

HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENT

Announcement 2002-48, page 809.

New IRS brochure entitled Home-Based Business Tax Avoidance Schemes. . .At A Glance. The schemes described in the document claim to offer tax "relief," but actually result in illegal tax avoidance. The promoters of these schemes claim that by setting up a bogus home-based business, individual taxpayers can deduct most, or all, of their personal expenses as business expenses.

INCOME TAX

Rev. Rul. 2002-20, page 794.

Charitable remainder trusts; qualified charitable remainder unitrusts; recipient trusts. This ruling provides that, in three situations, a charitable remainder unitrust may pay the unitrust amounts to a second trust for the life of an individual, who is financially disabled as defined in section 6511(h)(2)(A) of the Code. In each situation, the use of the unitrust amounts by the second trust is consistent with the manner in which the individual's own assets would be used, and the individual is, therefore, considered to have received the unitrust amounts directly from the charitable remainder unitrust for purposes of section 664(d)(2)(A). Rev. Rul. 76-270 amplified and superseded.

Rev. Rul. 2002-21, page 793.

Low-income housing credit; tax-exempt bond financing. Amounts received from investing proceeds of tax-exempt bonds are counted toward satisfying the 50-percent aggregate basis test under section 42(h)(4)(B) of the Code.

Notice 2002-29, page 797.

Section 469 and gain recognition election. This document explains the effect under section 469 of the Code of a deemed sale of property on January 1, 2001, pursuant to an election under section 311(e) of the Taxpayer Relief Act of 1997.

Announcement 2002-44, page 809.

Electronic submission of Form 8850. This document announces that Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits*, may be submitted electronically to State Employment Security Agencies (SESAs) and sets forth the requirements that any electronic system must meet.

ADMINISTRATIVE

Notice 2002-20, page 796.

Industry Issue Resolution Program. This document announces that the Industry Issue Resolution (IIR) Program, a pilot program aimed at resolving contentious tax issues involving business, is being made permanent and expanded to be available to all business taxpayers. Taxpayers as well as industry associations and other groups representing taxpayers are invited to suggest issues and possible options for resolution.

(Continued on the next page)

Announcements of Declaratory Judgment Proceedings Under Section 7428 begin on page 810.
Finding Lists begin on page ii.



ADMINISTRATIVE

Notice 2002-30, page 797.

Credit for sales of fuel produced from a nonconventional source, inflation adjustment factor, and reference price.

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under section 29 of the Code for calendar year 2001. This data is used to determine the credit allowable on sales of fuel produced from a nonconventional source.

Rev. Proc. 2002-24, page 798.

Qualified mortgage bonds; mortgage credit certificates; national median gross income. Guidance is provided concerning the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f) of the Code. Rev. Proc. 2001-35 obsoleted, except as provided in section 5.02 of this procedure.

Rev. Proc. 2002-25, page 800.

This procedure sets forth the maximum face amount of qualified zone academy bonds that may be issued by each state, the District of Columbia, and the possessions of the United States during 2002.

Rev. Proc. 2002-27, page 802.

Depreciation of tires. This document provides a safe harbor method of accounting (the original tire capitalization method) for the cost of original and replacement tires for certain vehicles owned by taxpayers, procedures for a qualifying taxpayer to obtain automatic consent from the Commissioner to change to the original tire capitalization method, and an optional procedure for certain qualifying taxpayers to settle open taxable years using the original tire capitalization method. Rev. Proc. 2002-9 modified and amplified.

The IRS Mission

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

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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This page is reserved for missing children Tristen Thorne and Anna Torres

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

Section 25.—Interest on Certain Home Mortgages

26 CFR 1.25-4T: *Qualified mortgage credit certificate program (temporary).*

Guidance is provided for the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f)(5) of the Code. See Rev. Proc. 2002-24, page 798.

Section 42.—Low-Income Housing Credit

26 CFR 1.42-1T: *Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a state or local housing credit agency (temporary).* (Also §§ 103, 146.)

Low-income housing credit; tax-exempt bond financing. Amounts received from investing proceeds of tax-exempt bonds are counted toward satisfying the 50-percent aggregate basis test under section 42(h)(4)(B) of the Code.

Rev. Rul. 2002-21

ISSUE

Are amounts received from investing proceeds of tax-exempt bonds counted toward satisfying the 50-percent aggregate basis test under § 42(h)(4)(B) of the Internal Revenue Code?

FACTS

Partnership was formed to develop and operate in State X a low-income housing building in accordance with § 42. In December 1999, the State X bond-issuing authority (Issuer) issued at par \$5.7 million of tax-exempt housing bonds, and loaned the \$5.7 million to Partnership to finance a portion of the construction of the low-income housing project. Issuer received an allocation of § 146 volume cap in the amount of \$5.7 million for the bonds. Principal payments on this financing are to be applied within a reasonable period to redeem the bonds.

Partnership's aggregate basis for the building and the land on which the build-

ing is located is \$11.8 million. Partnership earned \$300,000 in investment earnings from investing the original \$5.7 million of proceeds of the bonds. The sum of these amounts, \$6 million, was expended on construction of the building.

LAW AND ANALYSIS

Section 42(a) provides for a tax credit for investment in qualified low-income residential rental buildings placed in service after December 31, 1986.

Section 42(h)(1)(A) provides that the amount of credit determined under § 42 for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to the building under § 42(h).

Section 42(h)(4)(A) provides that § 42(h)(1) does not apply to any portion of the credit otherwise allowable under § 42(a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under § 103 if—

(i) the obligation is taken into account under § 146, and

(ii) principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide the financing.

Section 42(h)(4)(B) provides that, if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed with tax-exempt obligations specified in § 42(h)(4)(A), § 42(h)(1) does not apply to any portion of the low-income housing credit allowable under § 42(a) with respect to the building.

Section 1.42-1T(f)(1) of the temporary Income Tax Regulations provides that no housing credit allocation is required in order to claim a credit under § 42 with respect to the entire qualified basis (as defined in § 42(c)) of a qualified low-income building if 70 percent or more of the aggregate basis of the building and the land on which the building is located is financed with the proceeds of tax-exempt bonds which are taken into account for purposes of the volume cap under § 146. The reference to 70 percent in § 1.42-1T(f)(1) has been superseded by an amendment to § 42(h)(4)(B), which

changed 70 percent to 50 percent. Revenue Reconciliation Act of 1989, P.L. 101-239, § 7108(j).

Except as otherwise provided, § 103 provides that gross income does not include interest on any state or local bond. An exception under § 103(b)(1) is that interest on a private activity bond is included in gross income unless it is a qualified bond within the meaning of § 141. Generally, § 141(e)(2) requires that a qualified bond meet the volume cap requirements of § 146.

Section 146(a) provides that a private activity bond issued as part of an issue meets the volume cap requirements if the aggregate face amount of the private activity bonds issued pursuant to the issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed the authority's volume cap for the calendar year.

Proceeds is not specifically defined for purposes of § 1.42-1T(f)(1). However, for other purposes of the Code, tax-exempt bond proceeds are generally defined to include amounts received from investing proceeds. See § 1.148-1(b) of the Income Tax Regulations. Accordingly, given the similarity of purposes for determining bond proceeds under § 1.42-1T(f)(1) and the tax-exempt bond provisions of the Code, it is appropriate to treat proceeds for purposes of § 1.42-1T(f)(1) to include amounts received from investing proceeds.

In the present situation, Partnership properly includes the \$300,000 amount from investing proceeds to determine if it met the 50-percent aggregate basis test in § 42(h)(4)(B). Because \$6 million (\$5,700,000 plus \$300,000) is greater than 50 percent of the aggregate basis of the building and the land (\$11,800,000), Partnership satisfies the 50-percent test in § 42(h)(4)(B).

HOLDING

Amounts received from investing proceeds of tax-exempt bonds are counted toward satisfying the 50-percent aggregate basis test under § 42(h)(4)(B).

DRAFTING INFORMATION

The principal author of this revenue ruling is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Malgeri at (202) 622-3040 (not a toll-free number).

Section 103.—Interest on State and Local Bonds

26 CFR 1.103-1: Interest upon obligations of a state, territory, etc.

Are amounts received from investing proceeds of tax-exempt bonds counted toward satisfying the 50-percent aggregate basis test under § 42(h)(4)(B) of the Internal Revenue Code? See Rev. Rul. 2002-21, page 793.

Guidance is provided for the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f)(5) of the Code. See Rev. Proc. 2002-24, page 798.

Section 143.—Mortgage Revenue Bonds: Qualified Mortgage Bond and Qualified Veterans' Mortgage Bond

26 CFR 6a.103A-2: Qualified mortgage bond.

Guidance is provided for the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f)(5) of the Code. See Rev. Proc. 2002-24, page 798.

Section 146.—Volume Cap

Are amounts received from investing proceeds of tax-exempt bonds counted toward satisfying the 50-percent aggregate basis test under § 42(h)(4)(B) of the Internal Revenue Code? See Rev. Rul. 2002-21, page 793.

Section 167.—Depreciation

If a taxpayer has a depreciable interest in a qualifying vehicle and chooses to account for the cost of original and replacement tires under the original tire capitalization method, are the qualifying vehicle's tires treated as part of the vehicle for depreciation purposes? See Rev. Proc. 2002-27, page 802.

Section 168.—Accelerated Cost Recovery System

Under the original tire capitalization method, what is the applicable depreciation method, recovery period, and convention for the cost of a qualifying vehicle's original tires for purposes of § 168 of the Internal Revenue Code? See Rev. Proc. 2002-27, page 802.

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446.1: General rule for methods of accounting.

If a taxpayer changes its treatment of the cost of a qualifying vehicle's original and replacement tires to the original tire capitalization method, is this change a change in method of accounting under § 446(e) of the Internal Revenue Code? See Rev. Proc. 2002-27, page 802.

Section 481.—Adjustments Required by Changes in Method of Accounting

26 CFR 1.481-1: Adjustments in general.

If a taxpayer changes its treatment of the cost of a qualifying vehicle's original and replacement tires to the original tire capitalization method, is an adjustment under § 481 of the Internal Revenue Code taken into account in computing taxable income? See Rev. Proc. 2002-27, page 802.

Section 664.—Charitable Remainder Trusts

26 CFR 1.664-3: Charitable remainder unitrust.

Charitable remainder trusts; qualified charitable remainder unitrusts; recipient trusts. This ruling provides that, in three situations, a charitable remainder unitrust may pay the unitrust amounts to a second trust for the life of an individual, who is financially disabled

as defined in section 6511(h)(2)(A) of the Code. In each situation, the use of the unitrust amounts by the second trust is consistent with the manner in which the individual's own assets would be used, and the individual is, therefore, considered to have received the unitrust amounts directly from the charitable remainder unitrust for purposes of section 664(d)(2)(A).

Rev. Rul. 2002-20

ISSUE

May a trust qualify as a charitable remainder unitrust under § 664 of the Internal Revenue Code, if the unitrust amounts are paid to a separate trust for the life of an individual who is "financially disabled," as defined in § 6511(h)(2)(A)?

FACTS

An individual concurrently creates Trust A, a trust that otherwise qualifies as a charitable remainder unitrust, and a separate trust, Trust B. Under the governing instrument of Trust A, annual unitrust amounts will be paid to Trust B for the life of C. C is an individual who is financially disabled, that is, C is unable to manage C's own financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

Situation 1. Under the governing instrument of Trust B, a designated portion of the amount it receives from Trust A will be paid to C each month. If, at any time in the sole judgment of the trustee, the monthly payment to C is insufficient to provide adequately for the care, support, and maintenance of C, or is insufficient for the needs of C for any reason, additional amounts will be paid as needed to or on behalf of C from Trust B. Upon C's death, the balance remaining in Trust B will be distributed to C's estate.

Situation 2. Under the governing instrument of Trust B, the trustee may make distributions of income and principal, as determined in the trustee's sole and absolute discretion, for the financial aid and best interests of C in a manner

that supplements but does not supplant any governmental benefits otherwise available to *C*. Upon *C*'s death, the balance remaining in Trust *B* will be distributed to *C*'s estate.

Situation 3. Under the governing instrument of Trust *B*, the trustee may make distributions of income and principal, as determined in the trustee's sole and absolute discretion, for the financial aid and best interests of *C* in a manner that supplements but does not supplant any governmental benefits otherwise available to *C*. Upon *C*'s death, the governing instrument requires the trustee to reimburse the state for the total costs of medical assistance provided to *C* under the state's Medicaid plan. *C* is given a testamentary general power of appointment over the balance remaining in Trust *B*. If *C* fails to exercise the power, the balance will be distributed, in equal shares, to *C*'s sister and to *X*, a charitable organization.

LAW AND ANALYSIS

A charitable remainder unitrust is a trust from which a unitrust amount is payable at least annually during its term with an irrevocable remainder interest held for the benefit of charity. Under § 664 (d)(2)(A), the unitrust amount is a fixed percentage (not less than 5 percent and not more than 50 percent) of the net fair market value of the trust assets, valued annually. The unitrust amount is to be paid to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a

term of years (not in excess of 20 years) or for the life or lives of the individual or individuals.

Section 1.664-3(a)(5)(i) of the Income Tax Regulations provides that the period for which the unitrust amount is payable begins with the first year of the charitable remainder trust and continues either for the life or lives of a named individual or individuals or for a term of years not to exceed 20 years. Only an individual or an organization described in § 170(c) may receive an amount for the life of an individual.

In general, a charitable remainder unitrust may pay unitrust amounts to a second trust only for a term of 20 years or less. In *Situations 1, 2, and 3*, the unitrust amounts are payable to Trust *B* for the life of *C*, not for a term of years. However, in each of these situations, the sole function of Trust *B* is to receive and administer the unitrust amounts for the benefit of *C*, who is unable to manage *C*'s own financial affairs by reason of a medically determinable mental or physical impairment. Upon *C*'s death, the assets remaining in Trust *B* will be distributed either to *C*'s estate or, after reimbursing the state for any Medicaid benefits provided to *C*, will be subject to *C*'s general power of appointment. In these situations, the use of the assets in Trust *B* during *C*'s life and at *C*'s death is consistent with the manner in which *C*'s own assets would be used. *C*, therefore, is considered to have received the unitrust amounts directly from Trust *A* for purposes of § 664 (d)(2)(A). Accordingly, the term of Trust *A* may be for the life of *C* and is not limited to a term of years.

The same result would apply if Trust *A* were a charitable remainder annuity trust.

HOLDING

A trust may qualify as a charitable remainder unitrust under § 664 if the unitrust amounts will be paid for the life of a financially disabled individual to a separate trust that will administer these payments on behalf of that individual and, upon the individual's death, will distribute the remaining assets either to the individual's estate or, after reimbursing the state for any Medicaid benefits provided to the individual, subject to the individual's general power of appointment.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 76-270 (1976-2 C.B. 194) which addresses facts covered by *Situation 1*, is amplified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jan Bennett Geier of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Geier at (202) 622-7830 (not a toll-free call).

Section 1397E.—Credit to Holders of Qualified Zone Academy Bonds

What is the allocation for each State, the District of Columbia, and each possession of the United States of the national limitation amount of Qualified Zone Academy Bonds for calendar year 2002? See Rev. Proc. 2002-25, page 800.

Part III. Administrative, Procedural, and Miscellaneous

Industry Issue Resolution Program

Notice 2002-20

1. INTRODUCTION

This Notice invites submission of issues by taxpayers, representatives and associations for resolution under the Internal Revenue Service's *Industry Issue Resolution (IIR) Program*. Notice 2000-65 (2000-2 C.B. 599), announced the Industry Issue Resolution Pilot Program. The objective of the pilot program was to provide guidance to resolve frequently disputed tax issues common to a significant number of large or mid-size business taxpayers. This effort was part of the IRS's strategy to resolve issues in a manner other than the traditional post-filing examination process. Seven issues of the twenty-four submitted were selected for the pilot program. Thus far, five of the projects have resulted in published guidance.

After evaluating the pilot program and concluding that it was highly successful, the Service has determined that the IIR program should be made permanent. The objective is to provide guidance to resolve frequently disputed or burdensome issues and the program is expanded to address issues common to any size business taxpayers. The Large and Mid-Size Business Division (LMSB) and Small Business/Self-Employed Division (SB/SE) will jointly undertake the operational responsibility for the projects in the program. Resolution of contentious issues other than by the examination process is a strategic goal of both LMSB and SB/SE.

Taxpayers, as well as industry associations and other groups representing taxpayers, are invited to suggest issues and possible options for resolution. Parties submitting suggestions may be asked to meet with government representatives and to provide additional information. After analysis and review, the Service, the Office of Chief Counsel, and Treasury intend to select issues to address in the IIR program.

The form of resulting guidance may vary depending on the issue. However, the most likely form of guidance will be a Revenue Ruling or a Revenue Procedure that permits taxpayers to adopt a recommended treatment of the issue on future returns. In many cases, this may require filing a request for a change in method of accounting. For examples of the types of guidance that could be issued under this permanent program, see those published as a result of the IIR pilot program on the Digital Daily at www.irs.gov.

Suggestions for issues for the IIR program should be forwarded as provided in section 3 of this Notice by April 30, 2002. LMSB, SB/SE, the Office of Chief Counsel and Treasury will evaluate the suggestions with a view to selecting issues drawn from diverse industries. In reviewing potential issues for the program, the selection criteria will include the suitability of the issue for the program, the likelihood that timely guidance can be provided, and the availability of appropriate staffing and other resources. Projects selected for the program are expected to be included on the Treasury and IRS Guidance Priorities List for the business plan year ending in 2003. The principal focus of the program is to resolve issues arising in future years. However, depending on the circumstances, resolution also may be provided for certain issues for prior years.

Parties whose topics are accepted will be notified and may be asked to provide additional information and legal analysis of the issue. The issues selected for the program will be announced publicly.

2. ISSUES APPROPRIATE FOR THE PROGRAM

The objective of the IIR program is to provide guidance to resolve frequently disputed or burdensome tax issues that are common to a significant number of business taxpayers. Therefore, issues most appropriate to the program generally will have two or more of the following characteristics:

- There is uncertainty about the appropriate tax treatment of a given factual situation.

- The uncertainty results in frequent, often repetitive examinations of the same issue.
- The uncertainty results in significant taxpayer burden.
- The issue is material and impacts a significant number of taxpayers, either within an industry or across industry lines.
- Factual determination is a major component of the issue.

The following issues are not suitable:

- Issues unique to one or a small number of taxpayers.
- Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (e.g., employee plans).
- Issues regarding transactions that lack a *bona fide* business purpose or are done with a significant purpose of reducing or avoiding federal taxes.
- Issues involving transfer pricing or international tax treaties.

3. REQUESTING CONSIDERATION UNDER THE IIR PROGRAM

No particular format is required for submissions in response to this Notice. However, submissions should briefly describe the proposed issue and explain why there is a need for guidance. Submissions may include an analysis of how the issue may be resolved. In addition, submissions should state the number of taxpayers estimated to be affected by the issue. All submissions will be available for public inspection and copying in their entirety. Therefore, comments should not include taxpayer-specific information of a confidential nature. Letters should include the name and telephone number of a person to contact should further clarification be needed. Issues previously submitted under the pilot program, but not selected, must be resubmitted to be considered for this permanent program.

Submission of issues for resolution under the IIR program should be e-mailed to PFTG2@IRS.gov. Alternatively, submissions may be faxed or mailed to:

Internal Revenue Service
Att'n: Alex Shojay
Office of Pre-filing and Technical
Services
Large and Mid-Size Business
Division LM:PFTG
Mint Building, 3rd Floor M-3-330
1111 Constitution Avenue NW
Washington, DC 20224
Fax: 202-283-8406

4. ADDITIONAL INFORMATION ABOUT THE PROGRAM

Project staffing. The Service and Treasury will staff each project with a team (the IIR team) that will analyze such information as may be appropriate and propose a resolution. This resolution will require the approval of those officials normally responsible for approving the type of guidance to be issued. IIR team members will include appropriate personnel from LMSB and SB/SE, the Office of Chief Counsel, Appeals and Treasury. Other Service personnel, as needed, also may be team members. In some circumstances, the Service may find it necessary to hire outside experts.

Communication with requesting taxpayer or group and other interested parties. As part of its efforts to formulate a recommendation for a resolution position, the IIR team may meet with the submitting taxpayer or group, and possibly with other interested parties. It is anticipated that the submitting party and other interested parties will be given the opportunity to present factual data and legal analysis. The IIR team may seek additional factual development or legal analysis from the submitting party or other sources.

Any solicitation of input from affected persons will be done within the requirements of the Federal Advisory Committee Act (FACA). The Service does not intend to form advisory committees during this process. Input is welcome from interested parties, but they will not be invited to enter into negotiations or to participate in the decision-making process with respect to the proposed resolution of the issue.

Potential inspection of books and records. An IIR team may consider the inspection of an individual taxpayer's records desirable as part of the factual research necessary to develop its position. Although a team may request such

inspection, any such inspection will be voluntary. Any inspection of a taxpayer's records under this program, whether at the initiative of the taxpayer or the team, will not preclude or impede (under § 7605(b) of the Internal Revenue Code or any IRS administrative provisions) a later examination or inspection of records with respect to any tax year nor subject the IRS to any procedural restrictions (such as providing notice under § 7605(b)) that otherwise might apply before beginning such examination or inspection.

Disclosure of information provided by interested parties. Interested parties are encouraged to provide whatever information is necessary to permit the Service and Treasury to reach an appropriate resolution of an issue. However, this information may be subject to disclosure under the Freedom of Information Act (FOIA).

5. FURTHER INFORMATION

For further information regarding this notice, contact Susan Blake, Senior Program Analyst, of the LMSB Pre-filing and Technical Services Office at (202) 283-8414 (not a toll-free number).

Section 469 and Gain Recognition Election Notice

Notice 2002-29

This notice explains the effect under § 469 of the Internal Revenue Code of a deemed sale of property on January 1, 2001, pursuant to an election under § 311(e) of the Taxpayer Relief Act of 1997 (TRA 97) (1997-4 (Vol. 1) C. B. 1, 49-50).

Section 1(h), as amended in 1997, provides for a reduced capital gains rate for qualified 5-year gain. Section 1(h)(2)(B)(ii) limits the amount of qualified 5-year gain to that determined by taking into account only property for which the holding period begins after December 31, 2000. Section 311(e) of TRA 97 provides that a noncorporate taxpayer may elect to treat a capital asset or property used in the trade or business (as defined in § 1231(b) of the Code) held by the taxpayer on January 1, 2001, as having been sold on January 1, 2001, for an

amount equal to its fair market value and as having been reacquired for an amount equal to its fair market value on the same date (mark-to-market election).

Section 469(g)(1)(A) provides that, if a taxpayer disposes of the taxpayer's entire interest in any passive activity (or former passive activity) in a fully taxable transaction that does not involve a disposition to a related party, then the excess of the loss from the activity for the taxable year (including any suspended passive activity loss) over any net income or gain for the taxable year from all other passive activities shall be treated as a loss which is not from a passive activity. As a result, if § 469(g)(1)(A) applies, the excess loss from the activity over any net income from all passive activities is no longer subject to the limitations of § 469.

A question has arisen whether electing a deemed sale of property under § 311(e) of TRA 97 is treated as a disposition of that property under § 469(g)(1)(A).

In a technical correction to § 311(e), § 414(a)(2) of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21, clarifies that a mark-to-market election is not a disposition for purposes of § 469(g)(1)(A). Thus, the gain included in gross income by reason of a mark-to-market election may be passive activity gross income that can be offset by passive activity deductions, but the election does not otherwise affect the determination of the passive activity loss that is disallowed under § 469.

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

Nonconventional Source Fuel Credit, Section 29 Inflation Adjustment Factor, and Section 29 Reference Price

Notice 2002-30

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 29 of the Internal Revenue Code for calendar year 2001. These are used to

determine the credit allowable on fuel produced from a nonconventional source under § 29. The calendar year 2001 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of qualified fuels sold by a taxpayer to an unrelated person during the 2001 calendar year, the domestic production of which is attributable to the taxpayer.

BACKGROUND

Section 29(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuels, the production of which is attributable to the taxpayer and sold by the taxpayer to an unrelated person during the tax year. The credit is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 29(b)(1) and (2) provides for a phaseout of the credit. The credit allowable under § 29(a) must be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to § 29(b)(1)) as the amount by which the reference price for the calendar year in which the sale occurs exceeds \$23.50 bears to \$6.00. The \$3.00 in § 29(a) and the \$23.50 and \$6.00 must each be adjusted by multiplying these amounts by the 2001 inflation adjustment factor. In the case of gas from a tight formation, the \$3.00 amount in § 29(a) must not be adjusted.

Section 29(c)(1) defines the term “qualified fuels” to include oil produced from shale and tar sands; gas produced from geopressurized brine, Devonian shale, coal seams, or a tight formation, or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Section 29(d)(1) provides that the credit is to be applied only for sale of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 29(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 29(d)(2)(B) defines “inflation adjustment factor” for a calendar year as the fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 29(d)(2)(C) defines “reference price” to mean with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 29(d)(3) provides that in the case of a property or facility in which more than one person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) must be allocated among the persons in proportion to their respective interests in the gross sales from the property or facility.

Section 29(d)(5) and (6) provides that the term “barrel-of-oil equivalent” with respect to any fuel generally means that amount of the fuel which has a Btu content of 5.8 million.

INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE

The inflation adjustment factor for calendar year 2001 is 2.0917. The reference price for calendar year 2001 is \$21.86. These amounts will be published in the Federal Register on April 5, 2002.

PHASEOUT CALCULATION

Because the calendar year 2001 reference price does not exceed \$23.50 multiplied by the inflation adjustment factor, the phaseout of the credit provided for in § 29(b)(1) does not occur for any qualified fuel sold in calendar year 2001.

CREDIT AMOUNT

The nonconventional source fuel credit under § 29(a) is \$6.28 per barrel-of-oil equivalent of qualified fuels (\$3.00 x 2.0917). This amount will be published in the Federal Register on April 5, 2002.

DRAFTING INFORMATION CONTACT

The principal author of this notice is Jaime Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622-3120 (not a toll-free call).

26 CFR 601.601: Rules and regulations.

(Also Part I, §§ 25, 103, 143; 1.25-4T, 1.103-1, 6a.103A-2.)

Rev. Proc. 2002-24

SECTION 1. PURPOSE

This revenue procedure provides guidance concerning the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a “qualified bond” within the meaning of § 141. Section 141(e) provides that the term “qualified bond” includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term “qualified mortgage bond” means a bond that is issued as part of a “qualified mortgage issue”. Section 143(a)(2)(A) provides that the term “qualified mortgage issue” means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of

paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of \$250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term “applicable median family income” means the greater of (A) the area median gross income for the area in which the residence is located or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the

new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued and nonissued bond amounts elected after December 31, 1988.

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on January 31, 2002, and may be obtained by calling the HUD reference service at 1-800-245-2691. The income information is also available at HUD’s World Wide Web site, <http://huduser.org/datasets/il.html>, which provides a menu from which you may select the year and type of data of interest. The Internal Revenue Service annually publishes only the median gross income for the United States.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on September 6, 1994, in Rev. Proc. 94-55 (1994-2 C.B. 716).

SECTION 3. APPLICATION

.01 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use \$54,400 as the median gross income for the United States. See section 2.06 of this revenue procedure.

.02 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use the area median gross income figures released by HUD on January 31, 2002. See section 2.06 of this revenue procedure.

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2001-35 (2001-22 C.B. 1293) is obsolete except as provided in section 5.02 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86-124 (1986-2 C.B. 27). Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86-124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in section 3 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on January 31, 2002, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

.02 Notwithstanding section 5.01 of this revenue procedure, issuers may continue to rely on the United States and area median gross income figures specified in Rev. Proc. 2001-35 with respect to bonds originally sold and nonissued bond amounts elected not later than May 29, 2002, if the commitments or purchases described in section 5.01 are made not later than July 28, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is Zoran Stojanovic of the Office of Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). For further information regarding this revenue procedure, contact Mr. Stojanovic at (202) 622-3980 (not a toll-free call).

Rev. Proc. 2002-25

SECTION 1. PURPOSE

Pursuant to § 1397E(e)(2) of the Internal Revenue Code, this revenue procedure allocates among the States the 2002 national limitation amount of Qualified Zone Academy Bonds (“Bond” or “Bonds”) that may be issued for the calendar year 2002. For this purpose “State” includes the District of Columbia and the possessions of the United States.

SECTION 2. BACKGROUND

.01 Section 226 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, 111 Stat. 821 (1997), added § 1397E to the Internal Revenue Code to provide a credit to holders of Bonds under certain circumstances

so that the Bonds generally can be issued without discount or interest. Ninety-five percent of Bond proceeds are to be used for qualified purposes, as defined by § 1397E(d)(5), with respect to a qualified zone academy, as defined by § 1397E(d)(4).

.02 Section 1397E(e)(1), as amended by § 608 of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107-147, 116 Stat. 21 (2002), provides that the national limitation amount of Bonds that may be issued is \$400 million for each of the years 1998, 1999, 2000, 2001, 2002, and 2003. This amount is to be allocated among the States by the Secretary on the basis of their respective populations below the poverty level (as defined by the Office of Management and Budget) and is to be further allocated by each State to qualified zone academies within the State.

.03 Section 1397E(e)(4), as amended, by § 509 of the Tax Relief Extension Act

of 1999, Pub. L. 106-170, 113 Stat. 1860 (1999) provides that any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For this purpose a limitation amount shall be treated as used on a first-in first-out basis.

.04 Rev. Proc. 98-9 (1998-1 C.B. 341), Rev. Proc. 98-57 (1998-2 C.B. 682), Rev. Proc. 2000-10 (2000-1 C.B. 287), and Rev. Proc. 2001-14 (2001-1 C.B. 343), respectively, allocated the national limitation for 1998, 1999, 2000, and 2001 among the States.

SECTION 3. NATIONAL QUALIFIED ZONE ACADEMY BOND LIMITATION FOR 2002

The 2002 national limitation amount for Bonds is \$400 million. This amount is allocated among the States as follows:

STATE	MAXIMUM FACE AMOUNT OF BONDS THAT MAY BE ISSUED DURING 2002 (thousands of dollars)
ALABAMA	\$ 7,683
ALASKA	634
ARIZONA	7,061
ARKANSAS	5,589
CALIFORNIA	53,149
COLORADO	4,105
CONNECTICUT	2,621
DELAWARE	862
DISTRICT OF COLUMBIA	898
FLORIDA	19,196
GEORGIA	10,400
HAWAII	1,376
IDAHO	1,927
ILLINOIS	16,827
INDIANA	6,032
IOWA	2,465
KANSAS	3,004
KENTUCKY	5,637
LOUISIANA	8,736
MAINE	1,269
MARYLAND	4,632
MASSACHUSETTS	7,528
MICHIGAN	11,884

STATE	MAXIMUM FACE AMOUNT OF BONDS THAT MAY BE ISSUED DURING 2002 (thousands of dollars)
MINNESOTA	3,411
MISSISSIPPI	4,284
MISSOURI	5,266
MONTANA	1,628
NEBRASKA	1,771
NEVADA	2,035
NEW HAMPSHIRE	766
NEW JERSEY	7,970
NEW MEXICO	3,578
NEW YORK	29,441
NORTH CAROLINA	10,903
NORTH DAKOTA	730
OHIO	13,847
OKLAHOMA	6,032
OREGON	4,572
PENNSYLVANIA	12,710
RHODE ISLAND	1,017
SOUTH CAROLINA	4,787
SOUTH DAKOTA	802
TENNESSEE	9,814
TEXAS	36,059
UTAH	2,537
VERMONT	850
VIRGINIA	6,391
WASHINGTON	7,097
WEST VIRGINIA	2,968
WISCONSIN	6,199
WYOMING	646
AMERICAN SAMOA	418
GUAM	426
NORTHERN MARIANAS	381
PUERTO RICO	26,727
VIRGIN ISLANDS	422

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective April 29, 2002, and applies to Bonds issued after March 9, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is Zoran Stojanovic of the Office of Assistant Chief Counsel (Ex-

empt Organizations/Employment Tax/Government Entities). For further information regarding this revenue procedure, contact Mr. Stojanovic at (202) 622-3980 (not a toll-free call).

Rev. Proc. 2002-27

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting for the cost of original and replacement tires for certain vehicles (original tire capitalization method) used in various business activities. This revenue procedure also explains how a taxpayer can obtain automatic consent from the Commissioner of Internal Revenue to change to the original tire capitalization method, including rules relating to the limitations, terms, and conditions the Commissioner deems necessary to make the change. In addition, this revenue procedure provides an optional procedure for a taxpayer to settle open taxable years using the original tire capitalization method if the taxpayer's treatment of original and replacement tire expenditures is an issue under consideration in examination, before an area appeals office, or before the United States Tax Court (Tax Court) or is an issue pending in examination.

SECTION 2. BACKGROUND

.01 Section 162 of the Internal Revenue Code allows a deduction for all ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business. However, § 263(a) prohibits a deduction for capital expenditures. Capital expenditures include the cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year. Section 1.263(a)-2(a) of the Income Tax Regulations. These capital expenditures are subject to the allowance for depreciation.

.02 Section 167(a) provides a depreciation allowance for the exhaustion, wear and tear of property used in a trade or business or held for the production of income. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods of accounting for

determining depreciation allowances: (1) the general depreciation system (GDS) in § 168(a); and (2) the alternative depreciation system (ADS) in § 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention. For purposes of either GDS or ADS, the applicable recovery period is determined by reference to class life or by statute.

Rev. Proc. 87-56 (1987-2 C.B. 674) sets forth the class lives of property that are necessary to compute the depreciation allowances under § 168. The revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4 that consist of specific assets used in all business activities; and (2) asset classes 01.1 through 80.0 that consist of assets used in specific business activities.

.03 Several court decisions and revenue rulings have considered the expense-versus-capital expenditure issue regarding truck tires. In *W.H. Tompkins Co. v. Commissioner*, 47 B.T.A. 292 (1942), the court stated that the recovery of the cost of short-lived truck tires and tubes should not be associated with the depreciation of much longer-lived trucks because the tires and tubes are easily separable from the truck and are not a part of the truck's mechanism. The court held, therefore, that the cost of truck tires and tubes consumable within the taxable year are currently deductible as an expense in the year of purchase. See also *Zelco, Inc. v. Commissioner*, 331 F.2d 418, 421 (1st Cir. 1964) (a lessor of trailers and tractors used by interstate motor carriers was not required to treat those vehicles' tires as a part of the leased vehicles, and the cost of trailer and tractor tires and tubes with an average useful life of 12 months could be deducted currently); *Interstate Truck Service, Inc. v. Commissioner*, T.C. Memo. 1958-219 (a taxpayer in the motor freight transportation business can currently deduct the cost of tires and tubes on trucks, tractors, and trailers because on average all of the tires and tubes were consumable in less than one year). In Rev. Rul. 59-249 (1959-2 C.B. 55), the Service announced that it would follow the holdings of *Tompkins* and *Interstate* for tires purchased on new commercial trucking

equipment and used in motor freight transportation. Rev. Rul. 68-134 (1968-1 C.B. 63) discusses *Zelco* and holds that the principles of Rev. Rul. 59-249 are applicable to tires in the case of a taxpayer who is a purchaser-lessor of new commercial trucking equipment.

Accordingly, truck, trailer, and tractor tires are not treated as part of the vehicle for depreciation purposes. Rather, these tires are considered to be separate assets and, as such, their cost is currently deductible by a taxpayer provided they are consumable in less than one year. However, the cost of truck, trailer, and tractor tires with an average useful life to a taxpayer of more than one year cannot be currently deducted as an operating expense. Their cost must be capitalized and recovered through depreciation. Because truck, trailer, and tractor tires are not considered part of the vehicle for depreciation purposes, they are not associated with any of the specific transportation assets included in the specific asset classes of Rev. Proc. 87-56 (that is, asset classes 00.241, 00.242, 00.26, and 00.27). Therefore, in accordance with § 168 and Rev. Proc. 87-56, all truck, trailer, and tractor tires that must be capitalized, whether original or replacement, are depreciated as assets used in specific business activities (that is, asset classes 01.1 through 80.0 of Rev. Proc. 87-56). For example, if a taxpayer's business activity is described in asset class 42.0, Motor Transport—Freight, original and replacement truck, trailer, and tractor tires, like the other assets in this class, would have a 5-year recovery period for GDS purposes and an 8-year recovery period for ADS purposes.

.04 Under § 446(b), the Commissioner has broad authority to determine whether a method of accounting clearly reflects income. If a taxpayer's method of accounting does not clearly reflect income, the computation of taxable income must be made under a method that, in the opinion of the Secretary, does clearly reflect income. See *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522 (1979) (1979-1 C.B. 167); *Commissioner v. Hansen*, 360 U.S. 446 (1959) (1959-2 C.B. 460); § 1.446-1(c)(2)(ii).

.05 Section 446(e) and § 1.446-1(e) provide that, except as otherwise provided, a taxpayer must secure the consent

of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.06 Since the issuance of the court decisions and revenue rulings previously discussed, the quality of tires has improved significantly. Most tires manufactured in recent years have useful lives in excess of a year, although some taxpayers, because of the nature of their business activities, still consume their tires within a year. To minimize disputes regarding the useful lives of original tires and replacement tires for certain vehicles, the Internal Revenue Service will permit a taxpayer that complies with the requirements of this revenue procedure to account for the cost of original tires and replacement tires for certain vehicles using the original tire capitalization method described in section 5 of this revenue procedure.

SECTION 3. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Qualifying Vehicle.* A qualifying vehicle is a vehicle for which depreciation is determined under § 168 and that is described in asset class 00.241, 00.242, 00.26, or 00.27 of Rev. Proc. 87-56, or a converter dolly (converter gear) for which depreciation is determined under § 168.

.02 *Original Tires.* Original tires are the first set of tires installed on a qualifying vehicle acquired by the taxpayer whether or not the vehicle was equipped with tires when acquired.

.03 *Replacement Tires.* Replacement tires are all other tires installed on a qualifying vehicle following acquisition of the vehicle by taxpayer.

SECTION 4. SCOPE

.01 This revenue procedure applies to a taxpayer that has a depreciable interest in its qualifying vehicles and that chooses to account for the cost of original tires and replacement tires for all of its quali-

fying vehicles under the original tire capitalization method described in section 5 of this revenue procedure.

.02 A taxpayer that chooses not to account for the cost of original tires and replacement tires for all of its qualifying vehicles under the original tire capitalization method described in section 5 of this revenue procedure must account for the cost of these tires in accordance with section 2.03 of this revenue procedure.

SECTION 5. ORIGINAL TIRE CAPITALIZATION METHOD

.01 *In General.* Under the original tire capitalization method, a qualifying vehicle's tires are treated as part of the vehicle and not as separate assets. In addition, under the original tire capitalization method, the rotation of a tire from one vehicle to another (for example, from a tractor to a trailer) is not treated as a change in use within the meaning of § 168(i)(5). A taxpayer that uses the original tire capitalization method described in this section must use this method for the original and replacement tires of all of its qualifying vehicles.

.02 *Description of Method.* Under the original tire capitalization method, a taxpayer:

(1) must capitalize the cost of the original tires of a qualifying vehicle and depreciate these tires under § 168 by using the same depreciation method, recovery period, and convention applicable to the vehicle on which the tires are first installed;

(2) must treat the original tires of the qualifying vehicle as being disposed of at the same time the vehicle on which the tires were first installed is disposed of by the taxpayer; and

(3) must deduct the cost of the replacement tires of the qualifying vehicle as an expense in the taxable year the replacement tires are installed on the vehicle by the taxpayer.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *In General.* A change in a taxpayer's treatment of the cost of a qualifying vehicle's original tires and replacement

tires is a change in method of accounting to which §§ 446 and 481 apply.

.02 *Issue Not Under Consideration or Not Pending.* If a taxpayer within the scope of this revenue procedure wants to change to the original tire capitalization method for its first or second taxable year ending on or after December 31, 2001, (year of change) and the treatment of its qualifying vehicle's original tires or replacement tires is not an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002-9, 2002-3 I.R.B. 327, as modified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, and as modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561), or is not an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002-9), on April 3, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply. If the taxpayer is under examination, before an area appeals office, or before a federal court regarding any income tax issue other than the treatment of its qualifying vehicle's original tires or replacement tires, the taxpayer must provide a copy of the Form 3115, *Application for Change in Accounting Method*, to the examining officer, appeals officer, or government counsel (whichever is applicable) at the same time it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining officer, appeals officer, or government counsel, as appropriate.

(2) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002-27." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

(3) The change to the original tire capitalization method will be made using a “cut-off method.” Under the cut-off method, only a qualifying vehicle’s original and replacement tires placed in service by a taxpayer on or after the beginning of the year of change are accounted for under the original tire capitalization method. A qualifying vehicle’s original and replacement tires placed in service by the taxpayer before the year of change continue to be accounted for under the taxpayer’s former method of accounting. Because no items are duplicated or omitted from income when the cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

.03 Issue Under Consideration or Issue Pending. If a taxpayer within the scope of this revenue procedure wants to change to the original tire capitalization method for its year of change (as defined in section 6.02 of this revenue procedure) and the treatment of its qualifying vehicle’s original tires or replacement tires is an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002–9), or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002–9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply. The taxpayer must provide a copy of the Form 3115 to the examining officer, appeals officer, or government counsel (whichever is applicable) at the same time it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining officer, appeals officer, or government counsel, as appropriate.

(2) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002–9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: “Automatic Change Filed Under Rev. Proc. 2002–27.” This state-

ment should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

(3) The change to the original tire capitalization method will be made using a cut-off method. Under the cut-off method, only a qualifying vehicle’s original and replacement tires placed in service by a taxpayer on or after the beginning of the year of change are accounted for under the original tire capitalization method. A qualifying vehicle’s original and replacement tires placed in service by the taxpayer before the year of change continue to be accounted for under the taxpayer’s former method of accounting. But see section 6.03(4) of this revenue procedure. Because no items are duplicated or omitted from income when the cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

(4) Section 7 of Rev. Proc. 2002–9 does not apply. The taxpayer does not receive audit protection in connection with a change to the original tire capitalization method. Accordingly, the Service may require the taxpayer to change its method of accounting for a qualifying vehicle’s original and replacement tires for any taxable year before the year of change.

.04 Special Rule for Certain Taxpayers with Issue Under Consideration or Issue Pending. If a taxpayer is within the scope of this revenue procedure and the treatment of its qualifying vehicle’s original tires or replacement tires is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002–9) in examination, before an area appeals office, or before the Tax Court, or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer may change to the original tire capitalization method for its first or second taxable year ending on or after December 31, 2001, under section 6.03 of this revenue procedure or, alternatively, for an earlier taxable year under section 7 of this revenue procedure. See also section 6.05 of this revenue procedure for deemed consent situations.

.05 Special Rule for Certain Taxpayers Deemed to Have Obtained Consent. A taxpayer within the scope of this revenue procedure will be deemed to have obtained the consent of the Commissioner

to change to the original tire capitalization method (as described in section 5 of this revenue procedure) for all of its qualifying vehicles’ original tires and replacement tires placed in service before the year of change (as defined in section 6.02 of this revenue procedure) if: (1) the taxpayer treated these tires in the same manner as permitted under the original tire capitalization method in all taxable years since the tires were placed in service by the taxpayer; or (2) the taxpayer changed its treatment of these tires in a taxable year ending on or before December 31, 2001, for which an original federal income tax return has been filed as of April 3, 2002, to the original tire capitalization method, with or without a § 481(a) adjustment, and treated the tires under that method in all taxable years since the taxpayer changed to the original tire capitalization method. Any taxpayer described in this section 6.05 will be deemed to have obtained the consent of the Commissioner to change to the original tire capitalization method as of the beginning of the first taxable year in which the taxpayer used the original tire capitalization method, and is not required to file a Form 3115 under this section 6.

However, if the taxpayer’s treatment of its qualifying vehicle’s original tires or replacement tires is an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002–9), or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002–9), on April 3, 2002, the taxpayer does not receive audit protection in connection with the change to the original tire capitalization method. Accordingly, the Service may require the taxpayer to change its method of accounting for a qualifying vehicle’s original and replacement tires for any taxable year before the first taxable year in which the taxpayer used the original tire capitalization method. The procedures in section 7 of this revenue procedure apply for any taxable year before the first taxable year in which the taxpayer used the original tire capitalization method if the taxpayer’s treatment of its qualifying vehicle’s original tires or replacement tires is an issue under consideration in examination, before an area

appeals office, or before the Tax Court, or is an issue pending in examination, on April 3, 2002.

.06 *Changes Not Made under this Revenue Procedure.* A taxpayer that wants to change to the original tire capitalization method described in section 5 of this revenue procedure that does not change its method of accounting under section 6 or 7 of this revenue procedure must follow the change in method of accounting provisions in Rev. Proc. 2002-9 (or any successor). This change must be made with a § 481(a) adjustment.

SECTION 7. OPTIONAL SETTLEMENT FOR TAXPAYERS UNDER EXAMINATION, BEFORE AN AREA APPEALS OFFICE, OR BEFORE THE TAX COURT

.01 *In General.* If a taxpayer is within the scope of this revenue procedure, the treatment of the cost of its qualifying vehicles' original tires or replacement tires is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9) in examination, before an area appeals office, or before the Tax Court, or is an issue pending in examination (within the meaning of section 6.03(6) of Rev. Proc. 2002-9), on April 3, 2002, and the taxpayer does not change to the original tire capitalization method under section 6.03 of this revenue procedure, the Service offers to settle the original and replacement tires issue by changing the taxpayer's method of accounting for the cost of original and replacement tires to the original tire capitalization method in the earliest open taxable year after which there is no closed taxable year.

.02 *Terms of Settlement.*

(1) The Service will change the taxpayer's method of accounting for the cost of original and replacement tires to the original tire capitalization method described in section 5 of this revenue procedure.

(2) The change to the original tire capitalization method will be made using a cut-off method in the earliest open taxable year after which there is no closed taxable year.

(3) The taxpayer must reflect the settlement on its federal income tax returns for any affected succeeding taxable years. For example, an amount

required to be capitalized during a taxable year covered by the settlement should be depreciated in that taxable year and in affected succeeding taxable years (whether or not covered by the settlement) in accordance with the taxpayer's method of accounting for depreciation.

(4) The Service will not require the taxpayer to change its method of accounting for the cost of its qualifying vehicles' original and replacement tires to a method other than the original tire capitalization method for any taxable year for which a federal income tax return has been filed as of the date of the closing agreement or other appropriate settlement agreement, provided that:

(a) the taxpayer has complied with all the applicable provisions of the closing agreement or other appropriate settlement agreement;

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

(c) there has been no change in the material facts on which the closing agreement or other appropriate settlement agreement was based; and

(d) there has been no change in the applicable law on which the closing agreement or other appropriate settlement agreement was based.

(5) The taxpayer must execute a closing agreement under § 7121 or other appropriate settlement agreement as described in section 7.05 of this revenue procedure.

.03 *Procedures for Requesting the Settlement.*

(1) *Initiating the request.*

(a) *Taxable years under examination or in Appeals.* A taxpayer that wants to request a settlement under this section for taxable years under examination or in Appeals must submit its request in writing to the first line examination manager or appeals officer (whichever is applicable) on or before September 3, 2002.

(b) *Taxable years before the Tax Court.* A taxpayer that wants to request a settlement under this section for taxable years before the Tax Court must submit its request in writing to the Chief Counsel attorney assigned to the case on or before the earlier of September 3, 2002, or the date that is 30 days before the date the case is first set for trial, which is the date scheduled for the calendar call.

(2) *Statement of facts, law, and arguments.* The request for settlement must include the following information:

(a) the taxpayer's name, address, telephone number, and taxpayer identification number;

(b) the taxable years covered by the proposed settlement;

(c) the taxpayer's earliest open taxable year after which there is no closed taxable year;

(d) the taxpayer's current method of accounting for the cost of its qualifying vehicles' original and replacement tires; and

(e) a statement of the material facts, including the capitalized amount and the deductible amount computed under the original tire capitalization method for each taxable year under examination, before an area appeals office, or before the Tax Court, and an explanation of the computations used to determine those amounts.

(3) *Perjury statement.* The request for settlement must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." This declaration must be signed by, or on behalf of, the taxpayer by an individual with the authority to bind the taxpayer in these matters. The declaration may not be signed by the taxpayer's representative.

.04 *Procedures for Processing the Request.*

(1) *Receipt of request acknowledged.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will acknowledge receipt of the taxpayer's request for settlement in writing within 15 business days of receipt.

(2) *Factual development.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will contact the taxpayer to discuss any questions the Service may have, or ask for additional information believed to be necessary to execute the settlement (for example, to verify the correctness of the taxpayer's information).

(3) *Acceptance.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will accept the taxpayer's request for settlement if the request complies with the applicable terms of this revenue procedure. For taxable years before the Tax Court, the settlement is subject to the approval of the Court.

(4) *Notification of acceptance.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will notify the taxpayer in writing when the Service agrees to the settlement requested by the taxpayer.

.05 *Procedures for Implementing the Settlement.*

(1) *Closing agreement or other appropriate settlement agreement required.* A taxpayer implementing a settlement is required to execute a closing agreement under § 7121 or other appropriate settlement agreement.

(2) *Contents of closing agreement or other appropriate settlement.* A closing agreement must comply with the requirements of Rev. Proc. 68-16 (1968-1 C.B. 770) and must be substantially in the form set forth in the APPENDIX of this revenue procedure. Settlement agreements in cases pending before the Tax Court must conform substantially to the provisions set forth in the APPENDIX of this revenue procedure and must conform to the rules and procedures of the Tax Court.

(3) *Review and execution of closing agreement or other appropriate settlement.*

(a) *Taxpayers under examination.* The first line examination manager will prepare a closing agreement. The first line examination manager should submit the closing agreement to the appropriate Territory Manager (LMSB) or Territory Manager, Compliance (SB/SE) (whichever is applicable) and his or her assigned counsel for review prior to submitting the closing agreement to the taxpayer for execution. Failure by the examination manager to submit the closing agreement to the Territory Manager or his or her assigned counsel for review will not invalidate the closing agreement. After the closing agreement has been executed

by the taxpayer, it will be executed on behalf of the Service by the appropriate Director, Field Operations (LMSB) or Area Director, Field Compliance (SB/SE) (whichever is applicable).

(b) *Taxpayers before an area appeals office.* The appeals officer or appeals team case leader will prepare a closing agreement. After the closing agreement has been executed by the taxpayer, it will be executed on behalf of the Service by an authorized official from Appeals.

(c) *Taxpayers before the Tax Court.* For docketed taxable years before the Tax Court, the taxpayer and the Chief Counsel attorney must prepare an appropriate settlement document, settlement stipulation, or stipulated decision document, pursuant to the rules and procedures of the court. The settlement document, settlement stipulation, or stipulated decision document is subject to the approval of the court.

(4) *Amended returns.*

(a) *In general.* In cases pending before examination or appeals, the Service will make the adjustments necessary to reflect the settlement to the taxpayer's returns for the taxable years under examination or before an area appeals office. In cases pending before the Tax Court, the settlement agreement will include adjustments necessary to reflect the settlement with respect to the year(s) before the court. The taxpayer is required to file amended returns to reflect the settlement for any other affected taxable years for which a federal income tax return has been filed as of the date of the closing agreement or other appropriate settlement agreement. The amended returns must include the adjustments to taxable income necessary to reflect the new method and any collateral adjustments to taxable income or tax liability resulting from the change. A taxpayer eligible to file a qualified amended return under Rev. Proc. 94-69 (1994-2 C.B. 804) may satisfy the requirements of this section by filing a qualified amended return in accordance with that revenue procedure.

(b) *Time and manner.* The taxpayer must file any required amended returns prior to the date it executes the closing agreement or other appropriate

settlement agreement. The taxpayer must provide a copy of the amended returns to the first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) before the closing agreement or other appropriate settlement agreement is executed.

.06 *Effect on Other Offices of the Service.* If a taxpayer is before an area appeals office or the Tax Court regarding the treatment of the cost of its qualifying vehicles' original and replacement tires and does not settle this issue under the provisions of this section 7, an appropriate representative from an area appeals office or Chief Counsel office may settle a particular taxpayer's case involving this issue on a more favorable or less favorable basis than provided in this revenue procedure. For example, an appeals officer may settle a case based on the hazards of litigation.

SECTION 8. EFFECTIVE DATE

01. *In general.* This revenue procedure is effective for taxable years ending on or after December 31, 2001.

02. *Form 3115 pending with the Service.* If a taxpayer filed a Form 3115 with the national office to make the change in method of accounting authorized by this revenue procedure, and this Form 3115 is pending with the national office on April 3, 2002, the taxpayer may make the change under this revenue procedure. However, the national office will process the Form 3115 in accordance with the authority under which it was filed unless the taxpayer notifies the national office by July 2, 2002, that it intends to make the method change under this revenue procedure. If the taxpayer timely notifies the national office that it wants to make the method change under this revenue procedure, any user fee submitted with the Form 3115 will be returned to the taxpayer.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include this accounting method change in section 2 of the APPENDIX.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mark Pitzer of the Office of

Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure,

contact Charlotte Chyr at (202) 622-3110 (not a toll-free call).

APPENDIX

Department of the Treasury Internal Revenue Service

Closing Agreement on Final Determination Covering Specific Matters

Under § 7121 of the Internal Revenue Code, *[insert taxpayer's name, address, telephone number, and identifying number]* (“the taxpayer”) and the Commissioner of Internal Revenue (“the Commissioner”) make the following closing agreement:

WHEREAS:

1. The accounting method issue covered by this closing agreement is the taxpayer’s method of accounting for the cost of its qualifying vehicles’ original and replacement tires. The definitions of qualifying vehicle, original tires, and replacement tires set forth in section 3 of Rev. Proc. 2002-27, apply for purposes of this closing agreement.

2. The taxable year(s) covered by this closing agreement are *[insert applicable taxable year(s) covered by the agreement]*.

3. Under the taxpayer’s present method of accounting for the cost of its qualifying vehicles’ original and replacement tires, the taxpayer *[describe in detail the taxpayer’s current method of accounting being changed: for example, “deducts the cost of its qualifying vehicles’ original and replacement tires when purchased”]*.

4. The taxpayer and the Commissioner relied on the following facts and representations in making this closing agreement: *[insert relevant facts, including the amounts capitalized or deducted under the original tire capitalization method for each taxable year under examination, before an area appeals office, or before the Tax Court, an explanation of the computations used to determine those amounts, and a statement of whether the amounts capitalized or deducted for each of those taxable years is taken into account for federal income tax purposes]*.

5. *[If applicable, insert:]* The taxpayer has filed an amended return(s) for the taxable year(s) ended *[insert applicable affected succeeding taxable year(s) for which a federal income tax return has been filed as of the date of the closing agreement]* to reflect the change in method of accounting for the cost of the qualifying vehicles’ original and replacement tires described in this closing agreement.

6. *[If applicable, insert:]* A stipulated decision has been entered by the *[insert name of federal court]* with respect to the taxable year(s) ended *[insert date(s)]* that reflects taxable income for such year(s) computed using the original tire capitalization method described in section 5 of Rev. Proc. 2002-27 for the cost of the qualifying vehicles’ original and replacement tires.

NOW IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes:

1. That the Service is changing the taxpayer’s method of accounting for the cost of its qualifying vehicles’ original and replacement tires to the original tire capitalization method of accounting described in section 5 of Rev. Proc. 2002-27, for the taxable year ended *[insert earliest open taxable year after which there is no closed taxable year]*.

2. That the change in method of accounting is to be made on a cut-off basis.

3. That the adjustment(s) to tax attributable to the adjustment(s) to taxable income resulting from the change in the method of accounting for the cost of the qualifying vehicles’ original and replacement tires (including the current year adjustment(s) and any collateral adjustments to taxable income or tax liability resulting from the change) for each taxable year covered by the closing agreement are as follows: *[insert the adjustments to each taxable year covered by the closing agreement in table form]*.

4. That the change in method of accounting for the cost of the qualifying vehicles’ original and replacement tires is a change in method of accounting within the meaning of Rev. Proc. 2002-27. As such, the provisions of § 446 and the regulations thereunder apply to the original tire capitalization method of accounting described in section 5 of Rev. Proc. 2002-27 for the cost of the qualifying vehicles’ original and replacement tires.

5. That, under section 7.02(4) of Rev. Proc. 2002-27, the Service will not require the taxpayer to change its method of accounting for the cost of its qualifying vehicles’ original and replacement tires to a method other than the original tire capitalization method for *[insert taxable year(s) for which a federal income tax return has been filed as of the date of this closing agreement]*, provided that: (a) the taxpayer has complied with all the applicable provisions of this closing agreement; (b) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact; (c) there has been no change in the material facts on which this closing agreement was based; and (d) there has been no change in the applicable law on which this closing agreement was based.

6. That the Service is not precluded from challenging the computation of the amounts capitalized or deducted for any taxable year covered by this closing agreement on a basis unrelated to the original tire capitalization method (for example, that all or a portion of the cost of a qualifying vehicle’s original or replacement tires is not incurred under § 461).

7. [If applicable, insert:] That the following additional conditions also apply: [insert, for example, conditions with respect to waiving restrictions on assessment and collection, paying any tax, abating any overassessment, or refunding or crediting any tax overpayment].

8. That the taxpayer accepts this settlement and agrees to the applicable terms of Rev. Proc. 2002-27.

This agreement is final and conclusive except:

- (1) The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
- (2) It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and
- (3) If it relates to a tax period ending after the date of this agreement, it is subject to any law enacted after the agreement date, that applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this document.

Taxpayer (other than individual):

By: _____ Date: _____
Title: _____

Commissioner of Internal Revenue:

By: _____ Date: _____
Title: _____

Instructions

This agreement must be signed and filed in triplicate. (All copies must have original signatures.) The original and copies of the agreement must be identical. The name of the taxpayer must be stated accurately. The agreement may relate to one or more years.

If an attorney or agent signs the agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the agreement.

If the taxpayer is a corporation, the agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached.

Use additional pages if necessary and identify them as part of this agreement.

Please see Rev. Proc. 68-16 (1968-1 C.B. 770) for a detailed description of practices and procedures applicable to most closing agreements.

Part IV. Items of General Interest

Electronic Submission of Form 8850

Announcement 2002-44

Form 8850

Employers submit Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits*, to State Employment Security Agencies (SESAs) as part of the process of obtaining those tax credits. The Internal Revenue Service will allow the electronic submission of Forms 8850 with SESAs that choose to establish a system to electronically receive this form. In general, the electronic system must meet the requirements described in paragraphs (1) through (6) below.

For purposes of this announcement, “employer” refers to an employer required to submit a Form 8850 or an authorized employer representative.

Requirements

(1) *In General.* The electronic system must ensure that the information received is the information sent, and it must document all occasions of access that result in the submission of a Form 8850. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the persons signing the Form 8850, accessing the system, and submitting the Form 8850 are the job applicant and employer identified in the form.

(2) *Same Information as Paper Form 8850.* The electronic submission must provide the SESA with exactly the same information as the paper Form 8850.

(3) *Jurat and Signature Requirements.* The electronic submission must be signed by the job applicant and the employer under penalties of perjury.

(A) *Jurat.* The jurats (perjury statements) must contain the language that appears on the paper Form 8850 for the job applicant and the employer, respectively. The electronic system must inform the job applicant and the employer that they must make the declaration contained in the applicable jurat and that the decla-

ration is made by signing the Form 8850. The instructions and the language of each jurat must immediately follow the information provided by the job applicant or the employer, as applicable, and must immediately precede that person’s electronic signature.

(B) *Electronic Signatures.* The electronic signatures must (1) identify the job applicant whose name is on the electronic Form 8850 and the employer submitting the electronic Form 8850, and (2) authenticate and verify the submission. For this purpose, the terms “authenticate” and “verify” have the same meaning as they do when applied to a written signature on a paper Form 8850. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature of the employer must be the final entry in the submission.

(4) *Copies of Electronic Form 8850.* The electronic system must enable the employer to supply and, upon request by the Internal Revenue Service, the employer must supply (A) a hard copy of the electronic Form 8850 submitted to the SESA and (B) a statement that, to the best of the employer’s knowledge, the electronic Form 8850 was submitted by the employer with respect to the named job applicant. The hard copy of the electronic Form 8850 must provide exactly the same information as, but need not be a facsimile of, the paper Form 8850.

(5) *Retention of Forms 8850 by the SESAs and Employers.* Electronic Forms 8850 have the same status as paper Forms 8850. Therefore, guidance that applies to paper Forms 8850 also applies to electronic Forms 8850. For example, as is the case for paper Forms 8850, electronic Forms 8850 are required to be retained by employers under their established record-keeping systems. For further information, see Rev. Proc. 98-25 (1998-1 C.B. 689) (information regarding the retention of records within an Automatic Data Processing System).

Drafting Information

The principal author of this announcement is Robert Wheeler. For further information regarding this announcement, contact Karin Loverud at (202) 622-6080 (not a toll-free call).

IRS Issues Document Warning Taxpayers to be Aware of Home-Based Business Tax Avoidance Schemes

Announcement 2002-48

The Internal Revenue Service just released a new brochure entitled *Home-Based Business Tax Avoidance Schemes . . . At A Glance*. The schemes described in the document claim to offer tax “relief,” but actually result in illegal tax avoidance.

The promoters of these schemes claim that by setting up a bogus home-based business, individual taxpayers can deduct most, or all, of their personal expenses as business expenses. The brochure includes some examples of personal expenses that are not deductible but are commonly claimed as business expenses in home-based business tax avoidance schemes.

The brochure explains that no matter how convincing the claims that are found in marketing materials for these schemes may appear, nondeductible personal living expenses cannot be transformed into deductible business expenses. The tax code firmly establishes that a clear business purpose and profit motive must exist in order to generate and claim allowable business expenses.

Taxpayers who claimed such deductions on a past tax return should file an amended return as soon as possible to limit possible interest and penalties on top of any taxes they might owe.

To find out more about home-based business tax avoidance schemes, order IRS Document 01300 (02-2002) by calling 1-800-829-2437, or visit www.irs.gov.

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

This announcement serves notice to donors that on January 14, 2002, the United States Tax Court entered a Decision accepting the agreement of the parties regarding the organization described below. The organization listed below is recognized as an organization described

in section 501(c)(3) which is exempt from tax under section 501(a) for taxable years prior to January 1, 2001. Pursuant to the Decision, the organization listed below is not recognized as an organization described in section 501(c)(3) and is not exempt from tax under section 501(a) for taxable years beginning January 1, 2001.

Living Truth Ministries
Austin, TX

This announcement serves notice to donors that on February 15, 2002, the

United States Tax Court entered a decision accepting the agreement of the parties that the organization listed below is not recognized as an organization described in section 501(c) and is not exempt from taxation under section 501(a), effective October 1, 1996.

Endowment for Paso Del Norte
Schools, Inc.
El Paso, TX

Definition of Terms

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

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

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

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

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

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

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

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

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

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.

PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2002–1 through 2002–16

Announcements:

2002–1, 2002–2 I.R.B. 304
2002–2, 2002–2 I.R.B. 304
2002–3, 2002–2 I.R.B. 305
2002–4, 2002–2 I.R.B. 306
2002–5, 2002–4 I.R.B. 420
2002–6, 2002–5 I.R.B. 458
2002–7, 2002–5 I.R.B. 459
2002–8, 2002–6 I.R.B. 494
2002–9, 2002–7 I.R.B. 536
2002–10, 2002–7 I.R.B. 539
2002–11, 2002–6 I.R.B. 494
2002–12, 2002–8 I.R.B. 553
2002–13, 2002–7 I.R.B. 540
2002–14, 2002–7 I.R.B. 540
2002–15, 2002–7 I.R.B. 540
2002–16, 2002–7 I.R.B. 541
2002–17, 2002–8 I.R.B. 561
2002–18, 2002–10 I.R.B. 621
2002–19, 2002–8 I.R.B. 561
2002–20, 2002–8 I.R.B. 561
2002–21, 2002–8 I.R.B. 562
2002–22, 2002–8 I.R.B. 562
2002–23, 2002–8 I.R.B. 563
2002–24, 2002–9 I.R.B. 606
2002–25, 2002–10 I.R.B. 621
2002–26, 2002–11 I.R.B. 629
2002–27, 2002–11 I.R.B. 629
2002–28, 2002–11 I.R.B. 630
2002–29, 2002–11 I.R.B. 631
2002–30, 2002–11 I.R.B. 632
2002–31, 2002–15 I.R.B. 747
2002–32, 2002–12 I.R.B. 664
2002–33, 2002–12 I.R.B. 666
2002–34, 2002–13 I.R.B. 702
2002–35, 2002–12 I.R.B. 667
2002–36, 2002–13 I.R.B. 703
2002–37, 2002–13 I.R.B. 703
2002–38, 2002–14 I.R.B. 738
2002–39, 2002–14 I.R.B. 738
2002–40, 2002–15 I.R.B. 747
2002–41, 2002–14 I.R.B. 739
2002–42, 2002–14 I.R.B. 739
2002–43, 2002–16 I.R.B. 792

Court Decisions:

2073, 2002–14 I.R.B. 718

Notices:

2002–1, 2002–2 I.R.B. 283
2002–2, 2002–2 I.R.B. 285
2002–3, 2002–2 I.R.B. 289
2002–4, 2002–2 I.R.B. 298
2002–5, 2002–3 I.R.B. 320
2002–6, 2002–3 I.R.B. 326
2002–7, 2002–6 I.R.B. 489
2002–8, 2002–4 I.R.B. 398
2002–9, 2002–5 I.R.B. 450

Notices:—Continued

2002–10, 2002–6 I.R.B. 490
2002–11, 2002–7 I.R.B. 526
2002–12, 2002–7 I.R.B. 526
2002–13, 2002–8 I.R.B. 547
2002–14, 2002–8 I.R.B. 548
2002–15, 2002–8 I.R.B. 548
2002–16, 2002–9 I.R.B. 567
2002–17, 2002–9 I.R.B. 567
2002–18, 2002–12 I.R.B. 644
2002–19, 2002–10 I.R.B. 619
2002–21, 2002–14 I.R.B. 730
2002–22, 2002–14 I.R.B. 731
2002–23, 2002–15 I.R.B. 742
2002–24, 2002–16 I.R.B. 785
2002–25, 2002–15 I.R.B. 743
2002–26, 2002–15 I.R.B. 743
2002–28, 2002–16 I.R.B. 785

Proposed Regulations:

REG–209135–88, 2002–4 I.R.B. 418
REG–209114–90, 2002–9 I.R.B. 576
REG–107100–00, 2002–7 I.R.B. 529
REG–107366–00, 2002–12 I.R.B. 645
REG–118861–00, 2002–12 I.R.B. 651
REG–105344–01, 2002–2 I.R.B. 302
REG–112991–01, 2002–4 I.R.B. 404
REG–115054–01, 2002–7 I.R.B. 530
REG–119436–01, 2002–3 I.R.B. 377
REG–120135–01, 2002–8 I.R.B. 552
REG–125450–01, 2002–5 I.R.B. 457
REG–125626–01, 2002–9 I.R.B. 604
REG–142299–01, 2002–4 I.R.B. 418
REG–159079–01, 2002–6 I.R.B. 493
REG–165706–01, 2002–16 I.R.B. 787
REG–167648–01, 2002–16 I.R.B. 790
REG–102740–02, 2002–13 I.R.B. 701

Revenue Procedures:

2002–1, 2002–1 I.R.B. 1
2002–2, 2002–1 I.R.B. 82
2002–3, 2002–1 I.R.B. 117
2002–4, 2002–1 I.R.B. 127
2002–5, 2002–1 I.R.B. 173
2002–6, 2002–1 I.R.B. 203
2002–7, 2002–1 I.R.B. 249
2002–8, 2002–1 I.R.B. 252
2002–9, 2002–3 I.R.B. 327
2002–10, 2002–4 I.R.B. 401
2002–11, 2002–7 I.R.B. 526
2002–12, 2002–3 I.R.B. 374
2002–13, 2002–8 I.R.B. 549
2002–14, 2002–5 I.R.B. 450
2002–15, 2002–6 I.R.B. 490
2002–16, 2002–9 I.R.B. 572
2002–17, 2002–13 I.R.B. 676
2002–18, 2002–13 I.R.B. 678
2002–19, 2002–13 I.R.B. 696
2002–20, 2002–14 I.R.B. 732

Revenue Procedures—Continued:

2002–22, 2002–14 I.R.B. 733
2002–23, 2002–15 I.R.B. 744
2002–26, 2002–15 I.R.B. 746

Revenue Rulings:

2002–1, 2002–2 I.R.B. 268
2002–2, 2002–2 I.R.B. 271
2002–3, 2002–3 I.R.B. 316
2002–4, 2002–4 I.R.B. 389
2002–5, 2002–6 I.R.B. 461
2002–6, 2002–6 I.R.B. 460
2002–7, 2002–8 I.R.B. 543
2002–8, 2002–9 I.R.B. 564
2002–9, 2002–10 I.R.B. 614
2002–10, 2002–10 I.R.B. 616
2002–11, 2002–10 I.R.B. 608
2002–12, 2002–11 I.R.B. 624
2002–13, 2002–12 I.R.B. 637
2002–14, 2002–12 I.R.B. 636
2002–15, 2002–13 I.R.B. 668
2002–16, 2002–15 I.R.B. 740
2002–17, 2002–14 I.R.B. 716
2002–18, 2002–16 I.R.B. 779
2002–19, 2002–16 I.R.B. 778

Tax Conventions:

2002–14 I.R.B. 725

Treasury Decisions:

8968, 2002–2 I.R.B. 274
8969, 2002–2 I.R.B. 276
8970, 2002–2 I.R.B. 281
8971, 2002–3 I.R.B. 308
8972, 2002–5 I.R.B. 443
8973, 2002–4 I.R.B. 391
8974, 2002–3 I.R.B. 318
8975, 2002–4 I.R.B. 379
8976, 2002–5 I.R.B. 421
8977, 2002–6 I.R.B. 463
8978, 2002–7 I.R.B. 500
8979, 2002–6 I.R.B. 466
8980, 2002–6 I.R.B. 477
8981, 2002–7 I.R.B. 496
8982, 2002–8 I.R.B. 544
8983, 2002–9 I.R.B. 565
8984, 2002–13 I.R.B. 668
8985, 2002–14 I.R.B. 707
8986, 2002–16 I.R.B. 780

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.

Finding List of Current Actions on Previously Published Items²

Bulletins 2002–1 through 2002–16

Announcements:

2001–83

Modified by
Ann. 2002–36, 2002–13 I.R.B. 703

2002–9

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632
Ann. 2002–35, 2002–12 I.R.B. 667

Notices:

90–24

Modified and superseded by
Notice 2002–24, 2002–16 I.R.B. 785

98–31

Supplemented by
Ann. 2002–37, 2002–13 I.R.B. 703

98–43

Modified and superseded by
Notice 2002–5, 2002–3 I.R.B. 320

2000–11

Obsoleted by
Notice 2002–3, 2002–2 I.R.B. 289

2001–10

Revoked by
Notice 2002–8, 2002–4 I.R.B. 398

2001–61

Supplemented by
Notice 2002–15, 2002–8 I.R.B. 548

2001–68

Supplemented by
Notice 2002–15, 2002–8 I.R.B. 548

Proposed Regulations:

REG–209135–88

Corrected by
Ann. 2002–15, 2002–7 I.R.B. 540
Ann. 2002–30, 2002–11 I.R.B. 632

REG–251502–96

Withdrawn by
Ann. 2002–33, 2002–12 I.R.B. 666

REG–107100–00

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–105344–01

Corrected by
Ann. 2002–7, 2002–5 I.R.B. 459

Proposed Regulations:—Continued

REG–112991–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632
Ann. 2002–38, 2002–14 I.R.B. 738

REG–115054–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–119436–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–120135–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–125450–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–125626–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–126485–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–137519–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–142299–01

Corrected by
Ann. 2002–15, 2002–7 I.R.B. 540
Ann. 2002–30, 2002–11 I.R.B. 632

REG–142686–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

REG–159079–01

Corrected by
Ann. 2002–30, 2002–11 I.R.B. 632

Revenue Procedures:

84–37

Modified by
Rev. Proc. 2002–1, 2002–1 I.R.B. 1

84–57

Obsoleted by
T.D. 8976, 2002–5 I.R.B. 421

87–50

Modified by
Rev. Proc. 2002–10, 2002–4 I.R.B. 401

89–45

Superseded by
Rev. Proc. 2002–23, 2002–15 I.R.B. 744

Revenue Procedures:—Continued

96–13

Modified by
Rev. Proc. 2002–1, 2002–1 I.R.B. 1

97–27

Modified and amplified by
Rev. Proc. 2002–19, 2002–13 I.R.B. 696

98–49

Obsoleted by
T.D. 8976, 2002–5 I.R.B. 421

99–49

Modified and superseded by
Rev. Proc. 2002–9, 2002–3 I.R.B. 327

2000–20

Modified by
Rev. Proc. 2002–6, 2002–1 I.R.B. 203

2000–46

Superseded by
Rev. Proc. 2002–22, 2002–14 I.R.B. 733

2001–1

Superseded by
Rev. Proc. 2002–1, 2002–1 I.R.B. 1

2001–2

Superseded by
Rev. Proc. 2002–2, 2002–1 I.R.B. 82

2001–3

Superseded by
Rev. Proc. 2002–3, 2002–1 I.R.B. 117

2001–4

Superseded by
Rev. Proc. 2002–4, 2002–1 I.R.B. 127

2001–5

Superseded by
Rev. Proc. 2002–5, 2002–1 I.R.B. 173

2001–6

Superseded by
Rev. Proc. 2002–6, 2002–1 I.R.B. 203

2001–7

Superseded by
Rev. Proc. 2002–7, 2002–1 I.R.B. 249

2001–8

Superseded by
Rev. Proc. 2002–8, 2002–1 I.R.B. 252

2001–13

Corrected by
Ann. 2002–5, 2002–4 I.R.B. 420

2001–16

Modified by
Ann. 2002–26, 2002–11 I.R.B. 629

2001–27

Supplemented by
Rev. Proc. 2002–20, 2002–14 I.R.B. 732

² A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.

Revenue Procedures:—Continued

2001–36

Superseded by
Rev. Proc. 2002–3, 2002–1 I.R.B. 117

2001–41

Superseded by
Rev. Proc. 2002–2, 2002–1 I.R.B. 82

2001–51

Superseded by
Rev. Proc. 2002–3, 2002–1 I.R.B. 117

2002–3

Modified by
Rev. Proc. 2002–22 I.R.B. 733

2002–6

Modified by
Notice 2002–1, 2002–2 I.R.B. 283

2002–8

Modified by
Notice 2002–1, 2002–2 I.R.B. 283

2002–9

Modified and clarified by
Ann. 2002–17, 2002–8 I.R.B. 561

Modified and amplified by
Rev. Rul. 2002–9, 2002–10 I.R.B. 614
Rev. Proc. 2002–17, 2002–13 I.R.B. 676
Rev. Proc. 2002–19, 2002–13 I.R.B. 696

Revenue Rulings:

55–261

Distinguished by
Rev. Rul. 2002–19, 2002–16 I.R.B. 778

55–747

Revoked by
Notice 2002–8, 2002–4 I.R.B. 398

61–146

Distinguished by
Rev. Rul. 2002–3, 2002–3 I.R.B. 316

64–328

Modified by
Notice 2002–8, 2002–4 I.R.B. 398

66–110

Modified by
Notice 2002–8, 2002–4 I.R.B. 398

73–304

Superseded by
Rev. Proc. 2002–26, 2002–15 I.R.B. 746

73–305

Superseded by
Rev. Proc. 2002–26, 2002–15 I.R.B. 746

79–151

Distinguished by
Rev. Rul. 2002–19, 2002–16 I.R.B. 778

79–284

Superseded by
Rev. Proc. 2002–26, 2002–15 I.R.B. 746

Revenue Rulings:—Continued

89–29

Obsoleted by
T.D. 8976, 2002–5 I.R.B. 421

92–19

Supplemented in part by
Rev. Rul. 2002–12, 2002–11 I.R.B. 624

2002–7

Corrected by
Ann. 2002–13, 2002–7 I.R.B. 540

Treasury Decisions:

8971

Corrected by
Ann. 2002–20, 2002–8 I.R.B. 561

8972

Corrected by
Ann. 2002–23, 2002–8 I.R.B. 563

8973

Corrected by
Ann. 2002–14, 2002–7 I.R.B. 540

8975

Corrected by
Ann. 2002–21, 2002–8 I.R.B. 562

8976

Corrected by
Ann. 2002–21, 2002–8 I.R.B. 562

8978

Corrected by
Ann. 2002–39, 2002–14 I.R.B. 738