Internal Revenue
bulletin

Bulletin No. 2006-5
January 30, 2006

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2006–6, page 381.

LIFO; price indexes; department stores. The November 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 2005.

T.D. 9236, page 382.

Final regulations under section 1374 of the Code provide that (a) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362; and (b) for purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374.

REG–104385–01, page 389.

Proposed regulations under section 168 of the Code provide guidance on the normalization requirements applicable to public utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1999 law. The regulations permit a utility whose assets cease to be public utility property to return to its ratepayers the normalization reserve for excess deferred income taxes (EDFIT) with respect to those assets and, in certain circumstances, also permit the return of part or all of the reserve for accumulated deferred investment tax credits (ADITC) with respect to those assets. A public hearing is scheduled for April 5, 2006.

Notice 2006–6, page 385.

This document notifies taxpayers and material advisors of a future change to the categories of reportable transactions under proposed section 1.6011–4 of the regulations. The Service and Treasury Department will be issuing temporary and proposed regulations under section 1.6011–4 that will remove from the categories of reportable transactions under section 1.6011–4(b)(1) the category of transactions with a significant book-tax difference currently set forth in section 1.6011–4(b)(6). Until the amended regulations are issued, taxpayers and material advisors may rely on this notice.

Notice 2006–10, page 386.

Hurricane Katrina evacuation allowances. This notice discusses the income and employment tax treatment of special allowances paid by federal executive agencies to employees and their dependents to reimburse certain expenses incurred while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven.

EMPLOYEE PLANS

Notice 2006–8, page 386.

Weighted average interest rate update; 30–year Treasury securities. The weighted average interest rate for January 2006 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

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Finding Lists begin on page ii.
Index for January begins on page iv.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2006–9, page 392.
The Nunoi Foundation of Los Angeles, CA, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

EMPLOYMENT TAX

Notice 2006–10, page 386.
Hurricane Katrina evacuation allowances. This notice discusses the income and employment tax treatment of special allowances paid by federal executive agencies to employees and their dependents to reimburse certain expenses incurred while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven.

ADMINISTRATIVE

Notice 2006–6, page 385.
This document notifies taxpayers and material advisors of a future change to the categories of reportable transactions under proposed section 1.6011–4 of the regulations. The Service and Treasury Department will be issuing temporary and proposed regulations under section 1.6011–4 that will remove from the categories of reportable transactions under section 1.6011–4(b)(1) the category of transactions with a significant book-tax difference currently set forth in section 1.6011–4(b)(6). Until the amended regulations are issued, taxpayers and material advisors may rely on this notice.

Notice 2006–10, page 386.
Hurricane Katrina evacuation allowances. This notice discusses the income and employment tax treatment of special allowances paid by federal executive agencies to employees and their dependents to reimburse certain expenses incurred while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven.

Rev. Proc. 2006–15, page 387.
This procedure provides the maximum vehicle values for use of the special valuation rules under regulations sections 1.61–21(d) and (e). These values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index (CPI).

Announcement 2006–10, page 393.
This document provides notice of a public hearing on proposed regulations (REG–131739–03, 2005–36 I.R.B. 494) relating to the IRS preparing or executing returns for persons who fail to make required returns. The hearing is scheduled for March 8, 2006.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61–21(e): Vehicle cents-per-mile valuation.

A revenue procedure provides maximum vehicle values for which the special valuation rules of regulations sections 1.61–21(d) and (e) may be used. See Rev. Proc. 2006-15, page 387.

Section 280F.—Limitation on Depreciation for Luxury Automobiles; Limitation Where Certain Property Used for Personal Purposes

A revenue procedure provides maximum vehicle values for which the special valuation rules of regulations sections 1.61–21(d) and (e) may be used. See Rev. Proc. 2006-15, page 387.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The November 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 2005.

Rev. Rul. 2006–6

The following Department Store Inventory Price Indexes for November 2005 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, November 30, 2005.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

	Groups	Nov. 2004	Nov. 2005	Percent Change from Nov. 2004 to Nov. 2005[1]
1.	Piece Goods	507.8	480.6	-5.4
2.	Domestics and Draperies	535.3	508.2	-5.1
3.	Women's and Children's Shoes	656.6	684.7	4.3
4.	Men's Shoes	842.9	868.9	3.1
5.	Infants' Wear	584.3	564.1	-3.5
6.	Women's Underwear	518.5	548.8	5.8
7.	Women's Hosiery	342.0	339.8	-0.6
8.	Women's and Girls' Accessories	583.1	582.1	-0.2
9.	Women's Outerwear and Girls' Wear	376.8	368.3	-2.3
10.	Men's Clothing	542.5	542.1	-0.1
11.	Men's Furnishings	581.5	574.9	-1.1
12.	Boys' Clothing and Furnishings	430.1	403.5	-6.2
13.	Jewelry	879.0	861.4	-2.0
14.	Notions	789.1	803.1	1.8
15.	Toilet Articles and Drugs	998.6	1001.0	0.2
16.	Furniture and Bedding	601.7	596.7	-0.8
17.	Floor Coverings	590.2	612.3	3.7
18.	Housewares	711.8	701.9	-1.4
19.	Major Appliances	201.6	204.3	1.3
20.	Radio and Television	40.7	38.1	-6.4
21.	Recreation and Education[2]	79.5	77.6	-2.4
22.	Home Improvements[2]	130.6	137.2	5.1
23.	Automotive Accessories[2]	113.1	116.5	3.0

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Nov. 2004	Nov. 2005	Percent Change from Nov. 2004 to Nov. 2005[1]
Groups 1–15: Soft Goods	566.4	561.0	-1.0
Groups 16–20: Durable Goods	380.5	376.2	-1.1
Groups 21–23: Misc. Goods[2]	92.9	93.1	0.2
Store Total[3]	499.6	495.4	-0.8

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622–7924 (not a toll-free call).

Section 1374.—Tax Imposed on Certain Built-In Gains

26 CFR 1.1374–8: Section 1374(d)(8) transactions.

T.D. 9236

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Section 1374 Effective Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance concerning the applicability of section 1374 of the Internal Revenue Code to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations.

DATES: *Effective Date:* These regulations are effective December 21, 2005.

Applicability Dates: Section 1.1374–8 applies to any transaction described in section 1374(d)(8) that occurs on or after December 27, 1994. Section 1.1374–10 applies for taxable years beginning after December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622–7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR Part 1. On December 22, 2004, temporary regulations (T.D. 9170, 2005–4 I.R.B. 363) regarding the applicability of section 1374 to S corporations that acquire assets in certain carryover basis transactions and to certain corporations that terminate S corporation status and later elect again to become S corporations were published in the **Federal Register** (69 FR 76612). A notice of proposed rulemaking (REG–139683–04, 2005–4 I.R.B. 371) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (69 FR 76635). The temporary regulations provide that (1) section 1374(d)(8) applies to any transaction described in that section that occurs on or after December 27, 1994, regardless of the date of the S corporation's election under section 1362, and (2) for purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988, a corporation's most recent S election, not an earlier election that has been revoked or terminated, determines whether or not it is subject to current section 1374.

No comments were received responding to the notice of proposed rulemaking, and no public hearing was requested or held. The proposed regulations are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to §1.1374–8(a)(2) of these regulations. With respect to §1.1374–10(c) of these regulations, it has been determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to dispense with a delayed effective date. This section, which is substantively identical to currently effective temporary regulations, merely continues to provide necessary guidance to taxpayers with respect to the application of the transition rule regarding qualified corporations in section 633(d)(8) of TRA, as amended by TAMRA, and, accordingly, with respect to the applica-

tion of section 1374 to asset dispositions which occur during taxable years beginning after December 22, 2004. Because §1.1374–8(a)(2) does not impose a collection of information on small entities, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6). It is hereby certified that §1.1374–10(c) of these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that §1.1374–10(c) of these regulations addresses an uncommon fact situation not likely to affect a significant number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Section 1.1374–8 also issued under 26 U.S.C 337(d) and 1374(e).* * *

Section 1.1374–10 also issued under 26 U.S.C. 337(d) and 1374(e).* * *

Par. 2. Section 1.1374–0 is amended by revising the entries for §1.1374–8 and adding an entry for §1.1374–10(c) to read as follows:

§1.1374–0 Table of contents.

* * * * *

§1.1374–8 Section 1374(d)(8) transactions.

(a) In general.
(b) Effective date of section 1374(d)(8).
(c) Separate determination of tax.
(d) Taxable income limitation.
(e) Examples.

* * * * *

§1.1374–10 Effective date and additional rules.

* * * * *

(c) Revocation and re-election of S corporation status.
(1) In general.
(2) Example.

Par. 3. Section 1.1374–8 is amended by:

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

2. Revising paragraph (a).

3. Adding new paragraph (b).

The revision and addition read as follows:

§1.1374–8 Section 1374(d)(8) transactions.

(a) *In general.* If any S corporation acquires any asset in a transaction in which the S corporation's basis in the asset is determined (in whole or in part) by reference to a C corporation's basis in the assets (or any other property) (a section 1374(d)(8) transaction), section 1374 applies to the net recognized built-in gain attributable to the assets acquired in any section 1374(d)(8) transaction.

(b) *Effective date of section 1374(d)(8).* Section 1374(d)(8) applies to any section 1374(d)(8) transaction, as defined in paragraph (a)(1) of this section, that occurs on or after December 27, 1994, without regard to the date of the corporation's election to be an S corporation under section 1362.

* * * * *

§1.1374–8T [Removed]

Par. 4. Section 1.1374–8T is removed.

Par. 5. Section 1.1374–10 is amended by revising paragraph (c) to read as follows:

§1.1374–10 Effective date and additional rules.

* * * * *

(c) *Termination and re-election of S corporation status*—(1) *In general.* For purposes of section 633(d)(8) of the Tax Reform Act of 1986, as amended, any reference to an election to be an S corporation under section 1362 shall be treated as a reference to the corporation's most recent election to be an S corporation under section 1362. This paragraph (c) applies for taxable years beginning after December 22, 2004, without regard to the date of the corporation's most recent election to be an S corporation under section 1362.

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

Example. (i) Effective January 1, 1988, X, a C corporation that is a qualified corporation under section 633(d) of the Tax Reform Act of 1986, as amended, elects to be an S corporation under section 1362. Effective January 1, 1990, X revokes its S status and becomes a C corporation. On January 1, 2004, X again elects to be an S corporation under section 1362. X disposes of assets in 2006, 2007, and 2008, recognizing gain.

(ii) X is not eligible for treatment under the transition rule of section 633(d)(8) of the Tax Reform Act of 1986, as amended, with respect to these assets. Accordingly, X is subject to section 1374, as amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988, and the 10-year recognition period begins on January 1, 2004.

(iii) To the extent the gain that X recognizes on the asset sales in 2006, 2007, and 2008 reflects built-in gain inherent in such assets in X's hands on January 1, 2004, such gain is subject to tax under section 1374 as amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

§1.1374–10T [Removed]

Par. 6. Section 1.1374–10T is removed.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved December 9, 2005.

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

(Filed by the Office of the Federal Register on December 20, 2005, 8:45 a.m., and published in the issue of the Federal Register for December 21, 2005, 70 F.R. 75730)

Section 6011.—General Requirement of Return, Statement, or List

A notice notifies taxpayers and material advisors of a future change to the categories of reportable transactions under section 1.6011–4 of the Income Tax Regulations. See Notice 2006-6, page 385.

Section 6111.—Disclosure of Reportable Transactions

A notice notifies taxpayers and material advisors of a future change to the categories of reportable transactions under section 1.6011–4 of the Income Tax Regulations. See Notice 2006-6, page 385.

Section 6112.—Material Advisors of Reportable Transactions Must Keep Lists of Advisees, etc.

A notice notifies taxpayers and material advisors of a future change to the categories of reportable transactions under section 1.6011–4 of the Income Tax Regulations. See Notice 2006-6, page 385.

Part III. Administrative, Procedural, and Miscellaneous

Notification of Removal of the Transaction With a Significant Book-Tax Difference Category of Reportable Transaction Under § 1.6011–4

Notice 2006–6

The purpose of this notice is to notify taxpayers and material advisors of a future change to the categories of reportable transactions under § 1.6011–4 of the Income Tax Regulations. Until regulations reflecting this change are issued, taxpayers and material advisors may rely on this notice.

BACKGROUND

Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with procedures provided in § 1.6011–4. Similarly, § 6111 of the Internal Revenue Code, as amended by the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (the Act), requires that each material advisor with respect to any reportable transaction make a return setting forth information identifying and describing the transaction and any potential tax benefits expected to result from the transaction by the date specified by the Secretary. Section 6112, as amended by the Act, requires material advisors to maintain lists identifying each person with respect to whom the advisor acted as a material advisor and containing such other information as the Secretary may by regulations require.

Under § 1.6011–4(b), there are currently six categories of reportable transactions. One category of reportable transactions is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011–4(b)(6) as a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than $10 million on a gross basis from the amount of the item or items for book purposes in any taxable year. The amount of an item for book purposes is normally determined by applying U.S. generally accepted accounting principles for worldwide income.

In 2004, the Internal Revenue Service released Schedule M–3, *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*, for corporations that file Form 1120, *U.S. Corporation Income Tax Return*, effective for taxable years ending on or after December 31, 2004. On August 2, 2004, the Service and Treasury Department released Rev. Proc. 2004–45, 2004–2 C.B. 140, which provided procedures for filing the Schedule M–3 that are deemed to satisfy a taxpayer's disclosure obligations for reporting transactions with a significant book-tax difference under § 1.6011–4. Rev. Proc. 2004–45 also announced that the Service and Treasury Department will continue to evaluate whether the disclosure requirements described in the revenue procedure and Schedule M–3 provide the Service and Treasury Department adequate information regarding significant book-tax differences. In December 2005, the Service released draft Schedules M–3 and instructions for corporations and partnerships that, in general, have total assets of $10 million or more and that file Forms 1120–PC, *U.S. Property and Casualty Insurance Company Income Tax Return*, 1120–L, *U.S. Life Insurance Company Income Tax Return*, 1120–S, *U.S. Income Tax Return for an S Corporation*, or 1065, *U.S. Return of Partnership Income*. When finalized, these Schedules M–3 will be effective for tax years ending on or after December 31, 2006.

Based on a review of the Forms 8886, *Reportable Transaction Disclosure Statement*, and Schedules M–3 received during the most recent filing season, the Service and Treasury Department have concluded that the book-tax difference category of reportable transactions under § 1.6011–4 is no longer necessary. As a result, the Service and Treasury Department will be issuing temporary and proposed regulations under § 1.6011–4 that will remove from the categories of reportable transactions under § 1.6011–4(b)(1) the category of transactions with a significant book-tax difference currently set forth in § 1.6011–4(b)(6).

REMOVAL OF BOOK-TAX DIFFERENCE CATEGORY UNDER § 1.6011–4

The removal of the book-tax difference category of reportable transactions will apply to transactions with a significant book-tax difference that otherwise would have to be disclosed by taxpayers under § 1.6011–4 on Form 8886 (or on Schedule M–3 as prescribed in Rev. Proc. 2004–45) on or after January 6, 2006, the date this notice is released to the public. Consequently, for those affected transactions, taxpayers are not required to file a disclosure statement solely because the transaction has a significant book-tax difference under § 1.6011–4(b)(6).

The removal of this category of reportable transaction also will apply to transactions with a significant book-tax difference that otherwise would have to be disclosed by material advisors under § 6111 on Form 8264, *Application for Registration of a Tax Shelter*, on or after January 6, 2006. For those affected transactions, material advisors are not required to file a disclosure statement solely because the transaction has a significant book-tax difference under § 1.6011–4(b)(6).

Similarly, the removal of this category of reportable transaction will apply to transactions with a significant book-tax difference for which lists under § 6112 otherwise should have been prepared and maintained beginning on or after January 6, 2006. For those affected transactions, material advisors are not required to prepare and maintain lists solely because the transaction has a significant book-tax difference under § 1.6011–4(b)(6).

This notice does not relieve taxpayers or material advisors of any disclosure, registration or list maintenance obligations for transactions that should have been disclosed or registered, or for transactions for which lists should have been prepared and maintained, prior to January 6, 2006. Further, this notice does not relieve taxpayers of any obligation to file a Schedule M–3.

If a transaction with a significant book-tax difference also is described in § 1.6011–4(b)(2) through (5) or (7), the transaction is a reportable transaction under § 1.6011–4 for which disclosure may be required by taxpayers under

§ 1.6011–4, and for which disclosure and list maintenance may be required by material advisors under §§ 6111 and 6112, respectively.

DRAFTING INFORMATION

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

Weighted Average Interest Rate Update

Notice 2006–8

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code generally provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

Section 417(e)(3)(A)(ii)(II) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for December 2005 is 4.65 percent. Pursuant to Notice 2002–26, 2002–1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

Month	For Plan Years Beginning in: Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
January	2006	4.85	4.37 to 5.10	4.37 to 5.34

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro 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 (a toll-free number), between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1–202–283–9703. Mr. Montanaro may be reached at 1–202–283–9714. The telephone numbers in the preceding sentences are not toll-free.

Treatment of Certain Travel, Lodging, and Other Allowances Paid by Federal Executive Agencies to Employees Evacuated From Hurricane Katrina Core Disaster Area

Notice 2006–10

SECTION 1. PURPOSE

This notice provides guidance on the federal income and employment tax treatment of special allowances (as defined in 5 C.F.R. §§ 550.403(c) and 550.405(b)(2)) paid by federal executive agencies (as defined in 5 U.S.C. § 105) to employees (as defined in 5 C.F.R. § 550.401(b)(2), (3), and (4)) to reimburse certain expenses the employees and their dependents incur while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven as a result of the extraordinary damage and destruction caused by Hurricane Katrina. The term "Hurricane Katrina core disaster area" means that portion of the Hurricane Katrina Disaster Area determined by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. *See* § 2(2) of the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109–73, 119 Stat. 2016 (2005).

SECTION 2. BACKGROUND

In the wake of Hurricane Katrina, which was a Presidentially declared disaster, federal executive agencies may make payments to their employees to reimburse the costs of travel, lodging, meals, and incidental expenses the employees and their dependents incur while evacuating from the Hurricane Katrina core disaster area and staying at a safe haven. Federal executive agencies are authorized to pay these special allowances to employees under 5 U.S.C. § 5523(b) ("An employee in an Executive agency may be granted such additional allowance payments . . . .")

and 5 C.F.R. § 550.403(c) if the employees and their dependents "are evacuated in the United States because of natural disasters or for military or other reasons that create imminent danger to their lives." 5 C.F.R. § 550.401(a). The payments authorized by 5 C.F.R. § 550.403(c) include travel expenses and *per diem* payments to offset direct added expenses the employees and their dependents incur due to an evacuation. Additional special allowance payments for subsistence expenses, as authorized by and computed under 5 C.F.R. § 550.405(b)(2), may be paid for a period not to exceed 180 days after the effective date of the order to evacuate. Federal executive agencies generally must determine the amount of the special allowance payments for the employees and their dependents consistent with the Federal Travel Regulation (FTR), 41 C.F.R. Chapters 300 through 304. For dependents under 12 years of age and for payments made after the first 30 days of evacuation, the special allowance payments are paid at a rate less than the maximum *per diem*. 5 C.F.R. § 550.405. The regulations authorizing these payments are silent as to whether federal executive agencies are required to take into account reimbursements from other payors when determining the amount of a special allowance.

Section 61 provides that except as otherwise provided in subtitle A of the Code, gross income means all income from whatever source derived.

The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107–134, 115 Stat. 2427 (2001), added § 139 to the Code. Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Under § 139(b)(1), a qualified disaster relief payment includes any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

Section 139(c) defines a qualified disaster to include:

(1) a disaster that results from a terroristic or military action (as defined in § 692(c)(2));

(2) a Presidentially declared disaster (as defined in § 1033(h)(3)); or

(3) a disaster resulting from an accident involving a common carrier, or from any other event, that is determined by the Secretary to be of a catastrophic nature.

Section 139(d) provides that for purposes of chapter 2 and subtitle C of the Code, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

Because "of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred." Joint Committee on Taxation Staff, *Technical Explanation of the "Victims of Terrorism Tax Relief Act of 2001," As Passed by the House and Senate on December 20, 2001*, 107th Cong., 1st Sess. 16 (2001).

SECTION 3. APPLICATION

.01 Payments Made by Federal Executive Agencies to Which This Notice Applies

The special allowances described in 5 U.S.C. § 5523(b) and 5 C.F.R. §§ 550.403(c) and 550.405(b)(2) that an employee receives as a result of Hurricane Katrina will be treated as reasonable, necessary, and excludable from the gross income and wages of the employee under § 139 to the extent that the expenses compensated by the special allowances are not otherwise compensated for by insurance or otherwise.

Federal executive agencies that pay an employee special allowances authorized by 5 U.S.C. § 5523(b) and 5 C.F.R. §§ 550.403(c) and 550.405(b)(2) as a result of Hurricane Katrina will not be required to report the special allowances (even if the expenses are otherwise compensated for by insurance or otherwise) on Form W–2, *Wage and Tax Statement*, or to deduct and withhold taxes from these amounts. In addition, the IRS will not require either a Federal executive agency or its employee to include any amount of Hurricane Katrina special allowances in wages for employment tax purposes (even if the expenses are otherwise compensated for by insurance or otherwise).

.02 Payments Made by Federal Executive Agencies to Which This Notice Does Not Apply

The rules provided in section 3.01 of this notice do not apply to payments not described therein. For example, the rules do not apply to advance payments of pay, allowances, and differentials under 5 U.S.C. § 5522(a) and to payments made by a federal executive agency to compensate an employee for expenses incurred in relocating to the disaster area.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, please contact Mr. Iskow at (202) 622–4920 (not a toll-free call).

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26 CFR 1.61–21: Taxation of fringe benefits.
(Also Internal Revenue Code §§ 61, 280F.)

Rev. Proc. 2006–15

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2006 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable is $15,000 for a passenger automobile and $16,400 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2006 for which the fleet-average valuation rule provided under section 1.61–21(d) of the regulations may be applicable is $19,900 for a passenger automobile and $21,400 for a truck or van.

SECTION 2. BACKGROUND

.01 If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. Internal Revenue Code § 61; Treas. Reg. § 1.61–21.

.02 For employer-provided passenger automobiles (including trucks and vans) made available to employees for personal use that meet the requirements of section 1.61–21(e)(1) of the regulations, generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of section 1.61–21(e). However, regulations section 1.61–21(e)(1)(iii)(A) provides that for a passenger automobile first made available after 1988 to any employee of the employer for personal use, the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the passenger automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (iv)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.03 For employer-provided vehicles available to employees for personal use for an entire year, generally the value of the personal use may be determined under the automobile lease valuation rule of section 1.61–21(d) of the regulations. Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of regulations section 1.61–21(d)(5)(v) are met, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, section 1.61–21(d)(5)(v)(D) of the regulations provides that for an automobile first made available after 1988 to an employee of the employer for personal use, the value of the personal use may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (v)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.04 The maximum passenger automobile values for applying the vehicle cents-per-mile and the fleet-average value rules reflect the automobile price inflation adjustment of Code section 280F(d)(7). The method of calculating this price inflation amount for automobiles other than trucks and vans uses the "new car" component of the Consumer Price Index (CPI) "automobile component". When calculating this price inflation adjustment for trucks and vans, the "new trucks" component of the CPI is used. This results in somewhat higher maximum values for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988, and is consistent with the change announced in Rev. Proc. 2003–75, 2003–2 C.B. 1018, for purposes of calculating depreciation deductions. See also Rev. Proc. 2004–20, 2004–1 C.B. 642, and Rev. Proc. 2005–13, 2005–12 I.R.B. 759. For purposes of this revenue procedure, the term "trucks and vans" refers to passenger automobiles that are built on a truck chassis, including minivans and sport utility vehicles (SUVs) that are built on a truck chassis.

SECTION 3. PROCEDURE

.01 Maximum Automobile Value for Using the Cents-per-mile Valuation Rule. An employer providing a passenger automobile for the first time in calendar year 2006 for the personal use of any employee may determine the value of the personal use by using the vehicle cents-per-mile valuation rule in section 1.61–21(e) of the regulations if its fair market value on the date it is first made available does not exceed $15,000 for a passenger automobile other than a truck or van, or $16,400 for a truck or van. If the fair market value of the passenger automobile exceeds this amount, the employer may determine the value of the personal use under the general valuation rules of regulations section 1.61–21(b) or under the special valuation rules of section 1.61–21(d) (Automobile lease valuation) or section 1.61–21(f) (Commuting valuation) if the applicable requirements are met. See Rev. Proc. 2004–20 for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2004, and Rev. Proc. 2005–48 for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2005.

.02 Maximum Automobile Value for Using the Fleet-Average Valuation Rule. An employer with a fleet of 20 or more automobiles providing an automobile for the first time in calendar year 2006 for the personal use of any employee for an entire year may determine the value of the personal use by using the fleet-average valuation rule in regulations section 1.61–21(d)(5)(v) to calculate the Annual Lease Values of the automobiles in the fleet. The fleet-average valuation rule may not be used to determine the Annual Lease Value of any automobile if its fair market value on the date it is first made available exceeds $19,900 for a passenger automobile other than a truck or van, or $21,400 for a truck or van. If all other applicable requirements are met, an employer with a fleet of 20 or more vehicles consisting of passenger automobiles other than trucks or vans as well as trucks and vans may use the fleet-average valuation rule as long as none of the vehicles exceed their respective maximum allowable values. If the fair market value of any passenger automobile in the fleet exceeds these amounts, the employer may determine the value of the personal use under regulations section 1.61–21(f) (Commuting valuation) or the general valuation rules of section 1.61–21(b), or may determine the Annual Lease Value of such automobile separately under the automobile lease valuation rule of section 1.61–21(d)(2) if the applicable requirements are met.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to employer-provided passenger automobiles first made available to employees for personal use in calendar year 2006.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Frederick L. Wesner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt/Government Entities). For further information regarding the maximum automobile value for applying the valuation rules of regulations section 1.61–21(e)(1)(iii)(A) (the vehicle cents-per-mile valuation rule), and section 1.61–21(d)(5)(v)(D) (the fleet-average valuation rule), contact Frederick L. Wesner at (202) 622–6040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking, Notice of Public Hearing, and Withdrawal of Previous Proposed Regulations

Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease to be Public Utility Property

REG–104385–01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of public hearing, and withdrawal of previous proposed regulations.

SUMMARY: This document contains proposed regulations that provide guidance on the normalization requirements applicable to public utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. The proposed regulations permit a utility whose assets cease to be public utility property to return to its ratepayers the normalization reserve for excess deferred income taxes (EDFIT) with respect to those assets and, in certain circumstances, also permit the return of part or all of the reserve for accumulated deferred investment tax credits (ADITC) with respect to those assets. This document also provides notice of a public hearing on these proposed regulations and a withdrawal of proposed regulations [REG–104385–01, 2003–1 C.B. 634] published March 4, 2003, at 68 FR 10190.

DATES: Written or electronic comments must be received by March 21, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 5, 2006, at 10 a.m. must be received by March 15, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104385–01), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104385–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–104385–01). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146), and former section 46(f) of the Code. Proposed regulations relating to the normalization requirements applicable to electric utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law [REG–104385–01] were published in the **Federal Register** on March 4, 2003 (the 2003 proposed regulations). The 2003 proposed regulations would have provided rules under which electric utilities whose electricity generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise, could continue to flow through certain reserves associated with those assets without violating the normalization requirements. In response to public comments and after further analysis, the 2003 proposed regulations are withdrawn, and new regulations are proposed in this document.

Normalization Method of Accounting

Section 168 of the Code permits the use of accelerated depreciation methods. Section 168(f)(2) provides, however, that accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes.

Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred federal income tax reserve, or ADFIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the accelerated method used in computing actual tax expense.

This accounting treatment prevents the immediate flow-through to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between actual tax expense and ratemaking tax expense is charged to ADFIT.

Excess Deferred Income Tax

The Tax Reform Act of 1986 (the 1986 Act) reduced the highest corporate tax rate

from 46 percent to 34 percent. The excess deferred federal income tax (EDFIT) reserve is the balance of the deferred tax reserve immediately before the rate reduction over the balance that would have been held in the reserve if the 34 percent rate had been in effect for prior periods. The EDFIT reserves were amounts that utilities had collected from ratepayers to pay future taxes that, as a result of the 1986 Act reduction in corporate tax rates, would not be imposed.

Section 203(e) of the 1986 Act specifies the manner in which the EDFIT reserve must be flowed through to ratepayers under a normalization method of accounting. It provides that the EDFIT reserve may be reduced, with a corresponding reduction in the cost of service the utility collects from ratepayers, no more rapidly than the EDFIT reserve would be reduced under the average rate assumption method (ARAM). For taxpayers that did not have adequate data to apply the average rate assumption method, subsequent guidance permitted use of the reverse South Georgia method as an alternative. In general, both the average rate assumption method and the reverse South Georgia method spread the flow-through of the EDFIT reserve over the remaining lives of the property that gave rise to the excess.

Accumulated Deferred Investment Tax Credits (ADITC)

Former section 46 of the Code similarly addressed the flow-through to ratepayers of the investment tax credit determined under that section. Under former section 46(f)(1), the rate base (the amount on which the utility is permitted to collect a return from ratepayers) could be reduced by reason of the credit if the reduction in the rate base was restored not less rapidly than ratably. If the rate base is reduced, the credit may not also be used to reduce the utility's cost of service. Under former section 46(f)(2), an electing utility could flow through the investment credit not more rapidly than ratably (that is, could reduce the cost of service collected from ratepayers by no more than a ratable portion of the credit) over the investment's regulatory life. The balance of the credit remaining to be flowed through to ratepayers would be held in a reserve for accumulated deferred investment tax credits (ADITC). If the utility elected ratable flow-through of the credit, the rate base could not be reduced by reason of any portion of the credit.

Private Letter Rulings

The IRS has issued a number of private letter rulings holding that flow-through of the EDFIT and ADITC reserves associated with an asset is not permitted after the asset's deregulation, whether by disposition or otherwise. These rulings were based on the principle that flow-through is permitted only over the asset's regulatory life and when that life is terminated by deregulation no further flow-through is permitted. After further consideration, the IRS and Treasury have concluded that former section 46(f) does not, in all cases, prohibit flowthrough of ADITC reserves after deregulation and that section 203(e) of the Tax Reform Act does not preclude flowthrough of the EDFIT reserve with respect to deregulated property.

Explanation of Provisions

The 2003 proposed regulations provided that utilities whose generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise (deregulated public utility property), may continue to flow through EDFIT reserves associated with those assets without violating the normalization requirements. The rate of flowthrough was limited to the rate that would have been permitted under a normalization method of accounting if the assets had remained public utility property. But for section 203(e) of the 1986 Act, the entire EDFIT reserve would have been flowed through to ratepayers when the reduction in rates became effective, whether the assets to which the EDFIT reserve was attributable remained public utility property for their entire useful life or were subsequently deregulated or sold. As noted in the preamble of the 2003 proposed regulations, the IRS and Treasury have concluded that section 203 of the 1986 Act provides a schedule for flowing through the EDFIT reserve but that nothing in that section suggests that something less than the entire reserve should ultimately be flowed through to ratepayers. Accordingly, these proposed regulations retain the rule of the 2003 proposed regulations, with the effective date changes described below, for generation assets and extend the application of the rule to all other public utility property.

The 2003 proposed regulations also provided similar rules under which utilities could continue to flow through ADITC reserves associated with deregulated generation assets without violating the normalization requirements. The proposed regulations did not address the treatment of deregulated assets under former section 46(f)(1) (relating to the use of the investment credit to reduce the taxpayer's rate base). After further consideration, the IRS and Treasury have concluded that flowthrough of the ADITC reserve should not continue after deregulation except to the extent the utility is permitted to recover stranded costs after deregulation.

If an asset qualifying for the investment tax credit is purchased by a utility, the allowance of the credit, without flowthrough, lowers the utility's actual tax expense but does not result in higher tax expense for ratepayers than would have been the case if the asset had not been purchased. Thus, in the absence of flowthrough, the investment tax credit is a subsidy from the Federal government for the purchase of the asset rather than a transfer from ratepayers to the utility. The underlying policy of former section 46(f) is to share this subsidy between ratepayers and utilities in proportion to their respective contributions to the purchase price. In general, former section 46(f) treats ratepayers as contributing to the purchase price when ratemaking depreciation expense with respect to the asset is included in the rates they pay, resulting in full flowthrough over the asset's regulatory life. In the case of a deregulated asset, the contribution of ratepayers can be appropriately measured by the ratemaking depreciation expense they are charged with respect to the asset and any additional stranded cost that the utility is permitted to recover with respect to the asset after its deregulation.

Accordingly, the proposed regulations permit flowthrough of the ADITC reserve with respect to public utility property to continue after its deregulation only to the extent the reduction in cost of service does not exceed, as a percentage of the ADITC with respect to the property at the time of deregulation, the percentage of the total stranded cost that the taxpayer is per-

mitted to recover with respect to the property. In addition, the credit may not be flowed through more rapidly than the rate at which the taxpayer is permitted to recover the stranded cost with respect to the property.

As in the case of the EDFIT reserve, these proposed regulations extend the flowthrough rule for generation assets to all public utility property. In addition, these proposed regulations provide equivalent rules for property to which former section 46(f)(1) (relating to rate base restoration) applies.

Proposed Effective Date

The 2003 proposed regulations would have applied to public utility property deregulated after March 4, 2003. Utilities would have been permitted an election to apply the proposed rules to property that was deregulated on or before that date.

Comments suggested that deregulation agreements between utilities and their regulators entered into before the March 4, 2003 proposed effective date were based on the only guidance then available (*i.e.*, the private letter rulings issued by the IRS) and that the availability of a retroactive election could effectively change the terms of those agreements. Although private letter rulings are directed only to the taxpayers who requested them and may not be used or cited as precedent, the IRS and Treasury have concluded that the Secretary's authority under section 7805(b)(7) to provide for retroactive elections should not be exercised in a manner that impairs existing agreements between utilities and their regulators. Accordingly, these proposed regulations do not include a similar election to apply the regulations retroactively.

As noted above, these proposed regulations are broader in scope than the 2003 proposed regulations. Accordingly, these regulations are proposed to apply to public utility property that becomes deregulated public utility property after December 21, 2005. For public utility property that becomes deregulated public utility property on or before December 21, 2005, the IRS will follow the holdings set forth in the private letter rulings that prohibit flow-through of the EDFIT and ADITC reserves associated with an asset after the asset's disposition. Flowthrough will be permitted, however, if it is consistent with the 2003 proposed regulations, and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on December 21, 2005, or December 21, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the ADDRESSES caption) timely to the IRS. All comments will be available for public inspection and copying. Treasury and IRS specifically request comments on the clarity of the proposed regulations and how they may be made clearer and easier to understand.

A public hearing has been scheduled for April 5, 2006, at 10 a.m. in room 7218 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 15, 2006.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–104385–01) published in the **Federal Register** on March 4, 2003 (68 FR 10190) is withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.46–6 is amended by adding paragraph (k) to read as follows:

§1.46–6 Limitation in case of certain regulated companies.

* * * * *

(k) Treatment of accumulated deferred investment tax credits upon the deregulation of public utility property—(1) *Scope*. This paragraph (k) provides rules for the application of former sections 46(f)(1) and 46(f)(2) of the Internal Revenue Code with respect to public utility property that ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated public utility property).

(2) *Ratable amount*—(i) *Restoration of rate base reduction*. A reduction in the taxpayer's rate base on account of the credit with respect to public utility property that becomes deregulated public utility property is restored ratably during the period after the property becomes deregulated public utility property if the amount of the reduction remaining to be restored does not, at any time during the period, exceed the restoration percentage of the recoverable stranded cost of the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated;

(B) The recoverable stranded cost of the property at any time is the stranded cost of the property that the taxpayer will be permitted to recover through rates after such time; and

(C) The restoration percentage for the property is determined by dividing the reduction in rate base remaining to be restored with respect to the property immediately before the property becomes deregulated public utility property by the stranded cost of the property.

(ii) *Cost of service reduction*. Reductions in the taxpayer's cost of service on account of the credit with respect to public utility property that becomes deregulated public utility property are ratable during the period after the property becomes deregulated public utility property if the cumulative amount of the reduction during such period does not, at any time during the period, exceed the flow-through percentage of the cumulative stranded cost recovery for the property at such time. For this purpose—

(A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated;

(B) The cumulative stranded cost recovery for the property at any time is the stranded cost of the property that the taxpayer has been permitted to recover through rates on or before such time; and

(C) The flow-through percentage for the property is determined by dividing the amount of credit with respect to the property remaining to be used to reduce cost of service immediately before the property becomes deregulated public utility property by the stranded cost of the property.

(3) *Cross reference*. See §1.168(i)–(3) for rules relating to the treatment of balances of excess deferred income taxes when public utility property becomes deregulated public utility property.

(4) *Effective dates*—(i) *In general*. This paragraph (k) applies to public utility property that becomes deregulated public utility property after December 21, 2005.

(ii) *Application of regulation project REG–104385–01 to pre-effective date reductions in cost of service*. A reduction in the taxpayer's cost of service will be treated as ratable if it is consistent with the proposed rules in regulation project REG–104385–01, 2003–1 C.B. 634, and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on December 21, 2005, or December 21, 2007.

Par. 3. Section 1.168(i)–3 is added to read as follows:

§1.168(i)–3 Treatment of excess deferred income tax reserve upon disposition of deregulated public utility property.

(a) *Scope*. This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146) with respect to public utility property (within the meaning of section 168(i)(10)) that ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated public utility property).

(b) *Amount of reduction*. If public utility property of a taxpayer becomes deregulated public utility property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference*. See §1.46–6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated public utility property.

(d) *Effective dates*—(1) *In general*. This section applies to public utility property that becomes deregulated public utility property after December 21, 2005.

(2) *Application of regulation project REG–104385–01 to pre-effective date reductions of excess deferred income tax reserve*. A reduction in the taxpayer's excess deferred income tax reserve will be treated as ratable if it is consistent with the proposed rules in regulation project REG–104385–01, 2003–1 C.B. 634, and occurs during the period March 5, 2003, through the earlier of the last date on which the utility's rates are determined under the rate order in effect on December 21, 2005, or December 21, 2007.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 20, 2005, 8:45 a.m., and published in the issue of the Federal Register for December 21, 2005, 70 F.R. 75762)

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2006–9

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on January 30, 2006, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

The Nunoi Foundation
Los Angeles, CA

Substitute for Return; Hearing Announcement 2006–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations (REG–131739–03, 2005–36 I.R.B. 494) relating to the IRS preparing or executing returns for persons who fail to make required returns.

DATES: The public hearing is being held on Wednesday, March 8, 2006, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Wednesday, February 15, 2006.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:PA:LPD:PR (REG–131739–03), room 5203, Internal Revenue Service, POB 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–131739–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit outlines electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and *notice.comment@irscounsel.treas.gov* (REG–131739–03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–131739–03) that was published in the **Federal Register** on Monday, July 18, 2005 (70 FR 41165).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written or electronic comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by February 15, 2006.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

Guy R. Traynor,
Federal Register Liaison,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedures and Administration).

(Filed by the Office of the Federal Register on January 13, 2006, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2006, 71 F.R. 2497)

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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Key to Abbreviations:

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

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