

## **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. 2006-41, page 331.**

**LIFO; price indexes; department stores.** The June 2006 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, June 30, 2006.

#### **Rev. Rul. 2006-42, page 337.**

**Levy on bank account.** This ruling explains that a superpriority lien argument is not a defense to a levy. If a bank has such an argument, it must file a wrongful levy suit within nine months of the levy. Otherwise, the statute of limitations bars such a suit.

#### **T.D. 9272, page 332.**

#### **REG-159929-02, page 341.**

Final, temporary, and proposed regulations under section 860G of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes.

#### **T.D. 9275, page 327.**

Final regulations under section 410 of the Code implement a statutory directive of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) to amend section 1.410(b)-6(g) of the regulations. The final regulations permit, in certain circumstances, employees of a tax-exempt organization described in section 501(c)(3) to be excluded for the purpose of testing whether a section 401(k) plan (or a

section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer) meets the requirements for minimum coverage specified in section 410(b). The regulations affect tax-exempt employers described in section 501(c)(3), retirement plans sponsored by these employers, and participants in these plans.

### **EMPLOYEE PLANS**

#### **Rev. Rul. 2006-43, page 329.**

**Government pick-up plans; employer contributions; income tax; prospective application.** This ruling describes the actions required for a state or its political subdivisions, etc., to “pick-up” or treat certain contributions as employer contributions to a plan qualified under section 401(a) of the Code. If certain criteria are met, this ruling will be applied prospectively. Rev. Ruls. 81-35, 81-36, and 87-10 amplified and modified.

#### **T.D. 9275, page 327.**

Final regulations under section 410 of the Code implement a statutory directive of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) to amend section 1.410(b)-6(g) of the regulations. The final regulations permit, in certain circumstances, employees of a tax-exempt organization described in section 501(c)(3) to be excluded for the purpose of testing whether a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer) meets the requirements for minimum coverage specified in section 410(b). The regulations affect tax-exempt employers described in section 501(c)(3), retirement plans sponsored by these employers, and participants in these plans.

**(Continued on the next page)**

Announcements of Disbarments and Suspensions begin on page 343.  
Finding Lists begin on page ii.  
Index for July through August begins on page iv.



**Notice 2006–74, page 339.**

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

## **EXEMPT ORGANIZATIONS**

**Announcement 2006–55, page 342.**

Aviation Safety Council, Inc., of Pasadena, CA; Budget and Credit Counseling Services, Inc., of New York, NY; and Mason Credit Counseling, Inc., of Hauppauge, NY, no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

## **ADMINISTRATIVE**

**Rev. Rul. 2006–42, page 337.**

**Levy on bank account.** This ruling explains that a superpriority lien argument is not a defense to a levy. If a bank has such an argument, it must file a wrongful levy suit within nine months of the levy. Otherwise, the statute of limitations bars such a suit.

**Notice 2006–73, page 339.**

This notice effects interim revisions to Forms 8898, *Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession*, and 8840, *Closer Connection Exception Statement for Aliens*. Taxpayers required to file these forms should disregard certain line items. However, filers are reminded that they must retain the information elicited on those line items, as well as the rest of the form, in their books and records.

**Announcement 2006–56, page 342.**

This document contains corrections to temporary regulations (T.D. 9262, 2006–24 I.R.B. 1040) concerning the application of section 199 of the Code, which provides a deduction for income attributable to domestic production activities, to certain transactions involving computer software.

# The IRS Mission

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

applying the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## Section 410.—Minimum Participation Standards

26 CFR 1.410(b)–6: Excludable employees.

### T.D. 9275

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Exclusion of Employees of 501(c)(3) Organizations in 401(k) and 401(m) Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations under section 410(b) of the Internal Revenue Code. The final regulations permit, in certain circumstances, employees of a tax-exempt organization described in section 501(c)(3) to be excluded for the purpose of testing whether a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer) meets the requirements for minimum coverage specified in section 410(b). These regulations affect tax-exempt employers described in section 501(c)(3), retirement plans sponsored by these employers, and participants in these plans.

**DATES:** *Effective Date:* July 21, 2006.

*Applicability Date:* These regulations apply to plan years beginning after December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Linda L. Conway, 202–622–6060, or Michael P. Brewer, 202–622–6090 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains final amendments to the Income Tax Regulations

(26 CFR Part 1) under section 410(b) of the Internal Revenue Code of 1986 (Code). On March 16, 2004, a notice of proposed rulemaking (REG–149752–03, 2004–1 C.B. 707) was published in the **Federal Register** (69 FR 12291) under section 410(b). The regulations implement a directive by Congress, contained in section 664 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38) (EGTRRA), to amend §1.410(b)–6(g) of the regulations.

Prior to the enactment of the Small Business Job Protection Act of 1996 (Public Law 104–188, 110 Stat. 1755) (SBJPA), both governmental and tax-exempt entities generally were subject to the section 410(b) coverage requirements and precluded from maintaining section 401(k) plans pursuant to section 401(k)(4)(B). To prevent the section 401(k)(4)(B) prohibition from causing a plan to fail section 410(b), the existing regulations provide that employees of either governmental or tax-exempt entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B) may be treated as excludable in applying the minimum coverage rules to a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan, if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by section 401(k)(4)(B) benefit under the plan for the plan year. Although tax-exempt organizations described in section 501(c)(3) were precluded by section 401(k)(4)(B) from maintaining a section 401(k) plan, they were permitted to allow their employees to make salary reduction contributions to a plan or contract that satisfies section 403(b) (a section 403(b) plan).

Section 1426(a) of SBJPA amended section 401(k)(4)(B), effective for plan years beginning after December 31, 1996, to allow nongovernmental tax-exempt organizations (including organizations exempt under section 501(c)(3)) to maintain section 401(k) plans. Thus, a section 501(c)(3) tax-exempt organization can now maintain a section 401(k) plan, a sec-

tion 403(b) plan, or both. Prior to the enactment of SBJPA, many eligible tax-exempt organizations maintained section 403(b) plans. In light of this provision of SBJPA, section 664 of EGTRRA directed the Secretary of the Treasury to modify the regulations under section 410(b) to provide that employees of an organization described in section 403(b)(1)(A)(i) (a section 501(c)(3) organization) who are eligible to make contributions under section 403(b) pursuant to a salary reduction agreement may be treated as excludable with respect to a plan under section 401(k) or a plan under section 401(m) that is provided under the same general arrangement as a plan under section 401(k), if (1) no employee of an organization described in section 403(b)(1)(A)(i) is eligible to participate in such section 401(k) plan or section 401(m) plan and (2) 95 percent of the employees who are not employees of an organization described in section 403(b)(1)(A)(i) are eligible to participate in such plan under such section 401(k) or (m).

The amendment to §1.410(b)–6(g) of the regulations pursuant to section 664 of EGTRRA allows the continued maintenance of section 403(b) plans by these organizations without requiring the same employees to be covered under a section 401(k) plan and the section 403(b) plan. In certain circumstances, the amendments will help an employer that maintains both a section 401(k) plan and a section 403(b) plan that provides for contributions under a salary reduction agreement (within the meaning of section 402(g)) to satisfy the section 410(b) coverage requirements with respect to the section 401(k) plan without the employer having to provide dual coverage for employees.

Only a few comments were received on the proposed regulations. No public hearing was requested or held. After consideration of the comments received, the final regulations adopt the provisions of the proposed regulations with certain modifications described below.

## Explanation of Provisions

These final regulations retain the rule that provides that employees of governmental entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B)(ii) may be treated as excludable employees if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by reason of section 401(k)(4)(B)(ii) benefit under the plan for the year.

As directed by section 664 of EGTRRA, these final regulations also provide that employees of a section 501(c)(3) organization who are eligible to make contributions under section 403(b) pursuant to a salary reduction agreement (within the meaning of section 402(g)) may be treated as excludable with respect to a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan, if (1) no employee of a section 501(c)(3) organization is eligible to participate in such section 401(k) plan or section 401(m) plan; and (2) at least 95 percent of the employees who are neither employees of a section 501(c)(3) organization nor employees of a governmental entity who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B)(ii) are eligible to participate in such section 401(k) plan or section 401(m) plan.

The proposed regulations, in an attempt to simplify the language in section 664 of EGTRRA, would have provided that, for purposes of testing either a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement, employees of a section 501(c)(3) organization who are eligible to make salary reduction contributions (within the meaning of section 402(g)) under a section 403(b) plan may be treated as excludable employees if no employee of the organization (rather than no employee of any organization described in section 403(b)(1)(A)(ii) (as in the language in section 664 of EGTRRA)) is eligible to participate in the section 401(k) plan or 401(m) plan, and 95% of the employees of the employer who are not employees of the organization (rather than an organization described in section 403(b)(1)(A)(ii) (as in the language in section 664 of EGTRRA))

are eligible to participate in the section 401(k) plan or section 401(m) plan. After further consideration, the IRS and Treasury Department have concluded that this simplification of the statutory language might not in all cases result in the same employees being excludable as would be excludable by applying the statutory language, which was not the intent. Thus, the final regulations more closely track the language in section 664 of EGTRRA than the proposed regulations.

The few comments received on the proposed regulations generally did not ask for changes to the basic rule but rather asked for further explanation as to the proper interpretation of the rule, including the scope of the exclusion and the interaction of the rule with other rules in the regulations under section 410(b). As explained further below, the IRS and Treasury Department believe that the answers to the questions raised in the comments is reasonably clear under the existing language, and have decided not to expand guidance in the regulation beyond the specific direction of Congress.

Commentators requested clarification as to when a section 401(m) plan is provided under the same general arrangement as a section 401(k) plan for purposes of these regulations. Generally, a section 401(m) plan is provided under the same general arrangement as a section 401(k) plan only to the extent that the matching contributions are contingent upon elective deferrals in the section 401(k) plan.

Commentators asked for clarification of the relationship between the proposed regulations and §1.410(b)-7(f) and whether matching contributions made under a 401(a) tax-qualified plan may be taken into account when applying the coverage requirements of section 410(b) to matching contributions provided as part of a section 403(b) plan. Treasury regulation §1.410(b)-7(f) permits a plan subject to section 403(b)(12)(A)(i), which requires the universal availability of the right to defer, to satisfy section 410(b) by taking into account plans that are not subject to section 403(b)(12)(A)(i). Accordingly, a section 403(b) plan is permitted to satisfy the section 410(b) coverage requirements for matching contributions by taking into account matching contributions that are provided under a plan that is not subject to section 403(b)(12)(A)(i) (e.g., a section

401(a) tax-qualified plan). However, because Treasury regulation §1.410(b)-7(f) does not permit a section 401(a) tax-qualified plan to satisfy the requirements of section 410(b) by taking into account a plan subject to section 403(b)(12)(A)(i), a section 401(a) tax-qualified plan must satisfy the section 410(b) coverage requirements by disregarding coverage under a section 403(b) plan. These regulations provide the rules for disregarding employees of a governmental or tax-exempt entity for purposes of applying the coverage requirements of section 410(b) to a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan.

Commentators asked whether employees of a tax-exempt organization described in section 501(c)(3) who would be eligible to make salary reduction contributions under a section 403(b) plan but for the exclusions permitted under section 403(b)(12), such as nonresident aliens and employees who normally work less than 20 hours per week, are taken into account as employees who are eligible to make salary reduction contributions for purposes of these regulations. These regulations provide that such employees are not taken into account unless they are actually eligible to make salary reduction contributions to the section 403(b) plan.

## Effective Date

As directed by Congress in section 664 of EGTRRA, these final regulations apply to plan years beginning after December 31, 1996. However, the preamble to the proposed regulations provided that taxpayers were permitted to rely on the proposed regulations, and if and to the extent that the final regulations were more restrictive, the final regulations would be prospective. As described above, the final regulations make certain modifications to the proposed regulations. These may be more restrictive than the proposed regulations under certain limited circumstances. Consequently, for plan years beginning after December 31, 1996, but before January 1, 2007, an employer is permitted to determine the excludable employees under a section 401(k) plan or section 401(m) plan using either §1.410(b)-6(g) in the proposed regulations or these final regulations.

## Special Analyses

It has been determined that this 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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

## Drafting Information

The principal authors of these regulations are Linda L. Conway and Michael P. Brewer of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

\* \* \* \* \*

## 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 removing the entry for §§1.410(b)–2 through 1.410(b)–10 and adding entries in numerical order to read, in part, as follows:

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

§1.410(b)–2 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–3 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–4 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–5 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–6 also issued under 26 U.S.C. 410(b)(6) and section 664 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38).

§1.410(b)–7 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–8 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–9 also issued under 26 U.S.C. 410(b)(6).

§1.410(b)–10 also issued under 26 U.S.C. 410(b)(6).\* \* \*

Par. 2. Section 1.410(b)–0, table of contents, the entry for 1.410(b)–6 is amended by:

1. Revising the entry for 1.410(b)–6(g).

2. Adding entries for 1.410(b)–6(g)(1), (g)(2), and (g)(3).

The revision and additions read as follows:

#### *§1.410(b)–0 Table of contents.*

\* \* \* \* \*

#### *§1.410(b)–6 Excludable employees.*

\* \* \* \* \*

(g) Employees of certain governmental or tax-exempt entities.

(1) Plans covered.

(2) Employees of governmental entities.

(3) Employees of tax-exempt entities.

\* \* \* \* \*

Par. 3. In §1.410(b)–6, paragraph (g) is revised to read as follows:

#### *§1.410(b)–6 Excludable employees.*

\* \* \* \* \*

(g) *Employees of certain governmental or tax-exempt entities—(1) Plans covered.* For purposes of testing either a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan, an employer may treat as excludable those employees described in paragraphs (g)(2) and (3) of this section.

(2) *Employees of governmental entities.* Employees of governmental entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B)(ii) may be treated as excludable employees if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by reason of section 401(k)(4)(B)(ii) benefit under the plan for the year.

(3) *Employees of tax-exempt entities.* Employees of an organization described in section 403(b)(1)(A)(i) who are eligible to make salary reduction contributions under section 403(b) may be treated as excludable with respect to a section 401(k) plan,

or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan, if—

(i) No employee of an organization described in section 403(b)(1)(A)(i) is eligible to participate in such section 401(k) plan or section 401(m) plan; and

(ii) At least 95 percent of the employees who are neither employees of an organization described in section 403(b)(1)(A)(i) nor employees of a governmental entity who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B)(ii) are eligible to participate in such section 401(k) plan or section 401(m) plan.

\* \* \* \* \*

Par. 4. In §1.410(b)–10, paragraph (e) is added to read as follows:

#### *§1.410(b)–10 Effective dates and transition rules.*

\* \* \* \* \*

(e) *Effective date for provisions relating to exclusion of employees of certain tax-exempt entities.* The provisions in §1.410(b)–6(g) apply to plan years beginning after December 31, 1996. For plan years to which §1.410(b)–6 applies that begin before January 1, 1997, §1.410(b)–6(g) (as it appeared in the April 1, 2005 edition of 26 CFR part 1) applies.

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

Approved June 30, 2006.

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

(Filed by the Office of the Federal Register on July 20, 2006, 8:45 a.m., and published in the issue of the Federal Register for July 21, 2006, 71 FR. 41357)

## Section 414.—Definitions and Special Rules

(Also § 7805.)

**Government pick-up plans; employer contributions; income tax; prospective application.** This ruling describes the actions required for a state or its political subdivisions, etc., to “pick-up” or treat certain contributions as employer contributions to a plan qualified under

section 401(a) of the Code. If certain criteria are met, this ruling will be applied prospectively. Rev. Ruls. 81-35, 81-36, and 87-10 amplified and modified.

## Rev. Rul. 2006-43

### ISSUES

What actions are required in order for a State or political subdivision thereof, or an agency or instrumentality of any of the foregoing, to “pick up” employee contributions to a plan qualified under § 401(a) of the Internal Revenue Code so that the contributions are treated as employer contributions pursuant to § 414(h)(2)?

### FACTS

Employer M is a political subdivision of State N. Employer M participates in Plan A, a defined benefit pension plan qualified under § 401(a) and established by State N to provide retirement benefits to eligible employees of State N and any political subdivision of State N. Plan A requires each participating employee to make employee contributions to Plan A equal to a specified percentage of the participant’s salary. These amounts, designated as employee contributions under § 414(h)(1), are deducted from the participant’s salary. State N statutes governing Plan A permit any political subdivision to provide that the employee contributions will be paid by the employer in order to be picked up and treated as employer contributions under § 414(h)(2). On March 1, 2006, Employer M amends its governing laws to provide that the amounts designated as employee contributions under Plan A will be paid by Employer M for all of Employer M’s employees in order to be treated as employer contributions under § 414(h)(2), as permitted under the statutes governing Plan A. The amendment is in writing, was adopted by persons authorized to amend Employer M’s governing laws, and is effective for periods on or after April 1, 2006. Employer M, thereafter, treats the amounts as employer contributions, instead of as being employee contributions, for federal income tax purposes and does not include these amounts in the participating employees’ gross income.

### LAW AND ANALYSIS

Section 414(h)(1) provides that any amount contributed to a qualified plan is not treated as having been made by the employer if it is designated as an employee contribution.

Section 414(h)(2) provides a special rule for qualified plans established by a State government or political subdivision thereof, or by any agency or instrumentality of the foregoing. Under this rule, contributions, although designated as employee contributions, are nevertheless treated as employer contributions if the contributions are picked up by the employing unit.

Section 401(k) provides the rules relating to cash or deferred elections. Section 1.401(k)-1(a)(1) of the Income Tax Regulations provides that a plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension or rural cooperative plan, does not satisfy the requirements of § 401(a) if the plan includes a cash or deferred arrangement. Thus, a qualified defined benefit plan is not permitted to include a cash or deferred arrangement.

Section 1.401(k)-1(a)(3) generally defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer (i) provide an amount that is not currently available to the employee in the form of cash or some other taxable benefit, or (ii) contribute an amount to a trust or provide an accrual for a plan deferring the receipt of compensation.

Rev. Rul. 77-462, 1977-2 C.B. 358, addresses the income tax treatment of contributions picked up by the employer within the meaning of § 414(h)(2). In Rev. Rul. 77-462, the employer school district agreed to “pick up” and pay the required contributions of the eligible employees under the plan. The revenue ruling holds that the contributions picked up by the school district are excluded from the gross income of employees until such time as they are distributed to the employees.

Rev. Rul. 81-35, 1981-1 C.B. 255, and Rev. Rul. 81-36, 1981-1 C.B. 255, address certain requirements for contributions to be picked up by an employer within the meaning of § 414(h)(2). These revenue rulings establish that the following criteria must be satisfied: (i) the employer must specify that the contributions,

although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee; and (ii) the employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the plan. Rev. Rul. 81-35 and Rev. Rul. 81-36 apply even if the employer picks up the contributions through either a reduction in salary or an offset against future salary increases.

Rev. Rul. 87-10, 1987-1 C.B. 136, addresses when contributions designated as employee contributions (designated employee contributions) under § 414(h)(1) to a qualified plan established by a State government (including a political subdivision thereof, or any agency or instrumentality of the foregoing) are excludable from the gross income of the employee. The ruling concludes that, to satisfy the criteria set forth in Rev. Rul. 81-35 and Rev. Rul. 81-36, the governmental action necessary to effectuate the “pick-up” must be completed before the period to which such contributions relate. Thus, designated employee contributions to a qualified plan established by a State government are excluded from gross income as “pick-up” contributions that are treated as employer contributions only to the extent the contributions relate to compensation for services rendered after the date of the last governmental action necessary to effectuate the “pick-up.”

Based on the foregoing, a contribution to a qualified plan established by a State government will not be treated as picked up by the employing unit under § 414(h)(2) unless the employing unit:

(1) Specifies that the contributions, although designated as employee contributions, are being paid by the employer. For this purpose, the employing unit must take formal action to provide that the contributions on behalf of a specific class of employees of the employing unit, although designated as employee contributions, will be paid by the employing unit in lieu of employee contributions. A person duly authorized to take such action with respect to the employing unit must take such action. The action must apply only prospectively and be evidenced by a contemporaneous written document (*e.g.*, minutes of a meeting, a resolution, or an ordinance).

(2) Does not permit a participating employee from and after the date of the



“pick-up” to have a cash or deferred election right (within the meaning of § 1.401(k)-1(a)(3)) with respect to designated employee contributions. Thus, for example, participating employees must not be permitted to opt out of the “pick-up”, or to receive the contributed amounts directly instead of having them paid by the employing unit to the plan.

Employer M has taken formal action which was memorialized in a contemporaneous writing that provides that it will “pick up” all prospective contributions for the Employer M employees who are required to contribute to Plan A. Further, employees are required to participate in Plan A, do not have the option of choosing to receive the contributed amounts directly, and may not make a cash or deferred election with respect to such amounts. Employer M has met the requirements to have the designated employee contributions under Plan A picked up and treated as employer contributions pursuant to § 414(h)(2). Thus, contributions made to Plan A are not includible in a participant’s gross income until distributed under § 402.

This revenue ruling applies only for federal income tax purposes. See §§ 3121(a)(5)(A) and 3121(v)(1)(B) of the Federal Insurance Contributions Act (FICA) for the treatment of amounts treated as an employer contributions under § 414(h)(2).

#### **HOLDING**

Because an authorized person has taken formal action in writing prospectively to have the employing unit pay previously designated employee contributions to a § 401(a) qualified plan, appropriate actions have been taken for the contributions to be picked up by the employing unit and treated as employer contributions pursuant to § 414(h)(2).

#### **TRANSITION RELIEF FOR PRE-EXISTING “PICK-UPS”**

Under the authority of § 7805(b)(8), the Service will not treat any plan that on or

before August 28, 2006, includes designated employee contributions that were intended to be picked up as employer contributions pursuant to § 414(h)(2) as failing to meet the requirements of such section prior to January 1, 2009, solely on account of the failure to satisfy the requirement that the “pick-up” be pursuant to a formal action, by a person duly authorized to take such action with respect to the employing unit, that is evidenced by contemporaneous writing, but only if the following conditions are satisfied: (1) the employing unit has taken contemporaneous action evidencing an intent to establish a “pick-up” (e.g., provided information to employees relating to the establishment of the “pick-up”) and has operated the plan accordingly; and (2) the employing unit takes formal action in writing prior to January 1, 2009, with respect to future contributions to meet the requirements set forth above in paragraph (1) of *Law and Analysis* in this revenue ruling.

The relief provided above for “pick-ups” implemented prior to August 28, 2006, applies only if the actions taken otherwise complied with Rev. Rul. 81-35, Rev. Rul. 81-36, and Rev. Rul. 87-10, and only if the employing unit has not reported the contributions as wages subject to federal income tax withholding from and after the date of implementation of the intended “pick-up”.

In addition, under the authority of § 7805(b)(8), this revenue ruling does not modify or revoke any private letter ruling issued to any taxpayer prior to August 28, 2006. See § 601.201(l)(4).

#### **EFFECT ON OTHER GUIDANCE**

Rev. Rul. 81-35, Rev. Rul. 81-36, and Rev. Rul. 87-10 are amplified and modified.

#### **DRAFTING INFORMATION**

The principal drafter of this revenue ruling is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information re-

garding this revenue ruling, 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. Ms. Herrmann may be reached at (202) 283-9888 (not a toll-free number).

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

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

**LIFO; price indexes; department stores.** The June 2006 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, June 30, 2006.

#### **Rev. Rul. 2006-41**

The following Department Store Inventory Price Indexes for June 2006 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, June 30, 2006.

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	June 2005	June 2006	Percent Change from June 2005 to June 2006 <sup>1</sup>
1. Piece Goods .....	504.8	456.6	-9.5
2. Domestics and Draperies .....	519.1	490.1	-5.6
3. Women's and Children's Shoes .....	650.4	686.5	5.6
4. Men's Shoes .....	878.2	892.0	1.6
5. Infants' Wear .....	559.9	556.3	-0.6
6. Women's Underwear.....	541.4	549.9	1.6
7. Women's Hosiery .....	340.0	349.4	2.8
8. Women's and Girls' Accessories .....	588.9	564.4	-4.2
9. Women's Outerwear and Girls' Wear .....	347.5	354.4	2.0
10. Men's Clothing .....	536.9	523.2	-2.6
11. Men's Furnishings.....	562.8	560.2	-0.5
12. Boys' Clothing and Furnishings .....	413.6	388.3	-6.1
13. Jewelry.....	872.3	885.9	1.6
14. Notions .....	810.4	815.1	0.6
15. Toilet Articles and Drugs .....	997.0	996.4	-0.1
16. Furniture and Bedding .....	598.7	604.1	0.9
17. Floor Coverings .....	604.6	610.4	1.0
18. Housewares.....	711.9	695.7	-2.3
19. Major Appliances.....	204.3	203.1	-0.6
20. Radio and Television.....	39.0	36.1	-7.4
21. Recreation and Education <sup>2</sup> .....	78.5	76.8	-2.2
22. Home Improvements <sup>2</sup> .....	137.8	139.3	1.1
23. Automotive Accessories <sup>2</sup> .....	114.6	120.1	4.8
Groups 1-15: Soft Goods .....	552.0	552.2	0.0
Groups 16-20: Durable Goods.....	379.8	372.9	-1.8
Groups 21-23: Misc. Goods <sup>2</sup> .....	93.4	93.6	0.2
Store Total <sup>3</sup> .....	490.8	489.4	-0.3

<sup>1</sup>Absence of a minus sign before the percentage change in this column signifies a price increase.

<sup>2</sup>Indexes on a January 1986 = 100 base.

<sup>3</sup>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 860G.—Other Definitions and Special Rules**

*26 CFR 1.860G-3: Treatment of foreign persons.*

**T.D. 9272**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1**

**REMIC Residual Interests—Accounting for REMIC Net Income (Including**

**Any Excess Inclusions) (Foreign Holders)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is

recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated. The regulations clarify the timing of income under section 860G for purposes of determining a domestic partnership's responsibility under sections 1441 and 1442 for withholding tax with respect to a foreign partner's share of REMIC net income as a result of indirectly holding a residual interest. The regulations also provide that an excess inclusion is treated as income from sources within the United States. The text of the temporary regulations also serves as the text of the proposed regulations (REG-159929-02) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective August 1, 2006.

*Applicability Dates:* For dates of applicability, see §§1.860A-1T(b)(5), 1.863-1T(f) and 1.1441-2T(f).

**FOR FURTHER INFORMATION CONTACT:** Dale Collinson, (202) 622-3900 (not a toll-free number).

### **Background and Explanation of Provisions**

This document contains amendments to 26 CFR part 1 under sections 860A, 860G(b), 863, 1441, and 1442 of the Internal Revenue Code (Code). Under section 860C(a)(1), in general, a holder of a REMIC residual interest must take into account the holder's daily portion of the taxable income or net loss of the REMIC for each day of the taxable year on which the holder held the interest. Thus, a residual interest holder generally is taxable currently on the taxable income or net loss of the REMIC without regard to whether or when the REMIC makes distributions. Section 860G(b) provides an exception to this general rule in section

860C for the timing of income attributable to the ownership of a REMIC residual interest. Under this exception, for purposes of sections 871(a), 881, 1441, and 1442, if amounts are includible in the income of a holder of a REMIC residual interest that is a nonresident alien individual or a foreign corporation, the amounts are taken into account only when paid or distributed to the foreign holder, or when the interest is disposed of.

In its earlier years, a REMIC may accrue and recognize more taxable interest income from the mortgages that it holds than it accrues and deducts as interest on the regular interests that it has issued. This produces net income for the REMIC and thus for the holder of the REMIC's residual interest. Many REMICs are structured so that the REMIC uses all, or substantially all, of its cash flow to pay expenses and to pay principal and interest on regular interests (effectively using a portion of interest receipts to pay principal or other nondeductible items). Such a REMIC will make little or no distributions to the holders of the residual interest in the REMIC, and each holder will incur tax liabilities with respect to its share of the REMIC's net income in an amount that exceeds the holder's economic return.

In addition, all or substantially all of the income attributable to holding the residual interest will be subject to special rules relating to *excess inclusions*. To ensure that the income will be taxable in all events, these rules, among other things, prevent the use of net operating losses to offset the excess inclusions, see section 860E, and preclude any exemption from, or reduction in, applicable withholding taxes, see section 860G(b)(2). Residual interests that entitle the holder to little or no distributions are commonly referred to as *noneconomic* REMIC residual interests, and persons acquiring those interests receive an *inducement fee* for becoming the holder and undertaking the associated tax payment responsibilities. Taxable income that must be recognized in excess of the economic income for a period is often called *phantom income*. In the case of a REMIC, the early phantom income is generally offset by matching deductions (generally called *phantom losses*) in later periods.

Consistent with the Congressional purpose of ensuring that excess inclusions of

REMICs be subject to tax, §1.860E-1(c) of the Income Tax Regulations provides for disregarding transfers of noneconomic REMIC residual interests if a significant purpose of the transfer is avoiding assessment or collection of tax. In addition, §1.860G-3(a)(1) provides, "A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal income tax purposes if the transferee is a foreign person." Section 1.860G-3(a)(2) provides, "A residual interest has tax avoidance potential . . . unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual." Accordingly, foreign persons are generally precluded from becoming the direct holders of noneconomic residual interests.

"Where necessary or appropriate to prevent the avoidance of tax imposed by [chapter 1 of the Code]," section 860G(b) authorizes the adoption of regulations requiring REMIC net income inclusions of foreign holders of REMIC residual interests to be taken into account for purposes of sections 871(a), 881, 1441, and 1442 earlier than is provided in section 860G(b)(1). The legislative history of the Tax Reform Act of 1986 indicates that Congress intended that this regulatory authority may be exercised with respect to noneconomic residual interests. See 2 H.R. Rep. No. 841, 99<sup>th</sup> Cong., 2d Sess. II-236 (1986) (referring to residual interests that do "not have significant value").

The IRS and Treasury Department have become aware that noneconomic REMIC residual interests are being transferred to domestic partnerships that subsequently allocate the phantom income to foreign persons. If a partnership has no foreign partners at the time the partnership acquires a noneconomic REMIC residual interest, the person transferring the residual interest to the partnership may take the position that neither §1.860E-1(c) nor §1.860G-3 is applicable. In turn, the partnership may take the position, by applying the aggregate approach to the relation between a partnership and its partners, that

foreign persons who later become partners hold the REMIC residual interest that had previously been acquired by the partnership. Based on the conclusion that the foreign partners are holders of the residual interest, the partnership may take the further position that, under section 860G(b), a withholding tax obligation on the partnership's allocation to the foreign partner of income from the residual interest arises no sooner than the time when distributions on the residual interest are made by the REMIC (distributions that will almost never occur with a noneconomic residual) or when the interest is disposed of. Under this view, the foreign holder's tax liability with respect to net income of the REMIC (including excess inclusions) would be deferred until disposition of the holder's interest in the REMIC residual interest, including a disposition through termination of the REMIC, a disposition of the REMIC residual interest by the partnership, or a disposition of the partnership interest by the foreign partner.

The IRS and Treasury Department have concluded that, in order to achieve effective assessment and collection of U.S. tax on REMIC net income, including excess inclusion income, in furtherance of the congressional purpose referenced above and section 860E(a)(1), (b), and (e) and section 860G(b) of the Code, the time when foreign partners are required to account for REMIC net income should be accelerated. That is, for purposes of sections 871(a), 881, 1441, and 1442, the temporary regulations eliminate the deferral (relative to section 860C) that section 860G(b)(1) might otherwise prescribe. To prevent the adoption of similar schemes using real estate investment trusts, regulated investment companies, common trust funds, or subchapter T cooperative organizations, foreign persons to whom excess inclusion income is allocated by any of these other entities must account for REMIC excess inclusions on a similarly accelerated basis.

Several provisions of regulations under sections 1441 and 1442 are relevant to the taxation of REMIC net income inclusions (and particularly net income inclusions with respect to noneconomic REMIC residual interests) that are allocated to foreign persons. Under §1.1441-2(e), for purposes of section 1441 and 1442, a payment generally is considered made

to a person if that person realizes income, whether or not the income results from an actual transfer of cash or other property. Under §1.1441-2(d)(1), however, if a withholding agent is not related to the recipient or beneficial owner, the withholding agent has an obligation to withhold only to the extent that, at any time between the date that the obligation to withhold would arise but for the provisions of §1.1441-2(d) and the due date for the filing of a return on Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," (including extensions) for the year in which the payment occurs, the withholding agent has control over, or custody of money or property owned by the recipient or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. For this purpose, a withholding agent is related to the recipient or beneficial owner if it is related within the meaning of section 482. Section 1.1441-2(d)(1) further provides that the foregoing exception does not apply "to distributions with respect to stock or if the lack of control or custody of money or property owned by the recipient or beneficial owner from which to withhold is part of a prearranged plan known to the withholding agent to avoid withholding under sections 1441, 1442, or 1443."

Under §1.1441-5(b)(2), a U.S. partnership is required to withhold under §1.1441-1 as a withholding agent on an amount subject to withholding (as defined in §1.1441-2(a)) that is includible in the gross income of a partner that is a foreign person. Except as provided in §1.1441-5(b)(2)(v) (which prevents a second withholding obligation from arising with respect to the actual distribution of income previously withheld upon as a distribution from a U.S. partnership or trust), a U.S. partnership is required to withhold when making any distributions that include amounts subject to withholding. To the extent a foreign partner's distributive share of income subject to withholding has not actually been distributed to the foreign partner, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that the statement on Form 1065, "U.S. Return of Partnership Income," is mailed (or otherwise provided) to the

partner or the due date for furnishing that statement.

Pursuant to the authority granted under section 860G(b), for purposes of sections 871(a), 881, 1441, and 1442, these temporary regulations generally require a foreign partner in a partnership holding one or more REMIC residual interests to take into account REMIC net income inclusions at the end of its taxable year (or on the last date of the taxable year of a partnership that allocates REMIC net income to the foreign partner). The temporary regulations require a foreign shareholder in a real estate investment trust or regulated investment company, a foreign participant in a common trust fund, or a foreign patron of a subchapter T cooperative organization to take into account excess inclusion income at the same time as other income from the entity.

The temporary regulations also provide that an excess inclusion is treated as income from sources within the United States. The Treasury Department and the IRS believe this treatment is appropriate because the inclusions are largely *phantom income* arising from the special provisions of the Code relating to REMICs and thus are unlikely to have tax significance outside the United States. The temporary regulations provide that, to the extent excess inclusions are taken into account with respect to a residual interest, net losses with respect to the residual interest are allocated and apportioned to the class and grouping(s) of gross income to which the excess inclusions were assigned.

The temporary regulations also provide that the exemption available under certain circumstances to certain withholding agents that do not have custody or control of money or property from which to satisfy a withholding obligation is not available in any case with respect to an excess inclusion subject to these rules. No inference is intended as to whether, for purposes of this exemption, any right, obligation, contract, or arrangement other than a REMIC residual interest constitutes property of a sort from which a withholding obligation may be satisfied.

#### **Effective Date**

The regulations regarding the timing of REMIC income inclusions apply to REMIC net income of a foreign person

with respect to REMIC residual interests with respect to which the first REMIC net income allocation to the foreign person under section 860C occurs on or after August 1, 2006. The regulations regarding the source of excess inclusions are applicable for taxable years ending after August 1, 2006.

### 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. These regulations are necessary to provide taxpayers with immediate guidance to discourage the overly aggressive interpretations being employed for the inappropriate avoidance of current income tax assessment or collection by foreign persons who are allocated income from REMIC residual interests. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b)(B), and with a delayed effective date pursuant to 5 U.S.C. 553(d). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the special analysis section of the preamble to the cross-referenced notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of Code, these temporary regulations will be 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 Dale Collinson, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department 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 1.860A-1 also issued under 26 U.S.C. 860G(b) and 860G(e).

Section 1.860A-1T also issued under 26 U.S.C. 860G(b) and 860G(e). \* \* \*

Section 1.860G-3T also issued under 26 U.S.C. 860G(b) and 860G(e). \* \* \*

Par. 2. Section 1.860A-0 is amended as follows:

1. Section 1.860A-1, paragraph (b)(5) is added.

2. Section 1.860A-1T is added.

3. Section 1.860G-3, paragraph (b) is revised.

4. Section 1.860G-3T is added.

The additions and revisions read as follows:

#### *§1.860A-0 Outline of REMIC provisions.*

\* \* \* \* \*

#### *§1.860A-1 Effective dates and transition rules.*

\* \* \* \* \*

(b) \* \* \*

(5) [Reserved].

#### *§1.860A-1T Effective dates and transition rules (temporary).*

(a) through (b)(4) [Reserved].

(5) Accounting for REMIC net income of foreign persons.

\* \* \* \* \*

#### *§1.860G-3 Treatment of foreign persons.*

\* \* \* \* \*

(b) Accounting for REMIC net income. [Reserved].

#### *§1.860G-3T Treatment of foreign persons (temporary).*

(a) [Reserved].

(b) Accounting for REMIC net income.

(1) Allocation of partnership income to a foreign partner.

(2) Excess inclusion income allocated by certain pass-through entities to a foreign person.

Par. 3. In §1.860A-1 paragraph (b)(5) is added to read as follows:

#### *§1.860A-1 Effective dates and transition rules.*

\* \* \* \* \*

(b) \* \* \*

(5) [Reserved]. For further guidance, see §1.860A-1T(b)(5).

Par. 4. Section 1.860A-1T is added to read as follows:

#### *§1.860A-1T Effective dates and transition rules (temporary).*

(a) through (b)(4) [Reserved]. For further guidance, see §1.860A-1(a) through (b)(4).

(5) *Accounting for REMIC net income of foreign persons.* Section 1.860G-3T(b) is applicable to REMIC net income (including excess inclusions) of a foreign person with respect to a REMIC residual interest if the first net income allocation under section 860C(a)(1) to the foreign person with respect to that interest occurs on or after August 1, 2006. This section will expire July 31, 2009.

Par. 5. In §1.860G-3, paragraph (b) is revised as follows:

#### *§1.860G-3 Treatment of foreign persons.*

\* \* \* \* \*

(b) *Accounting for REMIC net income.* [Reserved]. For further guidance, see §1.860G-3T(b).

Par. 6. Section 1.860G-3T is added to read as follows:

#### *§1.860G-3T Treatment of foreign persons (temporary).*

(a) [Reserved]. For further guidance, see §1.860G-3(a).

(b) *Accounting for REMIC net income—(1) Allocation of partnership income to a foreign partner.* A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with §1.702-1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441, and 1442 as if that amount were received on the last day of the partnership's taxable year, except to the extent that some or all

of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner's indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner's indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership's residual interest in the REMIC, a disposition of the foreign partner's interest in the partnership, or any other reduction in the foreign partner's allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See §1.871-14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC. For a partnership's withholding obligations with respect to excess inclusion amounts described in this paragraph (b)(1), see §1.1441-2T(b)(5), §1.1441-2T(d)(4), §1.1441-5(b)(2)(i)(A) and §§1.1446-1 through 1.1446-7.

(2) *Excess inclusion income allocated by certain pass-through entities to a foreign person.* If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter T applies and if the amount so allocated is governed by section 860E(d)(2) (treating it "as an excess inclusion with respect to a residual interest held by" the taxpayer), the amount shall be taken into account for purposes of sections 871(a), 881, 1441, and 1442 at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.

Par. 7. Section 1.863-0 table of contents is amended as follows:

1. The entries for §1.863-1(e) are revised.

2. Entries for §1.863-1T are added.

The revisions and additions read as follows:

*§1.863-0 Table of contents.*

\*\*\*\*\*

*§1.863-1 Allocation of gross income under section 863(a).*

\*\*\*\*\*

(e) Residual interest in a REMIC.

(1) REMIC inducement fees.

(2) Excess inclusion income and net losses.

\*\*\*\*\*

*§1.863-1T Allocation of gross income under section 863(a).*

(a) through (d) [Reserved].

(e) Residual interest in a REMIC.

(1) REMIC inducement fees.

(2) Excess inclusion income and net losses.

(f) Effective date.

Par. 8. Section 1.863-1 is amended as follows:

1. The paragraph heading for paragraph (e) is revised.

2. The text of paragraph (e) is redesignated as (e)(1).

3. A new paragraph heading for paragraph (e)(1) is added.

4. A new paragraph (e)(2) is added.

5. The last sentence of paragraph (f) is revised and a new sentence is added to the end.

The revisions and additions read as follows:

*§1.863-1 Allocation of gross income under section 863(a).*

\*\*\*\*\*

(e) *Residual interest in a REMIC—(1) REMIC inducement fees.* \*\*\*

(2) *Excess inclusion income and net losses.* [Reserved]. For further guidance, see §1.863-1T(e)(2).

(f) \*\*\* Paragraph (e)(1) of this section is applicable for taxable years ending on or after May 11, 2004. For further guidance, see §1.863-1T(f).

Par. 9. Section 1.863-1T is added to read as follows:

*§1.863-1T Allocation of gross income under section 863(a) (temporary).*

(a) through (d) [Reserved]. For further guidance, see §1.863-1(a) through (d).

(e) *Residual interest in a REMIC—(1) REMIC inducement fees.* [Reserved]. For further guidance, see §1.863-1(e)(1).

(2) *Excess inclusion income and net losses.* An excess inclusion (as defined in section 860E(c)) shall be treated as income from sources within the United States. To the extent of excess inclusion income previously taken into account with respect to a residual interest (reduced by net losses previously taken into account under this paragraph), a net loss (described in section 860C(b)(2)) with respect to the residual interest shall be allocated to the class of gross income and apportioned to the statutory grouping(s) or residual grouping of gross income to which the excess inclusion income was assigned.

(f) *Effective date.* Paragraph (e)(2) of this section applies for taxable years ending after August 1, 2006. For further guidance, see §1.863-1(f). This section will expire July 31, 2009.

Par. 10. Section 1.1441-0 is amended by adding entries for §§1.1441-2(b)(5), 1.1441-2(d)(4), and 1.1441-2T to read as follows:

*§1.1441-0 Outline of regulation provisions for section 1441.*

\*\*\*\*\*

*§1.1441-2 Amounts subject to withholding.*

\*\*\*\*\*

(b) \*\*\*

(5) REMIC residual interests.

\*\*\*\*\*

(d) \*\*\*

(4) Withholding exemption inapplicable.

\*\*\*\*\*

*§1.1441-2T Amounts subject to withholding.*

(a) through (b)(4) [Reserved].

(5) REMIC residual interests.

(c) through (d)(3) [Reserved].

(d)(4) Withholding exemption inapplicable.

(e) [Reserved].

(f) Effective date.

\*\*\*\*\*

Par. 11. Section 1.1441-2 is amended by adding paragraphs (b)(5) and (d)(4), and a sentence to the end of paragraph (f), to read as follows:

§1.1441-2 Amounts subject to withholding.

\* \* \* \* \*

(b) \* \* \*  
(5) *REMIC residual interest*. [Reserved]. For further guidance, see §1.1441-2T(b)(5).

\* \* \* \* \*

(d) \* \* \*  
(4) *Withholding exemption inapplicable*. For further guidance, see §1.1441-2T(d)(4).

\* \* \* \* \*

(f) \* \* \* For further guidance, see §1.1441-2T(f).

Par. 12. Section 1.1441-2T is added to read as follows:

§1.1441-2T Amounts subject to withholding (temporary).

(a) through (b)(4) [Reserved]. For further guidance, see §1.1441-2(a) through (b)(4).

(5) *REMIC residual interests*. Amounts subject to withholding include an excess inclusion described in §1.860G-3T(b)(2) and the portion of an amount described in §1.860G-3T(b)(1) that is an excess inclusion.

(c) through (d)(3) [Reserved]. For further guidance, see §1.1441-2(c) through (d)(3).

(4) *Withholding exemption inapplicable*. The exemption in §1.1441-2(d) from the obligation to withhold shall not apply to amounts described in §1.860G-3T(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest).

(e) [Reserved]. For further guidance, see §1.1441-2(e).

(f) *Effective date*. This section applies after August 1, 2006. This section will expire July 31, 2009.

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

Approved July 14, 2006.

Eric Solomon,  
Acting Deputy Assistant  
Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 31, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 1, 2006, 71 F.R. 43363)

## Section 6332.—Surrender of Property Subject to Levy

**Levy on bank account.** This ruling explains that a superpriority lien argument is not a defense to a levy. If a bank has such an argument, it must file a wrongful levy suit within nine months of the levy. Otherwise, the statute of limitations bars such a suit.

## Rev. Rul. 2006-42

### ISSUE

After receiving a levy, does either a bank's setoff of a taxpayer's deposit account or a bank's claim of a security interest that has priority over the federal tax lien under section 6323(b)(10) of the Internal Revenue Code relieve the bank of its obligation to honor the levy?

### FACTS

*Situation 1.* T, a construction company, has a business deposit account with Bank A in State Z. Under the laws of State Z, Bank A owes a debt to T for the funds deposited into the account. On January 5, 2004, the Service filed a Notice of Federal Tax Lien (NFTL), providing public notice of T's unpaid Federal tax liability and of the statutory lien arising under section 6321. On April 1, 2004, Bank A loaned \$50,000 to T. As part of the transaction, T gave Bank A a promissory note payable on demand. Prior to making the loan to T, Bank A did not have actual notice or knowledge of the existence of the federal tax lien.

As security for the loan, on April 1, 2004, Bank A perfected a security interest in T's deposit account under the laws of State Z, which adopt revised Article 9 of the Uniform Commercial Code (U.C.C.). Revised Article 9 allows a bank to create a security interest in a deposit account as the original collateral for a business loan. U.C.C. 9-109(a)(1) (1999).

On June 1, 2004, after providing T with notice and an opportunity for hearing, the Service issued a notice of levy in the amount of \$100,000 to Bank A;

at that time, T's deposit account in Bank A totaled \$15,000. After receiving the notice of levy, on June 1, 2004, Bank A made demand for full payment of the loan (\$50,000) and, after not receiving payment, set off all of T's account against T's liability for the loan. Under the laws of State Z, when two parties have mutual indebtedness, either of them may cancel or extinguish one debt with the other. Bank A did not send any funds to the Service in response to the notice of levy. On July 1, 2004, Bank A contacted the Service and provided proof that it met all of the requirements for claiming a superpriority interest under section 6323(b)(10) and requested that the levy be released.

*Situation 2.* The facts are the same as in *Situation 1*, except that Bank A did not prove its superpriority interest under section 6323(b)(10) to the Service and, on May 1, 2005, the government filed suit against Bank A pursuant to section 6332(d) to enforce the levy.

### LAW AND ANALYSIS

Section 6321 provides that if any person liable to pay any tax neglects or refuses to pay after demand, the amount shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Section 6323(a) provides that the lien imposed by section 6321 generally shall not be valid against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until the Service files its NFTL. Section 6323(b) affords protection for certain interests even if a NFTL has been filed. Section 6323(b)(10) provides that the federal tax lien shall not be valid with respect to a savings deposit, share, or other account, with an institution described in section 581 or 591 of the Internal Revenue Code, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account. Sections 581 and 591 describe the following institutions: banks, trust companies, mutual savings banks, cooperative banks, domestic building and loan associations, and similar saving and loans associations.

Subject to the notice and opportunity for hearing provisions of section 6330, section 6331(a) provides that if any person

liable to pay any tax neglects or refuses to pay within 10 days after notice and demand, the Service may levy upon all property and rights to property belonging to such person or on which there is a federal tax lien. The levy does not determine whether the government's claim is superior to the claims of other parties. Rather, levy authority is designed to enable the government "promptly to secure its revenues" while competing claims are resolved. *United States v. National Bank of Commerce*, 472 U.S. 713, 721 (1985).

Section 6332(a) provides that any levied-upon person in possession of, or obligated with respect to, the taxpayer's property or rights to property must surrender such property or rights to property, or discharge such obligation, except such part of the property or rights to property subject to an attachment or execution under any judicial process.

Section 6332(d) provides that any person who fails or refuses to surrender property or rights to property subject to levy upon demand shall be liable to the United States in a sum equal to the value of property or rights not surrendered and, absent reasonable cause, provides for a penalty equal to 50 percent of that sum.

Section 7426(a)(1) provides that any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on the levied upon property may file a wrongful levy suit against the government. An administrative request for return of property under section 6343(b) is not a prerequisite to filing suit for wrongful levy under section 7426.

Section 6532(c)(1) states the general rule that no wrongful levy suit shall be begun after the expiration of 9 months from the date of the levy. Section 6532(c)(2) sets forth a limited exception to this general rule and provides that if an administrative request is made for the return of property described in section 6343(b), the 9-month period prescribed in section 6532(c)(1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

There are only two defenses to an action brought by the United States to enforce a levy pursuant to section 6332(d). The first is that the levied-upon party is neither in possession of nor obligated with respect to the taxpayer's property or rights to property. The second is that the taxpayer's property is subject to a prior judicial attachment or execution. *National Bank of Commerce*, 472 U.S. at 721–22. Lien priority is not one of the two defenses to a levy recognized by *National Bank of Commerce*. E.g., *Virgin Islands Bureau of Internal Revenue v. Chase Manhattan Bank*, 312 F.3d 131, 139 (3rd Cir. 2002); *United States v. Citizens and Southern National Bank*, 538 F.2d 1101, 1106 (5th Cir. 1976); *United States v. Sterling National Bank & Trust Co.*, 494 F.2d 919, 921 (2d Cir. 1974); *United States v. AmSouth Bank*, 947 F. Supp. 459, 461 (M.D. Fl. 1996).

After receiving a levy, a bank's setoff of a taxpayer's account does not excuse the bank from honoring the levy; a bank's liability for honoring a levy is determined as of the time that it receives the notice of levy. E.g., *State Bank of Fraser v. United States*, 861 F.2d 954, 961 (6th Cir. 1988).

*Situation 1.* Bank A's setoff does not relieve the bank of its obligation to honor the levy. When the IRS served the levy on June 1, 2004, Bank A owed a debt of \$15,000 to T, which the notice of levy seized. *State Bank of Fraser*, 861 F.2d at 961. At that point in time, Bank A was liable to the IRS for the amount of the debt. IRC § 6332(d)(1). The subsequent setoff does not eliminate Bank A's liability to the Service. Additionally, Bank A's priority interest under section 6323(b)(10) does not relieve the bank of its obligation to honor the levy.

Bank A, however, prudently contacted the Service in a timely manner to resolve its dispute informally. In this situation, Bank A was able to prove its section 6323(b)(10) priority claim to the Service. In the exercise of its administrative discretion, the Service may release a levy when a bank proves its superpriority interest under section 6323(b)(10). Since it would serve no purpose to require Bank A to surrender T's funds to the Service when Bank A and the Service agree that Bank A has a priority interest under section 6323(b)(10), the Service will generally release the levy. If Bank A had not contacted the Service informally, it could have timely filed a

wrongful levy suit in federal district court pursuant to section 7426(a)(1).

*Situation 2.* Bank A has no defense to the notice of levy for the reasons discussed in *Situation 1*. Here, Bank A did not contact the Service to pursue informal resolution of its section 6323(b)(10) priority claim, nor did Bank A timely file a wrongful levy suit pursuant to section 7426(a)(1) to challenge the levy. Bank A's failure to act in a timely manner has left it in a position where it cannot assert its superpriority claim, as a court does not have jurisdiction to hear an untimely wrongful levy suit. E.g., *LaBonte v. United States*, 233 F.3d 1049, 1051 (7th Cir. 2000).

## HOLDING

A bank's setoff of a taxpayer's deposit account after receiving a levy or a bank's claim of a priority security interest under section 6323(b)(10) of the Internal Revenue Code does not relieve the bank of its obligation to honor the levy. In *Situation 1*, however, the Service exercised its administrative discretion and released the levy after Bank A timely established that it had a superpriority interest under section 6323(b)(10). In contrast, in *Situation 2*, Bank A failed to take any action to protect its security interest, and it is barred from asserting superpriority as a defense against the government's suit to enforce the levy.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Walter Ryan of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Walter Ryan at (202) 622-3610 (not a toll-free call).

## Section 7805.—Rules and Regulations

26 CFR 301.7805-1: Rules and regulations.

Whether prospective relief will be given to a certain government pick-up plans within the meaning of section 414(h)(2) of the Code. See Rev. Rul. 2006-43, page 329.



## Part III. Administrative, Procedural, and Miscellaneous

### Revision of Forms 8898 and 8840

#### Notice 2006-73

##### PURPOSE

This notice effects interim revisions to Forms 8898 and 8840. Taxpayers required to file these forms should disregard certain line items. The Treasury Department (Treasury) and Internal Revenue Service (IRS) plan to revise Forms 8898 and 8840 and the corresponding instructions in accordance with this notice. Until revised forms are issued, taxpayers may rely on this notice when completing these forms.

##### BACKGROUND

Section 937(a) requires that, except as provided in regulations, to be a *bona fide* resident of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the United States Virgin Islands, an individual must be present in the relevant U.S. possession for at least 183 days during the taxable year, must not have a tax home outside the possession during the taxable year, and must not have a closer connection to the United States or a foreign country than to the possession. The principles of section 7701(b)(3)(B)(ii) and Treas. Reg. § 301.7701(b)-2(d) apply to determine whether an individual has such a closer connection. See § 937(a)(2); Treas. Reg. § 1.937-1(e)(1)(i).

Section 937(c) generally requires individuals who take the position for U.S. income tax reporting purposes that they became, or ceased to be, a *bona fide* resident of one of the specified possessions to file notice of such position. On April 18, 2006, the IRS released Form 8898, *Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession*, on which the notice required by § 937(c) is to be made. Taxpayers who changed their residence to or from a U.S. possession during any of the tax years 2001, 2002, 2003, 2004, or 2005 generally must file Form 8898 by October 16, 2006, for any such tax year. See Notice 2006-57, 2006-27 I.R.B. 13.

Section 7701(b) generally provides that an alien is treated as a resident of

the United States for U.S. income tax purposes if the individual (1) has entered the United States as a lawful permanent resident and is such a resident at any time during the calendar year; (2) is present in the United States for a substantial period of time (the “substantial presence test”); or (3) makes an election to be treated as a resident of the United States. An exception to the substantial presence test under section 7701(b)(3)(B) provides that an alien may still be treated as a nonresident alien if the individual (1) is present in the United States for fewer than 183 days during the current year; (2) has a tax home in a foreign country during the year; and (3) has a closer connection to that country than to the United States. Treas. Reg. § 301.7701(b)-2(d) provides a facts-and-circumstances test to determine whether an individual has such a closer connection. This facts-and-circumstances test provides a non-exclusive list of factors to be taken into consideration when making this determination. See Treas. Reg. § 301.7701(b)-2(d)(1)(i) through (x).

An alien individual who otherwise meets the substantial presence test must file a statement for each tax year for which the alien claims a closer connection to a foreign country to explain the basis of the individual’s claim. See Treas. Reg. § 301.7701(b)-8(a)(1). For this purpose, the Commissioner has prescribed the use of Form 8840, *Closer Connection Exception Statement for Aliens*.

##### REVISION OF FORMS

Part III of Form 8898 elicits information relevant to determining whether an individual has closer connections to the United States or a foreign country than to the relevant possession for purposes of the closer connection test of § 937(a). Part IV of Form 8840 elicits substantially the same information for determining whether an individual has a closer connection to a foreign country for purposes of the closer connection test of § 7701(b). Much of the information elicited reflects the facts and circumstances specifically set forth in the regulations. See Treas. Reg. §§ 1.937-1(e)(1)(i); 301.7701(b)-2(d).

Since the release of Form 8898, Treasury and the IRS have received comments concerning the reporting burden with respect to some of the information that individuals are required to provide on the form. In light of these comments, Treasury and the IRS intend to revise Forms 8898 and 8840, and the corresponding instructions, to modify the information required on lines 17 and 29 of Form 8898 and lines 20 and 31 of Form 8840. Until such time, taxpayers required to file Form 8898 or Form 8840 should disregard those line items.

Because the closer connection tests of §§ 937(a) and 7701(b) are facts-and-circumstances tests, all of the factors described in Forms 8898 and 8840 are material in the determination of whether an individual is considered, respectively, a *bona fide* resident of a U.S. possession or a resident of the United States. Therefore, filers are required to retain the information previously elicited on lines 17 and 29 of Form 8898 or on lines 20 and 31 of Form 8840 in their books and records along with any other relevant information so that the information may be readily available for inspection in the event of an examination. See Treas. Reg. § 1.6001-1.

##### DRAFTING INFORMATION

The principal author of this notice is J. David Varley of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Varley at (202) 435-5262 (not a toll-free call).

### Weighted Average Interest Rate Update

#### Notice 2006-74

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 July 2006 is 5.13 percent. 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 2036.

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

For Plan Years Beginning in:		30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
Month	Year			
August	2006	4.84	4.35 to 5.08	4.35 to 5.32

#### 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 fur-

ther 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 202-283-9703. Mr. Montanaro may be reached at 202-283-9714. The telephone numbers in the preceding sentences are not toll-free.

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

### REMIC Residual Interests — Accounting for REMIC Net Income (Including Any Excess Inclusions (Foreign Holders))

#### REG-159929-02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations, (T.D. 9272) relating to the income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general tax purposes. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated. The regulations clarify the timing of income under section 860G for purposes of determining a domestic partnership's responsibility under sections 1441 and 1442 for withholding tax with respect to a foreign partner's share of REMIC net income as a result of indirectly holding a residual interest. The regulations also provide that an excess inclusion is treated as income from sources within the United States. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 30, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-159929-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/reg](http://www.irs.gov/reg) or the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-159929-02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Collinson, (202) 622-3900 (not a toll-free number); concerning the submission of comments, or a request for a public hearing, Kelly Banks ([Kelly.D.Banks@irscounsel.treas.gov](mailto:Kelly.D.Banks@irscounsel.treas.gov)).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to sections 860A; 860G, 863, 1441, and 1442 of the Internal Revenue Code (Code). The temporary regulations provide rules relating to the recognition and sourcing of income and related withholding issues associated with a Real Estate Mortgage Investment Conduit (REMIC) residual interest that is allocated to a foreign person, including a foreign partner in a domestic partnership. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

##### Special Analyses

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

that the regulations do not impose any new or different requirements on small entities. Therefore, 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 will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### Comments and Requests for a 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. 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 will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

##### Drafting Information

The principal author of these regulations is Dale Collinson, Office of the Associate Chief Counsel (Financial Institutions and Products). However, 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 an entry in numerical order to read, in part, as follows:

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

§1.860A-1 also issued under 26 U.S.C. 860G(b) and 860G(e). \* \* \*

Par. 2. In §1.860A-1, paragraph (b)(5) is added to read as follows:

*§1.860A-1 Effective dates and transition rules.*

\*\*\*\*\*

(b) \*\*\*

(5) [The text of the proposed amendment to §1.860A-1(b)(5) is the same as the text of §1.860A-1T(b)(5) published elsewhere in this issue of the Bulletin].

Par. 3. In §1.860G-3, paragraph (b) is added to read as follows:

*§1.860G-3 Treatment of foreign persons.*

\*\*\*\*\*

(b) [The text of the proposed amendment to §1.860G-3(b) is the same as the text of §1.860G-3T(b) published elsewhere in this issue of the Bulletin].

Par. 4. Section 1.863-1 is amended as follows:

1. The paragraph heading for paragraph (e) is revised.

2. The text of paragraph (e) is redesignated as (e)(1).

3. A new paragraph heading for paragraph (e)(1) is added.

4. A new paragraph (e)(2) is added.

5. The last sentence of paragraph (f) is revised and a new sentence is added to the end.

The revisions and additions read as follows:

*§1.863-1 Allocation of gross income under section 863(a).*

\*\*\*\*\*

(e) *Residual interest in a REMIC*—(1) *REMIC inducement fees.*\*\*\*

(2) [The text of the proposed amendment to §1.863-1(e)(2) is the same as the text of §1.863-1T(e)(2) published elsewhere in this issue of the Bulletin].

(f) [The text of proposed amendment to §1.863-1(f) is the same as the text of §1.863-1T(f) published elsewhere in this issue of the Bulletin].

Par. 5. Section 1.1441-2 is amended by adding paragraphs (b)(5) and (d)(4) and a sentence to the end of paragraph (f) to read as follows:

*§1.1441-2 Amounts subject to withholding.*

\*\*\*\*\*

(b) \*\*\*

(5) [The text of the proposed amendment to §1.1441-2(b)(5) is the same as the text of §1.1441-2T(b)(5) published elsewhere in this issue of the Bulletin].

\*\*\*\*\*

(d) \*\*\*

(4) [The text of the proposed amendment to §1.1441-2(d)(4) is the same as the text of §1.1441-2T(d)(4) published elsewhere in this issue of the Bulletin].

\*\*\*\*\*

(f) [The text of the proposed amendment to §1.1441-2T(f)(1) is the same as the text of §1.1441-2T(f)(1) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on July 31, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 1, 2006, 71 F.R. 43398)

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

### **Announcement 2006-55**

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on August 28, 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.

Aviation Safety Council, Inc.  
Pasadena, CA  
Budget and Credit Counseling  
Services, Inc.  
New York, NY  
Mason Credit Counseling, Inc.  
Hauppauge, NY

## **Computer Software Under Section 199(c)(5)(B); Correction**

### **Announcement 2006-56**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to temporary regulations (T.D. 9262, 2006-24 I.R.B. 1040) that were published in the **Federal Register** on Thursday, June 1, 2006 (71 FR 31074) concerning the application of section 199 of the Internal Revenue Code, which provides a deduction for income attributable to domestic production activities, to certain transactions involving computer software.

DATES: These corrections are effective June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren Ross Taylor, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 199 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (T.D. 9262) contains errors that may prove to be misleading and are in need of clarification.

\* \* \* \* \*

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

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 \* \* \*

§ 1.199-3T [Corrected]

Par. 2. Section 1.199-3T is amended by revising paragraphs (i)(6)(iii) introductory text and Example 5 to read as follows:

§ 1.199-3T Domestic production gross receipts (temporary).

\* \* \* \* \*

(i) \* \* \*

(6) \* \* \*

(iii) Exceptions. Notwithstanding paragraph (i)(6)(ii) of this section, if a taxpayer derives gross receipts from providing to customers computer software MPGE in whole or in significant part by the taxpayer within the United States for the customers' direct use while connected to the Internet (online software), then such gross receipts will be treated as being derived from the lease, rental, license, sale, exchange, or other disposition of computer software only if —

\* \* \* \* \*

Example 5. The facts are the same as in Example 4, except that O does not sell the tax preparation computer software to customers affixed to a compact disc or by download and O's only method of providing the tax preparation computer software to customers is over the Internet. P, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of P's substantially identical tax preparation computer software that has been affixed to a compact disc as well as from the sale to customers of P's substantially identical tax preparation computer software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, O's gross receipts derived from providing its tax preparation computer software to customers over the Internet will

be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of § 1.199-3 are met).

§ 1.199-8T [Corrected]

Par. 3. Section 1.199-8T is amended by revising paragraph (i)(4) to read as follows:

§ 1.199-8T Other rules (temporary).

\* \* \* \* \*

(i) \* \* \*

(4) Computer software. Section 1.199-3T(i)(6)(ii) through (v) are applicable for taxable years beginning on or after June 1, 2006. Taxpayers may apply these temporary regulations to taxable years beginning after December 31, 2004, and before June 1, 2006. The applicability of § 1.199-3T(i)(6)(ii) through (v) expires on or before May 22, 2009.

Guy R. Traynor, Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on July 5, 2006, 8:45 a.m., and published in the issue of the Federal Register for July 6, 2006, 71 F.R. 38262)

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

Announcement 2006-57

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

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

# Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service,

may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Crane, Stephen	Palm Springs, CA	Enrolled Agent	May 4, 2006 to August 3, 2007
Cohen, Ronald J.	Newburgh, NY	Attorney	Indefinite from June 21, 2006
Layson, David A.	Corydon, IN	Attorney	April 7, 2006 to October 6, 2007
Brough, Donald L.	Salem, IN	CPA	July 1, 2006 to June 30, 2010
Gulian, Yervant	Great Neck, NY	CPA	April 17, 2006 to December 16, 2007
Rivera-Smith, Dawn	Brick, NJ	CPA	May 30, 2006 to November 29, 2008
Eckstein, Matthew	Woodbury, NY	CPA	June 15, 2006 to March 14, 2007
Hecht, Jodee L.	Clifton, VA	CPA	Indefinite from June 19, 2006
Finch, Phillip W.	Yorktown, VA	CPA	Indefinite from June 22, 2006
Troese Jr., Henry A.	Clarion, PA	Enrolled Agent	Indefinite from June 22, 2006
Robbins, Ronald E.	Pittsford, VT	CPA	June 24, 2006 to June 23, 2008
Shapiro, Sidney C.	West Palm Beach, FL	CPA	Indefinite from July 1, 2006

Name	Address	Designation	Date of Suspension
Martini, Anthony	Stamford, CT	CPA	June 18, 2006 to December, 17, 2007
Cunningham, William	Philadelphia, PA	CPA	July 1, 2006 to March 31, 2007
Simontacchi, Joseph F.	Morris Plains, NJ	CPA	Indefinite from July 1, 2006
Carroccio, Ronald P.	Staten Island, NY	CPA	Indefinite from July 1, 2006
Miller, Walter P.	Roanoke, VA	CPA	Indefinite from July 1, 2006
Aneji, Patrick	Houston, TX	CPA	Indefinite from June 22, 2006
Rosenbloom, Mark L.	Chicago, IL	Attorney	August 15, 2006 to August 14, 2007
Viener, Ira S.	Fort Lee, NJ	CPA	Indefinite from August 1, 2006
Ganz, Sheldon M.	Great Neck, NJ	CPA	Indefinite from August 1, 2006
Tomasulo, Maria	Wantagh, NY	CPA	Indefinite from August 7, 2006
Galpern, Joel G.	North Miami, FL	CPA	Indefinite from September 1, 2006

# Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Dolan Jr., John L.	Memphis, TN	Attorney	Indefinite from April 3, 2006
St. Mary, Randall L.	Snohomish, WA	Attorney	Indefinite from April 3, 2006
Theriault, Michael J.	Bel Air, MD	Attorney	Indefinite from April 3, 2006
Smith, Bernard P.	Marblehead, MA	Attorney	Indefinite from April 3, 2006
Bradley, Phillip M.	West Point, VA	Attorney	Indefinite from April 3, 2006
Haefele, Richard J.	Wayzata, MN	Attorney	Indefinite from April 3, 2006
Decker, William E.	Mandeville, LA	Attorney	Indefinite from April 3, 2006
Arbour, John J.	Monroe, LA	Attorney	Indefinite from April 3, 2006
Keller, John S.	Martin Kenner, LA	Attorney	Indefinite from April 3, 2006
Fallon, Charles D.	Neptune, NJ	Attorney	Indefinite from April 3, 2006
Agresti, Thomas J.	Centennial, CO	Attorney	Indefinite from April 3, 2006
Kirsch, Craig F.	Pittsburgh, PA	CPA	Indefinite from April 3, 2006



Name	Address	Designation	Date of Suspension
Hall, Lenny G.	McDowell, KY	CPA	Indefinite from April 11, 2006
Hultgren, Jerry R.	Fresno, CA	Attorney	Indefinite from April 11, 2006
Loutos, Peter A.	Chicago, IL	Attorney	Indefinite from April 11, 2006
Smith III, Frank L.	Bushnell, FL	Attorney	Indefinite from April 11, 2006
Morley, Michael J.	Springfield, PA	CPA	Indefinite from April 11, 2006
Waters, Richard W.	Smithfield, UT	CPA	Indefinite from April 11, 2006
Hartgraves, Travis M.	Abilene, TX	Attorney	Indefinite from April 14, 2006
Dunn, George T.	Lockhart, TX	Attorney	Indefinite from April 14, 2006
Adkins, Thomas R.	Houston, TX	Attorney	Indefinite from April 14, 2006
Hairston, John W.	Sugar Land, TX	Attorney	Indefinite from April 26, 2006
Marcone, Frank J.	Upper Providence, PA	Attorney	Indefinite from May 1, 2006
Fraley, Donald J.	Minneapolis, MN	Attorney	Indefinite from May 3, 2006
Tooke, S. Judd	Shreveport, LA	Attorney	Indefinite from May 3, 2006
Reilly, Michael G.	Council Bluffs, IA	Attorney	Indefinite from May 3, 2006
Faneuil, Robert A	Newton, MA	Attorney	Indefinite from May 3, 2006

Name	Address	Designation	Date of Suspension
Maignan, Peter R.	Upper Marlboro, MD	Attorney	Indefinite from May 3, 2006
Son, David	Phoenix, AZ	Attorney	Indefinite from May 5, 2006
Susman, Warren I.	New York, NY	Attorney	Indefinite from May 8, 2006
Wurst, Jerome	Arlington, TX	Attorney	Indefinite from May 8, 2006
O'Shea, Joseph G.	Jackson Heights, NY	Attorney	Indefinite from May 8, 2006
Biegelson, Alan	Brooklyn, NY	Attorney	Indefinite from May 8, 2006
Leonard, Robert K.	Winston-Salem, NC	Attorney	Indefinite from May 8, 2006
Cassidy, Michael M.	Madison, WI	Attorney	Indefinite from May 8, 2006
Dobkin, Daniel B.	New Hyde Park, NY	Attorney	Indefinite from May 8, 2006
Nealy, Joseph L.	Sugarland, TX	Attorney	Indefinite from May 16, 2006
Conmey, Edwin W.	Oconomowoc, WI	Attorney	Indefinite from May 16, 2006
Knott Jr., Robert T.	Los Angeles, CA	Attorney	Indefinite from May 16, 2006
Diamond, Howard S.	Mendham, NJ	Attorney	Indefinite from May 16, 2006
Fitzgerald, Bill L.	Lubbock, TX	Attorney	Indefinite from May 16, 2006
Brubaker, Gregory A.	San Francisco, CA	Attorney	Indefinite from May 18, 2006
Dodenbier, Robert F.	Lehi, UT	Attorney	Indefinite from May 18, 2006

Name	Address	Designation	Date of Suspension
Young, Paul J.	Taft, CA	Attorney	Indefinite from June 8, 2006
Dahodwala, Fatema	Andover, MA	Attorney	Indefinite from June 8, 2006
Mendola, Joseph E.	Monessen, PA	CPA	Indefinite from June 8, 2006
Rooney, Edward F.	Minneapolis, MN	Attorney	Indefinite from June 8, 2006
Long, Rebecca L.	Wichita, KS	Attorney	Indefinite from June 8, 2006
West, Clifton C.	Fayetteville, NC	Attorney	Indefinite from June 8, 2006
Silva, Zoilo I.	City Island, NY	Attorney	Indefinite from June 8, 2006
Tyler Jr., Earle S.	Bangor, ME	Attorney	Indefinite from June 12, 2006
Horneber, Alice S.	Sioux City, IA	Attorney	Indefinite from June 12, 2006
Donnelly, Christine M.	Blue Springs, MO	Attorney	Indefinite from June 12, 2006
Driscoll Jr., Peter	Columbia, MD	Attorney	Indefinite from June 12, 2006
Souza, John C.	Pocatello, ID	Attorney	Indefinite from June 12, 2006
Crockett, Kevin J.	Midvale, UT	Attorney	Indefinite from June 12, 2006
White, Debra M. Wyatt	Navasota, TX	CPA	Indefinite from June 12, 2006
Wilkins, Daniel J.	Chelmsford, MA	Attorney	Indefinite from June 12, 2006
Merica, Chad L.	Murray, UT	CPA	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
Wintroub, David S.	Omaha, NE	Attorney	Indefinite from June 12, 2006
Smith, Roderick E.	Kansas City, MO	Attorney	Indefinite from June 12, 2006
Guida, Joseph M.	Aberdeen, MD	Attorney	Indefinite from June 12, 2006
Sonibare, Nash	St. Paul, MN	CPA	Indefinite from June 12, 2006
Braun, Marc W.	St. Louis, MO	Attorney	Indefinite from June 12, 2006
Coffey, John J.	Rye, NH	Attorney	Indefinite from June 12, 2006
Whitehead, H. Allen	New York, NY	Attorney	Indefinite from June 12, 2006
Lansky, Sidney	Mattapoisett, MA	Attorney	Indefinite from June 12, 2006
Pazniokas, Paul M.	Norwood, MA	Attorney	Indefinite from June 12, 2006
Bajgrowicz, James J.	Santa Rosa, CA	Attorney	Indefinite from June 12, 2006
Davis, Bret J.	Los Angeles, CA	Attorney	Indefinite from June 12, 2006
McAvoy, Timothy	Chicago, IL	Attorney	Indefinite from June 12, 2006
Loffadelli, Thomas C.	Studio City, CA	Attorney	Indefinite from June 12, 2006
Emeziem, Kelechi C.	Antioch, CA	Attorney	Indefinite from June 12, 2006
Pugh, William C.	Wayzata, MN	Attorney	Indefinite from June 12, 2006
Lamanna, Eugene C.	Reading, PA	Attorney	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
Bartels, John R.	St. Paul, MN	Attorney	Indefinite from June 12, 2006
Shapiro, Kenneth S.	Bala Cynwyd, PA	CPA	Indefinite from June 14, 2006
Stone, Jerry W.	Austin, TX	Attorney	Indefinite from June 21, 2006
Vanriper, Philip E.	Binghamton, NY	Attorney	Indefinite from June 21, 2006
Simuro, Valerie T.	Gardiner, NY	Attorney	Indefinite from June 21, 2006
Simms, William K.	Brooklyn, NY	Attorney	Indefinite from June 21, 2006
Weaver, Terring M.	Clarksburg, WV	CPA	Indefinite from July 1, 2006
Norman, Clarence	Brooklyn, NY	Attorney	Indefinite from August 3, 2006
Knight, John G.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006
Kronegold, Sheldon H.	Englewood, NJ	Attorney	Indefinite from August 3, 2006
Foushee, Wayne H.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006

## Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Kahn, Harold	Hollis, NY	CPA	June 26, 2006 to June 25, 2010

# Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

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Name	Address	Designation	Effective Date
Gailey, James N.	Huntersville, NC	CPA	June 5, 2006

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## Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand. The following individuals have consented to the issuance of a Censure:

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Name	Address	Designation	Date of Censure
Williams, Daniel S.	Carlsbad, CA	Attorney	March 29, 2006
Azan, Reinaldo L.	Miami Beach, FL	CPA	July 24, 2006
Golub, Stephen B.	Norwalk, CT	CPA	August 3, 2006

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# 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.  
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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.



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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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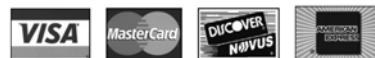
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