	0.003745	0.007068	0.005851	0.003799	0.006386	0.005301	0.005576
62	0.004118	0.007785	0.006723	0.004128	0.007096	0.006086	0.006405
63	0.004614	0.008739	0.007874	0.004468	0.007853	0.007014	0.007444
64	0.005010	0.009670	0.008903	0.004814	0.008671	0.007916	0.008410

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2009 Non- Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Non- Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Table for Distributions Subject to § 417(e)(3)
65	0.005399	0.010709	0.010089	0.005161	0.009565	0.008927	0.009508
66	0.005916	0.012059	0.011642	0.005503	0.010533	0.010089	0.010866
67	0.006281	0.013351	0.013005	0.005837	0.011574	0.011211	0.012108
68	0.006466	0.014525	0.014234	0.006158	0.012710	0.012397	0.013316
69	0.006780	0.016045	0.015780	0.006463	0.013985	0.013704	0.014742
70	0.006903	0.017436	0.017162	0.006750	0.015452	0.015157	0.016160
71	0.007774	0.019292	0.019022	0.007373	0.016873	0.016583	0.017803
72	0.009516	0.021421	0.021173	0.008619	0.018768	0.018493	0.019833
73	0.012129	0.023860	0.023646	0.010487	0.020528	0.020290	0.021968
74	0.015613	0.026618	0.026446	0.012978	0.022752	0.022554	0.024500
75	0.019968	0.030193	0.030060	0.016092	0.024716	0.024569	0.027315
76	0.025194	0.033653	0.033565	0.019829	0.027232	0.027131	0.030348
77	0.031291	0.038045	0.037992	0.024188	0.030479	0.030415	0.034204
78	0.038259	0.042968	0.042944	0.029170	0.033598	0.033568	0.038256
79	0.046098	0.048531	0.048525	0.034775	0.037094	0.037086	0.042806
80	0.054807	0.054807	0.054807	0.041002	0.041002	0.041002	0.047905
81	0.062339	0.062339	0.062339	0.045382	0.045382	0.045382	0.053861
82	0.070779	0.070779	0.070779	0.050310	0.050310	0.050310	0.060545
83	0.078898	0.078898	0.078898	0.055861	0.055861	0.055861	0.067380
84	0.089172	0.089172	0.089172	0.062127	0.062127	0.062127	0.075650
85	0.098983	0.098983	0.098983	0.070337	0.070337	0.070337	0.084660
86	0.109743	0.109743	0.109743	0.079719	0.079719	0.079719	0.094731
87	0.123554	0.123554	0.123554	0.090353	0.090353	0.090353	0.106954
88	0.138984	0.138984	0.138984	0.100638	0.100638	0.100638	0.119811
89	0.153594	0.153594	0.153594	0.113562	0.113562	0.113562	0.133578
90	0.172016	0.172016	0.172016	0.125502	0.125502	0.125502	0.148759
91	0.187360	0.187360	0.187360	0.137817	0.137817	0.137817	0.162589
92	0.206439	0.206439	0.206439	0.150220	0.150220	0.150220	0.178330
93	0.222695	0.222695	0.222695	0.165060	0.165060	0.165060	0.193878
94	0.238927	0.238927	0.238927	0.177036	0.177036	0.177036	0.207982
95	0.259058	0.259058	0.259058	0.188377	0.188377	0.188377	0.223718
96	0.274955	0.274955	0.274955	0.198905	0.198905	0.198905	0.236930
97	0.290399	0.290399	0.290399	0.211822	0.211822	0.211822	0.251111
98	0.310289	0.310289	0.310289	0.220391	0.220391	0.220391	0.265340
99	0.324963	0.324963	0.324963	0.227712	0.227712	0.227712	0.276338

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2009 Non-Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Non-Annuitant Table	2009 Annuitant Table	2009 Optional Combined Table for Small Plans	2009 Table for Distributions Subject to § 417(e)(3)
100	0.339084	0.339084	0.339084	0.233696	0.233696	0.233696	0.286390
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Mortality tables for 2010
Valuation dates occurring during 2010
Distributions subject to § 417(e)(3) with annuity starting dates during
stability periods beginning in 2010

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Table for Distributions Subject to § 417(e)(3)
1	0.000384	0.000384	0.000384	0.000345	0.000345	0.000345	0.000365
2	0.000259	0.000259	0.000259	0.000224	0.000224	0.000224	0.000242
3	0.000215	0.000215	0.000215	0.000168	0.000168	0.000168	0.000192

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Table for Distributions Subject to § 417(e)(3)
4	0.000168	0.000168	0.000168	0.000126	0.000126	0.000126	0.000147
5	0.000154	0.000154	0.000154	0.000113	0.000113	0.000113	0.000134
6	0.000147	0.000147	0.000147	0.000106	0.000106	0.000106	0.000127
7	0.000141	0.000141	0.000141	0.000100	0.000100	0.000100	0.000121
8	0.000130	0.000130	0.000130	0.000089	0.000089	0.000089	0.000110
9	0.000126	0.000126	0.000126	0.000084	0.000084	0.000084	0.000105
10	0.000128	0.000128	0.000128	0.000085	0.000085	0.000085	0.000107
11	0.000132	0.000132	0.000132	0.000086	0.000086	0.000086	0.000109
12	0.000138	0.000138	0.000138	0.000089	0.000089	0.000089	0.000114
13	0.000145	0.000145	0.000145	0.000094	0.000094	0.000094	0.000120
14	0.000157	0.000157	0.000157	0.000103	0.000103	0.000103	0.000130
15	0.000167	0.000167	0.000167	0.000114	0.000114	0.000114	0.000141
16	0.000176	0.000176	0.000176	0.000121	0.000121	0.000121	0.000149
17	0.000186	0.000186	0.000186	0.000129	0.000129	0.000129	0.000158
18	0.000196	0.000196	0.000196	0.000132	0.000132	0.000132	0.000164
19	0.000205	0.000205	0.000205	0.000130	0.000130	0.000130	0.000168
20	0.000214	0.000214	0.000214	0.000128	0.000128	0.000128	0.000171
21	0.000227	0.000227	0.000227	0.000125	0.000125	0.000125	0.000176
22	0.000238	0.000238	0.000238	0.000126	0.000126	0.000126	0.000182
23	0.000256	0.000256	0.000256	0.000132	0.000132	0.000132	0.000194
24	0.000271	0.000271	0.000271	0.000138	0.000138	0.000138	0.000205
25	0.000292	0.000292	0.000292	0.000146	0.000146	0.000146	0.000219
26	0.000325	0.000325	0.000325	0.000158	0.000158	0.000158	0.000242
27	0.000337	0.000337	0.000337	0.000165	0.000165	0.000165	0.000251
28	0.000347	0.000347	0.000347	0.000174	0.000174	0.000174	0.000261
29	0.000363	0.000363	0.000363	0.000183	0.000183	0.000183	0.000273
30	0.000392	0.000392	0.000392	0.000205	0.000205	0.000205	0.000299
31	0.000440	0.000440	0.000440	0.000251	0.000251	0.000251	0.000346
32	0.000496	0.000496	0.000496	0.000286	0.000286	0.000286	0.000391
33	0.000557	0.000557	0.000557	0.000314	0.000314	0.000314	0.000436
34	0.000619	0.000619	0.000619	0.000338	0.000338	0.000338	0.000479
35	0.000682	0.000682	0.000682	0.000360	0.000360	0.000360	0.000521
36	0.000742	0.000742	0.000742	0.000380	0.000380	0.000380	0.000561
37	0.000798	0.000798	0.000798	0.000399	0.000399	0.000399	0.000599
38	0.000829	0.000829	0.000829	0.000420	0.000420	0.000420	0.000625

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Table for Distributions Subject to § 417(e)(3)
39	0.000857	0.000857	0.000857	0.000444	0.000444	0.000444	0.000651
40	0.000883	0.000883	0.000883	0.000484	0.000484	0.000484	0.000684
41	0.000911	0.000938	0.000911	0.000530	0.000530	0.000530	0.000721
42	0.000945	0.001049	0.000946	0.000584	0.000584	0.000584	0.000765
43	0.000985	0.001215	0.000988	0.000642	0.000642	0.000642	0.000815
44	0.001033	0.001436	0.001040	0.000705	0.000705	0.000705	0.000873
45	0.001087	0.001713	0.001101	0.000751	0.000755	0.000751	0.000926
46	0.001136	0.002045	0.001161	0.000797	0.000855	0.000798	0.000980
47	0.001188	0.002432	0.001227	0.000842	0.001004	0.000846	0.001037
48	0.001243	0.002875	0.001302	0.000911	0.001203	0.000921	0.001112
49	0.001300	0.003373	0.001384	0.000984	0.001452	0.001004	0.001194
50	0.001358	0.003926	0.001474	0.001092	0.001751	0.001125	0.001300
51	0.001416	0.003990	0.001544	0.001212	0.001869	0.001251	0.001398
52	0.001477	0.004003	0.001650	0.001383	0.002083	0.001435	0.001543
53	0.001582	0.004059	0.001818	0.001579	0.002358	0.001653	0.001736
54	0.001697	0.004112	0.002008	0.001805	0.002689	0.001910	0.001959
55	0.001875	0.004262	0.002368	0.002066	0.003080	0.002258	0.002313
56	0.002099	0.004497	0.002860	0.002371	0.003543	0.002706	0.002783
57	0.002363	0.004815	0.003290	0.002655	0.004027	0.003122	0.003206
58	0.002671	0.005241	0.003802	0.002903	0.004519	0.003530	0.003666
59	0.002949	0.005690	0.004316	0.003175	0.005079	0.004005	0.004161
60	0.003259	0.006230	0.004933	0.003468	0.005694	0.004571	0.004752
61	0.003688	0.006962	0.005763	0.003780	0.006354	0.005274	0.005519
62	0.004056	0.007668	0.006622	0.004108	0.007061	0.006056	0.006339
63	0.004549	0.008617	0.007764	0.004446	0.007814	0.006979	0.007372
64	0.004940	0.009535	0.008779	0.004790	0.008628	0.007877	0.008328
65	0.005323	0.010559	0.009947	0.005135	0.009517	0.008882	0.009415
66	0.005839	0.011903	0.011491	0.005476	0.010481	0.010040	0.010766
67	0.006199	0.013177	0.012835	0.005808	0.011516	0.011155	0.011995
68	0.006375	0.014321	0.014034	0.006127	0.012646	0.012335	0.013185
69	0.006685	0.015820	0.015559	0.006431	0.013915	0.013636	0.014598
70	0.006800	0.017175	0.016905	0.006716	0.015374	0.015080	0.015993
71	0.007663	0.019003	0.018738	0.007334	0.016772	0.016484	0.017611
72	0.009389	0.021100	0.020856	0.008570	0.018655	0.018382	0.019619
73	0.011978	0.023502	0.023292	0.010424	0.020384	0.020148	0.021720

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Table for Distributions Subject to § 417(e)(3)
74	0.015430	0.026219	0.026051	0.012897	0.022592	0.022395	0.024223
75	0.019744	0.029771	0.029641	0.015988	0.024519	0.024374	0.027008
76	0.024921	0.033182	0.033096	0.019697	0.027014	0.026914	0.030005
77	0.030961	0.037551	0.037500	0.024024	0.030266	0.030202	0.033851
78	0.037864	0.042452	0.042428	0.028969	0.033363	0.033333	0.037881
79	0.045630	0.047997	0.047991	0.034532	0.036834	0.036826	0.042409
80	0.054259	0.054259	0.054259	0.040715	0.040715	0.040715	0.047487
81	0.061778	0.061778	0.061778	0.045064	0.045064	0.045064	0.053421
82	0.070213	0.070213	0.070213	0.049957	0.049957	0.049957	0.060085
83	0.078267	0.078267	0.078267	0.055470	0.055470	0.055470	0.066869
84	0.088548	0.088548	0.088548	0.061692	0.061692	0.061692	0.075120
85	0.098290	0.098290	0.098290	0.069915	0.069915	0.069915	0.084103
86	0.108975	0.108975	0.108975	0.079321	0.079321	0.079321	0.094148
87	0.122813	0.122813	0.122813	0.089992	0.089992	0.089992	0.106403
88	0.138289	0.138289	0.138289	0.100235	0.100235	0.100235	0.119262
89	0.152826	0.152826	0.152826	0.113221	0.113221	0.113221	0.133024
90	0.171327	0.171327	0.171327	0.125125	0.125125	0.125125	0.148226
91	0.186611	0.186611	0.186611	0.137404	0.137404	0.137404	0.162008
92	0.205819	0.205819	0.205819	0.149770	0.149770	0.149770	0.177795
93	0.222027	0.222027	0.222027	0.164730	0.164730	0.164730	0.193379
94	0.238210	0.238210	0.238210	0.176682	0.176682	0.176682	0.207446
95	0.258540	0.258540	0.258540	0.188000	0.188000	0.188000	0.223270
96	0.274405	0.274405	0.274405	0.198507	0.198507	0.198507	0.236456
97	0.289819	0.289819	0.289819	0.211610	0.211610	0.211610	0.250715
98	0.309979	0.309979	0.309979	0.220170	0.220170	0.220170	0.265075
99	0.324638	0.324638	0.324638	0.227485	0.227485	0.227485	0.276062
100	0.338745	0.338745	0.338745	0.233462	0.233462	0.233462	0.286104
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Non-Annuitant Table	2010 Annuitant Table	2010 Optional Combined Table for Small Plans	2010 Table for Distributions Subject to § 417(e)(3)
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Mortality tables for 2011
Valuation dates occurring during 2011
Distributions subject to § 417(e)(3) with annuity starting dates during
stability periods beginning in 2011

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Table for Distributions Subject to § 417(e)(3)
1	0.000377	0.000377	0.000377	0.000338	0.000338	0.000338	0.000358
2	0.000254	0.000254	0.000254	0.000220	0.000220	0.000220	0.000237
3	0.000211	0.000211	0.000211	0.000164	0.000164	0.000164	0.000188
4	0.000164	0.000164	0.000164	0.000123	0.000123	0.000123	0.000144
5	0.000151	0.000151	0.000151	0.000111	0.000111	0.000111	0.000131
6	0.000144	0.000144	0.000144	0.000104	0.000104	0.000104	0.000124
7	0.000138	0.000138	0.000138	0.000098	0.000098	0.000098	0.000118
8	0.000128	0.000128	0.000128	0.000087	0.000087	0.000087	0.000108
9	0.000124	0.000124	0.000124	0.000083	0.000083	0.000083	0.000104
10	0.000125	0.000125	0.000125	0.000083	0.000083	0.000083	0.000104
11	0.000130	0.000130	0.000130	0.000085	0.000085	0.000085	0.000108
12	0.000135	0.000135	0.000135	0.000088	0.000088	0.000088	0.000112

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Table for Distributions Subject to § 417(e)(3)
13	0.000142	0.000142	0.000142	0.000092	0.000092	0.000092	0.000117
14	0.000154	0.000154	0.000154	0.000101	0.000101	0.000101	0.000128
15	0.000163	0.000163	0.000163	0.000112	0.000112	0.000112	0.000138
16	0.000172	0.000172	0.000172	0.000119	0.000119	0.000119	0.000146
17	0.000183	0.000183	0.000183	0.000128	0.000128	0.000128	0.000156
18	0.000192	0.000192	0.000192	0.000130	0.000130	0.000130	0.000161
19	0.000201	0.000201	0.000201	0.000128	0.000128	0.000128	0.000165
20	0.000210	0.000210	0.000210	0.000126	0.000126	0.000126	0.000168
21	0.000223	0.000223	0.000223	0.000123	0.000123	0.000123	0.000173
22	0.000234	0.000234	0.000234	0.000124	0.000124	0.000124	0.000179
23	0.000252	0.000252	0.000252	0.000130	0.000130	0.000130	0.000191
24	0.000268	0.000268	0.000268	0.000136	0.000136	0.000136	0.000202
25	0.000290	0.000290	0.000290	0.000143	0.000143	0.000143	0.000217
26	0.000323	0.000323	0.000323	0.000156	0.000156	0.000156	0.000240
27	0.000335	0.000335	0.000335	0.000163	0.000163	0.000163	0.000249
28	0.000345	0.000345	0.000345	0.000172	0.000172	0.000172	0.000259
29	0.000362	0.000362	0.000362	0.000181	0.000181	0.000181	0.000272
30	0.000390	0.000390	0.000390	0.000203	0.000203	0.000203	0.000297
31	0.000438	0.000438	0.000438	0.000249	0.000249	0.000249	0.000344
32	0.000493	0.000493	0.000493	0.000284	0.000284	0.000284	0.000389
33	0.000554	0.000554	0.000554	0.000311	0.000311	0.000311	0.000433
34	0.000616	0.000616	0.000616	0.000335	0.000335	0.000335	0.000476
35	0.000679	0.000679	0.000679	0.000356	0.000356	0.000356	0.000518
36	0.000738	0.000738	0.000738	0.000376	0.000376	0.000376	0.000557
37	0.000794	0.000794	0.000794	0.000394	0.000394	0.000394	0.000594
38	0.000824	0.000824	0.000824	0.000414	0.000414	0.000414	0.000619
39	0.000851	0.000851	0.000851	0.000437	0.000437	0.000437	0.000644
40	0.000876	0.000876	0.000876	0.000477	0.000477	0.000477	0.000677
41	0.000903	0.000930	0.000903	0.000522	0.000522	0.000522	0.000713
42	0.000936	0.001038	0.000937	0.000575	0.000575	0.000575	0.000756
43	0.000974	0.001201	0.000977	0.000633	0.000633	0.000633	0.000805
44	0.001021	0.001418	0.001028	0.000695	0.000695	0.000695	0.000862
45	0.001073	0.001689	0.001087	0.000739	0.000744	0.000739	0.000913
46	0.001120	0.002014	0.001144	0.000783	0.000842	0.000784	0.000964
47	0.001171	0.002393	0.001210	0.000827	0.000989	0.000831	0.001021

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Table for Distributions Subject to § 417(e)(3)
48	0.001223	0.002826	0.001281	0.000894	0.001185	0.000904	0.001093
49	0.001277	0.003314	0.001360	0.000967	0.001430	0.000986	0.001173
50	0.001333	0.003856	0.001447	0.001073	0.001722	0.001106	0.001277
51	0.001389	0.003914	0.001515	0.001193	0.001839	0.001231	0.001373
52	0.001448	0.003923	0.001618	0.001363	0.002054	0.001414	0.001516
53	0.001550	0.003978	0.001781	0.001560	0.002330	0.001633	0.001707
54	0.001663	0.004030	0.001968	0.001787	0.002662	0.001891	0.001930
55	0.001839	0.004181	0.002323	0.002050	0.003056	0.002241	0.002282
56	0.002062	0.004416	0.002809	0.002357	0.003522	0.002690	0.002750
57	0.002323	0.004733	0.003234	0.002642	0.004007	0.003107	0.003171
58	0.002628	0.005158	0.003741	0.002889	0.004496	0.003512	0.003627
59	0.002902	0.005599	0.004247	0.003159	0.005054	0.003985	0.004116
60	0.003207	0.006131	0.004854	0.003451	0.005665	0.004548	0.004701
61	0.003633	0.006857	0.005676	0.003761	0.006322	0.005248	0.005462
62	0.003995	0.007553	0.006522	0.004087	0.007026	0.006026	0.006274
63	0.004486	0.008496	0.007655	0.004423	0.007775	0.006944	0.007300
64	0.004871	0.009401	0.008656	0.004766	0.008584	0.007837	0.008247
65	0.005249	0.010411	0.009808	0.005110	0.009470	0.008839	0.009324
66	0.005763	0.011748	0.011342	0.005449	0.010428	0.009989	0.010666
67	0.006118	0.013006	0.012668	0.005779	0.011458	0.011099	0.011884
68	0.006286	0.014121	0.013838	0.006096	0.012583	0.012274	0.013056
69	0.006591	0.015599	0.015341	0.006398	0.013846	0.013568	0.014455
70	0.006698	0.016917	0.016651	0.006683	0.015298	0.015006	0.015829
71	0.007553	0.018718	0.018457	0.007297	0.016672	0.016386	0.017422
72	0.009263	0.020783	0.020543	0.008524	0.018543	0.018271	0.019407
73	0.011828	0.023149	0.022943	0.010365	0.020242	0.020008	0.021476
74	0.015247	0.025826	0.025661	0.012819	0.022434	0.022239	0.023950
75	0.019521	0.029354	0.029226	0.015887	0.024323	0.024180	0.026703
76	0.024650	0.032717	0.032633	0.019568	0.026798	0.026700	0.029667
77	0.030634	0.037063	0.037013	0.023863	0.030054	0.029991	0.033502
78	0.037473	0.041943	0.041920	0.028772	0.033130	0.033100	0.037510
79	0.045167	0.047469	0.047463	0.034294	0.036576	0.036568	0.042016
80	0.053716	0.053716	0.053716	0.040430	0.040430	0.040430	0.047073
81	0.061222	0.061222	0.061222	0.044749	0.044749	0.044749	0.052986
82	0.069651	0.069651	0.069651	0.049608	0.049608	0.049608	0.059630

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Table for Distributions Subject to § 417(e)(3)
83	0.077641	0.077641	0.077641	0.055082	0.055082	0.055082	0.066362
84	0.087928	0.087928	0.087928	0.061260	0.061260	0.061260	0.074594
85	0.097602	0.097602	0.097602	0.069495	0.069495	0.069495	0.083549
86	0.108212	0.108212	0.108212	0.078924	0.078924	0.078924	0.093568
87	0.122076	0.122076	0.122076	0.089632	0.089632	0.089632	0.105854
88	0.137598	0.137598	0.137598	0.099834	0.099834	0.099834	0.118716
89	0.152062	0.152062	0.152062	0.112881	0.112881	0.112881	0.132472
90	0.170642	0.170642	0.170642	0.124750	0.124750	0.124750	0.147696
91	0.185864	0.185864	0.185864	0.136991	0.136991	0.136991	0.161428
92	0.205202	0.205202	0.205202	0.149320	0.149320	0.149320	0.177261
93	0.221361	0.221361	0.221361	0.164401	0.164401	0.164401	0.192881
94	0.237495	0.237495	0.237495	0.176329	0.176329	0.176329	0.206912
95	0.258023	0.258023	0.258023	0.187624	0.187624	0.187624	0.222824
96	0.273856	0.273856	0.273856	0.198110	0.198110	0.198110	0.235983
97	0.289239	0.289239	0.289239	0.211398	0.211398	0.211398	0.250319
98	0.309669	0.309669	0.309669	0.219950	0.219950	0.219950	0.264810
99	0.324314	0.324314	0.324314	0.227257	0.227257	0.227257	0.275786
100	0.338406	0.338406	0.338406	0.233229	0.233229	0.233229	0.285818
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Non-Annuitant Table	2011 Annuitant Table	2011 Optional Combined Table for Small Plans	2011 Table for Distributions Subject to § 417(e)(3)
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Mortality tables for 2012
Valuation dates occurring during 2012
Distributions subject to § 417(e)(3) with annuity starting dates during
stability periods beginning in 2012

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Table for Distributions Subject to § 417(e)(3)
1	0.000369	0.000369	0.000369	0.000331	0.000331	0.000331	0.000350
2	0.000249	0.000249	0.000249	0.000216	0.000216	0.000216	0.000233
3	0.000207	0.000207	0.000207	0.000161	0.000161	0.000161	0.000184
4	0.000161	0.000161	0.000161	0.000121	0.000121	0.000121	0.000141
5	0.000148	0.000148	0.000148	0.000109	0.000109	0.000109	0.000129
6	0.000141	0.000141	0.000141	0.000102	0.000102	0.000102	0.000122
7	0.000136	0.000136	0.000136	0.000096	0.000096	0.000096	0.000116
8	0.000125	0.000125	0.000125	0.000085	0.000085	0.000085	0.000105
9	0.000121	0.000121	0.000121	0.000081	0.000081	0.000081	0.000101
10	0.000123	0.000123	0.000123	0.000082	0.000082	0.000082	0.000103
11	0.000127	0.000127	0.000127	0.000083	0.000083	0.000083	0.000105
12	0.000132	0.000132	0.000132	0.000086	0.000086	0.000086	0.000109
13	0.000139	0.000139	0.000139	0.000090	0.000090	0.000090	0.000115
14	0.000151	0.000151	0.000151	0.000099	0.000099	0.000099	0.000125
15	0.000160	0.000160	0.000160	0.000110	0.000110	0.000110	0.000135
16	0.000169	0.000169	0.000169	0.000118	0.000118	0.000118	0.000144
17	0.000179	0.000179	0.000179	0.000126	0.000126	0.000126	0.000153
18	0.000188	0.000188	0.000188	0.000128	0.000128	0.000128	0.000158
19	0.000197	0.000197	0.000197	0.000126	0.000126	0.000126	0.000162
20	0.000206	0.000206	0.000206	0.000124	0.000124	0.000124	0.000165
21	0.000219	0.000219	0.000219	0.000121	0.000121	0.000121	0.000170

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Table for Distributions Subject to § 417(e)(3)
22	0.000230	0.000230	0.000230	0.000122	0.000122	0.000122	0.000176
23	0.000248	0.000248	0.000248	0.000127	0.000127	0.000127	0.000188
24	0.000264	0.000264	0.000264	0.000134	0.000134	0.000134	0.000199
25	0.000287	0.000287	0.000287	0.000141	0.000141	0.000141	0.000214
26	0.000321	0.000321	0.000321	0.000154	0.000154	0.000154	0.000238
27	0.000334	0.000334	0.000334	0.000161	0.000161	0.000161	0.000248
28	0.000343	0.000343	0.000343	0.000170	0.000170	0.000170	0.000257
29	0.000360	0.000360	0.000360	0.000179	0.000179	0.000179	0.000270
30	0.000388	0.000388	0.000388	0.000201	0.000201	0.000201	0.000295
31	0.000436	0.000436	0.000436	0.000247	0.000247	0.000247	0.000342
32	0.000491	0.000491	0.000491	0.000282	0.000282	0.000282	0.000387
33	0.000551	0.000551	0.000551	0.000309	0.000309	0.000309	0.000430
34	0.000613	0.000613	0.000613	0.000332	0.000332	0.000332	0.000473
35	0.000675	0.000675	0.000675	0.000352	0.000352	0.000352	0.000514
36	0.000735	0.000735	0.000735	0.000371	0.000371	0.000371	0.000553
37	0.000790	0.000790	0.000790	0.000389	0.000389	0.000389	0.000590
38	0.000819	0.000819	0.000819	0.000409	0.000409	0.000409	0.000614
39	0.000845	0.000845	0.000845	0.000431	0.000431	0.000431	0.000638
40	0.000869	0.000869	0.000869	0.000469	0.000469	0.000469	0.000669
41	0.000895	0.000922	0.000895	0.000515	0.000515	0.000515	0.000705
42	0.000926	0.001028	0.000927	0.000567	0.000567	0.000567	0.000747
43	0.000964	0.001187	0.000967	0.000623	0.000623	0.000623	0.000795
44	0.001008	0.001399	0.001015	0.000684	0.000684	0.000684	0.000850
45	0.001059	0.001664	0.001073	0.000727	0.000732	0.000727	0.000900
46	0.001104	0.001982	0.001128	0.000770	0.000828	0.000771	0.000950
47	0.001153	0.002353	0.001191	0.000812	0.000972	0.000816	0.001004
48	0.001203	0.002777	0.001260	0.000878	0.001164	0.000888	0.001074
49	0.001256	0.003254	0.001337	0.000949	0.001404	0.000968	0.001153
50	0.001309	0.003786	0.001421	0.001055	0.001692	0.001087	0.001254
51	0.001363	0.003840	0.001486	0.001174	0.001810	0.001211	0.001349
52	0.001419	0.003845	0.001585	0.001344	0.002025	0.001395	0.001490
53	0.001519	0.003898	0.001746	0.001541	0.002302	0.001613	0.001680
54	0.001630	0.003949	0.001929	0.001769	0.002635	0.001872	0.001901
55	0.001805	0.004101	0.002279	0.002034	0.003031	0.002223	0.002251
56	0.002024	0.004337	0.002758	0.002343	0.003501	0.002674	0.002716

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Non-Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Table for Distributions Subject to § 417(e)(3)
57	0.002284	0.004652	0.003179	0.002629	0.003987	0.003091	0.003135
58	0.002586	0.005075	0.003681	0.002874	0.004474	0.003494	0.003588
59	0.002856	0.005509	0.004179	0.003143	0.005029	0.003965	0.004072
60	0.003156	0.006033	0.004777	0.003433	0.005637	0.004525	0.004651
61	0.003579	0.006754	0.005591	0.003743	0.006290	0.005222	0.005407
62	0.003935	0.007440	0.006425	0.004067	0.006991	0.005996	0.006211
63	0.004423	0.008378	0.007548	0.004401	0.007736	0.006909	0.007229
64	0.004803	0.009270	0.008535	0.004742	0.008542	0.007798	0.008167
65	0.005175	0.010266	0.009671	0.005084	0.009422	0.008794	0.009233
66	0.005688	0.011595	0.011194	0.005421	0.010376	0.009939	0.010567
67	0.006039	0.012837	0.012504	0.005750	0.011401	0.011043	0.011774
68	0.006198	0.013923	0.013644	0.006066	0.012520	0.012212	0.012928
69	0.006499	0.015380	0.015126	0.006366	0.013776	0.013500	0.014313
70	0.006597	0.016663	0.016401	0.006649	0.015221	0.014930	0.015666
71	0.007444	0.018437	0.018180	0.007258	0.016572	0.016288	0.017234
72	0.009138	0.020471	0.020235	0.008476	0.018432	0.018162	0.019199
73	0.011679	0.022802	0.022600	0.010303	0.020100	0.019868	0.021234
74	0.015067	0.025438	0.025276	0.012739	0.022277	0.022083	0.023680
75	0.019302	0.028943	0.028818	0.015784	0.024128	0.023986	0.026402
76	0.024384	0.032259	0.032177	0.019438	0.026583	0.026486	0.029332
77	0.030313	0.036581	0.036532	0.023701	0.029844	0.029781	0.033157
78	0.037089	0.041439	0.041416	0.028573	0.032898	0.032869	0.037143
79	0.044712	0.046947	0.046941	0.034054	0.036320	0.036312	0.041627
80	0.053179	0.053179	0.053179	0.040147	0.040147	0.040147	0.046663
81	0.060671	0.060671	0.060671	0.044435	0.044435	0.044435	0.052553
82	0.069094	0.069094	0.069094	0.049260	0.049260	0.049260	0.059177
83	0.077020	0.077020	0.077020	0.054696	0.054696	0.054696	0.065858
84	0.087312	0.087312	0.087312	0.060831	0.060831	0.060831	0.074072
85	0.096919	0.096919	0.096919	0.069078	0.069078	0.069078	0.082999
86	0.107454	0.107454	0.107454	0.078529	0.078529	0.078529	0.092992
87	0.121344	0.121344	0.121344	0.089273	0.089273	0.089273	0.105309
88	0.136910	0.136910	0.136910	0.099435	0.099435	0.099435	0.118173
89	0.151302	0.151302	0.151302	0.112543	0.112543	0.112543	0.131923
90	0.169960	0.169960	0.169960	0.124375	0.124375	0.124375	0.147168
91	0.185121	0.185121	0.185121	0.136580	0.136580	0.136580	0.160851

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2012 Non- Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Non- Annuitant Table	2012 Annuitant Table	2012 Optional Combined Table for Small Plans	2012 Table for Distributions Subject to § 417(e)(3)
92	0.204586	0.204586	0.204586	0.148872	0.148872	0.148872	0.176729
93	0.220697	0.220697	0.220697	0.164072	0.164072	0.164072	0.192385
94	0.236783	0.236783	0.236783	0.175976	0.175976	0.175976	0.206380
95	0.257507	0.257507	0.257507	0.187249	0.187249	0.187249	0.222378
96	0.273309	0.273309	0.273309	0.197713	0.197713	0.197713	0.235511
97	0.288660	0.288660	0.288660	0.211187	0.211187	0.211187	0.249924
98	0.309359	0.309359	0.309359	0.219730	0.219730	0.219730	0.264545
99	0.323989	0.323989	0.323989	0.227030	0.227030	0.227030	0.275510
100	0.338068	0.338068	0.338068	0.232996	0.232996	0.232996	0.285532
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Mortality tables for 2013
Valuation dates occurring during 2013
Distributions subject to § 417(e)(3) with annuity starting dates during
stability periods beginning in 2013

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Table for Distributions Subject to § 417(e)(3)
1	0.000362	0.000362	0.000362	0.000324	0.000324	0.000324	0.000343
2	0.000244	0.000244	0.000244	0.000211	0.000211	0.000211	0.000228
3	0.000203	0.000203	0.000203	0.000158	0.000158	0.000158	0.000181
4	0.000158	0.000158	0.000158	0.000118	0.000118	0.000118	0.000138
5	0.000145	0.000145	0.000145	0.000107	0.000107	0.000107	0.000126
6	0.000139	0.000139	0.000139	0.000100	0.000100	0.000100	0.000120
7	0.000133	0.000133	0.000133	0.000094	0.000094	0.000094	0.000114
8	0.000123	0.000123	0.000123	0.000083	0.000083	0.000083	0.000103
9	0.000119	0.000119	0.000119	0.000080	0.000080	0.000080	0.000100
10	0.000120	0.000120	0.000120	0.000080	0.000080	0.000080	0.000100
11	0.000124	0.000124	0.000124	0.000081	0.000081	0.000081	0.000103
12	0.000129	0.000129	0.000129	0.000084	0.000084	0.000084	0.000107
13	0.000136	0.000136	0.000136	0.000088	0.000088	0.000088	0.000112
14	0.000148	0.000148	0.000148	0.000097	0.000097	0.000097	0.000123
15	0.000157	0.000157	0.000157	0.000108	0.000108	0.000108	0.000133
16	0.000166	0.000166	0.000166	0.000116	0.000116	0.000116	0.000141
17	0.000176	0.000176	0.000176	0.000124	0.000124	0.000124	0.000150
18	0.000185	0.000185	0.000185	0.000127	0.000127	0.000127	0.000156
19	0.000193	0.000193	0.000193	0.000124	0.000124	0.000124	0.000159
20	0.000202	0.000202	0.000202	0.000122	0.000122	0.000122	0.000162
21	0.000215	0.000215	0.000215	0.000119	0.000119	0.000119	0.000167
22	0.000226	0.000226	0.000226	0.000120	0.000120	0.000120	0.000173
23	0.000244	0.000244	0.000244	0.000125	0.000125	0.000125	0.000185
24	0.000261	0.000261	0.000261	0.000132	0.000132	0.000132	0.000197
25	0.000284	0.000284	0.000284	0.000139	0.000139	0.000139	0.000212
26	0.000319	0.000319	0.000319	0.000153	0.000153	0.000153	0.000236
27	0.000332	0.000332	0.000332	0.000159	0.000159	0.000159	0.000246
28	0.000342	0.000342	0.000342	0.000168	0.000168	0.000168	0.000255
29	0.000358	0.000358	0.000358	0.000177	0.000177	0.000177	0.000268
30	0.000386	0.000386	0.000386	0.000199	0.000199	0.000199	0.000293

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Table for Distributions Subject to § 417(e)(3)
31	0.000434	0.000434	0.000434	0.000245	0.000245	0.000245	0.000340
32	0.000488	0.000488	0.000488	0.000280	0.000280	0.000280	0.000384
33	0.000548	0.000548	0.000548	0.000306	0.000306	0.000306	0.000427
34	0.000610	0.000610	0.000610	0.000328	0.000328	0.000328	0.000469
35	0.000672	0.000672	0.000672	0.000348	0.000348	0.000348	0.000510
36	0.000731	0.000731	0.000731	0.000367	0.000367	0.000367	0.000549
37	0.000786	0.000786	0.000786	0.000384	0.000384	0.000384	0.000585
38	0.000815	0.000815	0.000815	0.000403	0.000403	0.000403	0.000609
39	0.000839	0.000839	0.000839	0.000424	0.000424	0.000424	0.000632
40	0.000862	0.000862	0.000862	0.000462	0.000462	0.000462	0.000662
41	0.000887	0.000914	0.000887	0.000507	0.000507	0.000507	0.000697
42	0.000917	0.001018	0.000918	0.000558	0.000558	0.000558	0.000738
43	0.000953	0.001174	0.000956	0.000614	0.000614	0.000614	0.000785
44	0.000996	0.001382	0.001003	0.000674	0.000674	0.000674	0.000839
45	0.001045	0.001642	0.001058	0.000716	0.000721	0.000716	0.000887
46	0.001089	0.001954	0.001113	0.000757	0.000815	0.000758	0.000936
47	0.001136	0.002317	0.001173	0.000797	0.000956	0.000801	0.000987
48	0.001184	0.002732	0.001240	0.000862	0.001145	0.000871	0.001056
49	0.001234	0.003199	0.001314	0.000932	0.001381	0.000951	0.001133
50	0.001286	0.003718	0.001396	0.001037	0.001664	0.001068	0.001232
51	0.001337	0.003767	0.001458	0.001155	0.001781	0.001192	0.001325
52	0.001390	0.003768	0.001553	0.001325	0.001997	0.001375	0.001464
53	0.001489	0.003820	0.001711	0.001523	0.002274	0.001594	0.001653
54	0.001597	0.003870	0.001890	0.001752	0.002609	0.001854	0.001872
55	0.001770	0.004023	0.002235	0.002017	0.003007	0.002205	0.002220
56	0.001988	0.004259	0.002709	0.002329	0.003480	0.002658	0.002684
57	0.002245	0.004573	0.003125	0.002616	0.003967	0.003076	0.003101
58	0.002544	0.004994	0.003622	0.002860	0.004452	0.003477	0.003550
59	0.002810	0.005421	0.004112	0.003128	0.005003	0.003946	0.004029
60	0.003105	0.005936	0.004700	0.003416	0.005609	0.004502	0.004601
61	0.003525	0.006653	0.005508	0.003724	0.006259	0.005196	0.005352
62	0.003876	0.007329	0.006329	0.004046	0.006956	0.005966	0.006148
63	0.004361	0.008260	0.007442	0.004379	0.007697	0.006874	0.007158
64	0.004736	0.009140	0.008416	0.004718	0.008499	0.007759	0.008088
65	0.005103	0.010122	0.009536	0.005059	0.009375	0.008750	0.009143

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Table for Distributions Subject to § 417(e)(3)
66	0.005615	0.011444	0.011048	0.005394	0.010324	0.009889	0.010469
67	0.005960	0.012670	0.012341	0.005721	0.011344	0.010988	0.011665
68	0.006111	0.013728	0.013453	0.006036	0.012457	0.012151	0.012802
69	0.006408	0.015165	0.014915	0.006335	0.013708	0.013433	0.014174
70	0.006499	0.016413	0.016155	0.006616	0.015145	0.014856	0.015506
71	0.007338	0.018161	0.017908	0.007221	0.016472	0.016190	0.017049
72	0.009016	0.020164	0.019932	0.008430	0.018322	0.018054	0.018993
73	0.011533	0.022460	0.022261	0.010244	0.019959	0.019729	0.020995
74	0.014889	0.025057	0.024898	0.012662	0.022121	0.021929	0.023414
75	0.019084	0.028538	0.028415	0.015685	0.023935	0.023795	0.026105
76	0.024118	0.031808	0.031728	0.019312	0.026371	0.026275	0.029002
77	0.029991	0.036105	0.036057	0.023544	0.029635	0.029573	0.032815
78	0.036703	0.040942	0.040920	0.028380	0.032667	0.032638	0.036779
79	0.044254	0.046431	0.046425	0.033821	0.036066	0.036058	0.041242
80	0.052647	0.052647	0.052647	0.039866	0.039866	0.039866	0.046257
81	0.060125	0.060125	0.060125	0.044124	0.044124	0.044124	0.052125
82	0.068542	0.068542	0.068542	0.048916	0.048916	0.048916	0.058729
83	0.076403	0.076403	0.076403	0.054313	0.054313	0.054313	0.065358
84	0.086701	0.086701	0.086701	0.060405	0.060405	0.060405	0.073553
85	0.096240	0.096240	0.096240	0.068664	0.068664	0.068664	0.082452
86	0.106702	0.106702	0.106702	0.078137	0.078137	0.078137	0.092420
87	0.120616	0.120616	0.120616	0.088916	0.088916	0.088916	0.104766
88	0.136225	0.136225	0.136225	0.099037	0.099037	0.099037	0.117631
89	0.150545	0.150545	0.150545	0.112205	0.112205	0.112205	0.131375
90	0.169280	0.169280	0.169280	0.124002	0.124002	0.124002	0.146641
91	0.184380	0.184380	0.184380	0.136171	0.136171	0.136171	0.160276
92	0.203973	0.203973	0.203973	0.148426	0.148426	0.148426	0.176200
93	0.220035	0.220035	0.220035	0.163744	0.163744	0.163744	0.191890
94	0.236072	0.236072	0.236072	0.175624	0.175624	0.175624	0.205848
95	0.256992	0.256992	0.256992	0.186875	0.186875	0.186875	0.221934
96	0.272762	0.272762	0.272762	0.197318	0.197318	0.197318	0.235040
97	0.288083	0.288083	0.288083	0.210976	0.210976	0.210976	0.249530
98	0.309050	0.309050	0.309050	0.219510	0.219510	0.219510	0.264280
99	0.323665	0.323665	0.323665	0.226803	0.226803	0.226803	0.275234
100	0.337730	0.337730	0.337730	0.232763	0.232763	0.232763	0.285247

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Non-Annuitant Table	2013 Annuitant Table	2013 Optional Combined Table for Small Plans	2013 Table for Distributions Subject to § 417(e)(3)
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Extension of Replacement Period for Livestock Sold on Account of Drought in Specified Counties

Notice 2008-86

SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

SECTION 2. BACKGROUND

.01 *Nonrecognition of Gain on Involuntary Conversion of Livestock.* Section

1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 *Replacement Period.* Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale

or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for any taxable year with respect to which the due date (without regard to extensions) for

a taxpayer's return is after December 31, 2002.

SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006–82, 2006–2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006–82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's 4-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought

conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at www.drought.unl.edu/dm/archive.html.

In addition, Notice 2006–82 provides that the Internal Revenue Service will publish in September of each year a list of counties, districts, cities, or parishes (hereinafter "counties") for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2008. Under Notice 2006–82,

the 12-month period ending on August 31, 2008, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2008 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2008), the replacement period will be extended under § 1033(e)(2) and Notice 2006–82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer's first taxable year ending after a drought-free year for the applicable region.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Seoyeon Park of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Park at (202) 622–4960 (not a toll-free call).

APPENDIX

Alabama

Counties of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Arizona

Counties of Apache, Cochise, Coconino, Gila, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Yavapai, Yuma.

Arkansas

Counties of Arkansas, Clay, Cleburne, Conway, Craighead, Crittenden, Cross, Faulkner, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lonoke, Mississippi, Monroe, Perry, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, Sharp, Stone, Van Buren, White, Woodruff.

California

Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba.

Colorado

Counties of Baca, Bent, Cheyenne, Crowley, El Paso, Elbert, Kiowa, Las Animas, Lincoln, Moffat, Otero, Prowers.

Delaware

Counties of Kent, Sussex.

The District of Columbia

Florida

Counties of Bay, Broward, Calhoun, Charlotte, Collier, DeSoto, Escambia, Franklin, Gadsden, Glades, Gulf, Hardee, Hendry, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lee, Leon, Liberty, Manatee, Martin, Miami-Dade, Monroe, Okaloosa, Okeechobee, Palm Beach, Polk, St. Lucie, Santa Rosa, Sarasota, Wakulla, Walton, Washington.

Georgia

Counties of Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.

Hawaii

Counties of Hawaii, Honolulu, Maui.

Idaho

Counties of Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington.

Illinois

Counties of Alexander, Bond, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, Williamson.

Indiana

Counties of Bartholomew, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Marion, Martin, Monroe, Morgan, Ohio, Orange, Owen, Perry, Pike, Posey, Putnam, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vigo, Warrick, Washington, Wayne.

Kansas

Counties of Clark, Finney, Grant, Greeley, Hamilton, Haskell, Kearny, Logan, Meade, Morton, Seward, Stanton, Stevens, Wallace, Wichita.

Kentucky

Counties of Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clay, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Madison, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McCreary, McLean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe, Woodford.

Louisiana

Parishes of Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Concordia, De Soto, Franklin, Grant, Jackson, La Salle, Madison, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Vernon, Webster, Winn.

Maryland

Baltimore City. Counties of Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Charles, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, Worcester.

Michigan

Counties of Alger, Antrim, Baraga, Benzie, Charlevoix, Cheboygan, Chippewa, Crawford, Delta, Dickinson, Emmet, Gogebic, Grand Traverse, Houghton, Iron, Kalkaska, Keweenaw, Leelanau, Luce, Mackinac, Manistee, Marquette, Menominee, Missaukee, Ontonagon, Otsego, Presque Isle, Roscommon, Schoolcraft, Wexford.

Minnesota

Counties of Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Carlton, Cass, Chippewa, Chisago, Cook, Crow Wing, Douglas, Grant, Hennepin, Isanti, Itasca, Kanabec, Kandiyohi, Koochiching, Lac qui Parle, Lake, Lake of the Woods, McLeod, Meeke, Mille Lacs, Morrison, Otter Tail, Pine, Pope, Renville, Roseau, St. Louis, Sherburne, Stearns, Stevens, Swift, Todd, Wadena, Washington, Wright, Yellow Medicine.

Mississippi

Counties of Adams, Alcorn, Benton, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, DeSoto, Franklin, Itawamba, Jasper, Jefferson, Kemper, Lafayette, Lauderdale, Lee, Lowndes, Marshall, Monroe, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Wayne, Webster, Winston.

Missouri

Counties of Bollinger, Buchanan, Butler, Caldwell, Cape Girardeau, Carter, Clay, Clinton, DeKalb, Dunklin, Franklin, Iron, Jackson, Jefferson, Lafayette, Madison, Mississippi, New Madrid, Pemiscol, Perry, Platte, Ray, Reynolds, Ripley, St. Francois, St. Louis, Ste. Genevieve, Scott, Stoddard, Washington, Wayne.

Montana

Counties of Beaverhead, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, McCone, Meagher, Mineral, Missoula, Musselshell, Park, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Valley, Wheatland, Wibaux, Yellowstone.

Nebraska

Counties of Box Butte, Dawes, Garden, Morrill, Scotts Bluff, Sheridan, Sioux.

Nevada

Carson City. Counties of Churchill, Clark, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, White Pine.

New Mexico

Counties of Catron, Chaves, Colfax, DeBaca, Dona Ana, Eddy, Grant, Harding, Hidalgo, Lea, Lincoln, Luna, Otero, Quay, Roosevelt, Sierra, Socorro, Union.

New York

Counties of Erie, Essex, Franklin, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, St. Lawrence, Wayne, Wyoming.

North Carolina

Counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, Yancey.

North Dakota

Counties of Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Cavalier, Divide, Dunn, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Ramsey, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Towner, Ward, Wells, Williams.

Ohio

Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren.

Oklahoma

Counties of Beaver, Cimarron, Ellis, Harper, Texas.

Oregon

Counties of Baker, Deschutes, Grant, Harney, Lake, Malheur, Umatilla, Union, Wallowa.

South Carolina

Counties of Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, York.

South Dakota

Counties of Butte, Corson, Custer, Fall River, Haakon, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, Shannon, Ziebach.

Tennessee

Counties of Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Meigs, Monroe, Montgomery, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Shelby, Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

Texas

Counties of Andrews, Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brewster, Brooks, Brown, Bureson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Chambers, Cochran, Coke, Coleman, Collin, Colorado, Comal, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Denton, DeWitt, Dimmit, Duval, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fayette, Fisher, Fort Bend, Freestone, Frio, Gaines, Galveston, Gillespie, Glasscock, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hansford, Harris, Hartley, Haskell, Hays, Hidalgo, Hill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, Kinney, Kleberg, La Salle, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Madison, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montgomery, Moore, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Refugio, Robertson, Rockwall, Runnels, Sabine, San Augustine, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terrell, Terry, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Waller, Ward, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, Zavala.

Utah

Counties of Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Virginia

Cities of Alexandria, Bedford, Bristol, Charlottesville, Chesapeake, Colonial Heights, Danville, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Galax, Hampton, Hopewell, Lynchburg, Manassas, Manassas Park, Martinsville, Newport News, Norfolk, Norton, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Suffolk, Virginia Beach, Williamsburg. Counties of Accomack, Albemarle, Amelia, Amherst, Appomattox, Arlington, Augusta, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockingham, Russell, Scott, Smyth, Southampton, Spotsylvania, Stafford, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe, York.

Washington

Counties of Asotin, Columbia, Garfield, Pend Oreille, Spokane, Stevens, Whitman.

West Virginia

Counties of Boone, Cabell, Fayette, Jackson, Jefferson, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Putnam, Raleigh, Roane, Summers, Wayne, Wirt, Wood, Wyoming.

Wisconsin

Counties of Ashland, Barron, Bayfield, Burnett, Door, Douglas, Florence, Forest, Iron, Langlade, Lincoln, Marinette, Oconto, Oneida, Polk, Price, Rusk, Sawyer, Vilas, Washburn.

Wyoming

Counties of Carbon, Fremont, Goshen, Hot Springs, Lincoln, Natrona, Niobrara, Park, Sublette, Sweetwater, Teton, Uinta, Washakie.

Hurricane Ike Disaster Relief Notice 2008-87

I. PURPOSE

The Internal Revenue Service, the Department of Labor's Employee Benefits Security Administration ("EBSA"), and the Pension Benefit Guaranty Corporation

("PBGC") are providing relief in connection with certain employee benefit plans because of damage caused by Hurricane Ike ("Ike"). The relief provided by this notice is in addition to the relief already provided by the Service, EBSA, and the PBGC to victims of Ike.

II. BACKGROUND

A. Provisions Relating to Disaster Relief.

Section 7508A(b) of the Code provides that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster or a terroristic or military action, the Secretary of the Treasury may prescribe a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be

completed. No plan is to be treated as failing to be operated in accordance with its terms solely because the plan disregards any period by reason of such relief. Sections 518 and 4002(i) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406 ("ERISA") authorize the provision of parallel relief under Titles I and IV of ERISA.

B. Pre-Pension Protection Act of 2006. The following provisions apply to periods for which relevant changes made by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) ("PPA"), do not apply (generally plan years beginning before January 1, 2008).

Section 412(a) of the Code and section 302(a) of ERISA provide that, in order for a plan to meet the minimum funding standards of the Code and ERISA, the plan must not have an accumulated funding deficiency as of the end of any plan year. Section 412(c)(10) of the Code and section 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any contributions for a plan year made by an employer by the end of the 8½-month period following the end of such plan year are deemed to have been made on the last day of the plan year. For a plan with a 2007 calendar-year plan year, this 8½-month period ends on September 15, 2008.

Section 412(d) of the Code and section 303 of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(d)(4) of the Code and section 303(d)(1) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for a plan year that ended on June 30, 2008, the sponsor of the plan must have submitted an application by September 15, 2008.

Section 412(m)(1) of the Code and section 302(e)(1) of ERISA impose a higher rate of interest on any unpaid required quarterly installments for certain plans with a funded current liability percentage of less than 100 percent for the preceding

plan year. Section 412(m)(5) of the Code and section 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a 12-month plan year beginning on October 1, 2007, the due dates for the required installments are January 15, 2008, April 15, 2008, July 15, 2008, and October 15, 2008.

Section 412(n) of the Code and section 302(f) of ERISA provide, for certain plans with a funded current liability percentage of less than 100 percent for the plan year, that a lien arises in favor of the plan if the required installments or any other payment required under those sections are not made to the plan before the due date for such installment or other payment and if the aggregate unpaid balance of such installments or other payments exceeds \$1,000,000. The lien may be perfected by the PBGC.

Under the PBGC's premium regulations, contributions may be taken into account for determining a plan's unfunded vested benefits for a premium payment year or a plan's entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year if the contributions (1) are for a plan year before the premium payment year and (2) are made on or before the earlier of (a) the due date for payment of the variable-rate premium or (b) the date the variable-rate premium is paid (29 CFR §§ 4006.4(b)(2)(iv) and 4006.5(a)(5)). In addition, there are Title IV reporting requirements arising from certain late contributions (e.g., 29 CFR § 4043.25).

C. Post-PPA (Single Employer Pension Plans). The following provisions apply to periods for which relevant changes made by PPA apply (generally plan years beginning after December 31, 2007).

Section 412(a) of the Code and section 302(a) of ERISA require that an employer that sponsors a single employer pension plan contribute the minimum required contribution determined under § 430 of the Code and section 303 of ERISA (or, in the case of a money purchase plan, as required under the terms of the plan) for the plan year. Section 430(j)(1) of the Code and section 303(j)(1) of ERISA provide that the due date for payment of the minimum required contribution for a plan year

is 8½-months after the close of the plan year.

Section 412(c) of the Code and section 302(c) of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(c)(5) of the Code and section 302(c)(5) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for the plan year beginning January 1, 2008, and ending June 30, 2008, the sponsor of the plan must have submitted an application by September 15, 2008.

Section 430(j)(3) of the Code and section 303(j)(3) of ERISA impose a higher rate of interest with respect to late quarterly installments for a plan with a funding shortfall for the prior plan year. Section 430(j)(4) of the Code and section 303(j)(4) of ERISA increase the quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required quarterly installments for the 2008 plan year are April 15, 2008, July 15, 2008, October 15, 2008, and January 15, 2009.

Section 430(k) of the Code and section 303(k) of ERISA provide, for certain plans with a funding target attainment percentage of less than 100 percent for the plan year, that a lien arises in favor of the plan if the required installments or any other payment required under those sections are not made to the plan before the due date for such installment or other payment and if the aggregate unpaid balance of such installments or other payments exceeds \$1,000,000. The lien may be perfected by the PBGC.

Section 436 of the Code and section 206(g) of ERISA impose certain benefit restrictions that are applied based on a plan's adjusted funding target attainment percentage for the plan year. For this purpose, § 436(h)(2) of the Code and section 206(g)(7)(B) of ERISA provide that a plan's adjusted funding target attainment percentage for the plan year is conclusively presumed to be less than 60 percent from the first day of the 10th month of the

plan year through the end of the plan year if no certification of the adjusted funding target attainment percentage for the plan year is made before the first day of the 10th month of the plan year. For a plan with a 2008 calendar-year plan year, the deadline for this certification is September 30, 2008. Section 436(h)(3) of the Code and section 206(g)(7)(C) of ERISA require, in certain cases in which no certification of the adjusted funding target attainment percentage for a plan year is made before the first day of the 4th month of such year, that the plan's adjusted funding target attainment percentage is presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage for the preceding plan year for a period of time beginning on the first day of the 4th month. For a plan year beginning July 1, 2008, the deadline for this certification is September 30, 2008.

Section 101(j)(1) of ERISA provides that the plan administrator of a single employer plan is required to provide written notice to participants and beneficiaries within 30 days after the date the plan has become subject to a benefit restriction under section 206(g)(1) of ERISA (under which the payment of certain unpredictable contingent event benefits is restricted) or section 206(g)(3) of ERISA (under which the payment of certain accelerated benefit distributions is restricted). Section 101(j)(2) of ERISA provides that, for a single employer plan under which benefit accruals are restricted under section 206(g)(4) of ERISA because the plan's adjusted funding target attainment percentage is less than 60 percent, the plan administrator is required to provide written notice to participants and beneficiaries within 30 days after the earlier of the plan's valuation date or the date the adjusted funding target attainment percentage is presumed to be less than 60 percent for the plan year pursuant to section 206(g)(7)(B) of ERISA.

Under the PBGC's premium regulations, contributions may be taken into account for determining a plan's unfunded vested benefits for a premium payment year if the contributions (1) are for a plan year before the premium payment year and (2) are made on or before the earlier of (a) the due date for payment of the variable-rate premium or (b) the date the variable-rate premium is paid (29 CFR

§ 4006(c)). In addition, there are Title IV reporting requirements arising from certain late contributions (*e.g.*, 29 CFR § 4043.25).

D. Post-PPA (Multiemployer Defined Benefit Plans). The following provisions apply to periods for which relevant changes made by PPA apply.

Section 432(b)(3)(A) of the Code and section 305(b)(3)(A) of ERISA provide special rules for certain multiemployer defined benefit plans. For a plan that is subject to those requirements, the plan actuary must certify whether or not the plan is in endangered status for the plan year, whether or not the plan is or will be in critical status for the plan year, and, in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. The deadline for this certification for a plan year is the 90th day of the plan year. Section 432(c)(1) of the Code and section 305(c)(1) of ERISA require, for the first plan year that a multiemployer plan is in endangered status, that the plan sponsor adopt a funding improvement plan no later than 240 days following the required date for the actuarial certification of endangered status. Section 432(e)(1) of the Code and section 305(e)(1) of ERISA require, for the first plan year that a multiemployer plan is in critical status, that the plan sponsor adopt a rehabilitation plan no later than 240 days following the required date for the actuarial certification of critical status. For a multiemployer plan that is in endangered or critical status for its 2008 calendar-year plan year, this date is November 25, 2008.

III. RELIEF

Pursuant to § 7508A(b) of the Code, the relief set forth in this Part III applies to an Affected Plan. A plan is an Affected Plan only if any of the following were located in the counties of Brazoria, Chambers, Galveston, Harris, Jefferson, Liberty, Montgomery, or Orange in the State of Texas as of September 7, 2008: the principal place of business of the employer that maintains the plan (in the case of a single employer plan, determined disregarding the rules of § 414(b) and (c) of the

Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of § 414(b) and (c)); the office of the plan or the plan administrator; the office of the primary record keeper serving the plan; or the office of the enrolled actuary or other advisor that had been retained by the plan or the employer to make funding determinations or certifications for which the due date falls between the period beginning on September 7, 2008, and ending on December 15, 2008. For purposes of the preceding sentence, the term "office" includes only the worksite of those individuals, and the location of any records, necessary to determine the plan's funding requirements for the relevant period.

A. Pre-PPA. The following relief applies to periods for which relevant changes made by PPA do not apply (generally plan years beginning before January 1, 2008).

For any plan that is an Affected Plan, if the date described in § 412(c)(10) or 412(m) of the Code and section 302(c)(10) or 302(e) of ERISA for making a contribution falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then the deadline for that contribution is postponed to December 15, 2008. If the deadline described in § 412(d)(4) of the Code and section 303(d)(1) of ERISA for applying for a waiver for an Affected Plan falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then that deadline is postponed to December 15, 2008.

The relief set forth in this paragraph applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 412(c)(10) of the Code and section 302(c)(10) of ERISA, a contribution for any plan year before the premium payment year may be taken into account if it is made on or before the earlier of (1) the extended § 412(c)(10)/section 302(c)(10) date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable,

the plan's amended variable-rate premium filing) for the premium payment year.

B. Post-PPA (Single Employer Pension Plans). The following relief applies to periods for which relevant changes made by PPA apply (generally plan years beginning after December 31, 2007).

For any plan that is an Affected Plan, if the date described in § 430(j)(1) or 430(j)(3) of the Code and section 303(j)(1) or 303(j)(3) of ERISA for making a contribution falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then the date for that contribution is postponed to December 15, 2008. If the date described in § 412(c)(5) of the Code and section 302(c)(5) of ERISA for applying for a waiver for an Affected Plan falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then that deadline is postponed to December 15, 2008. If the date described in § 436(h)(2) or 436(h)(3) of the Code and section 206(g)(7)(B) or 206(g)(7)(C) of ERISA for certification of the adjusted funded target attainment percentage falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then the date by which such certification must be made is postponed to December 15, 2008.

With respect to any plan that is an Affected Plan, if the deadline for furnishing a notice required under section 101(j)(1) or (2) of ERISA falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then the date by which such notice must be furnished is postponed to December 15, 2008.

The relief set forth in this paragraph applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 430(j)(1) of the Code and section 303(j)(1) of ERISA, a contribution for any plan year before the premium payment year may be taken into account if it is made on or before the earlier of (1) the extended § 430(j)(1)/section 303(j)(1) contribution due date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable, the plan's amended variable-rate premium filing) for the premium payment year.

C. Post-PPA (Multiemployer Defined Benefit Plans).

If the deadline described in § 432(c)(1) or 432(e)(1) of the Code and section 305(c)(1) or 305(e)(1) of ERISA by which a plan sponsor of an Affected Plan that is in endangered or critical status must adopt a funding improvement plan or a rehabilitation plan falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then that deadline is postponed to December 15, 2008. For any plan that is an Affected Plan, if the date described in § 432(b)(3)(A) of the Code and section 305(b)(3)(A) of ERISA by which the plan actuary must certify whether or not the plan is in endangered status for the plan year and whether or not the plan is or will be in critical status for the plan year falls within the period beginning on September 7, 2008, and ending on December 15, 2008, then the date by which that certification must be made is postponed to December 15, 2008. If the date by which a certification of an Affected Plan's status is postponed in accordance with the preceding sentence, the date described in § 432(c)(1) or 432(e)(1) of the Code and section 305(c) or 305(e) of ERISA by which the plan sponsor of an Affected Plan that is in critical or endangered status must adopt a funding improvement plan or a rehabilitation plan nonetheless continues to be determined based on the original deadline for the certification of the plan's status.

DRAFTING INFORMATION

The principal authors of this notice are David Ziegler and Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Ziegler and Mr. Kuehnle can be contacted via e-mail at RetirementPlanQuestions@irs.gov.

Expanded Temporary Rule Allowing Governmental Issuers to Purchase Their Own Tax-Exempt Bonds

Notice 2008-88

SECTION 1. Purpose

This notice amends and supplements Notice 2008-41, 2008-15 I.R.B. 742 (April 14, 2008), regarding reissuance standards for tax-exempt bonds. (Defined terms in Notice 2008-41 shall have the same meanings when used in this notice.) This notice expands the circumstances and time periods during which the Treasury Department and the Internal Revenue Service ("IRS") will treat a tax-exempt bond that is purchased by its state or local governmental issuer as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond solely for purposes of § 103 and §§ 141 through 150 of the Internal Revenue Code, as amended ("Code"). (Except as noted, section references in this notice are to the Code and the Income Tax Regulations.) This notice is intended to provide flexibility to assist state and local governments in efforts to facilitate liquidity and stability in the short-term sector of the tax-exempt bond market.

SECTION 2. Background

In response to auction failures and liquidity constraints in the auction rate bond sector of the tax-exempt bond market, § 4 of Notice 2008-41 provides a special temporary rule which allows governmental issuers to purchase their own tax-exempt auction rate bonds on a temporary basis without resulting in a reissuance or retirement of the purchased tax-exempt bonds solely for purposes of § 103 and §§ 141 to 150. To be eligible for that special rule, a governmental issuer must purchase the tax-exempt auction rate bonds before October 1, 2008, and hold those bonds for not more than a 180-day period from the date of purchase.

Recently, circumstances affecting liquidity and stability in the credit markets have extended beyond the auction rate bond sector to affect other sectors of the short-term tax-exempt bond market, including other "qualified tender

bonds” (as defined in § 3.2 of Notice 2008–41) (e.g., variable rate demand bonds with seven-day put options) and tax-exempt commercial paper. In the case of commercial paper, a special rule under § 1.150–1(c)(4)(ii) allows certain short-term tax-exempt bonds issued pursuant to the same commercial paper program to be treated as part of the same issue. For purposes of this notice, references to “tax-exempt commercial paper” means tax-exempt bonds issued pursuant to the same commercial paper program that are treated as a single issue under this special rule in § 1.150–1(c)(4)(ii).

This notice expands the circumstances and time periods during which governmental issuers may purchase their own tax-exempt bonds to include the purchase and holding of all qualified tender bonds and tax-exempt commercial paper through the end of 2009. This notice also extends certain other time deadlines for special rules in Notice 2008–41.

SECTION 3. Scope and Application

3.1 *Expanded Temporary Rule Allowing Governmental Issuers to Purchase Their Own Tax-Exempt Bonds.* Solely for purposes of § 103 and §§ 141 through 150, the Treasury Department and the IRS will treat a tax-exempt “qualified tender bond” (as defined in Notice 2008–41) or “tax-exempt commercial paper” (as defined in § 2 of this notice) that is purchased by its “governmental issuer” (as defined in Notice 2008–41) on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if, irrespective of when the governmental issuer purchases the bond (including a purchase of a bond before October 1, 2008), the governmental issuer holds the bond until not later than December 31, 2009. Subsequent to the end of this period, a governmental issuer generally may not hold its own bond without causing a reissuance or retirement of such bond under the general rules in § 3.1 of Notice 2008–41 and other applicable law.

Thus, recognizing that the purchased bond is treated as continuing in effect without resulting in a reissuance or retirement of that bond solely for purposes of § 103 and §§ 141 through 150 during the permitted holding period until not later than

December 31, 2009 (“permitted holding period”), the governmental issuer may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right in its capacity as a bondholder, or otherwise resell the purchased bond during this permitted holding period. Further, in the case of the purchase of any particular obligation of tax-exempt commercial paper, including a purchase of such a particular obligation at maturity, a refinancing of that purchased tax-exempt commercial paper during the permitted holding period will be treated as part of the same issue as the issue of which the purchased tax-exempt commercial paper was a part. After the end of this permitted holding period, however, a governmental issuer generally may not hold its own bond without causing a reissuance or retirement of such bond under the general rules in Notice 2008–41 and other applicable law.

3.2 *Extension of Certain Other Time Limits for Special Rules in Notice 2008–41.* Section 3.2(3)(b) of Notice 2008–41 regarding operating rules for qualified tender rights is amended to extend the final date for purchase of bonds pursuant to qualified tender rights for which the special 180-day holding period applies (in lieu of the general 90-day holding period rule for this purpose) from October 1, 2008 to December 31, 2009. Section 6.2 of Notice 2008–41 regarding the treatment of certain waivers of interest rate caps on tax-exempt auction rate bonds is amended to extend the final date on which covered waivers of interest rate caps are disregarded from October 1, 2008 to December 31, 2009.

3.3 *No Inferences on Law.* This notice provides administrative relief in furtherance of public policy to promote liquidity and stability in the short-term tax-exempt bond market. Except with respect to the administrative relief expressly provided in this notice, no inference should be drawn from this notice regarding any other Federal tax issues affecting tax-exempt bonds or any other security. In addition, this notice is not intended to address any other Federal tax issue implicated in the transactions described in this notice allowing governmental issuers to purchase their own tax-exempt bonds on a temporary basis in prescribed circumstances.

SECTION 4. Effect on other Documents

This notice amends and supplements Notice 2008–41.

SECTION 5. Effective Date

This notice is effective as of March 25, 2008, which is the effective date of Notice 2008–41. Issuers of tax-exempt bonds may apply and rely on this notice to the same extent and in the same manner as provided in § 8 of Notice 2008–41.

SECTION 6. Drafting Information

The principal author of this notice is Timothy L. Jones, of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Mr. Jones at (202) 622–3980 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.
(Also: Part I, §§ 409A; 1.409A–1.)

Rev. Proc. 2008–61

SECTION 1. PURPOSE

This revenue procedure modifies and amplifies Rev. Proc. 2008–3, 2008–1 I.R.B. 110, with respect to areas in which rulings and determination letters will not be issued as to the tax consequences of arrangements described in § 409A of the Internal Revenue Code. As described below, this revenue procedure does not provide for the Service to issue rulings on the application of § 409A to nonqualified deferred compensation plans, but does provide for the issuance of rulings in other areas with respect to compensation plans that may be covered by § 409A.

SECTION 2. BACKGROUND

.01 Section 5 of Rev. Proc. 2008–3 lists specific areas for which the Internal Revenue Service (Service) temporarily is not issuing rulings and determinations because those matters are under study.

.02 Section 3.01 of Rev. Proc. 2008-3 reflects those areas in which rulings or determination letters will not be issued with respect to specific questions and problems.

.03 Section 5.08 of Rev. Proc. 2008-3 provides that the Service will not rule on the tax consequences of arrangements described in § 409A, including rulings as to whether an arrangement is an arrangement described in § 409A.

.04 Section 409A provides certain requirements applicable to nonqualified deferred compensation plans. If a plan does not meet those requirements, participants in the plan are required to immediately include amounts deferred under the plan in income and pay additional taxes on such income.

.05 The Treasury Department and the Service have issued final regulations under § 409A (T.D. 9321, 2007-19 I.R.B. 1123 [72 Fed. Reg. 19234] (April 17, 2007)). The final regulations apply to taxable years beginning on or after January 1, 2009. Notice 2007-86, 2007-46 I.R.B. 990. The final regulations define the terms nonqualified deferred compensation plan and deferral of compensation for purposes of § 409A. See § 1.409A-1(a) & (b).

.06 Since publication of the final regulations, the Treasury Department and Service have issued Notice 2007-100, 2007-52 I.R.B. 1243, providing transitional relief and guidance on the correction of certain failures of a nonqualified deferred compensation plan to comply with § 409A in operation. Section V of Notice 2007-100 requests comments on all aspects of a potential corrections program in which taxpayers could correct certain failures to comply with § 409A(a) in the operation of a nonqualified deferred compensation plan.

.07 Based on experience with the private letter ruling program, the Service has determined that section 5.08 of Rev. Proc. 2008-3 unnecessarily restricts the ability of the Service to issue private letter rulings under Rev. Proc. 2008-1, 2008-1 I.R.B. 1 and Rev. Proc. 2008-4, 2008-1 I.R.B. 121. For example, the existing no-rule policy prevents the Service from issuing private letter rulings with respect to estate and gift tax consequences of proposed *inter vivos* or testamentary transfers of rights under nonqualified deferred compensation plans, even though such issues do not directly involve the application of § 409A.

Also, the Service has been unable to issue private letter rulings concerning issues arising under the Federal Insurance Contributions Act (FICA) with respect to nonqualified deferred compensation.

.08 In light of the final regulations becoming applicable on January 1, 2009, and the issuance of Notice 2007-100, the Service has decided to modify and amplify Rev. Proc. 2008-3. The Service will continue not to issue rulings concerning the income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan described in § 409A, but the Service generally will rule on the application of certain other tax law provisions (such as FICA and estate and gift taxes) to taxpayers who participate in those plans. Specifically, rulings will not be issued with respect to the following: the income tax (including income tax withholding) consequences of establishing, operating, or participating in a nonqualified deferred compensation plan as defined in § 1.409A-1(a); whether a plan is described in § 1.409A-1(a)(3)(iv) (certain plans subject to a totalization agreement and similar plans) or § 1.409A-1(a)(3)(v) (certain broad-based foreign retirement plans); whether a plan is a *bona fide* vacation leave, sick leave, or compensatory time plan described in § 1.409A-1(a)(5); and whether a plan provides for the deferral of compensation under § 1.409A-1(b) (including whether an amount is a short-term deferral and whether certain stock rights, foreign plans, and separation pay plans are subject to § 409A).

SECTION 3. PROCEDURE

Rev. Proc. 2008-3 is modified by deleting section 5.08. Rev. Proc. 2008-3 is amplified by adding the following to section 3.01:

Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans.—The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 1.409A-1(a); whether a plan is described in § 1.409A-1(a)(3)(iv) or (v); whether a plan is a *bona fide* vacation leave, sick leave, or compensatory time plan described in § 1.409A-1(a)(5); and

whether a plan provides for the deferral of compensation under § 1.409A-1(b).

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2008-3 is modified and amplified.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to rulings and determination letters issued after September 25, 2008.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bill Schmidt of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure, contact Mr. Schmidt at (202) 622-6030 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, § 430.)

Rev. Proc. 2008-62

SECTION 1. PURPOSE AND CHANGES FROM REV. PROC. 2007-37

.01 The purpose of this revenue procedure is to set forth the procedure by which the sponsor of a defined benefit plan, other than a multiemployer plan, may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with § 430(h)(3)(C) of the Internal Revenue Code (Code) and § 303(h)(3)(C) of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

.02 This revenue procedure is an update of Rev. Proc. 2007-37, 2007-25 I.R.B. 1433. Rev. Proc. 2007-37 was based on the proposed regulations issued under § 430(h)(3)(C) of the Code and § 303(h)(3)(C) of ERISA published in the Federal Register on May 29, 2007, at 72 FR 29456 [REG-143601-06, 2007-24 I.R.B. 1398] (“proposed regulations”). Final regulations under § 430(h)(3)(C) were published in § 1.430(h)(3)-2 in the Federal Register on July 31, 2008, at 73 FR 44632 [T.D. 9419, 2008-40 I.R.B. 790]

(“regulations” or “final regulations”). This revenue procedure reflects the provisions of the final regulations, and includes the following changes from Rev. Proc. 2007–37:

(1) The requirements in subsection 2.02 were updated to reflect the ability to use a period of up to 5 years (or such longer period as the Commissioner may permit in future guidance) for the Experience Study Period, and subsection 10.01 was revised to clarify that the Experience Study Period used to develop the unadjusted base tables must coincide with the Experience Study Period used to demonstrate credible mortality experience.

(2) Subsections 4.01 and 5.06 were updated to reflect the extension of the deadline for submitting requests to October 1, 2008, for substitute mortality tables to be used effective for plan years beginning in 2009.

(3) The definition of the Base Year in subsection 5.03 was updated to reflect the revised definition in § 1.430(h)(3)–2(c)(2)(iii) of the final regulations.

(4) A new subsection 7.03 was inserted (and the former subsection 7.03 was renumbered as subsection 7.04) to permit plans within a Permissive Group to use different Experience Study Periods (subject to specified conditions) if the plans have different plan years.

(5) Subsection 9.01 was revised to reflect the requirement in § 1.430(h)(3)–2(d)(1) of the final regulations to increase the length of the period used to demonstrate lack of credible mortality experience if the Experience Study Period is longer than 4 years.

(6) A new subsection 9.06 was inserted to provide guidance for demonstrating lack of credible mortality experience when the Experience Study Period is developed using the approach in new subsection 7.03.

(7) A new subsection 9.07 was inserted to permit alternative means of demonstrating lack of credible mortality experience.

(8) One set of sample annuity values was eliminated with respect to nonannuitant mortality tables and adjustments were made to the date of birth used for the annuity values reported in subsection 13.03.

(9) References throughout the revenue procedure to “newly acquired” plans were changed to “newly affiliated” plans to con-

form to the language in the final regulations.

SECTION 2. BACKGROUND INFORMATION

.01 Section 412 of the Code provides minimum funding requirements for defined benefit pension plans. Section 430, which was added by the Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780 (“PPA ’06”), specifies the minimum funding requirements for defined benefit plans other than multi-employer plans pursuant to § 412 and is generally effective for plan years beginning on or after January 1, 2008. Section 430(h)(3)(A) sets forth rules regarding the use of generally applicable mortality tables for purposes of § 430. Section 430(h)(3)(C) and § 303(h)(3)(C) of ERISA provide that the Secretary of the Treasury may approve substitute mortality tables to be used in determining any present value or making any computation under those sections for a period not to exceed ten years. Mortality tables meet the requirements for substitute mortality tables if the pension plan has a sufficient number of plan participants and the plan has been maintained for a sufficient period of time in order to have credible mortality experience, and such tables reflect the actual experience of the plan and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan subject to § 430 of the Code that is maintained by the plan sponsor and the plan sponsor’s controlled group.

.02 Section 1.430(h)(3)–1 of the Income Tax Regulations, which sets forth rules regarding the use of generally applicable mortality tables for purposes of § 430, and § 1.430(h)(3)–2, which sets forth rules for the use of substitute mortality tables under § 430(h)(3)(C), were published in the Federal Register in proposed form on May 29, 2007. Rev. Proc. 2007–37 was issued to provide procedures under which sponsors of eligible plans could request and obtain approval for plan-specific mortality tables in accordance with proposed regulation § 1.430(h)(3)–2. Final regulations

under § 430(h)(3)(C) were published in § 1.430(h)(3)–2 in the Federal Register on July 31, 2008. This Rev. Proc. 2008–62 updates the procedures outlined in Rev. Proc. 2007–37 to reflect the changes in the final regulations.

Under both the proposed and final regulations, substitute mortality tables must reflect the actual mortality experience of the pension plan maintained by the plan sponsor for which the tables are to be used and that mortality experience must be credible. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, then the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. If separate mortality tables under § 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under § 430(h)(3)(C). Thus, if the mortality tables under § 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

Under the proposed regulations, a substitute mortality table would be based on credible mortality experience for a gender within a plan if and only if the mortality experience is based on at least 1,000 deaths within that gender over the period covered by the experience study. The experience study would be based on mortality experience data over a 2, 3, or 4-consecutive year period, the last day of which must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. The final regulations retain the above provisions, except that the maximum period of the experience study is extended to a 5-consecutive year period. In addition, the final regulations provide that the Commissioner may allow further extensions of the maximum experience study period in future guidance.

Development of a substitute mortality table under the regulations requires creation of a base table (Base Table) and identification of a base year (Base Year), which are then used to determine generational substitute mortality tables. The Base Table must be developed from a study of the mortality experience of the plan using amounts-weighted data. The regulations also set forth rules regarding development of amounts-weighted mortality rates for an age and the determination of the Base Year. The regulations provide that amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups.

The regulations provide that Base Tables may be constructed either directly through graduation of amounts-weighted mortality rates or indirectly by applying a level percentage to tables prescribed by § 430(h)(3)(A), provided that the resulting tables sufficiently reflect the plan's mortality experience. The Service may permit the construction of Base Tables through application of a level percentage to other recognized mortality tables, applying similar standards to ensure that the resulting tables are sufficiently reflective of the plan's mortality experience.

The final regulations provide that a plan sponsor cannot use substitute mortality tables for any plan for a plan year unless substitute mortality tables are established and used for each other plan subject to § 430 that is maintained by the plan sponsor and the plan sponsor's controlled group for that plan year (or, for plans with different plan years, a portion of that plan year). Under the regulations, the use of substitute mortality tables for one plan would not be prohibited merely because another plan maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. Thus, if a sponsor's controlled group maintains two pension plans subject to § 430, each of which has credible mortality experience for at least one gender, then either both plans must obtain approval from the Service to use substitute mortality tables or neither plan may use substitute mortality tables. By contrast, if, for one of those plans, neither males nor females have credible mortality experience, then the plan

without credible mortality experience will not interfere with the ability of the plan with credible mortality experience to use substitute mortality tables.

SECTION 3. GENERAL ADMINISTRATIVE PROCEDURES

.01 *Compliance with Regulations.* Requests submitted on or after December 1, 2008, must satisfy the requirements of final regulation § 1.430(h)(3)-2 and this Rev. Proc. 2008-62. Requests submitted before December 1, 2008, may either satisfy those requirements or, alternatively, may satisfy the requirements of proposed regulation § 1.430(h)(3)-2 and Rev. Proc. 2007-37.

.02 *Submission.* Requests for the use of substitute mortality tables must be submitted to:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by paragraph (10) of subsection 6.01 of Rev. Proc. 2008-8, 2008-1 I.R.B. 233, or its successors, must be sent with such requests.

.03 *Necessary Procedural Documents.* A request will not be considered unless it complies with paragraphs (1) through (3) of this subsection 3.03, below.

(1) The request (and any subsequently provided additional information) must be signed by the employer maintaining the plan(s) (the "applicant") or an authorized representative of the applicant who must be identified in (a), (b), (c), (d) or (e) of paragraph (11) of subsection 9.02 of Rev. Proc. 2008-4, 2008-1 I.R.B. 121, or its successors. Where an authorized representative signs the request or will appear before the Service in connection with the request, a properly signed and dated Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the request. An individual is not an authorized representative of the applicant merely on account of being the administrator or trustee of the plan.

(2) The request also must contain a declaration in the following form: "Under penalties of perjury, I declare that I have examined this request, or this modification

to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete." This declaration must be signed by the applicant (e.g., an authorized officer of a corporation). The signature of an individual with a power of attorney will not suffice for the declaration. See paragraph (13) of subsection 9.02 of Rev. Proc. 2008-4.

(3) Because a request for the use of substitute mortality tables constitutes a request for a ruling, compliance with § 6110 of the Code is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

.04 *Checklist.* A checklist has been provided in Appendix A, which must be signed and dated by the applicant or authorized representative and placed on top of the request.

SECTION 4. DEADLINE FOR REQUESTING THE USE OF SUBSTITUTE MORTALITY TABLES

.01 *In General.* A request for the use of substitute mortality tables generally must be submitted at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply. Thus, for example, if the first plan year to which substitute mortality tables are to apply is the plan year that begins January 1, 2010, then the deadline is June 1, 2009. Notwithstanding the generally applicable deadline, a request to use substitute mortality tables for a plan year that begins during 2009 is timely if it is submitted on or before October 1, 2008.

.02 *Incomplete Requests.* Generally, an incomplete request for the use of substitute mortality tables will be summarily denied absent mutual agreement of the Service and the applicant to extend the 180-day pe-

riod specified under § 430(h)(3)(C)(v)(II). Except as provided in subsection 5.06 of this revenue procedure, the applicant should not assume that the Service will agree to extend the 180-day period for a request that does not include substantially all of the applicable information specified in sections 5 through 13 of this revenue procedure.

SECTION 5. GENERAL RULES

.01 The Service will deny a request if the request fails to meet the requirements of this revenue procedure or if the Service determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

.02 If separate mortality tables are used for disabled individuals pursuant to § 430(h)(3)(D), then those individuals are disregarded for all purposes under this revenue procedure.

.03 A separate request must be made with respect to each plan (the “Plan”), or group of plans that are permissively aggregated (the “Permissive Group”), for which the use of a substitute mortality table or tables is requested. The request must include a complete copy of the Base Tables that will form the basis for the substitute mortality tables that will be used. The request must state the first day of the first plan year for which the substitute mortality tables are to be applicable (the “Requested Effective Plan Year”) and must state the term of years (not more than 10) that the tables are requested to be used.

Each request also must identify the Base Year of the Base Tables. Under § 1.430(h)(3)–2(c)(2)(iii), the base year is the calendar year that contains the day before the midpoint of the Experience Study Period. For example, if an Experience Study Period consists of the 5-consecutive-year period beginning July 1, 2006, and ending June 30, 2011, the midpoint of the Experience Study Period is January 1, 2009, and the Base Year is 2008. If the Experience Study Period reflects different plan years for plans within the Permissive Group as described in subsection 7.03, the midpoint is determined taking into account the total number of years and months reflected in the Experience Study Period.

.04 The request must include a description of the populations within the Plan (or

the Permissive Group) for which the use of substitute mortality tables is requested and a description of the populations, if any, for which the use of substitute mortality tables is not requested.

For example, if the use of substitute mortality tables is requested for nondisabled female individuals (but for no other individuals) where separate mortality tables are used for disabled individuals pursuant to § 430(h)(3)(D), then the population for whom the use of substitute mortality tables is requested would be described as “Nondisabled Females” and the population for whom the use of substitute mortality tables is not requested would be described as “Nondisabled Males.”

Similarly, if the use of substitute mortality tables is requested for male annuitants (but not male nonannuitants) and for females on a combined annuitant/nonannuitant basis, in each case including disabled individuals, then the populations for whom the use of substitute mortality tables is requested would be described as “Male Annuitants” and “Females,” and the population for whom the use of substitute mortality tables is not requested would be described as “Male Nonannuitants.”

.05 The request must include the plan identification information described in Section 6, the credible mortality experience demonstrations described in Section 7, the stability demonstrations described in Section 8, the lack of credible mortality experience demonstrations described in Section 9, the unadjusted mortality experience described in Section 10, the Base Table construction methods as set forth in Section 11 or 12, and the demonstrations with respect to the Base Tables described in Section 13.

.06 If there are other plans subject to § 430 maintained by the applicant, or members of the applicant’s controlled group, that have credible mortality experience for which the use of substitute mortality tables will be requested in a separate request, then the Service will not summarily deny the request for the use of substitute mortality tables on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables, but only if the applicant requests that the 180-day review period provided under § 430(h)(3)(C)(v)(II) not begin for the initial request and any such separate request

until the date all such separate requests have been received, and only if those separate requests are submitted within 90 days after the receipt of the initial request (and no later than the deadline that applies to each such separate request under section 4 of this revenue procedure). In the absence of such a request for a delay in the start of the 180-day review period, or if all such separate requests are not submitted within 90 days after the receipt of the initial request, the Service will summarily deny the request for the use of substitute mortality tables on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables.

Example. Employer E maintains Plans A and B, both of which are calendar year plans that have each had over 2,500 deaths in each of the last five years. Employer E submits a request for the use of substitute mortality tables for Plan A for the 2010 plan year that is received on February 15, 2009 (the “A Request”). To avoid denial of the A Request on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables, Employer E requests that the 180-day review period of the A Request not begin until the receipt of a separate request for the 2010 plan year from Employer E for the use of substitute mortality tables by Plan B. The Service agrees to defer commencement of the 180-day period, but will summarily deny the application unless Employer E submits a separate request for the use of substitute mortality tables for Plan B no later than May 15, 2009.

.07 If two or more plans are permissively aggregated for the purpose of constructing substitute mortality tables, then such plans are treated as a single plan for all purposes of this revenue procedure. Accordingly, if two or more plans are permissively aggregated, then all populations within the plans must be so aggregated.

Example. Employer F maintains Plans C, D, and E, each of which had 500 male deaths and 100 female deaths in each of the last five years. Employer F may request to use one substitute male mortality table and one substitute female mortality table for the aggregation of Plans C, D, and E. However, Employer F may not aggregate Plans C, D, and E and request to use one substitute female mortality table for Plans C, D, and E, and three separate substitute male mortality tables for Plans C, D, and E.

SECTION 6. IDENTIFICATION OF PLANS

.01 The following plan information must be provided for the Plan (or for each plan within the Permissive Group) for which the use of substitute mortality tables is requested:

(1) Plan name;

- (2) Plan number;
- (3) Plan year (*i.e.*, calendar, or if fiscal, the first and last day);
- (4) Employer identification number;
- (5) Date of plan establishment; and
- (6) Copies of the actuarial valuation reports for each plan year which begins or ends during the Experience Study Period as defined in section 7 of this revenue procedure.

.02 The following information must be provided for each plan that is subject to § 430 maintained by the applicant, or members of the applicant's controlled group, for which the use of substitute mortality tables is not requested:

- (1) Plan name;
- (2) Plan number;
- (3) Plan year (*i.e.*, calendar, or if fiscal, the first and last day);
- (4) Employer identification number;
- (5) Date of plan establishment;
- (6) If the plan is a newly affiliated plan under § 1.430(h)(3)–2(d)(1)(iii)(B), the date of the merger, acquisition, or similar transaction described in § 1.410(b)–2(f), and the last day of the plan year described in § 1.430(h)(3)–2(d)(1)(iii)(A); and

(7) The Lack of Credible Mortality Experience Demonstration Period, or, if the plan is not required to identify such a period, the applicable exception. (See section 9 of this revenue procedure.)

.03 The following additional information must be provided with respect to each plan that is subject to § 430 that is maintained by the applicant, or member of the applicant's controlled group, that was spun off from another plan that is maintained by the applicant within the five-year period preceding the date of the request:

- (1) The plan name and the plan number of the spun off plan, and the plan name and number of the plan from which the spinoff occurred;
- (2) The employer identification number of the employer maintaining the spun off plan and the employer identification number of the employer maintaining the plan from which the spinoff occurred;
- (3) The date of the spinoff;
- (4) The approximate number of individuals covered by the spun off plan as of the date of the spinoff and the approximate number of individuals covered by the plan from which the spinoff occurred, prior to the spinoff; and
- (5) The reason for the spinoff.

SECTION 7. DEMONSTRATIONS OF CREDIBLE MORTALITY EXPERIENCE

.01 The applicant's request must identify the period of time covered by the mortality experience study (the "Experience Study Period") used to develop the Base Table(s) and must identify the Base Year. Different Experience Study Periods for different populations within a plan are not permitted. Except as provided in subsections .02 and .03 of this section, different Experience Study Periods for different plans within the Permissive Group are not permitted. Thus, a plan that does not have mortality experience for the entire Experience Study Period may not be included in the Permissive Group. Similarly, a plan that was acquired subsequent to the first day of the Experience Study Period may be included in the Permissive Group only if the applicant includes mortality experience for the full Experience Study Period. Thus, in such cases, the mortality experience study must include mortality experience that occurred before the date of acquisition.

.02 A plan that came into existence by reason of a spinoff from the Plan (or from a plan within the Permissive Group) during the Experience Study Period may be included in the Permissive Group. In such a case, the period of time covered by the mortality experience study with respect to the spun off plan will begin as of the date of the spinoff. However, the mortality experience of the individuals covered by the spun off plan from the first day of the Experience Study Period to the date of the spinoff would be included as part of the experience of the single plan that existed before the spinoff.

.03 If separate plans within a Permissive Group have different plan years, the Experience Study Period may consist of a combination of different periods for analyzing the experience data for each plan, provided that the period for each plan:

- (1) is based on the plan year for that plan,
- (2) consists of the same number of years,
- (3) ends less than 3 years before the first day of the first plan year for which the substitute mortality table is to apply for any plan in the Permissive Group, and

(4) minimizes the total period of time covered by the overall Experience Study Period by overlapping (to the greatest extent possible) the periods used to analyze experience data for each plan in the Permissive Group.

For example, consider a Permissive Group consisting of two plans, Plan A with a calendar-year plan year and Plan B with a March 1-February 28 plan year, with experience data gathered by plan years for each plan. If the plan sponsor submits a request to use substitute mortality tables for the Permissive Group effective with the plan year beginning January 1, 2009, for Plan A and March 1, 2009, for Plan B, the plan sponsor may use an Experience Study Period ending as early as December 31, 2006, based on the first day of the plan year for Plan A. If the plan sponsor wishes to use the approach provided in this subsection .03 and uses a 4-year period ending on December 31, 2006, to analyze the experience data for Plan A, the period used to analyze the experience data for Plan B must be a 4-year period ending on February 28, 2007. The Experience Study Period in this case would be the period beginning January 1, 2003, and ending February 28, 2007.

.04 In order to demonstrate credible mortality experience, the number of deaths during each year of the Experience Study Period (and, in total, for the entire Experience Study Period) within each population for which the use of substitute mortality tables is requested must be provided in tabular form.

SECTION 8. DEMONSTRATION OF STABILITY

.01 The following information must be provided in tabular form for each population within the Plan (or plans within the Permissive Group) for which the use of a substitute mortality table is requested, aggregating all plans that have the same plan year:

- (1) The average number of individuals within the population during the Experience Study Period; and
- (2) The number of individuals within the population as of the last day of the plan year immediately preceding the plan year during which the use of substitute mortality tables is requested.

A reasonable estimate of the number of plan individuals, such as the estimated number of participants and beneficiaries used for purposes of PBGC Form 1-ES, may be used to provide the information requested in paragraph (2) of this subsection 8.01.

.02 If the difference between paragraphs (1) and (2) of subsection 8.01 within any population, for any plan year, reflects a difference of 20 percent or more, then an analysis that shows that the mortality experience during the Experience Study Period is still accurately predictive of the future mortality of the population must be submitted.

SECTION 9. DEMONSTRATIONS OF LACK OF CREDIBLE MORTALITY EXPERIENCE

.01 *General Rule.* For all plans maintained by the applicant, except as described in subsections .02 and .03 of this section, the period of time used to demonstrate a lack of credible mortality experience must be identified (the “Lack of Credible Mortality Experience Demonstration Period”). This period must consist of at least 4 consecutive years, with the last such year ending less than 3 years before the first day of the plan year for which lack of credible mortality experience is being demonstrated. However, if the Experience Study Period used for the substitute mortality tables for the Permissive Group is longer than 4 years, then the Lack of Credible Mortality Experience Demonstration Period must include the same number of years as the Experience Study Period and must end less than 3 years before the first day of the plan year for which lack of credible mortality experience is being demonstrated. See subsection .06 of this section for rules that apply when the Experience Study Period is a combination of different periods as described in subsection 7.03.

.02 *General Exception.* Plans described in paragraph (1), (2), or (3) of this subsection 9.02 are not required to identify a Lack of Credible Mortality Experience Demonstration Period.

(1) Plans for which the use of substitute mortality tables is requested for all populations (other than disabled populations for whom the tables prescribed under § 430(h)(3)(D) are used);

(2) Plans for which the use of substitute mortality tables has previously been approved by the Service and the term of years of such approval ends subsequent to the last day of the Requested Effective Plan Year; and

(3) Newly affiliated plans for which the last day of the plan year described in § 1.430(h)(3)-2(d)(1)(iii)(A) is a date on or after the first day of the plan year for which the use of substitute mortality tables is requested.

.03 *Exception for Certain Newly Affiliated Plans.* Newly affiliated plans (as defined in § 1.430(h)(3)-2(d)(1)(iii)(B)) for which the last day of the plan year described in § 1.430(h)(3)-2(d)(1)(iii)(A) is a date prior to the first day of the plan year for which the use of substitute mortality tables is requested, and for which the applicant has elected not to include mortality experience prior to the date of the acquisition, may identify a Lack of Credible Mortality Experience Demonstration Period consisting of fewer years than otherwise required under subsection .01 of this section. For such plans, the Lack of Credible Mortality Experience Demonstration Period must begin no later than the date the plan became newly affiliated and end not more than one year and one day before the first day of the plan year for which the use of substitute mortality tables is requested.

.04 *Demonstration of Plan-Wide Lack of Credible Mortality Experience.* The following information must be provided in tabular form for each plan that is not within the Permissive Group and which does not fall within one of the exceptions provided in subsection .02 of this section:

(1) The number of male deaths during the Lack of Credible Mortality Experience Demonstration Period; and

(2) The number of female deaths during the Lack of Credible Mortality Experience Demonstration Period.

.05 *Demonstration of Lack of Credible Mortality Experience for Certain Populations.* The number of male and female deaths during the Lack of Credible Mortality Experience Demonstration Period must be provided in tabular form for each relevant population within the Plan (or plans within the Permissive Group) for which the use of substitute mortality tables is not requested.

The relevant populations for this purpose would, for example, be nondisabled

females if the request was to use a substitute mortality table for nondisabled males (but for no other individuals) where separate mortality tables were used for disabled individuals pursuant to § 430(h)(3)(D). Similarly, the relevant populations would be male nonannuitants and females, in each case including disabled individuals, if the request was to use a substitute mortality table for male annuitants (but not for male nonannuitants) where separate mortality tables were not used for disabled individuals pursuant to § 430(h)(3)(D).

.06 *Application when Experience Study Period is a Combination of Different Periods as Described in Subsection 7.03.* For plans or populations within a Permissive Group, if the Experience Study Period covers a period of more than 4 years because it consists of a combination of 4-year (or longer) periods for analyzing the experience data for individual plans included in the Permissive Group, the Lack of Credible Mortality Experience Demonstration Period must also consist of a combination of 4-year periods for each plan (or such longer periods as used for the Experience Study Period), subject to the same constraints as in subsection 7.03.

For example, the Permissive Group illustrated in subsection 7.03 used an Experience Study Period consisting of 4 years based on the plan year for Plan A and 4 years based on the plan year of Plan B (for an overall Experience Study Period of 4 years and 2 months). Therefore, lack of credible mortality experience must be demonstrated for any populations within that Permissive Group for which substitute mortality tables are not requested, on the basis of a Lack of Credible Mortality Experience Demonstration Period covering a 4-year period corresponding to the plan year for the plan covering the population (for an overall Lack of Credible Mortality Experience Demonstration Period of 4 years and 2 months). Accordingly, for demonstrations applying to plan years beginning in 2011, the Lack of Credible Mortality Experience Demonstration Period could either be based on 4-year periods ending December 31, 2008, for populations covered under Plan A and February 28, 2009, for populations covered under Plan B, or on 4-year periods ending December 31, 2009, for populations covered under Plan A and February 28, 2010, for populations covered under Plan B.

However, if the overall Experience Study Period is less than 4 years in length, or if the population or plan for which lack of credibility experience is being demonstrated is not in the Permissive Group, then the general rule of subsection .01 of this section is applied based on the number of years of data used for each plan in the Permissive Group. For example, if the periods used to analyze experience data for Plans A and B were only 2 years in length, the Lack of Credible Mortality Experience Demonstration Period for any plans or populations within the Permissive Group could either be a period of 4 years (with both plans using the same period of time to analyze experience data) or 4 years and 2 months (using 4-year periods corresponding to the plan year for each plan to analyze the experience data). In either case, the Lack of Credible Mortality Experience Demonstration Period must end less than 3 years before the first day of any plan year for which lack of credible mortality experience is being demonstrated.

.07 *Alternative Demonstrations of Lack of Credible Mortality Experience.* In lieu of the information described in subsections .04 through .06 of this section, lack of credible mortality experience may be demonstrated by providing alternative information if such information demonstrates to the satisfaction of the Commissioner that the number of male and/or female deaths would not exceed 1,000 during the Lack of Credible Mortality Experience Demonstration Period. For example, a year-by-year reconciliation of the participant population (such as might be shown in an actuarial valuation report) could be submitted showing that the total number of participants leaving the plan during the Lack of Credible Mortality Experience Demonstration Period is less than 1,000, as this would clearly show that the number of male and female deaths must also be less than 1,000 during that period. Similarly, if the total number of participants in the plan does not exceed 1,000 for any year during the Lack of Credible Mortality Experience Demonstration Period, the year-by-year number of participants in the plan during such period could be submitted in lieu of the information described in subsections .04 through .06 of this section, as this would indicate that it would be highly unlikely that the total number of deaths during that period would exceed 1,000.

SECTION 10. UNADJUSTED MORTALITY EXPERIENCE

.01 *In General.* The information below must be provided in tabular form for all individuals within each population for whom the use of a separate mortality table is requested, for each year of the Experience Study Period, and for the Experience Study Period in its entirety, for all ages between 18 and 100 (except as provided in subsection .03 of this section). The same Experience Study Period must be used to develop the information below as was used to demonstrate credible mortality experience in section 7.

(1) The sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) of all individuals at that age at the beginning of the year, other than individuals who left the population during the year for reasons other than death;

(2) The sum of the accrued (or payable) benefits of all individuals at that age at the beginning of the year who left the population during the year for reasons other than death, adjusted to reflect exposure periods of less than one year;

(3) The sum of the accrued (or payable) benefits of all individuals at that age at the beginning of the year who died during the year;

(4) The quotient determined by dividing the sum of the accrued (or payable) benefits of all individuals at that age who died during the year by the sum of the accrued (or payable) benefits for all individuals at that age adjusted for individuals at that age who left the population for reasons other than death (*i.e.*, the amount determined in paragraph (3), divided by the total of the amounts determined in paragraphs (1) and (2));

(5) The total number of individuals at that age at the beginning of the year;

(6) The total number of individuals at that age at the beginning of the year who left the population for reasons other than death;

(7) The total number of individuals at that age at the beginning of the year who died during the year; and

(8) The average accrued benefit of all individuals at that age at the beginning of the year.

.02 *Adjustment for Exposure Periods of Less than One Year.* The request must include a description of the method(s) used

to adjust the accrued benefits of individuals who left for reasons other than death to reflect exposure periods of less than one year.

.03 *Grouping of Ages.* The information requested in subsection .01 of this section may be presented in five-year age groups. In such cases, the groups at the extreme ages may include more than five ages provided such groups either do not include ages greater than age 24 or do not include ages less than age 95. Thus, for example, an age group consisting of all ages 24 and lower would be permissible whereas an age group consisting of all ages 25 and lower would not be permissible.

.04 *Unadjusted Base Tables.* An Unadjusted Base Table for each population for which the use of substitute mortality tables is requested shall, for all ages or all groups of ages, consist of the quotients determined in paragraph (4) of subsection .01 of this section for the Experience Study Period in its entirety. The request must include a complete copy of each such Unadjusted Base Table.

SECTION 11. BASE TABLE CONSTRUCTION – GENERAL METHOD

.01 *In General.* Except as otherwise provided in section 12 of this revenue procedure, a Base Table for a population must be created from the Unadjusted Base Table for the population through the application of a graduation method generally used by the actuarial profession in the United States (*e.g.*, Whittaker-Henderson Type B, Karup-King). Section 12 of this revenue procedure provides for an alternate method of constructing a Base Table through the application of a fixed percentage to the mortality rates of a Standard Mortality Table, projected to the Base Year.

.02 *Information Regarding Graduation Methods.* The graduation method must be identified and the parameters of the graduation method used must be specified (*e.g.*, for Whittaker-Henderson Type B, the number of differences and the “h” value must be specified). If more than one graduation is performed, then the parameters must be specified for each such graduation.

.03 *Intermediate Values.* If more than one graduation is performed in the process of adjusting an Unadjusted Base Table to a

Base Table, then a copy of each intermediate table so created must be provided.

.04 *Rationale.* The rationale for the selection of each particular graduation method used must be provided along with the rationale for the selection of the particular parameters used as part of the method.

.05 *Extension to Extreme Ages.* At extreme ages for which insufficient data exists, the Base Tables must be extended to blend into the applicable Standard Mortality Table, provided in subsection .06 of this section, projected to the Base Year using Projection Scale AA, as set forth in the regulations. In such cases, the method (and the rationale for the method) used for the extension must be described.

.06 *Standard Mortality Tables.* For purposes of this revenue procedure, the following are the Standard Mortality Tables:

(1) The Male Base Nonannuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)-1;

(2) The Male Base Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)-1;

(3) The Female Base Nonannuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)-1;

(4) The Female Base Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)-1;

(5) The Male Base Combined Mortality Table (Year 2000) determined in accordance with subsection .07 of this section; and

(6) The Female Base Combined Mortality Table (Year 2000) determined in accordance with subsection .07 of this section.

.07 *Gender-Specific Base (Year 2000) Mortality Combined Tables.* For purposes of this revenue procedure, the Male Base Combined Mortality Table (Year 2000) is the table determined through application of the male Weighting Factors for Small Plans (the "Weights") to the Male Base Nonannuitant and Annuitant Mortality Tables (Year 2000) as set forth in § 1.430(h)(3)-1. Similarly, the Female Base Combined Mortality Table (Year 2000) is the table determined through application of the female Weights to the Female Base Nonannuitant and Annuitant Mortality Tables (Year 2000) as set forth in § 1.430(h)(3)-1.

SECTION 12. BASE TABLE CONSTRUCTION – ALTERNATE METHOD

.01 *General Rule.* A Base Table for a population may be created by applying a fixed percentage (the "Fixed Percentage") to the mortality rates in the Projected Applicable Standard Mortality Table only if the requirements of subsections .02 and .03 of this section are satisfied and the Service determines that the resulting Base Table sufficiently reflects the mortality experience of the applicable plan population. For this purpose the Projected Applicable Standard Mortality Table is the applicable Standard Mortality Table, projected to the Base Year using Projection Scale AA, as set forth in § 1.430(h)(3)-1. See subsection .05 of this section with regard to the possible use of other mortality tables for this purpose.

Under this section 12, the Unadjusted Base Mortality Tables must be constructed using five-year age groups. For each Base Table constructed using the alternate method described in this section, the Fixed Percentage and the mortality table to which such percentage is to be applied must be identified. In addition, for each so constructed Base Table, the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates (*i.e.*, the mortality rates for the ages that are the midpoints of the age ranges) from the Projected Applicable Standard Mortality Table must be provided, in tabular form, for all five-year age groups for which mortality experience is available.

.02 *Selection of the Fixed Percentage.*

(1) If the applicable Standard Mortality Table for a population is the table provided in either paragraph (1) or paragraph (3) of subsection 11.06, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 35-39 age group to the 60-64 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than six such groups) is more appropriate for this purpose.

(2) If the applicable Standard Mortality Table for a population is the table provided in either paragraph (2) or paragraph (4) of subsection 11.06, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 55-59 age group to the 80-84 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than six such groups) is more appropriate for this purpose.

(3) If the applicable Standard Mortality Table for a population is the table provided in either paragraph (5) or paragraph (6) of subsection 11.06, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 45-49 age group to the 80-84 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than eight such groups) is more appropriate for this purpose.

.03 *Consistency Requirement.* The consistency requirement of this subsection .03 is satisfied only if each of the applicable ratios described in subsection .02 of this section is within 10 percentage points of the Fixed Percentage.

.04 *Terminal Age.* Notwithstanding subsection .01 of this section, the mortality rate for the terminal age in any Base Table created by applying a Level Percentage to a Standard Mortality Table shall be 1.000.

.05 *Other Mortality Tables.* The Service will consider requests for the approval of Base Tables constructed through the application of a fixed percentage to the mortality rates of other published generally accepted mortality tables (*e.g.*, the 1983 Group Annuity Mortality Table) using standards similar to those provided in subsections .01 through .04 of this section.

.06 *Example.* The age group rates from the Male Unadjusted Base Table (determined in accordance with section 10 of this revenue procedure), the central age rates from the Male Base Combined Mortality

Table (Year 2000), projected to the Base Year, and the ratios of such rates are as follows:

Age Group	A Mortality Rate from Unadjusted Base Mortality Table	B Base Combined Mortality Table (Year 2000), Projected to the Base Year, Age Group Mortality Rate	C Ratio of Mortality Rate from Unadjusted Mortality Table to Base Mortality Rate (Year 2000)
45 to 49	0.00163	0.00165	98.79%
50 to 54	0.00211	0.00241	87.55%
55 to 59	0.00376	0.00431	87.24%
60 to 64	0.00765	0.00812	94.21%
65 to 69	0.01569	0.01506	104.18%
70 to 74	0.02439	0.02502	97.48%
75 to 79	0.03768	0.04387	85.89%
80 to 84	0.07948	0.07732	102.79%
Arithmetic Average Percentage			94.77%

In accordance with subsection .02 of this section, the Fixed Percentage to be applied to the Male Base Mortality Table (Year 2000), projected to the Base Year, must be between 92.77% and 96.77%. However, a Fixed Percentage that is less than 94.18% would fail to satisfy the requirements of subsection .03 of this section because the ratio for the 65–69 Age Group (*i.e.*, 104.18%) would then not be within 10 percentage points of a Fixed Percentage less than 94.18%. Similarly, a Fixed Percentage that is greater than 95.89% would fail the requirements of subsection .03 because the ratio for the 75–79 Age Group (*i.e.*, 85.89%) would then not be within 10 percentage points of a Fixed Percentage greater than 95.89%. Accordingly, under the facts in this example, if the applicant were to request the use of a Base Table constructed through the application of a percentage to the Male Base Mortality Table (Year 2000) that is a fixed integer, the applicant would be limited to a Fixed Percentage of 95%.

SECTION 13. DEMONSTRATIONS WITH RESPECT TO BASE TABLES

The following information must be provided with respect to each population for which the use of substitute mortality tables is requested:

.01 *Generational Mortality Tables.* Sample generational mortality tables, as of the Requested Effective Plan Year, for individuals whose years of birth are 1940, 1950, and 1960, constructed from the Base Tables using a methodology in accordance with § 1.430(h)(3)–1 (except that the projection period used to determine each particular mortality improvement factor is the number of years between the Base Year and the year for which the probability of death is determined).

.02 *Funding Target Comparisons.* The liability of the plan(s) for which the use of substitute mortality tables is requested as of the valuation date for a plan year ending

no earlier than one year and one day before the first plan year to which the substitute mortality tables will apply (the “Comparison Year”). The liability is to be measured using generational mortality tables determined in accordance with the methodology described in subsection .01 of this section. The liability is to be provided separately for active participants, terminated vested participants, and retirees and beneficiaries in pay status, and is to be determined as follows:

(1) For Comparison Years beginning in 2007, the liability to be reported is the Current Liability determined in accordance with § 412(l) as it existed prior to PPA '06 and, for comparison, what the Current Liability would have been if the substitute mortality table(s) had been used to determine Current Liability, holding all other assumptions constant.

(2) For Comparison Years beginning after 2007, the liability to be reported is the Funding Target, determined without regard to at-risk assumptions under § 430(i), and, for comparison, what the Funding Target would have been if the substitute mortality table(s) had been used to determine the Funding Target, holding all other assumptions constant.

.03 *Annuity Factors.* The following annuity factors based on generational mortality tables for individuals whose year of birth is 20 years before the Base Year, determined using interest and mortality assumptions consistent with those used under subsection .02 of this section.

(1) For all Base Tables with the exception of annuitant Base Tables, deferred to age 55 factors at quinquennial ages from 20 to 50.

(2) For all Base Tables with the exception of nonannuitant Base Tables, immediate annuity factors at quinquennial ages from 50 to 90.

.04 *Graphical Displays.* A comparison in the form of graphs with the X-axis representing age and the Y-axis representing the mortality rate, for each of the following pairs of mortality rates, for each population for which the use of substitute mortality tables is requested:

(1) The mortality rates from the Base Unadjusted Mortality Table and the mortality rates from the proposed Base Table; and

(2) The mortality rates from the proposed Base Table and from the applicable Standard Mortality Table (as described in subsection 11.06 of this revenue procedure), projected to the Base Year.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective for all requests for the use of plan-specific substitute mortality tables in accordance with § 430(h)(3)(C) of the Code and § 303(h)(3)(C) of ERISA submitted on or after December 1, 2008. Requests submitted prior to December 1, 2008, may rely on this revenue procedure or Rev. Proc. 2007–37.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act

(44 U.S.C. section 3507) under control number 1545–2073.

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

The collection of information in this revenue procedure is in sections 3 through 13. This collection of information is required to evaluate, process and obtain approval of the request for the use of substitute mortality tables. This information will be used to make determinations under § 430(h)(3) of the Code. The likely respondents are businesses or other

for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 25,400 hours.

The estimated annual burden per respondent/recordkeeper varies from 335 to 681 hours, depending on individual circumstances, with an estimated average burden of 508 hours. The estimated annual number of respondents/recordkeepers is 50.

The estimated annual frequency of responses is once every 10 years.

Books or records relating to a collection of information must be retained as long as their contents may become material in

the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Carolyn E. Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact Ms. Zimmerman at retirementplanquestions@irs.gov.

Appendix A

REQUEST FOR THE USE OF SUBSTITUTE MORTALITY TABLES CHECKLIST IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your request for the use of substitute mortality tables if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by indicating Y for yes, N for no, or N/A for not applicable. Explanations must be provided for N or N/A responses. ***Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.***

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request or if explanations are not provided for N and N/A responses, then your submission will be considered incomplete for purposes of determining the first day of the 180-day period described in § 430(h)(3)(C)(v)(II) of the Code.

1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
2. Have you satisfied all the requirements of Rev. Proc. 2008–4 or its successors (especially concerning signatures and penalties of perjury statement)? (See paragraphs (1) and (2) of subsection 3.03)
3. Have you included a statement of proposed deletions? (See paragraph (3) of subsection 3.03)
4. Have you included the user fee required under Rev. Proc. 2008–8 or its successors? (See subsection 3.02)
5. Have you included a copy of the Base Tables which will form the basis for the substitute mortality tables whose use is requested? (See subsection 5.03)
6. Have you identified the first day of the first plan year for which the use of substitute mortality tables is requested? (See subsection 5.03)
7. Have you stated the number of years for which the use of substitute mortality tables is requested? (See subsection 5.03)
8. Have you identified the Base Year of the Base Tables? (See subsection 5.03)
9. Have you included a description of the populations for which the use of substitute mortality tables is requested? (See subsection 5.04)
10. Have you included a description of the populations for which the use of substitute mortality tables is not requested? (See subsection 5.04)
11. Have you requested that the 180-day review period not begin until a separate request is received for another plan(s) maintained by the applicant is received? (See subsection 5.06)
12. Have you identified all plans subject to § 430 maintained by the applicant, or members of the applicant's controlled group, including the additional information required for spun-off plans under subsection 6.03? (See section 6)

13. Have you identified the Experience Study Period for each plan in the Permissive Group? (See subsections 7.01 through 7.03)
 14. Have you included a table showing the number of deaths, for each applicable population within the Plan (or within the Permissive Group), for each year (and in total) of the Experience Study Period? (See subsection 7.04)
 15. Have you included a table showing the average number of individuals during the Experience Study Period and the number of individuals within the population as of the last day of the plan year immediately preceding the plan year during which the use of substitute mortality tables is requested for each population within the Plan (or plans within the Permissive Group) for which the use of a substitute mortality table is requested? (See section 8)
 16. Have you included a table for each plan that is not within the Permissive Group showing the number of male and female deaths during the plan's Lack of Credible Mortality Experience Demonstration Period, including identification of the Lack of Credible Mortality Experience Demonstration Period? (See subsections 9.01, 9.04, and 9.06.) Alternatively, have you provided other information that demonstrates that the number of deaths during the Lack of Credible Mortality Experience Demonstration Period would not exceed 1,000? (See subsection 9.07)
 17. Have you included a table for each population within the Plan (or plans within the Permissive Group) for which the use of substitute mortality tables is not requested, showing the number of deaths within the population? (See subsections 9.01, 9.05, and 9.06) Alternatively, have you provided other information that demonstrates that the number of deaths during the Lack of Credible Mortality Experience Demonstration Period would not exceed 1,000? (See subsection 9.07)
 18. Have you included a table showing the accrued benefits, counts of individuals covered under the plan, and other information for all ages (or groups of ages) for each year (and in total) of the Experience Study Period? (See subsection 10.01)
 19. Have you included a description of the method(s) used to adjust the accrued benefits of individuals who left for reasons other than death? (See subsection 10.02)
 20. Have you included complete copies of each Unadjusted Base Table? (See subsection 10.04)
 21. Have you identified the graduation method(s) used to create the Base Table(s) from the Unadjusted Base Table(s), along with any intermediate tables resulting from applying the graduation method(s)? (See subsections 11.02 and 11.03)
 22. Have you provided the rationale(s) for use of the particular graduation method(s) selected? (See subsection 11.04)
 23. Have you described the method used to extend the Base Tables to extreme ages? (See subsection 11.05)
 24. Have you identified a Fixed Percentage and a mortality table associated with all Base Tables constructed using the alternate method provided in section 12? (See subsection 12.01)
 25. Have you included a table showing the ratios of the mortality rates from the Unadjusted Base Mortality Table to the central age mortality rates from the Projected Applicable Standard Mortality Table for each Base Table constructed using the alternate method of section 12? (See subsection 12.01)
 26. Have you included (three) sample generational mortality tables as of the Requested Effective Plan Year? (See subsection 13.01)
 27. Have you included a comparison of hypothetical funding targets determined using standard mortality tables and generational tables developed from the proposed Base Tables? (See subsection 13.02)
 28. Have you included annuity factors for each Base Table, based on generational mortality tables for individuals whose year of birth is 20 years before the applicable Base Year? (See subsection 13.03)
 29. Have you included graphical displays of the rates from the Base Unadjusted Mortality Tables, the proposed Base Tables, and the applicable Standard Mortality Tables? (See subsection 13.04)
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Rev. Proc. 2008-63

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the application of § 1058(a) of the Internal Revenue Code to situations in which securities are originally transferred pursuant to an agreement that meets the requirements of § 1058(b), the transferee subsequently defaults under the agreement as a direct or indirect result of its bankruptcy (or the bankruptcy of an affiliate), and as soon as is commercially practicable (but in no event more than 30 days following the default), the transferor uses collateral provided pursuant to the agreement to purchase identical securities.

SECTION 2. BACKGROUND

.01 Section 1058(a) provides that in the case of a taxpayer who transfers securities (as defined in § 1236(c)) pursuant to an agreement which meets the requirements of § 1058(b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

.02 In adding § 1058 to the Code, Congress intended to provide nonrecognition treatment to securities loans in which “the contractual obligation [to return identical securities] does not differ materially either in kind or in extent from the securities exchanged” S. Rep. No. 762, 95th Cong., 2d Sess. 7 (1978); 1978-2 C.B. 357, 361 (“Senate Report”). Congress also sought to encourage securities holders to make their securities available for loans. Congress explained:

Under present law, uncertainty has developed as to the correct income tax treatment of certain securities lending transactions. As a result, some owners of securities are reluctant to enter into such transactions.

Senate Report at 3; 1978-2 C.B. 359.

Because of time delays which a broker may face in obtaining securities (from the seller or transfer agent) to deliver to a purchaser, brokers are frequently required to borrow securities from organizations and individuals with investment portfolios for use in completing these market transactions. It is generally thought to be desirable to encourage organizations and individuals with securities holdings to make the securities available for such loans since the greater the volume of securities available for loan the less frequently will brokers fail to deliver a security to a purchaser within the time required by the relevant market rules.

Senate Report at 5; 1978-2 C.B. 360.

.03 Recently, a significant number of securities loans have terminated as a result of a default by the borrower of the securities. These defaults are often the direct or indirect result of the bankruptcy of the borrower (or an affiliate of the borrower). For example, the bankruptcy of the borrower might, by itself, constitute an event of default under the securities loan agreement. Likewise, the bankruptcy of an affiliate of the borrower might indirectly prevent the borrower from returning identical securities upon notice of termination by the lender, if, for example, such a bankruptcy affects the borrower’s liquidity and practical ability to acquire identical securities in the secondary market. In many of these situations, the lender thereafter purchases identical securities and applies collateral provided by the borrower pursuant to the securities loan agreement against the purchase price (and the borrower’s obligation to return identical securities is terminated).

SECTION 3. SCOPE

This revenue procedure applies to taxpayers (“Lenders”) who have transferred securities to an unrelated person (“Borrower”) in a securities loan in which—

.01 The securities loan agreement (“Agreement”) satisfies the requirements of § 1058(b);

.02 The Agreement requires that the Borrower transfer collateral to secure the Borrower’s obligations under the Agreement;

.03 The Borrower defaults under the Agreement as a direct or indirect result of its bankruptcy (or the bankruptcy of an affiliate); and

.04 As soon as is commercially practicable after the default (but in no event more than 30 days following the default), the Lender applies collateral provided under the Agreement (or cash generated by the sale of such collateral) to the purchase of identical securities.

SECTION 4. APPLICATION

For taxpayers within the scope of this revenue procedure, the Internal Revenue Service will treat the purchase described in section 3.04 of this revenue procedure as an exchange of rights under the Agreement for identical securities to which § 1058(a) applies.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after January 1, 2008.

SECTION 6. NO INFERENCE

This revenue procedure provides guidance with respect to certain federal income tax issues involving securities loans described in section 3 of this revenue procedure. No inference should be drawn about whether similar consequences will obtain if a securities loan falls outside the scope of this revenue procedure.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles W. Culmer of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Culmer at (202) 622-3950 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Regulations Enabling Elections for Certain Transactions Under Section 336(e)

REG-143544-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 336(e) of the Internal Revenue Code. These proposed regulations, when finalized, would permit taxpayers to make an election to treat certain sales, exchanges, and distributions of another corporation's stock as taxable sales of that corporation's assets. These proposed regulations will affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by November 24, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-143544-04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-143544-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-143544-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Mark J. Weiss, (202) 622-7750; concerning submissions of comments and the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has

been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments on the collection of information should be received by October 24, 2008.

The collection of information in this proposed regulation is in proposed §§1.336-2(h) and 1.336-4(c)(4)). This information is required by the IRS to allow certain parties to make a section 336(e) election and for certain shareholders to make a gain recognition election. The likely recordkeepers are business or other for-profit institutions.

The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 250.

Estimated annual frequency of responses: once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Any such comments should be submitted not later than October 24, 2008.

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

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

Background and Explanation of Provisions

Section 336(e) of the Internal Revenue Code (Code) authorizes the issuance of regulations under which a corporation (seller) that owns stock in another corporation (target) meeting the requirements of section 1504(a)(2) and sells, exchanges, or distributes all of such stock may make an election to treat the sale, exchange, or distribution of the target stock as a sale of all of target's underlying assets. Section 336(e) was enacted as part of the legislation repealing the General Utilities rule and, like an election under section 338(h)(10), is meant to provide taxpayers relief from a potential multiple taxation at the corporate level of the same economic gain which can result when a transfer of appreciated corporate stock is taxed to a corporation without providing a corresponding step-up in the basis of the assets of the corporation. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, 198, 204 (1986), 1986-3 C.B., Vol. 4, 198-207.

A. Scope of the Proposed Regulations

Pursuant to section 336(e), regulations may authorize a section 336(e) election in a broad set of circumstances. The IRS and Treasury Department have limited the scope of these proposed regulations, however, in order to provide guidance to a large number of taxpayers in the most efficient manner possible. These proposed regulations, when finalized, will provide the requirements and mechanics for, and consequences of, treating a stock sale, exchange, or distribution that would not otherwise be eligible for a section 338 election as a deemed asset sale.

The IRS and Treasury Department do not presently intend to authorize the making of section 336(e) elections under all the circumstances described within the statutory grant of authority. However, the IRS and Treasury Department are interested in comments regarding transactions beyond the scope of these proposed regulations for which such elections should be allowed and under what terms and conditions. For example, these proposed regulations do not apply to transactions between related

persons. For this purpose, persons are related if stock in a corporation owned by one of the persons would be attributed to the other person under section 318(a), other than section 318(a)(4). See proposed §1.336-1(b)(11). The IRS and Treasury Department continue to study the possibility of making a section 336(e) election available for such transactions. Accordingly, comments are requested regarding dispositions to related persons, including special rules needed to prevent the use of net operating losses to offset liquidation gains, manipulation of earnings and profits, and changes of accounting methods. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II at 204 (1986).

Additionally, these proposed regulations do not apply to transactions in which either the seller or the target is a foreign corporation. The IRS and Treasury Department request comments regarding how the rules of the proposed regulations should be modified to take into account the policies of international tax provisions if the proposed regulations were extended to apply to foreign sellers and/or foreign targets. For example, comments are requested regarding: (1) how the principles of section 338(h)(16) should apply; (2) how the foreign tax allocation rule of §1.338-9(d) should apply; (3) the characterization of the gain recognized on the deemed asset disposition for purposes of section 954(c)(1)(B); (4) whether special earnings and profits rules are necessary (see, for example, the rules described in Prop. Treas. Reg. §1.367(b)-8); and (5) how the withholding tax provisions of section 1445 should apply to the deemed asset disposition (if relevant).

The IRS and Treasury Department continue to study issues related to elections made under section 338(g) in the international area. Comments are requested on issues in this area, including the interaction of section 338(h)(16) with sections 902 and 960.

Absent the issuance of further guidance, it is intended that these regulations would provide the exclusive means of making elections under section 336(e). See proposed §1.336-2(a).

B. General Principles

1. General adoption of section 338(h)(10) principles

The legislative history to section 336(e) provides that principles similar to those of section 338(h)(10) should apply in the case of a section 336(e) election. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). These proposed regulations implement such principles. Accordingly, except to the extent inconsistent with the purposes of section 336(e) or as otherwise described, the results of a section 336(e) election coincide with those of a section 338(h)(10) election. Whenever possible, these proposed regulations rely upon and use the structure and principles established under section 338(h)(10) and the underlying regulations. For example, these regulations refer to principles under the section 338 regulations regarding the allocation of consideration, application of the asset and stock consistency rules, treatment of minority shareholders, and the availability of the section 453 installment method. In other instances, definitions and concepts from section 338 and the underlying regulations have been modified to reflect principles applicable to section 336(e). For example, these proposed regulations generally use the term “disposition” rather than “acquisition or purchase” and the term “sale, exchange, or distribution” instead of “sale.” Thus, a qualified stock disposition is defined as any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of proposed §1.336-1(b)(4), during the 12-month disposition period. See proposed §1.336-1(b)(5).

These proposed regulations also provide that a transaction that satisfies the definition of both a qualified stock disposition and a qualified stock purchase (as defined in section 338(d)(3)) generally will be treated only as a qualified stock purchase and thus does not qualify for an election under these regulations. See proposed §1.336-1(b)(5)(ii).

2. Requirements for a section 336(e) election

Section 336(e) requires that a seller own stock in another corporation meeting the requirements of section 1504(a)(2) and sell, exchange, or distribute all of such stock to qualify for a section 336(e) election. For purposes of these proposed regulations, a seller is a domestic corporation that makes a qualified stock disposition and includes a transferor and a distributor of target stock. See proposed §1.336-1(b)(1). Generally, all members of a seller’s consolidated group are treated as a single seller. See proposed §1.336-2(g)(2). Thus, similar to a section 338(h)(10) election, a section 336(e) election is available to a seller that directly owns stock of target meeting the requirements of section 1504(a)(2) and to sellers which are members of a consolidated group for the taxable year that includes the disposition date that in the aggregate own stock of target meeting the requirements of section 1504(a)(2). Because section 336(e) requires a corporate seller, the election is not available with respect to the stock of an S corporation. See proposed §1.336-1(b)(5). Cf. §1.338(h)(10)-1(c)(1).

These proposed regulations interpret section 336(e) as requiring only that an amount of stock meeting the requirements of section 1504(a)(2) be disposed of and not that every share of stock owned by the seller be disposed of. Accordingly, the seller, or a member of seller’s consolidated group, may retain a portion of its target stock. See proposed §§1.336-2(b)(1)(v) and 1.336-2(b)(2)(iv). Furthermore, these proposed regulations permit amounts of target stock sold, exchanged, and distributed to be aggregated for purposes of determining whether there has been a qualified stock disposition. For example, a domestic corporation’s sale of 50 percent of target’s stock to an unrelated person and a distribution to its unrelated shareholders of the remaining 50 percent within a 12-month period would constitute a qualified stock disposition. See proposed §1.336-1(b)(5).

In contrast to section 338, which requires a corporate purchaser, these proposed regulations define a purchaser as any person or persons who receive stock of target in a qualified stock disposition.

Accordingly, a section 336(e) election is available for sales, exchanges, or distributions (or a combination thereof) of target stock to both corporate and non-corporate purchasers, provided that the target stock is not sold, exchanged, or distributed to a related person. See proposed §§1.336-1(b)(2) and 1.336-1(b)(4)(i)(C).

Any stock sold, exchanged, or distributed to a related party is not considered to be disposed of for purposes of determining whether there has been a qualified stock disposition. See proposed §§1.336-1(b)(4)(i)(C) and 1.336-1(b)(5)(i). Relatedness generally is determined immediately after the sale, exchange, or distribution of target stock occurs (see proposed §§1.336-1(b)(4)(iii) and 1.336-1(b)(11), and §1.338-3(b)(3)).

C. Sales or Exchanges of Target Stock

In general, if a seller sells or exchanges target stock in a qualified stock disposition, the treatment of old target, seller, and purchaser are similar to the treatment of old target (old T), S, and P under section 338(h)(10). See §1.338(h)(10)-1. If an election is made under section 336(e), the seller disregards the actual sale or exchange of target stock. Instead, target (old target) is treated as selling all of its assets to an unrelated corporation in a single transaction at the close of the disposition date (the deemed asset disposition). Old target recognizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while it is a subsidiary of seller. After the deemed asset disposition, old target is then treated as liquidating into seller which in most cases will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies. Additionally, consistent with a section 338 election, the deemed purchase of the assets of old target by new target constitutes a deemed purchase of any subsidiary stock owned by target. Accordingly, a section 336(e) election is available for the deemed purchase of the stock of a target subsidiary if it constitutes a qualified stock disposition. A section 336(e) election generally does not change the tax consequences of the acquisition to a purchaser of target stock.

D. Distributions of Target Stock Not Described in Section 355(d)(2) or (e)(2)

A section 336(e) election can be made for a distribution of target stock, and the legislative history to section 336(e) provides that “[t]he conferees do not intend this election to affect the manner in which a corporation’s distribution to its shareholders will be characterized for purposes of determining the shareholder level income tax consequences.” H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). Accordingly, additional rules are required to address distributions and to ensure that the income tax consequences to a distributee are generally the same as if a section 336(e) election was not made.

Specifically, these proposed regulations provide that if seller (the distributor) distributes old target stock in the qualified stock disposition, seller is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock to its shareholders. Seller recognizes no gain or loss on the distribution. See proposed §1.336-2(b)(1)(iv). The distributee’s tax consequences generally shall be the same as if it received the target stock pursuant to the underlying distribution. However, the Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the distributee’s income tax consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller’s earnings and profits as a result of old target’s deemed asset disposition and liquidation into seller may alter the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1) from the amount that would have resulted if seller recognized gain on the stock distribution. See proposed §1.336-2(c).

If a seller actually distributed stock of a subsidiary or assets under section 301, it generally would be prevented from recognizing any loss. See section 311(a). The IRS and Treasury Department believe that it would be inconsistent with the general treatment of distributions to allow losses to be recognized on the section 336(e)

deemed asset disposition to the extent the qualified stock disposition was the result of a stock distribution. Therefore, under these proposed regulations, only a portion of the losses realized on the deemed asset disposition may be recognized. The portion of any realized loss that may be recognized is based on a fraction equal to the value of the target stock sold or exchanged in the qualified stock disposition on or before the disposition date over the total value of target stock disposed of in the qualified stock disposition on or before the disposition date. In the case of a section 336(e) election for a subsidiary of target, for purposes of determining the amount of loss that may be recognized by the subsidiary on the deemed asset disposition, only the percentage of the stock of the target subsidiary deemed sold by target equal to the percentage of the stock of target sold or exchanged is considered to have been sold or exchanged. See proposed §§1.336-2(b)(1)(i)(B)(2) and (3). Thus, losses realized in the deemed asset disposition are not recognized to the extent the qualified stock disposition is attributable to the distribution of target stock.

E. Section 355 Distributions

1. Availability of section 336(e) election for certain section 355 distributions

The legislative history to section 336(e) indicates that the election is intended to be available for taxable transactions. Specifically, the Conference Report provides that, “principles similar to those of section 338(h)(10) may be applied to taxable sales or distributions of controlled corporation stock.” H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). The legislative history to section 355(e) provides that although there is no adjustment to the basis of stock or assets as a result of the recognition of gain under section 355(e), “[t]here is no intention to limit the otherwise applicable Treasury regulatory authority under section 336(e) of the Code.” H.R. Conf. Rep. 220, 105th Cong., 1st Sess., 531-532, footnote 13 (1997), 1997-4 C.B. Vol 4, 531, 532. Accordingly, these proposed regulations would allow a corporation that would otherwise recognize the full amount of the gain realized with respect to a qualified stock disposition resulting,

in whole or in part, from a disposition described in section 355(d)(2) or (e)(2) to make a section 336(e) election. Without a section 336(e) election, such provisions may create a triple layer of taxation, one at the controlled corporation level, one at the distributing corporation level and, ultimately, one at the shareholder level. Allowing a section 336(e) election in these circumstances limits taxation to two layers, one at the controlled corporation level and one at the shareholder level when the controlled corporation stock is disposed of, and thus is consistent with *General Utilities* repeal.

2. Special rules for distributions described in section 355(d)(2) or 355(e)(2)

Generally, a section 336(e) election, like a section 338(h)(10) election, results in a deemed sale of old target's assets followed by a liquidation of old target into seller, which if made in a transaction to which section 381 applied, results in old target's attributes being transferred to the seller. Accordingly, consistent with a taxable asset acquisition, after the transaction new target generally has no tax attributes or earnings and profits, and holds its assets with a cost basis. In contrast, a section 355 distribution is generally tax-free to the distributing corporation's shareholders, even if the transaction is described in section 355(d)(2) or 355(e)(2). Further, following a section 355 distribution, the controlled corporation generally retains tax attributes and earnings and profits. The IRS and Treasury Department believe that, except as necessary to carry out the purposes of section 336(e), the section 355 consequences generally should continue to apply in such a transaction. For example, if the controlled corporation were treated as a new corporation, with no earnings and profits, the controlled corporation may be able to distribute its assets to its shareholders without recognizing any dividend consequences under section 301(c)(1). Therefore, to preserve the consequences of section 355 distributions, the proposed regulations provide special rules.

If a section 336(e) election is made for a distribution of the controlled corporation stock in a transaction described in section 355(d)(2) or 355(e)(2), the controlled corporation is treated as if it sold its assets to an unrelated person in the deemed

asset disposition and then it reacquired those assets (sale-to-self treatment). Following the deemed asset disposition, the controlled corporation (old target) is not deemed to liquidate into the distributing corporation (seller). See proposed §1.336-2(b)(2)(i)(A). Instead, the controlled corporation (old target) is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date, and then the distributing corporation is treated as distributing the stock of the controlled corporation (old target) to its shareholders. See proposed §1.336-2(b)(2)(ii) and (iii). Because no liquidation of old target into seller is deemed to occur, the controlled corporation (old target) will generally retain the tax attributes it would have had if the section 336(e) election had not been made. The proposed regulations further provide that the controlled corporation (old target) will take the effects of the deemed asset disposition into account and increase or decrease its earnings and profits immediately before allocating earnings and profits pursuant to §1.312-10. See proposed §1.336-2(b)(2)(vi). Finally, the deemed sale and reacquisition of target's assets (and, in the case of a parent-sub-sidiary chain of corporations making section 336(e) elections, a target subsidiary's assets) pursuant to the deemed asset disposition will not cause the transaction to fail to satisfy the requirements of section 355. See proposed §1.336-2(b)(2)(v).

Similar to a qualified stock disposition resulting from a distribution not involving a transaction described in section 355(d)(2) or (e)(2), old target's losses in the deemed asset disposition will be recognized, but only in relation to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. See §§1.336-2(b)(2)(i)(B)(2) and (3).

Notwithstanding the fact that the sale-to-self treatment applies to a distribution of stock described in section 355(d)(2) or (e)(2), if old target has any subsidiaries for which a section 336(e) election is made, the general deemed asset disposition methodology shall apply. Accordingly, old target subsidiary is treated as though it sold all its assets to an unrelated person, new target subsidiary is deemed to purchase all its assets from an unrelated person, and old target subsidiary

is deemed to liquidate into old target. If the sale-to-self treatment was applied, target subsidiary's attributes would remain with target subsidiary. The IRS and Treasury Department do not believe that taxpayers should have the option of whether the attributes become those of target, by doing an actual sale of target subsidiary's assets followed by a liquidation of target subsidiary, or remain with target subsidiary, by making a section 336(e) election for target subsidiary. Accordingly, the regulations apply the general deemed asset disposition methodology for section 336(e) elections for target subsidiaries in a distribution of target stock described in section 355(d)(2) or (e)(2).

3. Intragroup sales, exchanges, or distributions prior to external sales, exchanges, or distributions

Generally, if the stock of a target is transferred within an affiliated group and then is further transferred outside the affiliated group, a section 336(e) election is not available for the intragroup transfer because a qualified stock disposition may not be made between related sellers and purchasers. Thus, stock level gain may be recognized on the intragroup transfer. While a section 336(e) election may be available for the external transfer, this election would result in the affiliated group recognizing gain both on target's assets and the target stock, contrary to the intent of these proposed regulations. Comments are requested on how to address this concern. Further, because section 355(f) provides that section 355 does not apply to an intragroup distribution prior to an external distribution described in section 355(e)(2), these comments should address the concerns that section 355(f) is intended to address for distributions described therein.

F. Aggregate Deemed Asset Disposition Price (ADADP) and Adjusted Grossed Up Basis (AGUB)

These proposed regulations create a new term, aggregate deemed asset disposition price (ADADP). These proposed regulations retain the term adjusted grossed up basis (AGUB) as used in section 338. See §1.338-5. In general, these proposed regulations treat ADADP and AGUB similarly to the way aggregate deemed sale price (ADSP) and AGUB are treated under

the section 338 regulations. See proposed §§1.336-3 and 1.336-4. Old target recognizes all of the gain realized on the deemed transfer of its assets in exchange for the ADADP and allocates the ADADP among the assets held as of the disposition date (in the same manner as ADSP is allocated under §§1.338-6 and 1.338-7). See proposed §§1.336-2(b)(1)(i) and 1.336-2(b)(2)(i). ADADP is calculated by adding the grossed-up amount realized on the sale, exchange, or distribution of recently disposed target stock and the liabilities of old target. See proposed §1.336-3(b)(1). These proposed regulations account for the fact that there is no actual amount realized in a distribution of stock by treating the grossed-up amount realized on the sale, exchange, or distribution as including in the amount realized the fair market value of recently disposed target stock distributed in the qualified stock disposition. See proposed §1.336-3(c)(1)(i)(B).

These proposed regulations also create a new term, nonrecently disposed stock. The term nonrecently disposed stock has a similar meaning to the term nonrecently purchased stock in section 338(b)(6)(B). In a transaction for which a section 338 election is made, there is only one purchasing corporation (or an affiliated group treated as a purchasing corporation). Accordingly, in most cases, it should be relatively easy to determine the purchaser's basis in nonrecently purchased stock in order to determine AGUB. However, in a section 336(e) election, there can be multiple purchasers or multiple distributees, many of whom may have acquired small amounts of target stock prior to the 12-month disposition period. While a more precise determination of AGUB would require the determination of the basis of all such stockholdings, the IRS and Treasury Department recognize that it would often be impractical to require a seller to determine and track all the purchasers (and distributees) possessing small amounts of nonrecently purchased stock. Generally, purchasers holding at least 10 percent of the total voting power or value of the stock of target should be readily identifiable through mandatory SEC filings and other sources. Thus, in order to balance a desire for precision with a practical application, nonrecently disposed stock is defined as stock in a target corporation which is held on the disposition date by a

purchaser or a person related to a purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target, and which is not recently disposed stock. See proposed §1.336-1(b)(17).

In general, proposed §1.336-4 uses the same principles as paragraphs (b) through (g) of §1.338-5 to determine the amount of AGUB for target and the consequences of a gain recognition election. Proposed §1.336-4(b) contains modifications to the principles of §1.338-5 to reflect the principles of section 336(e).

New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date, but before the deemed liquidation (or, in the case of a transaction described in section 355(d)(2) or (e)(2), before the distribution) in exchange for an amount equal to the AGUB as determined under proposed §1.336-4. New target allocates the consideration deemed paid in the same manner as new target would as described in §§1.338-6 and 1.338-7 in order to determine the basis in each of the transferred assets. See proposed §§1.336-2(b)(1)(ii) and 1.336-2(b)(2)(ii). In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to new target is treated as referring to old target in its capacity as the purchaser of assets pursuant to the section 336(e) election. See proposed §1.336-4(b)(4).

Consistent with the principles of a section 338(h)(10) election, any stock retained by a seller or a member of seller's consolidated group after the 12-month disposition period is treated as acquired by the seller on the day after the disposition date at its fair market value. For this purpose, the fair market value of all the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock. See proposed §§1.336-2(b)(1)(v) and 1.336-2(b)(2)(iv). A minority shareholder (that is, a shareholder that is neither the seller that disposes of 80 percent of the voting power and value of target stock nor a member of seller's consolidated group) is generally not affected by a section 336(e) election. Accordingly, such a minority shareholder that disposes of its target stock will recognize gain or loss on the stock without regard to the section 336(e) election, and

a minority shareholder that retains its target stock retains its basis and holding period in its target stock. See proposed §1.336-2(d).

Under proposed §1.336-4(c), a holder of nonrecently disposed stock may make a gain recognition election, similar to the gain recognition election under section 338, which treats the nonrecently disposed stock as being sold as of the disposition date. The gain recognition election is mandatory if a purchaser owns (after the application of the rules of section 318(a), other than section 318(a)(4)) 80 percent or more of the voting power or value of target stock. See proposed §§1.336-1(b)(15) and 1.336-4(c)(2). Cf. §§1.338(h)(10)-1(d)(1) and 1.338-5(d). Once made, a gain recognition election is irrevocable. See proposed §1.336-4(c)(1). The IRS and Treasury Department request comments on whether the rules regarding gain recognition elections in these proposed regulations are appropriate, and whether the gain recognition election rules in regulations promulgated under section 338 should continue to apply. Also, see the "Correction to section 1.338-5" section of this preamble addressing a correction to the definition of the term *basis amount*, the amount used in determining the purchasing corporation's gain on the deemed sale of stock pursuant to the gain recognition election and in determining AGUB.

G. Making the Section 336(e) Election

These proposed regulations provide that a section 336(e) election is made by seller attaching a statement to its timely filed Federal income tax return for the taxable year that includes the disposition date. See proposed §1.336-2(h). If the seller is a member of a consolidated group, the statement is filed with the group's consolidated return.

The IRS and Treasury Department believe that it is appropriate to allow the seller (or the common parent of the seller's consolidated group) to unilaterally make the section 336(e) election. The IRS and Treasury Department believe that in a distribution of target stock, it would be impractical to require each distributee, who generally will hold relatively small percentages of the target stock, to join in the

election. Further, the distributees' interests should generally be protected because of the distributing corporation's fiduciary responsibilities to its shareholders. In the case of a sale or exchange, the purchasers should be able to protect their interests in any purchase contract. Comments are requested regarding whether it is appropriate to allow such unilateral section 336(e) elections in all cases.

The information required on a section 336(e) election statement is similar to that required on Form 8023, *Elections Under Section 338 for Corporations Making Qualified Stock Purchases*. In the case of a gain recognition election, the section 336(e) election statement must include information pertaining to the gain recognition election.

When finalized, these proposed regulations will permit taxpayers to make a protective section 336(e) election if they are unsure of whether a transaction constitutes a qualified stock disposition. If such an election is made, it will not have any effect if the transaction does not constitute a qualified stock disposition but will otherwise be binding and irrevocable. See proposed §1.336-2(j).

H. Correction to §1.338-5

Section 338(b)(3)(A) authorizes regulations under which the purchasing corporation may elect to step up its basis in nonrecently purchased stock (gain recognition election) to a "basis amount." Under section 338(b)(3)(B), the basis amount is equal to the grossed-up basis of the purchasing corporation's recently purchased stock multiplied by a fraction, the numerator of which is the percentage of target stock attributable to the purchasing corporation's nonrecently purchased stock and the denominator of which is 100 percent minus the numerator amount.

Section 1.338-5(d) provides for the above described gain recognition election. Section 1.338-5(d)(3)(ii) provides that the basis amount is equal to the amount in §1.338-5(c)(1) (the purchasing corporation's basis in recently purchased target stock determined without regard to acquisition costs) multiplied by a fraction, the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the

purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Section 1.338-5(d)(3)(ii) goes on to state, "[t]hus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock."

However, unless the purchasing corporation purchases all of the outstanding stock of target (other than the purchasing corporation's nonrecently purchased stock) within the 12-month acquisition period on or before the acquisition date, the formula in the regulations will not result in the purchasing corporation's basis in each share of nonrecently purchased stock equaling the average price of the recently purchased stock. Only if the basis in the recently purchased stock is grossed-up (as provided by the Code) will such result be achieved. In fact, §1.338-5(g), *Example 1*, paragraph (v), in demonstrating the effect of a gain recognition election, uses the grossed-up basis in the recently purchased stock, not the non-grossed-up basis, consistent with both the Code and the intent of the regulation. Accordingly, §1.338-5(d)(3)(ii) is corrected to use the grossed-up basis of recently purchased stock in determining the basis amount, rather than the non-grossed-up basis.

I. Proposed Effective/Applicability Date

These proposed regulations are proposed to apply to any qualified stock disposition for which the disposition date is on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is

based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of certain sales, exchanges, and distributions of stock of corporations. Moreover, they are expected to apply predominantly to transactions involving larger businesses because the election is only applicable for certain dispositions of stock of an affiliated subsidiary. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

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

Drafting Information

The principal author of these regulations is Mark J. Weiss of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.336-1 is also issued under 26 U.S.C. 336. * * *

Section 1.336-2 is also issued under 26 U.S.C. 336. * * *

Section 1.336-3 is also issued under 26 U.S.C. 336. * * *

Section 1.336-4 is also issued under 26 U.S.C. 336. * * *

Section 1.336-5 is also issued under 26 U.S.C. 336. * * *

Par. 2. Sections 1.336-0 through 1.336-5 are added to read as follows:

§1.336-0 Table of Contents.

This section lists captions contained in §§1.336-1, 1.336-2, 1.336-3, 1.336-4, and 1.336-5.

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 - (2) Dispositions described in section 355(d)(2) or (e)(2).
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§1.336-5 *Effective/applicability Date.*

§1.336-1. *General principles, nomenclature, and definitions for a section 336(e) election.*

(a) *Overview.* Section 336(e) authorizes the promulgation of regulations under which, in certain circumstances, a sale, exchange, or distribution of the stock of a subsidiary may be treated as an asset sale. This section and §§1.336-2 through 1.336-5 provide the rules for and consequences of making such election. This section provides the definitions and nomenclature. Generally, except to the extent inconsistent with section 336(e), the results of a section 336(e) election should coincide with those of a section 338(h)(10) election. Accordingly, to the extent not otherwise addressed in these regulations nor inconsistent with section 336(e), the principles of section 338 and the regulations under section 338 apply for purposes of these regulations. For example, §1.338-8 (concerning asset and stock consistency) and §1.338(h)(10)-1(d)(8) (concerning the availability of the section 453 installment method) may apply with respect to a section 336(e) election.

(b) *Definitions.* For purposes of §§1.336-1 through 1.336-5 (except as otherwise provided):

(1) *Seller.* The term *seller* means any domestic corporation that makes a qualified stock disposition of stock of another corporation. A seller includes both a transferor and a distributor of target stock. Generally, all members of a consolidated group that dispose of target stock are treated as a single seller. See §1.336-2(g)(2).

(2) *Purchaser.* The term *purchaser* means one or more persons that receive the stock of another corporation in a qualified stock disposition. A purchaser includes both a transferee and a distributee of target stock.

(3) *Target; target corporation; old target; new target.* The term *target* or *target corporation* means any domestic corporation the stock of which is sold, exchanged, or distributed by another domestic corporation in a qualified stock disposition. In the case of a transaction not described in section 355(d)(2) or (e)(2), “old target” refers to target for periods ending on or before the close of target’s disposition date and “new target” refers to target

for subsequent periods. In the case of a transaction described in section 355(d)(2) or (e)(2), “old target” refers to target for periods ending on or before the disposition date as well as for subsequent periods.

(4) *Disposed of; disposition*—(i) *In general.* The term *disposed of* refers to a transfer of stock in a disposition. The term *disposition* means any sale, exchange, or distribution of stock, but only if—

(A) the basis of the stock in the hands of the purchaser is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired or under section 1014(a) (relating to property acquired from a decedent),

(B) except as provided in paragraph (b)(4)(ii) of this section, the stock is not sold, exchanged, or distributed in a transaction to which section 351, 354, 355, or 356 applies and is not sold, exchanged, or distributed in any transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized in the transaction, and

(C) the stock is not sold, exchanged, or distributed to a related person.

(ii) *Exception for disposition of stock in certain section 355 transactions.* Notwithstanding paragraph (b)(4)(i)(B) of this section, a distribution of stock to a person who is not a related person in a transaction in which the full amount of stock gain would be recognized pursuant to section 355(d)(2) or (e)(2) shall be considered a disposition.

(iii) *Transactions with related persons.* In determining whether stock is sold, exchanged, or distributed to a related person, the principles of section 338(h)(3)(C) and §1.338-3(b)(3) shall apply.

(iv) *No consideration paid.* Stock in a target may be considered disposed of if, under general principles of tax law, the seller is considered to sell, exchange, or distribute stock of the target notwithstanding that no amount may be paid for (or allocated to) the stock.

(v) *Disposed of stock reacquired by certain persons.* Stock disposed of to another person under this section which is reacquired by the seller or a member of the seller’s consolidated group within the 12-month disposition period shall not be considered as disposed of.

(5) *Qualified stock disposition*—(i) *In general.* The term *qualified stock dispo-*

sition means any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of paragraph (b)(4) of this section, during the 12-month disposition period.

(ii) *Overlap with qualified stock purchase*—(A) *In general.* Except as provided in paragraph (b)(5)(ii)(B) of this section, a transaction satisfying the definition of a qualified stock disposition under paragraph (b)(5)(i) of this section which also qualifies as a qualified stock purchase (as defined in section 338(d)(3)) will not be treated as a qualified stock disposition.

(B) *Exception.* If, as a result of the deemed sale of old target’s assets pursuant to a section 336(e) election, there would be, but for paragraph (b)(5)(ii)(A) of this section, a qualified stock disposition of the stock of a subsidiary of target, then paragraph (b)(5)(ii)(A) shall not apply.

(6) *12-month disposition period.* The term *12-month disposition period* means the 12-month period beginning with the date of the first sale, exchange, or distribution of stock included in a qualified stock disposition.

(7) *Disposition date.* The term *disposition date* means, with respect to any corporation, the first day on which there is a qualified stock disposition with respect to the stock of such corporation.

(8) *Disposition date assets.* *Disposition date assets* are the assets of the target held at the beginning of the day after the disposition date (but see §1.338-1(d) (regarding certain transactions on the disposition date)).

(9) *Domestic corporation.* The term *domestic corporation* has the same meaning as in §1.338-2(c)(9).

(10) *Section 336(e) election.* A section 336(e) election is an election to apply section 336(e) to target. A section 336(e) election is made by making an election for target under §1.336-2(h).

(11) *Related persons.* Two persons are related if stock of a corporation owned by one of the persons would be attributed under section 318(a), other than section 318(a)(4), to the other.

(12) *Liquidation.* Any reference to a liquidation is treated as a reference to the transfer described in §1.336-2(b)(1)(iii)

notwithstanding its ultimate characterization for Federal income tax purposes.

(13) *Deemed asset disposition.* The deemed sale of old target's assets is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset disposition.

(14) *Deemed disposition tax consequences.* Deemed disposition tax consequences refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset disposition. Deemed disposition tax consequences also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset disposition.

(15) *80-percent purchaser.* An 80-percent purchaser is any purchaser that, after application of the attribution rules of section 318(a), other than section 318(a)(4), owns 80 percent or more of the voting power or value of the target corporation stock.

(16) *Recently disposed stock.* The term *recently disposed stock* means any stock in the target corporation which is not held by a seller or a member of the seller's consolidated group immediately after the close of the disposition date and which was sold, exchanged, or distributed by a seller during the 12-month disposition period. If, within the 12-month disposition period, stock is sold, exchanged, or distributed, then reacquired by a seller, and then sold, exchanged, or distributed again, only the last sale, exchange, or distribution of the reacquired stock in the 12-month disposition period may be recently disposed stock.

(17) *Nonrecently disposed stock.* The term *nonrecently disposed stock* means stock in the target corporation which is held on the disposition date by a purchaser or a person related (as described in §1.336-1(b)(11)) to the purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target and which is not recently disposed stock.

(c) *Nomenclature.* For purposes of §§1.336-1 through 1.336-5, except as otherwise provided, Parent, Seller, Target, Target Subsidiary, and Sub are domestic corporations and A, B, C, and D are individuals, none of whom are related to

Parent, Seller, Target, Target Subsidiary, Sub, or each other.

§1.336-2. Availability, mechanics, and consequences of section 336(e) election.

(a) *Availability of election.* A section 336(e) election is available if a seller makes a disposition of stock of another corporation (target) in a qualified stock disposition (as defined in §1.336-1(b)(5)). A section 336(e) election is irrevocable. A section 336(e) election is not available for transactions described in section 336(e) that do not constitute qualified stock dispositions, as defined in §1.336-1(b)(5).

(b) *Deemed transaction—(1) Dispositions not described in section 355(d)(2) or (e)(2)—(i) Old target—deemed asset disposition—(A) In general.* This paragraph (b)(1) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2). For the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), see paragraph (b)(2) of this section. In general, if a section 336(e) election is made, the seller is treated as not having sold, exchanged, or distributed the stock disposed of in the qualified stock disposition. Instead, old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation described in paragraph (b)(1)(iii) of this section) in exchange for the aggregate deemed asset disposition price (ADADP) as determined under §1.336-3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§1.338-6 and 1.338-7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller.

(B) *Gains and losses—(1) Gains.* Except as provided in §1.338(h)(10)-1(d)(8) (regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(2) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each

of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. For purposes of determining the amount of loss recognized by a subsidiary of old target for which a section 336(e) election is made, only the fraction of the old target subsidiary stock deemed sold in the deemed asset disposition of old target's assets that is equal to the loss recognition fraction is considered to have been sold or exchanged. In addition, to the extent old target or a subsidiary of old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(3) *Examples.* The following examples illustrate this paragraph (b)(1)(i)(B).

Example 1. (i) *Facts.* Seller owns 98 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On March 1 of Year 1, Seller sells 30 shares of Target stock to A for cash. On April 1 of Year 1, Seller sells 10 shares of Target stock to R, a related individual. On July 1 of Year 1, Seller distributes 50 shares of target stock to its unrelated shareholders. On December 1 of Year 1, Seller sells 5 shares of Target stock to B. Seller retains its remaining 3 shares of Target stock. The value of the Target stock on July 1 equals \$100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock $((30 + 50 + 5)/100)$ was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target recognizes all of its gain on the deemed asset disposition. However, only

30 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposition date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is \$3,000, the value, determined on July 1, the disposition date, of the 30 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is \$8,000, the value of the Target stock on July 1, the disposition date, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only 37.5 percent ($\$3,000/\$8,000$) of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

Example 2. (i) Facts. The facts are the same as in *Example 1* with the following additional facts: Target also owns 80 shares of Target Subsidiary common stock, the only class of Target Subsidiary stock outstanding, and Seller owns the remaining 20 shares of Target Subsidiary stock. Seller, Target, and Target Subsidiary file a consolidated Federal income tax return. Also on July 1 of Year 1, Seller distributes 15 shares of Target Subsidiary stock to its unrelated shareholders and sells 5 shares of Target Subsidiary stock to C for cash. The Target Subsidiary stock is worth \$10 a share on July 1. A section 336(e) election is also made with respect to the Target Subsidiary stock.

(ii) Consequences. The consequences with respect to the Target stock are the same as described in *Example 1* except that no gain or loss is recognized by Target on the deemed sale of its Target Subsidiary stock. With respect to Target Subsidiary, because at least 80 percent of the Target Subsidiary stock ($(80 + 15 + 5)/100$) was disposed of (or deemed disposed of) by members of Seller's consolidated group within the 12-month disposition period, a qualified stock disposition of Target Subsidiary has occurred. Old Target Subsidiary recognizes all of its gain on the deemed asset disposition. Notwithstanding that all 80 of Target's shares in Target Subsidiary were deemed sold in the deemed asset disposition of Target, only 37.5 percent of such shares were deemed sold as a result of a sale or exchange of Target stock. Accordingly, in determining the amount of loss on each of Target Subsidiary's assets that is recognized in the deemed sale of its assets, only 37.5 percent of the 80 shares of Target Subsidiary deemed sold by Target, 30 shares, are considered to have been sold or exchanged by Target. Therefore, the amount of loss recognized by Target Subsidiary is equal to a fraction, the numerator of which is the sum of \$300, the value, determined on July 1, the disposition date, of the 30 shares of Target Subsidiary deemed sold by Target in the qualified stock disposition, and \$50, the value, determined on July 1, the disposition date, of the 5 shares of Target Subsidiary stock sold by Seller on or before the disposition date, and the denominator of which is \$1,000, the value of the Target Subsidiary stock on July 1, the disposition date, that was disposed of in the qualified stock disposition of Target Subsidiary on or before the disposition date. Accordingly, only 35 percent ($(\$300 + \$50)/(\$1,000)$) of Old Target Subsidiary's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) Tiered targets. In the case of parent-subsidiary chains of corporations making

section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) New target—deemed purchase. New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation) in exchange for an amount equal to the adjusted grossed up basis (AGUB) as determined under §1.336-4. New target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§1.338-6 and 1.338-7 in order to determine the basis in each of the purchased assets. Notwithstanding paragraph (b)(1)(iii) of this section (deemed liquidation of old target), new target remains liable for the tax liabilities of old target (including the tax liability for the deemed disposition tax consequences). For example, new target remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old target joined in the same consolidated return. See §1.1502-6(a).

(iii) Old target and seller—deemed liquidation—(A) In general. Old target and seller are treated as if, before the close of the disposition date, after the deemed asset disposition described in paragraph (b)(1)(i)(A) of this section, and while owned by seller, old target transferred all of its assets to seller and ceased to exist. The transfer from old target to seller is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies.

(B) Tiered targets. In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed liqui-

dated of a lower-tier subsidiary corporation is considered to precede the deemed liquidation of a higher-tier subsidiary.

(iv) Seller—distribution of target stock. In the case of a distribution of target stock in the qualified stock disposition, seller (the distributor) is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock to its shareholders. Seller recognizes no gain or loss on the distribution of stock.

(v) Seller—retention of target stock. If a seller retains any target stock after the 12-month disposition period, the seller is treated as purchasing the stock so retained from new target (new target stock) on the day after the disposition date for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(1)(v), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see §1.336-3(c)).

(2) Dispositions described in section 355(d)(2) or (e)(2)—(i) Old target—deemed asset disposition—(A) In general. This paragraph (b)(2) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition resulting, in whole or in part, from a disposition described in section 355(d)(2) or (e)(2). Old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date in exchange for the ADADP as determined under §1.336-3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§1.338-6 and 1.338-7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller. Unlike a section 338(h)(10) election or a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2), old target is not deemed to liquidate.

(B) Gains and losses—(1) Gains. Except as provided in §1.338(h)(10)-1(d)(8)

(regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(2) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. In addition, to the extent old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(3) *Example.* The following example illustrates this paragraph (b)(2)(i)(B).

Example. (i) *Facts.* Seller owns 95 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On January 1 of Year 1, Seller sells 4 shares of Target stock to A for cash. On February 1 of Year 1, Seller sells 5 shares of Target stock to R, a related individual. On May 1 of Year 1, Seller distributes 6 shares of Target stock to its unrelated shareholders in a distribution not described in section 355(d)(2) or (e)(2). In an unrelated transaction, on July 1 of Year 1, Seller distributes its remaining 80 shares of Target stock to its unrelated shareholders in a distribution described in section 355(d)(2) or (e)(2). The value of the Target stock on July 1 equals \$100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock $((4 + 6 + 80)/100)$ was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target recognizes all of its gain on the deemed asset disposition. However, only 4 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposi-

tion date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is \$400, the value, determined on July 1, the disposition date, of the 4 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is \$9,000 $(\$400 + \$600 + \$8,000)$, the total value of the Target stock determined as of July 1, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only \$400/\$9,000 of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) *Old target—deemed purchase—(A) In general.* Immediately after the deemed asset disposition described in paragraph (b)(2)(i)(A) of this section, old target is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date (but before the distribution described in paragraph (b)(2)(iii)(A) of this section) in exchange for an amount equal to the AGUB as determined under §1.336-4. Old target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§1.338-6 and 1.338-7 in order to determine the basis in each of the purchased assets.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), old target's deemed purchase of all its assets is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(iii) *Seller-distribution of target stock—(A) In general.* Immediately after old target's deemed purchase of its assets described in paragraph (b)(2)(ii) of this section, seller is treated as distributing the stock of old target actually distributed to its shareholders in the qualified stock disposition. No gain or loss is recognized by seller on the distribution. Additionally, if stock of target is sold or exchanged as part of a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), no gain or loss is recognized by seller on the sale or exchange.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), the Federal income tax consequences of the section 336(e) election for a subsidiary of target shall be determined under paragraph (b)(1) of this section. The deemed liquidation of a lower-tier subsidiary corporation pursuant to paragraph (b)(1)(iii) of this section is considered to precede the deemed liquidation of a higher-tier subsidiary. The deemed liquidation of the highest tier subsidiary of target is considered to precede the distribution of old target stock described in paragraph (b)(2)(iii)(A) of this section.

(iv) *Seller—retention of target stock.* If a seller retains any target stock after the 12-month disposition period, the seller is treated as having disposed of the old target stock so retained, on the disposition date, in a transaction in which no gain or loss is recognized, and then, on the day after the disposition date, purchasing the stock so retained from old target for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(2)(iv), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see §1.336-3(c)).

(v) *Qualification under section 355.* Old target's deemed sale of all its assets to an unrelated person and old target's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. Similarly, the deemed sale of all of the assets of a subsidiary of target to an unrelated person and the new subsidiary's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. For purposes of applying section 355(a)(1)(D), seller is treated as having disposed of any stock disposed of in the qualified stock disposition on the date seller actually sold, exchanged, or distributed such stock. Further, seller's deemed disposition of retained old target stock under paragraph (b)(2)(iv) of this section is disregarded for purposes of applying section 355(a)(1)(D).

(vi) *Earnings and profits.* The earnings and profits of seller and target shall be determined pursuant to §1.312-10 and, if applicable, §1.1502-33(e). For this purpose, target will not be treated as a newly created controlled corporation and any increase or decrease in target's earnings and profits pursuant to the deemed asset disposition will increase or decrease, as the case may be, target's earnings and profits immediately before the allocation described in §1.312-10.

(c) *Purchaser.* Generally, the making of a section 336(e) election will not affect the Federal income tax consequences to which the purchaser would have been subject with respect to the acquisition of the target stock if a section 336(e) election was not made. Thus, notwithstanding §§1.336-2(b)(1)(i)(A), 1.336-2(b)(1)(iv), and 1.336-2(b)(2)(iii)(A), the purchaser will still be treated as having purchased, received in an exchange, or received in a distribution, the stock of target so acquired on the date actually acquired. However, see section 1223(1)(B) with respect to the holding period for stock acquired pursuant to a distribution qualifying under section 355 (or so much of section 356 that relates to section 355). The Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the purchaser's consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller's earnings and profits as a result of old target's deemed asset disposition and liquidation into seller may increase the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1).

(d) *Minority shareholders—(1) In general.* This paragraph (d) describes the treatment of shareholders of old target other than the seller (or a member of seller's consolidated group), whether or not they sell, exchange, or distribute their stock of target. A shareholder to which this paragraph (d) applies is referred to as a minority shareholder.

(2) *Sale, exchange, or distribution of target stock by a minority shareholder.* A minority shareholder recognizes gain or loss (as permitted under the general principles of tax law) on its sale, exchange, or distribution of target stock.

(3) *Retention of target stock by a minority shareholder.* A minority shareholder who retains its target stock does not recognize gain or loss under this section with respect to its shares of target stock. The minority shareholder's basis and holding period for that target stock are not affected by the section 336(e) election. Notwithstanding the treatment to the minority shareholder, if a section 336(e) election is made, target will still be treated as disposing of all of its assets in the deemed asset disposition.

(e) *Treatment consistent with an actual asset disposition.* Except as otherwise provided, no provision in this section shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur because of this section, taking into account other transactions that actually occurred or are deemed to occur. See §1.338-1(a)(2) regarding the application of other rules of law.

(f) *Treatment of target under other provisions of the Internal Revenue Code.* The provisions §1.338-1(b) apply with respect to the treatment of new target after a section 336(e) election, treating any reference to section 338 or 338(h)(10) as a reference to section 336(e).

(g) *Special rules—(1) Target as two corporations.* Although the target is a single corporation under corporate law, if a section 336(e) election is made, then, except with respect to a distribution described in section 355(d)(2) or (e)(2) and as provided in §1.338-1(b)(2), two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code.

(2) *Treatment of members of a consolidated group.* For purposes of §§1.336-1 through 1.336-5, all members of the seller's consolidated group are treated as a single seller, regardless of whether the member actually disposes of any stock. Accordingly, any dispositions of stock made by members of the same consolidated group shall be treated as made by one corporation, and any stock owned by members of the same consolidated group and not disposed of will be treated as stock retained by the seller.

(3) *Miscellaneous international provisions—(i) Source and foreign tax credit.*

The principles of section 338(h)(16) apply to section 336(e) elections for target corporations with foreign operations to ensure that the source and foreign tax credit limitation are properly determined.

(ii) *Allocation of foreign taxes.* If a section 336(e) election is made for target and target's taxable year under foreign law (if any) does not close at the end of the disposition date, foreign income taxes attributable to the foreign taxable income earned by the target during such foreign taxable year are allocated to old target and new target under the principles of §1.1502-76(b).

(h) *Making the section 336(e) election.* A section 336(e) election is made by the seller attaching a section 336(e) election statement to its timely filed (including extensions) Federal income tax return for the taxable year which includes the disposition date entitled "THIS IS AN ELECTION UNDER SECTION 336(e) TO TREAT THE DISPOSITION OF THE STOCK OF [insert name and employer identification number of target] AS A DEEMED SALE OF SUCH CORPORATION'S ASSETS." If the seller is a member of a consolidated group, the statement is filed with the Federal income tax return of the consolidated group. The seller must provide a copy of the statement to the target. The relevant information for each consolidated group member that disposes of target stock and each member that retains target stock must be set forth individually, not in the aggregate. In the case of a section 336(e) election for lower-tier targets, an additional statement must be filed for each lower-tier target. However, in preparing the statement, the seller of the directly disposed of target shall be treated as the seller of the lower-tier target. The section 336(e) election statement must include:

(1) The name, address, employer identification number (EIN), tax year, and state of incorporation of the target corporation;

(2) The name, address, EIN, tax year, and state of incorporation of the seller(s);

(3) The name, address, EIN (or social security number), tax year, and state of incorporation (if any) of any 80-percent purchaser;

(4) The disposition date;

(5) The percentage of target stock that was disposed of by each seller in the qualified stock disposition;

(6) The percentage of target stock that was disposed of on the disposition date by

each seller in the qualified stock disposition;

(7) The percentage of target stock that was sold or exchanged by each seller in the qualified stock disposition on or before the disposition date;

(8) The percentage of target stock that was distributed by each seller in the qualified stock disposition on or before the disposition date;

(9) The percentage of target stock that was retained by each seller immediately after the 12-month disposition period; and

(10) Whether any purchaser made a gain recognition election pursuant to §1.336-4(c). A copy of the gain recognition election statement must be attached to the section 336(e) election statement.

(i) [Reserved]

(j) *Protective section 336(e) election.* Taxpayers may make a protective election under section 336(e) in connection with a transaction. Such an election will have no effect if the transaction does not constitute a qualified stock disposition, as defined in §1.336-1(b)(5), but will otherwise be binding and irrevocable.

(k) *Examples.* The following examples illustrate the provisions of this section.

Example 1. Sale of 100 percent of target stock.

(i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of \$80 per share. Target's only assets are two parcels of land. Parcel 1 has a basis of \$5,000 and Parcel 2 has a basis of \$4,000. Target has no liabilities. On July 1 of Year 1, Parent sells all 100 shares of Target stock to A for \$100 per share. Parent incurs no selling costs and A incurs no acquisition costs. On July 1, the value of Parcel 1 is \$7,000 and the value of Parcel 2 is \$3,000. Parent makes a section 336(e) election.

(ii) *Consequences.* The sale of Target stock constitutes a qualified stock disposition. July 1 of Year 1 is the disposition date. Accordingly, pursuant to the section 336(e) election, for Federal income tax purposes, rather than treating Parent as selling the stock of Target to A, the following events are deemed to occur. Target is treated as if, on July 1, it sold all of its assets to an unrelated person in exchange for the ADADP, \$10,000, which is allocated \$7,000 to Parcel 1 and \$3,000 to Parcel 2 (see §1.336-3 for the determination and allocation of ADADP). Target recognizes gain of \$2,000 on Parcel 1 and loss of \$1,000 on Parcel 2. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, \$10,000 (see §1.336-4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately thereafter, distributing the \$10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. A's basis in New Target

stock equals \$100 per share, the amount paid for the stock.

Example 2. Sale of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that Parent only sells 80 shares of its Target stock to A and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 1* except that Parent also is treated as purchasing from New Target on July 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold to A, for their fair market value as determined under §1.336-2(b)(1)(v), \$2,000 (\$100 per share).

Example 3. Distribution of 100 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that instead of Parent selling 100 shares of Target stock to A, Parent distributes 100 shares to its shareholders, all of whom are unrelated to Parent, in a transaction that does not qualify under section 355.

(ii) *Consequences.* The results are the same as in *Example 1* except that Target does not recognize the \$1,000 of loss realized with respect to Parcel 2 (see §1.336-2(b)(1)(i)(B)(2)) and on July 1, immediately after the deemed liquidation of Target, Parent is deemed to purchase from New Target 100 shares of New Target stock and distribute those New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the shares under §1.336-2(b)(1)(iv). The shareholders receive the New Target stock as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d).

Example 4. Distribution of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 3* except that Parent distributes only 80 shares of Target stock to its shareholders and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 3* except that Parent is treated as purchasing on July 1 only 80 shares of New Target stock and as distributing only 80 shares of New Target stock to its shareholders and then as purchasing (and retaining), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under §1.336-2(b)(1)(v), \$2,000 (\$100 per share).

Example 5. Part sale, part distribution. (i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of \$80 per share. Target has two assets, both of which are buildings used in its business. Building 1 has a basis of \$6,000 and Building 2 has a basis of \$5,100. Target has no liabilities. On January 1 of Year 1, Parent sells 50 shares of Target to A for \$88 per share. Parent incurred no selling costs with respect to the sale of Target stock and A incurred no acquisition costs with respect to the purchase. On July 1 of Year 1, when the value of the Target stock is \$120 per share, Parent distributes 30 shares of Target to its unrelated shareholders. Parent retains the remaining 20 shares. On July 1, the value of Building 1 is \$7,800 and the value of Building 2 is \$4,200. A section 336(e) election is made.

(ii) *Consequences.* Because the sale of the 50 shares and the distribution of the 30 shares occurred within a 12-month disposition period, the 80 shares of Target stock sold and distributed were disposed of in a qualified stock disposition. July 1 of Year 1 is the disposition date. On July 1, Target is treated as if it sold its assets to an unrelated person in exchange

for the ADADP, \$10,000, which is allocated \$6,500 to Building 1 and \$3,500 to Building 2 (see §1.336-3 for the determination and allocation of ADADP). Target realizes and recognizes gain of \$500 on the deemed sale of Building 1 (\$6,500 - \$6,000). Target realizes loss of \$1,600 on the deemed sale of Building 2 (\$3,500 - \$5,100). However, pursuant to §1.336-2(b)(1)(i)(B)(2), because only a portion of the stock disposed of in the qualified stock disposition was sold or exchanged, only a portion of the loss on Building 2 is recognized. The amount of loss recognized on Building 2 is the \$1,600 loss realized multiplied by a fraction, the numerator of which is \$6,000, the value on July 1, of the 50 shares that were sold in the qualified stock disposition on or before the disposition date and the denominator of which is \$9,600, the value on July 1, of all of the Target shares disposed of in the qualified stock disposition on or before the disposition date. Thus, only \$1,000 ($\$1,600 \times (\$6,000/\$9,600)$) of the loss on the deemed sale of Building 2 is recognized by Old Target. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, \$10,000 (see §1.336-4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately after the deemed asset disposition, distributing the \$10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. Parent is then deemed to purchase 30 shares of New Target stock from New Target on July 1, and distribute those 30 New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the 30 shares under §1.336-2(b)(1)(iv). Parent is then deemed to purchase (and retain), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under §1.336-2(b)(1)(v), \$2,000 (\$100 per share). A is treated as having purchased the 50 shares of New Target stock on January 1 of Year 1 at a cost of \$88 per share, the same as if no section 336(e) election had been made. Parent's shareholders are treated as receiving the New Target stock on July 1 of Year 1 as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d), the same as if no section 336(e) election had been made.

Example 6. Sale of Target stock by consolidated group members. (i) *Facts.* Parent owns all the stock of Sub and 50 of the 100 outstanding shares of Target stock. Sub owns the remaining 50 shares of Target stock. Parent and Sub each hold their Target stock with a basis of \$80 per share. Target's assets have an aggregate basis of \$9,000. Target has no liabilities. Parent, Sub, and Target file a consolidated Federal income tax return. On February 1 of Year 1, Parent sells 30 shares of its Target stock to A for \$2,400. On March 1 of Year 1, Sub sells all 50 shares of its Target stock to B for \$5,600. Neither Parent nor Sub incurred any selling costs. Neither A nor B incurred any acquisition costs. A section 336(e) election is made. Assume that if the sale of the Target stock constitutes a qualified stock disposition, the value allocated to each of Target's assets under §1.336-3 will exceed the asset's basis.

(ii) *Consequences.* Because Parent and Sub are members of the same consolidated group, their sale of Target stock is treated as made by one seller (see

paragraph (g)(2) of this section), and the sales of Target stock constitute a qualified stock disposition. March 1 of Year 1 is the disposition date. For Federal income tax purposes, Parent and Sub are not treated as selling the stock of Target to A and B, respectively. Instead, the following events are deemed to occur. Target is treated as if, on March 1, it sold all its assets to unrelated person in exchange for the ADADP, \$10,000 (see §1.336-3 for determination of ADADP), recognizing gain of \$1,000. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, \$10,000 (see §1.336-4 for the determination of AGUB). Old Target is treated as liquidating into Parent and Sub immediately thereafter, distributing the \$10,000 deemed received in exchange for its assets in a transaction qualifying under section 332 (see §1.1502-34). Neither Parent nor Sub recognize gain or loss on the liquidation. Parent is then treated as purchasing from New Target on March 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold, for its fair market value as determined under §1.336-2(b)(1)(v), \$2,000 (\$100 per share). A is treated as having purchased 30 shares of New Target stock on February 1 of Year 1 at a cost of \$2,400 (\$80 per share), the same as if no section 336(e) election had been made. B is treated as having purchased 50 shares of New Target stock on March 1 of Year 1 at a cost of \$5,600 (\$112 per share), the same as if no section 336(e) election had been made.

Example 7. Sale of target stock by non-consolidated group members. (i) *Facts.* The facts are the same as in *Example 6* except that Parent, Sub, and Target do not join in the filing of a consolidated Federal income tax return. A section 336(e) election is made.

(ii) *Consequences.* Because Parent and Sub do not join in a consolidated Federal income tax return and no single seller sells, exchanges, or distributes Target stock meeting the requirements of section 1504(a)(2), the transaction does not constitute a qualified stock disposition. The section 336(e) election made with respect to the disposition of Target stock has no effect.

Example 8. Distribution of 80 percent of Target stock in complete redemption of a greater-than-50-percent shareholder. (i) *Facts.* A and B own 51 and 49 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 80 shares of Target stock to A in complete redemption of A's 51 shares of Seller in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Prior to the redemption, Seller and A would be related persons because, under section 318(a)(2)(C), any stock of a corporation that is owned by Seller would be attributed to A because A owns 50 percent or more of the value of the stock of Seller. However, for purposes of §§1.336-1 through 1.336-5, the determination of whether Seller and A are related is made immediately after the redemption of A's stock. See §§1.336-1(b)(4)(iii) and 1.338-3(b)(3)(ii)(A). After the redemption, A no longer owns any stock of Seller. Accordingly, A and Seller are not related persons, as defined in §1.336-1(b)(11), and the distribution of Target stock constitutes a qualified stock disposition. For Federal income tax purposes, rather than Seller distributing

the stock of Target to A, the following is deemed to occur. Target is treated as if it sold its assets to an unrelated person. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction. Immediately thereafter, Old Target is liquidated into Seller in a transaction qualifying under section 332. Seller recognizes no gain or loss on the liquidation. Seller is then treated as purchasing 80 shares of New Target stock from New Target and then distributing the stock of New Target to A in exchange for A's 51 shares of Seller stock. Seller recognizes no gain or loss on the distribution of New Target stock pursuant to §1.336-2(b)(1)(iv). Seller is then treated as purchasing from New Target, on the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually distributed, for its fair market value as determined under §1.336-2(b)(1)(v). The Federal income tax consequences to A are the same as if no section 336(e) election had been made.

Example 9. Pro-rata distribution of 80 percent of target stock. (i) *Facts.* A and B own 60 and 40 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 48 shares of Target stock to A and 32 shares of Target stock to B in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Any stock of a corporation that is owned by Seller would be attributed to A under section 318(a)(2)(C) because, after the distribution, A owns 50 percent or more of the value of the stock of Seller. Therefore, after the distribution, A and Seller are related persons, as defined in §1.336-1(b)(11), and the distribution of Target stock to A is not a disposition. Because only 32 percent of the Target stock was sold, exchanged, or distributed to nonrelated persons, there has not been a qualified stock disposition. Accordingly, the section 336(e) election made with respect to the distribution of the Target stock has no effect.

Example 10. Distribution of target stock described in section 355(e)(2). (i) *Facts.* Seller owns all 100 shares of Target's only class of stock. Target owns all 100 shares of Target Subsidiary's only class of stock. Seller distributes all 100 shares of Target stock to its shareholders, all of whom are unrelated to Seller, in a distribution that qualifies under section 355 (see paragraph (iv) of this *Example 10*). As part of the plan involving the distribution of the Target stock, the shareholders of Seller sell all of the stock of Seller, and section 355(e)(2) applies to the distribution. Section 336(e) elections are made with respect to Target and Target Subsidiary.

(ii) *Consequences—Old Target deemed asset sale.* Because the Target stock was distributed to persons who are unrelated to Seller, and the distribution is described in section 355(e)(2), the distribution constitutes a qualified stock disposition. See proposed §§1.336-1(b)(4) and 1.336-1(b)(5). Target's deemed disposition of the stock of Target Subsidiary as a result of the section 336(e) election also constitutes a qualified stock disposition. See §1.336-1(b)(5)(ii). For Federal income tax purposes, rather than Seller distributing the stock of Target to unrelated shareholders, the following is deemed to occur. Old Target is treated as if it sold all of its assets to an unrelated person for the ADADP, determined under §1.336-3. Old Target recognizes

gain, but not loss, on the deemed sale of each of its assets, other than the stock of Target Subsidiary. See §1.336-2(b)(2)(i)(B)(2). Old Target is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under §1.336-4.

(iii) *Consequences—Old Target Subsidiary deemed asset sale and liquidation.* After Old Target's deemed purchase of all of its assets, Old Target Subsidiary is then treated as if it sold all of its assets to an unrelated person for the ADADP, determined under §1.336-3. Old Target Subsidiary recognizes gain, but not loss, on the deemed sale of each of its assets. See §1.336-2(b)(1)(i)(B)(2). New Target Subsidiary is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under §1.336-4. Old Target Subsidiary is then deemed to liquidate into Old Target immediately thereafter, distributing the amount deemed received in exchange for its assets, in a transaction qualifying under section 332. Old Target recognizes no gain or loss on the liquidation of Old Target Subsidiary.

(iv) *Consequences—Seller distribution of Old Target.* After the deemed liquidation of Old Target Subsidiary, Seller is then treated as distributing the stock of Old Target to the unrelated shareholders. Pursuant to paragraph (b)(2)(v) of this section, neither Old Target's and Old Target Subsidiary's deemed sales of all their assets to unrelated persons nor Old Target's and New Target Subsidiary's deemed purchases of all their assets from unrelated persons will cause the distribution of Old Target to fail to satisfy the requirements of section 355. The distributee shareholders have the same Federal income tax consequences with respect to the receipt of the Target stock as if a section 336(e) election had not been made.

§1.336-3. Aggregate deemed asset disposition price; various aspects of taxation of the deemed asset disposition.

(a) *Scope.* This section provides rules under section 336(e) to determine the aggregate deemed asset disposition price (ADADP) for target. ADADP is the amount for which old target is deemed to have sold all of its assets in the deemed asset disposition. ADADP is allocated among target's assets in the same manner as ADSP is allocated under §1.338-6 to determine the amount for which each asset is deemed to have been sold. When a subsequent increase or decrease is required under general principles of tax law with respect to an element of ADADP, the redetermined ADADP is allocated among target's assets in the same manner as redetermined ADSP is allocated under §1.338-7.

(b) *Determination of ADADP—(1) General rule.* ADADP is the sum of—

(i) The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target; and

(ii) The liabilities of old target.

(2) *Time and amount of ADADP*—(i) *Original determination.* ADADP is initially determined at the beginning of the day after the disposition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADADP.

(ii) *Redetermination of ADADP.* ADADP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADADP. For example, ADADP is redetermined because of an increase or decrease in the amount realized on the sale or exchange of recently disposed stock of target or because liabilities not originally taken into account in determining ADADP are subsequently taken into account. Increases or decreases with respect to the elements of ADADP result in the reallocation of ADADP among target's assets in the same manner as ADSP under §1.338-7.

(c) *Grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target*—(1) *Determination of amount.* The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target is an amount equal to—

(i) The sum of (A) the amount realized on the sale or exchange of recently disposed stock of target, determined as if the seller(s) were required to use old target's accounting methods and characteristics and the installment method were not available and determined without regard to the selling costs taken into account under paragraph (c)(1)(iii) of this section and (B) the fair market value of recently disposed stock of target, determined on the date of each distribution, distributed in the qualified stock disposition;

(ii) Divided by the percentage of target stock (by value, determined on the disposition date) attributable to the recently disposed stock;

(iii) Less the selling costs incurred by the seller in connection with the sale or exchange of recently disposed stock that reduce its amount realized on the sale or exchange of the stock (for example, brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. Target has two classes of stock outstanding, voting common stock and preferred stock described in section 1504(a)(4). Seller owns all 100 shares of each class of stock. On March 1 of Year 1, Seller sells 10 shares of Target voting common stock to A for \$75. On April 1 of Year 2, Seller distributes 15 shares of voting common stock with a fair market value of \$120 to B. On May 1 of Year 2, Seller distributes 10 shares of voting common stock with a fair market value of \$110 to C. On July 1 of Year 2, Seller sells 55 shares of Target voting common stock to D for \$550. On July 1 of Year 2, the fair market value of all the Target voting common stock is \$1,000 (\$10 per share) and the fair market value of the preferred stock is \$600. Seller incurs \$20 of selling costs with respect to the sale to A and \$60 of selling costs with respect to the sale to D. The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of Target corporation is calculated as follows: The sum of the amount realized on the sale or exchange of recently disposed stock sold or exchanged (without regard to selling costs) and the fair market value of the recently disposed stock distributed is \$780 (\$120 + \$110 + \$550) (the 10 shares sold to A on March 1 of Year 1 is not recently disposed stock because it was not disposed of during the 12-month disposition period). The percentage of Target stock by value on the disposition date attributable to recently disposed stock equals 50% ($\$800/(\$1000 + \$600)$). The grossed-up amount realized equals \$1500 ($(\$780/.50) - \60 selling costs).

(d) *Liabilities of old target*—(1) *In general.* In general, the liabilities of old target are measured as of the beginning of the day after the disposition date. However, if a target for which a section 336(e) election is made engages in a transaction outside the ordinary course of business on the disposition date after the event resulting in the qualified stock disposition of the target or a higher-tier corporation, the target and all persons related thereto (either before or after the qualified stock disposition) under section 267(b) or section 707 must treat the transaction for all Federal income tax purposes as occurring at the beginning of the day following the transaction and after the deemed disposition by old target. In order to be taken into account in ADADP, a liability must be a liability of target that is properly taken into account in amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included the discharge of its liabilities. See §1.1001-2(a). Such liabilities may include liabilities for the tax consequences resulting from the deemed asset disposition.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADADP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the discharge of the liabilities by the unrelated person. For example, if no amount of a target liability is properly taken into account in amount realized as of the beginning of the day after the disposition date, the liability is not initially taken into account in determining ADADP (although it may be taken into account at some later date).

(e) *Deemed disposition tax consequences.* Gain or loss on each asset in the deemed asset disposition is computed by reference to the ADADP allocated to that asset. ADADP is allocated in the same manner as is ADSP under §1.338-6. Although deemed disposition tax consequences may increase or decrease ADADP by creating or reducing a tax liability, the amount of the tax liability itself may be a function of the size of the deemed disposition tax consequences. Thus, these determinations may require trial and error computations.

(f) *Other rules apply in determining ADADP.* ADADP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed asset disposition for purposes of determining ADADP.

§1.336-4. Adjusted grossed-up basis.

(a) *Scope.* Except as provided in paragraphs (b) and (c) of this section or as the context otherwise requires, the principles of paragraphs (b) through (g) of §1.338-5 apply in determining the adjusted grossed-up basis (AGUB) for target and the consequences of a gain recognition election. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under §1.336-2(b)(1)(ii), or the amount for which old target is deemed to have purchased all of its assets in the deemed purchase under §1.336-2(b)(2)(ii). AGUB is allocated among target's assets in accordance with §1.338-6 to determine the price at which the assets are deemed to have been purchased. When a subsequent

increase or decrease with respect to an element of AGUB is required under general principles of tax law, redetermined AGUB is allocated among target's assets in accordance with §1.338-7.

(b) *Modifications to the principles in §1.338-5.* Solely for purposes of applying §§1.336-1 through 1.336-4, the principles of §1.338-5 are modified as follows—

(1) *Purchasing corporation; purchaser.* Any reference to the “purchasing corporation” shall be treated as a reference to a purchaser, as defined in §1.336-1(b)(2).

(2) *Acquisition date; disposition date.* Any reference to the “acquisition date” shall be treated as a reference to the disposition date, as defined in §1.336-1(b)(7).

(3) *Section 338 election; section 338(h)(10) election; section 336(e) election.* Any reference to a “section 338 election” or a “section 338(h)(10) election” shall be treated as a reference to a section 336(e) election, as defined in §1.336-1(b)(10).

(4) *New target; old target.* In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to “new target” shall be treated as a reference to “old target” in its capacity as the purchaser of assets pursuant to the section 336(e) election.

(5) *Recently purchased stock; recently disposed stock.* Any reference to *recently purchased stock* shall be treated as a reference to recently disposed stock, as defined in §1.336-1(b)(16). In the case of a distribution of stock, for purposes of determining the purchaser's grossed-up basis of recently disposed stock, the purchaser's basis in recently disposed stock shall be deemed to be such stock's fair market value on the date it was acquired.

(6) *Nonrecently purchased stock; nonrecently disposed stock.* Any reference to *nonrecently purchased stock* shall be treated as a reference to nonrecently disposed stock, as defined in §1.336-1(b)(17).

(c) *Gain recognition election—(1) In general.* Any holder of nonrecently disposed stock of target may make a gain recognition election. The gain recognition election is irrevocable. Each owner of nonrecently disposed stock determines its basis amount, and therefore, the gain recognized pursuant to the gain recognition election, by applying §§1.338-5(c) and 1.338-5(d)(3)(ii) by reference to its

own recently disposed stock and nonrecently disposed stock, and not by reference to all recently disposed stock and nonrecently disposed stock.

(2) *80-percent purchaser.* If a section 336(e) election is made for target, any 80-percent purchaser and all persons related to the 80-percent purchaser are automatically deemed to have made a gain recognition election for its nonrecently disposed target stock.

(3) *Non-80-percent purchaser.* A gain recognition election is actually made by a non-80-percent purchaser by providing to the seller, and seller including with the section 336(e) election statement, a gain recognition election statement, as described in paragraph (c)(4) of this section. If a non-80-percent purchaser makes a gain recognition election, all related persons to the non-80-percent purchaser must also make a gain recognition election. Otherwise, the gain recognition election for the non-80-percent purchaser will have no effect.

(4) *Gain recognition election statement.* A gain recognition election statement must include the following declarations (or substantially similar declarations):

(i) [Insert name, address, and taxpayer identifying number of person for whom gain recognition election is actually being made] has elected to recognize gain under §1.336-4(c) with respect to [his, hers, or its] nonrecently disposed stock.

(ii) [Insert name of person for whom gain recognition election is actually being made] agrees to report any gain under the gain recognition election on [his, hers, or its] Federal income tax return (including an amended return, if necessary) for the taxable year that includes the disposition date of [insert name and EIN of target corporation].

(d) *Examples.* The following examples illustrate the provisions of this section.

Example 1. On January 1 of Year 1, Seller owns 85 shares of Target stock, A owns 8 shares, B owns 4 shares, and C owns the remaining 3 shares. Each of A's 8 shares, B's 4 shares, and C's 3 shares have a \$5 basis. Assume that Target has no liabilities. On July 1 of Year 2, Seller sells 70 shares of Target stock to A for \$10 per share. On September 1 of Year 2, Seller sells 5 shares of Target stock to B and 5 shares of Target stock to C for \$14 per share. A incurs \$25 of acquisition costs, and B and C each incur \$10 of acquisition costs in connection with their respective Year 2 purchases. These costs are capitalized in the basis of the Target stock. September 1 of Year 2 is the disposition date. Because A owns at least 10 percent of

the Target stock on September 1, the disposition date, and A's original 8 shares of Target stock owned on January 1 of Year 1 were not disposed of in the qualified stock disposition, A's original 8 shares of Target stock are nonrecently disposed stock. Although B's original 4 shares and C's original 3 shares were not disposed of in the qualified stock disposition, because neither B nor C owns, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of Target stock on the disposition date, their original shares are not nonrecently disposed stock. The grossed up basis of recently disposed Target stock is \$1011, determined as follows: The purchasers' (A, B, and C) aggregate basis in the recently disposed target stock, determined without regard to acquisition costs, is \$840 ((70 x \$10) + (5 x \$14) + (5 x \$14)). This amount is multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock which is nonrecently disposed stock, and the denominator of which is 80, the percentage of Target stock disposed of in the qualified stock disposition ($\$840 \times 92/80 = \966). This amount is then increased by the \$45 of acquisition costs incurred by A, B, and C to arrive at the \$1011 grossed up basis of recently disposed Target stock ($\$966 + \$45 = \$1011$). New Target's AGUB is \$1051, the sum of \$1011, the grossed up basis of recently disposed Target stock and \$40 (8 x \$5). A's basis in his nonrecently disposed Target stock.

Example 2. The facts are the same as in *Example 1* except that A makes a gain recognition election. Pursuant to the gain recognition election, A is treated as if it sold on September 1 of Year 2, the disposition date, its 8 shares of nonrecently disposed target stock for the basis amount, and A's basis in nonrecently disposed target stock immediately after the deemed sale is the basis amount. A's basis amount equals his basis in his recently disposed Target stock without regard to acquisition costs, \$700 (70 x \$10), multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock, by value, determined on the disposition date, which is A's nonrecently disposed Target stock, and the denominator of which is 70, the percentage of the Target stock, by value, determined on the disposition date, disposed of to A in the qualified stock disposition, which is then multiplied by a fraction, the numerator of which is 8, the percentage of target stock, by value, determined on the disposition date, attributable to A's nonrecently disposed Target stock and the denominator of which is 100 minus the numerator amount. Accordingly, A's basis amount is \$80 ($\$700 \times 92/70 \times 8/92$). A therefore recognizes gain of \$40 under the gain recognition election (\$80 basis amount minus A's \$40 basis in his nonrecently disposed stock prior to the gain recognition election). New Target's AGUB is \$1091, the sum of \$1011, the grossed up basis of all recently disposed Target stock and \$80, A's basis in his nonrecently disposed Target stock pursuant to the gain recognition election.

§1.336-5. *Effective/Applicability date.*

The provisions of §§1.336-1 through 1.336-4 apply to any qualified stock disposition for which the disposition date is on or after the date of publication of the

Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.338-0 is amended by adding entries for §§1.338-1(e) and 1.338-5(h) to read as follows:

§1.338-0. Outline of topics.

* * * * *

§1.338-1 General principles; status of old target and new target.

* * * * *

(e) Effective/applicability date.

* * * * *

§1.338-5 Adjusted grossed-up basis.

* * * * *

(h) Effective/applicability date.

Par. 4. Section 1.338-1 is amended by adding two new sentences after the parenthetical that follows the third sentence of paragraph (a)(1), by revising the first sentence in paragraph (c)(1), and adding a new paragraph (e) to read as follows:

§1.338-1. General principles; status of old target and new target.

(a) * * *

(1) * * * However, if, as a result of the deemed purchase of old target's assets pursuant to a section 336(e) election, there would be both a qualified stock purchase and a qualified stock disposition of the stock of a subsidiary of the target, neither a section 338(g) election nor a section 338(h)(10) election may be made with respect to the qualified stock purchase of the subsidiary. Instead, a section 336(e) election may be made with respect to such purchase. See §1.336-1(b)(5)(ii). * * *

* * * * *

(c) * * *

(1) *In general.* The rules of this paragraph (c) apply for purposes of applying the regulations under sections 336(e), 338, and 1060. * * *

* * * * *

(e) *Effective/applicability date.* Paragraphs (a)(1) and (c)(1) of this section are applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.338-5 is amended by revising the first sentence in paragraph (d)(3)(ii) and by adding a new paragraph (h) to read as follows:

§1.338-5. Adjusted grossed-up basis.

* * * * *

(d) * * *

(3) * * *

(ii) *Basis amount.* The basis amount is equal to the amount determined by applying paragraphs (c)(1) and (2) of this section (the purchasing corporation's grossed-up basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's non-recently purchased target stock and the denominator of which is 100 percent minus the numerator amount. * * *

* * * * *

(h) *Effective/applicability date.* Paragraph (d)(3)(ii) of this section is applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on August 22, 2008, 8:45 a.m., and published in the issue of the Federal Register for August 25, 2008, 73 F.R. 49965)

**Farmer and Fisherman
Income Averaging; Correction
Announcement 2008-91**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations (T.D. 9417, 2008-37 I.R.B. 693) that were published in the Federal Register on Tuesday, July 22,

2008 (73 FR 42522) relating to the averaging of farm and fishing income in computing income tax liability.

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (T.D. 9417) that are the subject of this correction are under section 1301 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9417 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (T.D. 9417), which were the subject of FR. Doc. E8-16665, is corrected as follows:

On page 42522, column 2, in the preamble, under the caption "For Further Information Contact", line 2, the language "Amy Pfalzgraf, (202) 622-4950 (not a)" is corrected to read "Amy Pfalzgraf (202) 622-4960 (not a)".

LaNita Van Dyke,
Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on September 4, 2008, 8:45 a.m., and published in the issue of the Federal Register for September 5, 2008, 73 F.R. 51719)

**Farmer and Fisherman
Income Averaging; Correction
Announcement 2008-92**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking by

cross-reference to temporary regulations (REG-161695-04, 2008-37 I.R.B. 699) that was published in the Federal Register on Tuesday, July 22, 2008 (73 FR 42538) relating to the averaging of farm and fishing income in computing income tax liability.

FOR FURTHER INFORMATION CONTACT: Amy Pfalzgraf, (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG-161695-04) that is the subject of this correction is under section 1301 of the Internal Revenue Code.

Need for Correction

As published, REG-161695-04 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking by cross-reference to temporary regulations (REG-161695-04), which was the subject of FR Doc. E8-16664, is corrected as follows:

On page 42538, column 2, in the preamble, under the caption "For Further Information Contact", line 2, the language "Amy Pfalzgraf, (202) 622-4950 (not a)" is corrected to read "Amy Pfalzgraf (202) 622-4960 (not a)".

LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on September 4, 2008, 8:45 a.m., and published in the issue of the Federal Register for September 5, 2008, 73 F.R. 51747)

IRS and the George Washington University Law School to Sponsor Institute on International Tax Issues

Announcement 2008-94

The Internal Revenue Service announces the Twenty-First Annual Institute on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and The George Washington University Law School, to be held on December 8 and 9, 2008, at the J.W. Marriott Hotel in Washington, DC. Registration is currently underway for the Institute, which is intended for international tax professionals.

The program will present a unique opportunity for top IRS and Treasury officials and tax experts, an OECD representative, foreign government tax authorities, and leading private sector specialists, to address breaking issues and present key perspectives on new developments. The first day will feature a discussion by U.S. and foreign tax authorities of competent authority current trends and new frontiers.

The first day will also feature sessions on the following:

- Foreign Audits and the Competent Authority Process
- Transfer Pricing Update-Regulatory and Administrative Developments
- The Modernization of Subpart F-Accommodating Business Structures While Preventing Avoidance Transactions
- Foreign Tax Credit Update
- Cross-Border M&A

The second day will focus on the following topics:

- When Does *And* Mean *Or*?: Current Issues in Treaty Interpretation
- Full Disclosure: How Taxpayers and Tax Administrators Are Coping with the New Transparency
- Inbound/Outbound Developments

On the first day, Douglas H. Shulman, Commissioner of the Internal Revenue

Service, will deliver the luncheon address. On the second day, Edward D. Kleinbard, Chief of Staff of the Joint Committee on Taxation, will deliver an opening address, and Michael F. Mundaca, Deputy Assistant Secretary for International Tax Affairs of the Treasury, will deliver the luncheon address. The second day will also include an "Ask the IRS" panel featuring senior officials from the Service.

Those interested in attending or obtaining more information should contact The George Washington University Law School, at <http://www.law.gwu.edu/ciit>.

Update to Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically, Revised August 2008

Announcement 2008-95

This announcement supersedes Announcement 2008-19 and contains corrections and clarifying information to Publication 1187, *Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically*, revised August 2008. Continue to use this Publication along with the changes listed below for your Tax Year 2008 filing. The following changes are effective for Tax Year 2008 forms filed in calendar year 2009.

Part A Changes:

- All communication via telephone to the Customer Service Section is Toll-Free 1-866-455-7438. This corrects a typographical error found in Part A, Section 3 .09 found on page 3 of Publication 1187.
- Section 8 .09. Apply the following formula to determine Total Withholding Credit (field positions 383-394 of the "Q" Record). All field positions described below are in the "Q" Record.

Income Codes (15–19)
 Gross Income Paid (6–17)
 - Withholding Allowance (18–29)
 = Net Income Amount (30–41)
 X Tax Rate (42–45)
 = Total Withholding Credit (383–394)

All other Income Codes
 Gross Income Paid (6–17)
 X Tax Rate (42–45)
 = Total Withholding Credit (383–394)

Part B Changes:

- Section 4 .03 should read: If you are considering sending files larger than 899,999 records, please contact IRS/ECC-MTB for specifics.
- Section 8 .01 Format Error number 9, should read: The Total Gross Income and Total Withholding Credit in the “Q” Record must equal the Total Gross Income and Total Withholding Credit reported in the corresponding “C” Record.

Part C Changes:

- Recipient “Q” Record positions 359–370: Remove the Note: If the U.S. tax withheld was either under or over reported, see field positions 761 of the Q Record.
- Recipient “Q” Record, Total Withholding Credit, field positions 383–394, add the Note: If the Total Withholding Credit, (aggregate

amounts of U.S. Tax Withheld and Withholding By Other Agents) was either under or over reported, see field position 761 of the Q Record”.

- Recipient “Q” Record, U.S. Tax Withheld Indicator, position 761: Change note to read: Please refer to Total Withholding Credit positions 383–394.
- Recipient “Q” Record, Recipient’s Foreign Tax I.D. Number, field positions 762–783 enter the number exactly as the recipient provides on their documentation. Alpha, numeric and/or other special characters are acceptable.
- Section 4 .01 should read: The “C” record is a summary of the number of “Q” Records for each Withholding Agent, Gross Amount Paid, and Total Withholding Credit.
- In the Reconciliation “C” Record, Total U.S. Tax Withheld, field position 31–45, should be titled Total Withholding Credit. Description and Remarks should read: Enter the total

aggregate amount of tax withheld by you and any other withholding agent. This is the aggregate total amounts from the fields U.S. Tax Withheld and Withholding By Other Agents. Enter the amount in whole dollars (do not enter cents). Right-justify and zero fill.

Part D Changes:

- The record length of all records has increased to 820 positions. This corrects a typographical error found at the end of Part D, in a graphic record layout found on page 49 of Publication 1187.

If you have questions concerning the filing of Form 1042-S, *Foreign Person’s U.S. Source Income Subject to Withholding*, please contact the Internal Revenue Service ECC-MTB toll-free at 866-455-7438.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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INTERNAL REVENUE BULLETIN

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

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