

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 96-4, page 16.

Section 1274A inflation-adjusted numbers for 1996. This ruling provides the dollar amounts, increased by the 1996 inflation-adjustment, for section 1274A of the Code. Rev. Rul. 95-10 supplemented and superseded.

Rev. Rul. 96-5, page 29.

CPI adjustment for below-market loans-1996. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987-1996. Rev. Rul. 95-11 supplemented and superseded.

T.D. 8631, page 7.

EE-34-95, page 49.

Temporary and proposed regulations under section 411 of the Code relating to the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended, relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA.

T.D. 8635, page 5.

Final and temporary regulations under sections 401 and 408 that provide guidance to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or remain an approved nonbank trustee.

EMPLOYEE PLANS

Rev. Rul. 96-7, page 12.

Disability mortality tables. This ruling provides mortality tables for use under section 412(1) for plan years after 1995 to calculate current liability for individuals entitled to benefits on account of disability.

Finding Lists begin on page 52.

Announcement 96-4, page 50.

An announcement discusses the publication of mortality tables for use under section 412(1) for individuals entitled to benefits on account of disability. The announcement requests comments on the tables published in Rev. Rul. 96-7.

EMPLOYMENT TAX

T.D. 8634, page 17.

Final regulations relating to the income tax withholding requirement on distribution of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Code.

ADMINISTRATIVE

Notice 96-1, page 30.

Notice of intention to issue regulations under section 1396 of the Code. The Service will clarify the relevant period under section 1396(d)(1)(A) during which substantially all of the services performed by an employee for his or her employer must be performed within an empowerment zone in a trade or business of the employer.

Rev. Proc. 96-12, page 30.

Life insurance partnerships. The Service will not rule on certain issues raised in connection with the transfer of a life insurance policy to an unincorporated organization. Rev. Proc. 96-3 amplified.

Rev. Proc. 96-13, page 31.

Updated competent authority procedure. This procedure sets forth the procedures concerning requests by taxpayers for assistance of the U.S. competent authority

(Continued on page 4)

Mission of the Service

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

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

Statement of Principles of Internal Revenue Tax Administration

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

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

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

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

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

Introduction

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

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

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

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

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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HIGHLIGHTS OF THIS ISSUE—Continued

ADMINISTRATIVE—Continued

under the provisions of an income, estate or gift tax treaty to which the United States is a party. Rev. Procs. 91-23 and 91-26 superseded; Rev. Proc. 91-22 amplified; Rev. Rul. 72-437 modified; Rev. Rul 92-75 clarified.

Rev. Proc. 96-14, page 41.

Obtaining relief. This procedure prescribes additional conditions associated with obtaining relief otherwise available under Rev. Proc. 65-17, 1965-1 C.B. 833. Rev. Rul. 82-80 and Rev. Proc. 65-17 modified; Rev. Proc. 91-24 superseded.

Rev. Proc. 96-15, page 41.

Advance valuation of art. Donors of art appraised at \$50,000 or more and executors or administrators of estates including art appraised at \$50,000 or more may request that the Service issue a statement of value for the art. Rev. Proc. 66-49 modified.

Rev. Proc. 96-16, page 45.

Letter rulings; tax-exempt obligations. Revised procedures are provided for obtaining a letter ruling under sections 103, 141-150, 1394, and 7871(c) of the Code. Rev. Procs. 88-32 and 88-33 obsolete.

T.D. 8630, page 19.

Final income, estate, and gift regulations relating to actuarial tables exceptions.

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

Section 101.—Certain Death Benefits

The Service will not rule on certain issues raised in connection with the transfer of a life insurance policy to an unincorporated organization. See Rev. Proc. 96-12, page 30.

Section 103.—Interest on State and Local Bonds

A revenue procedure sets forth procedures for requesting a ruling under §§ 103, 141-150, 1395, and 7871(c) of the Code. See Rev. Proc. 96-16, page 45.

Section 170.—Charitable, etc., Contributions and Gifts

26 CFR 1.170A-13: Recordkeeping and return requirements for deductions for charitable contributions.

The contributor of art appraised at \$50,000 or more may request that the Service issue a Statement of Value for the art. See Rev. Proc. 96-15, page 41.

Section 401.—Qualified Pension, Profit-sharing, and Stock Bonus Plans

26 CFR 1.401(f)-1: Certain custodial accounts on annuity contracts.

T.D. 8635

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Nonbank Trustee Net Worth Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or remain an approved nonbank trustee. These regulations affect nonbank trustees and custodians of individual retirement accounts, and nonbank custodians of qualified plans and tax-sheltered annuities.

EFFECTIVE DATE: These regulations are effective December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, temporary regulations (TD 8570 [1994-2 C.B. 49]) under section 401 were published in the Federal Register (59 FR 62570). A notice of proposed rulemaking (EE-38-94 [1994-2 C.B. 49]), cross-referencing the temporary regulations, was published in the Federal Register (59 FR 62644) on the same day. The temporary regulations provide guidance on the adequacy of net worth requirements for nonbank trustees and custodians of individual retirement plans, and for nonbank custodians of custodial accounts of qualified plans and tax-sheltered annuities.

After consideration of all of the comments, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision. Because section 401(d)(1), under which § 1.401-12 was originally issued, was repealed by section 237(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (1982), these final regulations also move all the rules for nonbank trustees and custodians that were previously in § 1.401-12(n) to § 1.408-2.

Explanation of Provisions

The fiduciary conduct rules for nonbank trustees and custodians under longstanding Treasury regulations require nonbank trustees and custodians to maintain a minimum amount of net worth in order to qualify as an approved nonbank trustee or custodian. Under this requirement, the nonbank trustee or custodian's net worth must exceed the greater of a specified dollar amount or a percentage of the value of all assets held in fiduciary accounts of retirement plans. A primary objective of this adequacy-of-net-worth requirement has been to ensure that nonbank trustees and custodians maintain a level

of solvency commensurate with their financial and fiduciary responsibilities.

Under the general net worth requirement, nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of \$100,000 or four percent of the value of all assets held in fiduciary accounts. Additionally, nonbank trustees and custodians must take whatever steps are necessary (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of \$50,000 or two percent of the value of all assets held by them in fiduciary accounts.

For passive nonbank trustees and custodians (qualified nonbank entities that have no discretion to direct the investment of assets), the percentage requirements are lower. Specifically, passive nonbank trustees and custodians may not accept new accounts unless their net worth exceeds the greater of \$100,000 or two percent of the value of all assets held in fiduciary accounts. Additionally, they must take appropriate action (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of \$50,000 or one percent of the value of assets held in their fiduciary accounts.

The proposed and temporary regulations provide a special rule for passive nonbank trustees and custodians that are broker-dealers and members of the Securities Investor Protection Corporation (SIPC). The proposed and temporary regulations provide that, to the extent that assets held in any fiduciary accounts are insured by SIPC in the event of the member's liquidation (\$500,000 per account, \$100,000 of which may be cash), the assets will be disregarded in determining the value of assets held in fiduciary accounts by the trustee or custodian for purposes of the percentage part of the net worth requirement.

The final regulations adopt the provisions of the proposed and temporary regulations. In addition, in response to comments, the final regulations extend the SIPC-related relief to all nonbank trustees and custodians that are broker-dealers and members of SIPC rather than limiting the relief to passive nonbank trustees and custodians. The final regulations provide that the

amount of the minimum net worth requirement for nonbank trustees and custodians that are SIPC members is reduced by either two percent of assets insured by SIPC (in the case of the minimum net worth requirement that applies to a trustee or custodian accepting additional accounts) or one percent of assets insured by SIPC (in the case of the minimum net worth requirement that must be satisfied to avoid a mandatory relinquishment of accounts). An example in the regulations illustrates this rule.

The final regulations also retain the rule in the proposed and temporary regulations that increased the initial net worth requirement for all nonbank trustees and custodians. The purpose of the rule is to better assure that the enterprises are sound and well-funded during their start-up period. This initial net worth requirement requires all new entities applying for nonbank trustee or custodian status to have a net worth of not less than \$250,000 for the most recent taxable year preceding the applicant's initial application.

This new initial net worth requirement applies only to applications received after January 5, 1995. Previously approved nonbank trustees and custodians need only satisfy the ongoing net worth requirement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations) IRS. However, other person-

nel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.401-12 also issued under 26 U.S.C. 401(d)(1). * * *

§§ 1.401-12 and 1.408-2 [Amended]

Par. 2. Paragraph (n) of § 1.401-12 is redesignated as paragraph (e) of § 1.408-2 and the authority citation immediately following § 1.401-12 is removed.

§ 1.401-12T [Removed]

Par. 3. Section 1.401-12T is removed.

§ 1.401(f)-1 [Amended]

Par. 4. Section 1.401(f)-1 is amended by:

1. Removing the language “section 401(d)(1) and the regulations thereunder” and adding “§ 1.408-2(e)” in its place in the last sentence of paragraph (b)(1)(ii).

2. Removing the language “401(d)(1) and adding “408(n)” in its place in paragraph (d)(1).

Par. 5. Section 1.408-2 is amended by:

1. Removing the language “401(d)(1)” and adding “408(n)” in its place in paragraph (b)(2)(i).

2. Removing the language “(b)(2)(ii)” and adding “(e)” in its place in paragraph (b)(2)(i).

3. Removing paragraph (b)(2)(ii).

4. Redesignating (b)(2)(iii) as (b)(2)(ii)

5. Removing newly redesignated paragraphs (e)(1) and (e)(9).

6. Further redesignating paragraphs (e)(2) through (e)(8) as paragraphs (e)(1) through (e)(7), respectively.

7. Removing the language “For the plan years to which this paragraph applies, the” and adding “The” in its place, and removing the language “(c)(1)(i)” and adding “(b)” in its place, in the first sentence of newly designated paragraph (e)(1).

8. Removing the language “401” and adding “408” in its place, and removing the language “(n)(3) to (n)(7)” and adding “(e)(2) to (e)(6)” in its place, in the second sentence of newly designated paragraph (e)(1).

9. Removing the language “Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224” and adding “the address prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter)” in its place in the third sentence of newly designated paragraph (e)(1), in the last sentence of newly designated (e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)(v)(B).

10. Removing the language “(n)(8)” and adding “(e)(7)” in its place in the last sentence of newly designated paragraph (e)(1).

11. Removing the language “(n)(6)” and adding “(e)(5)” in its place in newly designated paragraph (e)(2)(iv).

12. Redesignating newly designated paragraph (e)(5)(ii)(A) as paragraph (e)(5)(ii)(E).

13. Removing the language “(n)(7)(i)(A)” and adding “(e)(6)(i)(A)” in its place in newly designated paragraph (e)(5)(ii)(B)(2) and in newly designated paragraph (e)(5)(ii)(C)(2).

14. Removing the language “(n)(6)(iii)(A)” and adding “(e)(5)(iii)(A)” in its place in newly designated paragraph (e)(5)(iii)(B).

15. Removing the language “(n)(6)(vi)” and adding “(e)(5)(vi)” in its place in newly designated paragraph (e)(5)(v)(A).

16. Removing the language “(n)(6)(viii)(C)” and adding “(e)(5)(viii)(C)” in its place in newly designated paragraph (e)(5)(vi).

17. Removing the language “(n)(3)(v)” and adding “(e)(2)(v)” in its place, and removing the language “(n)(8)” and adding “(e)(7)” in its place, in newly designated paragraph (e)(5)(viii).

18. Removing the language “(n)(6)(i)(A)(3)” and adding “(e)(5)(i)(A)-

(3)” in its place, and removing the language “(n)(5)(ii)(E)” and adding “(e)(4)(ii)(E)” in its place, in the third sentence of newly designated paragraph (e)(6)(i)(A).

19. Removing the language “(n)(7)-(iii)(A)(3)” and adding “(e)(6)(iii)(A)-(3)” in its place in newly designated paragraph (e)(6)(iii)(C).

20. Revising newly redesignated paragraphs (e)(5)(ii)(A) and adding (e)(5)(ii)(D).

21. The revisions and addition read as follows:

§ 1.408-2 Individual retirement accounts

* * * * *

(e) * * *

* * * * *

(5) * * *

(ii) Adequacy of net worth—(A) Initial net worth requirement. In the case of applications received after January 5, 1995, no initial application will be accepted by the Commissioner unless the applicant has a net worth of not less than \$250,000 (determined as of the end of the most recent taxable year). Thereafter, the applicant must satisfy the adequacy of net worth requirements of paragraph (e)(6)(ii)(B) and (C) of this section.

* * * * *

(D) Assets held by members of SIPC—(1) For purposes of satisfying the adequacy-of-net worth requirement of this paragraph, a special rule is provided for nonbank trustees that are members of the Securities Investor Protection Corporation (SIPC) created under the Securities Investor Protection Act of 1970 (SIPA)(15 U.S.C. § 78aaa et seq, as amended). The amount that the net worth of a nonbank trustee that is a member of SIPC must exceed is reduced by two percent for purposes of paragraph (e)(5)(ii)(B)(2), and one percent for purposes of paragraph (e)(5)-(ii)(C)(2), of the value of assets (determined on an account-by-account basis) held for the benefit of customers (as defined in 15 U.S.C. § 78fff-2(e)(4)) in fiduciary accounts by the nonbank trustee to the extent of the portion of each account that does not exceed the dollar limit on advances described in 15 U.S.C. § 78fff-3(a), as amended, that would apply to the assets in that

account in the event of a liquidation proceeding under the SIPA.

(2) The provisions of this special rule for assets held in fiduciary accounts by members of SIPC are illustrated in the following example.

Example—(a) Trustee X is a broker-dealer and is a member of the Securities Investment Protection Corporation. Trustee X also has been approved as a nonbank trustee for individual retirement accounts (IRAs) by the Commissioner but not as a passive nonbank trustee. Trustee X is the trustee for four IRAs. The total assets of each IRA (for which Trustee X is the trustee) as of the most recent valuation date before the last day of Trustee X’s taxable year ending in 1995 are as follows: the total assets for IRA-1 is \$3,000,000 (all of which is invested in securities); the value of the total assets for IRA-2 is \$500,000 (\$200,000 of which is cash and \$300,000 of which is invested in securities), the value of the total assets for IRA-3 is \$400,000 (all of which is invested in securities); and the value of the total assets of IRA-4 is \$200,000 (all of which is cash). The value of all assets held in fiduciary accounts, as defined in § 1.408-2(e)(6)(viii)(A), is \$4,100,000.

(b) The dollar limit on advances described in 15 U.S.C. § 78fff-3(a) that would apply to the assets in each account in the event of a liquidation proceeding under the Securities Investor Protection Act of 1970 in effect as of the last day of Trustee X’s taxable year ending in 1995 is \$500,000 per account (no more than \$100,000 of which is permitted to be cash). Thus, the dollar limit that would apply to IRA-1 is \$500,000; the dollar limit for IRA-2 is \$400,000 (\$100,000 of the cash and the \$300,000 of the value of the securities); the dollar limit for IRA-3 is \$400,000 (the full value of the account because the value of the account is less than \$500,000 and no portion of the account is cash); and the dollar limit for IRA-4 is \$100,000 (the entire account is cash and the dollar limit per account for cash is \$100,000). The aggregate dollar limits of the four IRAs is \$1,400,000.

(c) For 1996, the amount determined under § 1.408-2(e)(6)(ii)(B) is determined as follows for Trustee X: (1) four percent of \$4,100,000 equals \$164,000; (2) two percent of \$1,400,000 equals \$28,000; and (3) \$164,000 minus \$28,000 equals \$136,000. Thus, because \$136,000 exceeds \$100,000, the minimum net worth necessary for Trustee X to accept new accounts for 1996 is \$136,000.

(d) For 1996, the amount determined under § 1.408-2(e)(6)(ii)(C) for Trustee X is determined as follows: (1) two percent of \$4,100,000 equals \$82,000; (2) one percent of \$1,400,000 equals \$14,000; and (3) \$82,000 minus \$14,000 equals \$68,000. Thus, because \$68,000 exceeds \$50,000, the minimum net worth necessary for Trustee X to avoid a mandatory relinquishment of accounts for 1996 is \$68,000.

* * * * *

Margaret Milner Richardson,
Commissioner of
Internal Revenue.

Approved December 12, 1995.

Leslie Samuels,
Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on December 19, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 20, 1995, 60 F.R. 65547)

Section 411.—Minimum Vesting Standards

26 CFR 1.411(d)-6T: Section 204(h) notice.

T.D. 8631

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

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject published in *** [EE-34-95, page 49, this Bulletin.]

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public proce-

dure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1477. Responses to this collection of information are required under section 204(h) of ERISA upon the adoption of certain amendments to pension plans.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in * * * [EE-34-95, page 00, this Bulletin].

The regulations do not involve any issue of confidentiality.

Background

This document contains temporary regulations that provide guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). Section 204(h) of ERISA was added by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Public Law 99-272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Public Law 99-514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

Prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 89-65 (1989-2 C.B. 786) and Rev. Proc. 94-13 (1994-

1 C.B. 566), and under Notice 87-21 (1987-1 C.B. 458), Notice 88-131 (1988-2 C.B. 546), Notice 89-92 (1989-2 C.B. 410), and Notice 90-73 (1990-2 C.B. 353). These temporary regulations provide further guidance, in the form of Questions and Answers.

The provisions in this Treasury Decision are needed immediately to provide guidance to the public with respect to the notice requirements of section 204(h) of ERISA. Issues related to section 204(h) arise in connection with a broad range of plan amendments, including amendments prompted by recent changes in the law. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under 5 U.S.C. 553(b).

Explanation of Provisions

Section 204(h) of ERISA applies if a defined benefit plan or an individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, alternate payees, and employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) of ERISA may also be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days in advance of the effective date of an amendment significantly reducing the future rate of benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Section 204(h) of ERISA does not apply to an amendment that does not affect the rate of future benefit accrual. These regulations clarify that an amendment to a defined benefit plan that does not affect the annual benefit commencing at normal retirement age does not affect the rate of future benefit accrual for purposes of section 204(h). Accordingly, the regulations provide that the plan administrator of a defined benefit plan is not required to provide section 204(h) notice with respect to an amendment that does not affect the future annual benefit payable at normal retirement age, even if the amendment affects other forms of payment (such as a single sum distribution) or benefits commencing at a date other than normal retirement age (such as an early retirement benefit).

The regulations also clarify that an amendment to an individual account plan that does not change the amount of future allocations to participants' accounts does not affect the rate of future benefit accrual for purposes of section 204(h) of ERISA. Accordingly, section 204(h) notice is not required with respect to any such amendment.

Even if an amendment affects the rate of future benefit accrual, section 204(h) notice is required only if the amendment significantly reduces the rate of future benefit accrual. Under the regulations, whether an amendment significantly reduces the rate of future benefit accrual is to be determined based on reasonable expectations taking into account all relevant facts and circumstances.

The regulations delegate to the Commissioner of Internal Revenue the authority to provide that section 204(h) notice need not be provided with respect to plan amendments that the Commissioner determines are necessary or appropriate, as a result of a change in federal law, to maintain compliance with the law. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other guidance in the Internal Revenue Bulletin.

In situations in which section 204(h) notice is required with respect to an amendment, the regulations provide guidance on the participants, alternate payees, and employee organizations to whom the notice must be provided. Specifically, the regulations provide that the plan administrator is not required to provide notice to a partici-

pant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. For example, notice need not be provided to participants (such as former employees with a vested benefit under the plan) who, prior to the amendment, were not entitled to accrue future benefits under the plan. Moreover, under the regulations, section 204(h) notice is not required to be provided to an employee organization unless it represents one or more participants to whom section 204(h) notice is required to be provided. Finally, the regulations clarify that employees who have not yet become participants in the plan are not taken into account for any purpose under section 204(h) of ERISA.¹ Thus, the plan administrator is not required to provide section 204(h) notice to such employees.

The regulations provide that a plan that is terminated in accordance with title IV of ERISA is deemed to satisfy section 204(h) not later than the date of termination established under section 4048 of ERISA. Accordingly, section 204(h) does not require that any further benefits accrue under the plan after that date. However, if that date of termination is deferred, benefits continue to accrue until the deferred date of termination absent an effective cessation of accruals as of an earlier specified date.

If the plan is not amended to significantly reduce the rate of future benefit accrual prior to the termination, section 204(h) notice is not required. However, the regulations also affirm that section 204(h) applies to an amendment that is effective prior to the termination date and clarify that, if section 204(h) notice is required, it can be provided either with or as part of the notice of intent to terminate or separately.

The regulations also provide two rules applicable in situations in which a plan administrator was required to provide section 204(h) notice with respect to an amendment but failed to provide timely notice to some of the parties to whom notice was required to be provided. The first rule applies when the plan administrator fails to provide timely notice with respect to more than a de minimis percentage of the parties to whom section 204(h)

notice was required. In such a situation, the amendment becomes effective in accordance with its terms with respect to a participant to whom notice was required if the participant was provided with timely notice and any employee organization representing the participant was also provided with timely notice. The amendment also becomes effective in accordance with its terms with respect to an alternate payee to whom notice was required if the alternate payee was provided with timely notice.

The second rule applies in a situation in which the plan administrator made a good faith effort to comply with section 204(h) of ERISA with respect to an amendment, failed to provide timely section 204(h) notice to no more than a de minimis percentage of the parties to whom notice was required, and provided timely notice to all employee organizations with respect to whom section 204(h) notice was required. In such a situation, if the plan administrator, promptly upon discovery of the omission, provides section 204(h) notice to all parties who were required to be provided such notice but were omitted, the plan amendment becomes effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required, including those who did not receive notice prior to discovery of the omission.

Effective Dates

These temporary regulations are effective for amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after December 30, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for section 1.411(d)-6T to read as follows:

Authority: 26 U.S.C. 7805. * * *
Section 1.411(d)-6T also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001int. * * *

Par. 2. 1.411(d)-6T is added to read as follows:

1.411(d)-6T Section 204(h) notice.

Q-1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)?

A-1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for the requirements relating to summary plan descriptions and summaries of material modifications.

¹This is not intended to affect the rights of employees under other provisions of ERISA.

Q-2: To which plans does section 204(h) of ERISA apply?

A-2: Section 204(h) of ERISA applies to defined benefit plans subject to part 2 of subtitle B of title I of ERISA and to individual account plans subject to such part 2 and to the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q-3: What is *section 204(h) notice*?

A-3: *Section 204(h) notice* is notice that complies with section 204(h) of ERISA and the rules in this section.

Q-4: For which amendments is section 204(h) notice required?

A-4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A-2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A-4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q-5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A-5: (a) *In general—(1) Defined benefit plans.* For purposes of section 204(h) of ERISA, an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts.

Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A-5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A-5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in 1.401(a)(4)-4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A-5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the assumptions used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Q-6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A-6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using the permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit ac-

crual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in 1.401(a)(4)-8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A-5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A-6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which equals 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q-7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A-7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted.

Q-8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment?

A-8: No. Employees who have not yet become participants in a plan at the time an amendment to the plan is adopted are not taken into account for

adopted taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment?

A-8: No. Employees who have not yet become participants in a plan at the time an amendment to the plan is adopted are not taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q-9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?

A-9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A-9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A-9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. Assume in *Example 1* that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit

was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. Assume the same facts as in *Example 4*, except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q-10: Does a notice fail to comply with section 204(h) of ERISA if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A-10: No, the notice does not fail to comply with section 204(h) of ERISA merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q-11: How may section 204(h) notice be provided?

A-11: A plan administrator may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an

acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed along with other notice provided by the employer or plan administrator.

Q-12: If a plan administrator fails to provide section 204(h) notice to more than a *de minimis* percentage of participants and alternate payees to whom section 204(h) notice is required to be provided, will the plan administrator be considered to have complied with section 204(h) of ERISA with respect to participants and alternate payees who were provided with timely section 204(h) notice?

A-12: The plan administrator will be considered to have complied with section 204(h) of ERISA with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with timely section 204(h) notice. The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was provided with timely section 204(h) notice. Accordingly, the amendment will become effective in accordance with its terms with respect to those participants and alternate payees.

Q-13: Will a plan be considered to have complied with section 204(h) of ERISA if the plan administrator provides section 204(h) notice to all but a *de minimis* percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A-13: The plan will be considered to have complied with section 204(h) of ERISA and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a *de minimis* percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and

(d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q-14: How does section 204(h) of ERISA apply to a plan that is terminated in accordance with title IV of ERISA?

A-14: (a) *On and after termination date.* Notwithstanding paragraph (b) of this Q&A-14 or any other provisions of this section, a plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) of ERISA not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would not require that any additional benefits accrue after such date.

(b) *Amendment effective before termination date.* An amendment that is effective before the termination date (or date of termination, as applicable) established under section 4048 of ERISA is subject to section 204(h). Accordingly, if such amendment provides for a significant reduction in the rate of future benefit accrual, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to the amendment. However, if a plan is not amended to reduce significantly the rate of future benefit accrual before the termination date (for example, the plan continues existing benefit accruals until the termination date), section 204(h) notice is not required.

Q-15: When does section 204(h) of ERISA become effective?

A-15: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) of ERISA generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date.* This section applies to amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after December 30, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In 602.101, paragraph (c) is amended by adding to the table in numerical order the entry “1.411(d)–6T ... 1545–1477”.

Margaret Milner Richardson,
*Commissioner of
Internal Revenue.*

Approved December 5, 1995.

Leslie Samuels,
*Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on December 12, 1995, 1:23 p.m., and published in the issue of the Federal Register for December 15, 1995, 60 F.R. 64401)

Section 412.—Minimum Funding Standards

Disability mortality tables. This ruling provides mortality tables for use under section 412(1) for plan years after 1995 to calculate current liability for individuals entitled to benefits on account of disability.

Rev. Rul. 96–7

ISSUE

What alternative mortality tables may be used to calculate a plan's current liability under § 412(1) of the Internal Revenue Code for individuals who are entitled to benefits under the plan on account of disability?

LAW AND ANALYSIS

Section 412(1) provides additional funding requirements for certain underfunded defined benefit pension plans that have more than 100 participants and that are not multiemployer plans. In general, the additional funding requirements are determined based on a plan's unfunded current liability.

Section 751(a) of the Retirement Protection Act of 1994 added § 412(1)–(7)(C)(ii) to the Code, effective for plan years beginning after December 31, 1994. Section 412(1)(7)(C)(ii)

provides that, for purposes of determining current liability, the mortality table used shall be the table prescribed by the Secretary, and sets forth the basis for establishing a table. For plan years beginning before the effective date of the first tables prescribed under § 412(1)(7)(C)(ii)(II), the table must be based on the prevailing commissioners' standard table (described in § 807(d)–(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993. Rev. Rul. 95–28, 1995–1 C.B. 74, sets forth this mortality table.

Section 412(1)(7)(C)(iii)(I) provides that, for plan years beginning after December 31, 1995, the Secretary shall establish mortality tables that may be used, in lieu of the tables under § 412(1)(7)(C)(ii), to determine current liability under § 412(1) for individuals who are entitled to benefits under the plan on account of disability. The Secretary must establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after December 31, 1994. Under § 412(1)(7)(C)(iii)(II), the mortality table for individuals whose disabilities occur in plan years beginning after December 31, 1994, applies only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

The alternative mortality tables provided for under § 412(1)(7)(C)(iii) are permitted to be used in the specified circumstances, but are not required to be used. For any individual for whom these alternative mortality tables are not used, the mortality table prescribed under § 412(1)(7)(C)(ii) must be used.

The alternative mortality tables provided under § 412(1)(7)(C)(iii) may be used only for individuals who are entitled to benefits under the plan on account of disability. For this purpose, an individual is entitled to benefits under a plan on account of disability if, because of the occurrence of a disability, the individual is entitled to receive a benefit to which the individual would not be entitled in the absence of the disability. For example, an individual is entitled to benefits under a plan on account of disability if, upon the occurrence of a disability at a time before the individual would have been entitled to receive an unreduced normal retirement benefit upon retire-

ment, the individual is entitled to receive the same annuity that would have been payable to the individual upon retirement at normal retirement age. As a further example, an individual is entitled to benefits under a plan on account of disability if the individual, who would not otherwise be earning service credits, is credited with years of service for the period of disability. On the other hand, an individual is not entitled to benefits on account of disability if the individual separates from the service of the employer because of a disability, but merely receives the same benefit that would have been payable if the individual had separated from service without the occurrence of the disability.

For purposes of § 412(l)(7)(C)(iii), any individual who has become entitled to benefits under a plan on account of disability continues to be considered entitled to benefits under the plan on account of disability until the individual recovers from disability and becomes entitled to different benefits under the plan than the individual would have been entitled to if the individual had not recovered.

Under § 412(l), nothing prohibits the use of an additional actuarial assumption that meets the requirements of § 412(c) regarding the probability of recovery from disability.

HOLDING

The mortality tables provided below, as applicable, may be used for plan years beginning after December 31, 1995, in lieu of the mortality table required to be used under § 412(l)(7)(C)(ii), for purposes of determining current liability. The first mortality table provided below may be used for plan years beginning after December 31, 1995, in lieu of the mortality table required to be used under § 412(l)(7)(C)(ii), for purposes of determining current liability for individuals entitled to benefits under the plan on account of disability, whose disabilities occurred in plan years beginning before January 1, 1995. The second mortality table provided below may be used for plan years beginning after December 31, 1995, in lieu of the mortality table required to be used under § 412(l)(7)(C)(ii), for purposes of determining current liability for individuals entitled to benefits under the plan on account of disability, whose disabilities occur in

plan years beginning after December 31, 1994. This second mortality table may be used only for individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. The mortality table required to be used under § 412(l)(7)(C)(ii) must be used for individuals whose disabilities occur in plan years beginning after December 31, 1994, but who are not disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

MORTALITY TABLE FOR DISABILITIES OCCURRING IN PLAN YEARS BEGINNING BEFORE JANUARY 1, 1995

The following mortality table is the mortality table that is permitted to be used for individuals entitled to benefits under the plan on account of disability, whose disabilities occurred in plan years beginning before January 1, 1995. The table sets forth the number living based upon a starting population of one million lives at age 15 (l_x), and the annual rate of mortality (q_x), to be used for each age and each gender.

Age	l_x male	q_x male
15	1,000,000.00	0.006245
16	993,755.00	0.006493
17	987,302.55	0.006749
18	980,639.24	0.007018
19	973,757.12	0.007297
20	966,651.61	0.007586
21	959,318.59	0.007887
22	951,752.45	0.008201
23	943,947.13	0.008526
24	935,899.03	0.008864
25	927,603.22	0.009216
26	919,054.43	0.009581
27	910,248.97	0.009964
28	901,179.25	0.010358
29	891,844.84	0.010768
30	882,241.45	0.011190
31	872,369.17	0.011624
32	862,228.75	0.012071
33	851,820.79	0.012531
34	841,146.62	0.013022
35	830,193.21	0.013421
36	819,051.19	0.013892
37	807,672.93	0.014380
38	796,058.59	0.014889
39	784,206.07	0.015420
40	772,113.62	0.015976
41	759,778.33	0.016562
42	747,194.88	0.017179
43	734,358.82	0.017831

Age	l_x male	q_x male
44	721,264.47	0.018521
45	707,905.93	0.019251
46	694,278.03	0.020025
47	680,375.11	0.020846
48	666,192.01	0.021716
49	651,724.99	0.022639
50	636,970.59	0.023624
51	621,922.79	0.024617
52	606,612.92	0.025865
53	590,922.88	0.027076
54	574,923.05	0.028263
55	558,674.00	0.029451
56	542,220.49	0.030667
57	525,592.21	0.031937
58	508,806.38	0.033281
59	491,872.79	0.034700
60	474,804.81	0.036185
61	457,623.99	0.037729
62	440,358.30	0.039325
63	423,041.21	0.040976
64	405,706.67	0.042720
65	388,374.88	0.044607
66	371,050.64	0.046684
67	353,728.52	0.049000
68	336,395.82	0.051594
69	319,039.81	0.054468
70	301,662.35	0.057612
71	284,282.98	0.061019
72	266,936.32	0.064679
73	249,671.14	0.068604
74	232,542.70	0.072881
75	215,594.76	0.076965
76	199,001.51	0.081027
77	182,877.01	0.085222
78	167,291.87	0.089592
79	152,303.86	0.094182
80	137,959.57	0.099034
81	124,296.89	0.104194
82	111,345.90	0.109705
83	99,130.69	0.115609
84	87,670.29	0.121952
85	76,978.73	0.128777
86	67,065.64	0.136128
87	57,936.13	0.144048
88	49,590.54	0.152581
89	42,023.97	0.161771
90	35,225.71	0.171662
91	29,178.79	0.182297
92	23,859.59	0.193720
93	19,237.51	0.205975
94	15,275.06	0.219106
95	11,928.20	0.234086
96	9,135.98	0.248436
97	6,866.27	0.263954
98	5,053.89	0.280803
99	3,634.74	0.299154
100	2,547.40	0.319185
101	1,734.31	0.341086
102	1,142.76	0.365052
103	725.59	0.393102
104	440.36	0.427255
105	252.21	0.469531

Age	l_x male	q_x male	Age	l_x female	q_x female	Age	l_x male	q_x male
106	133.79	0.521945	69	458,649.12	0.031848	15	1,000,000.00	0.022010
107	63.96	0.586518	70	444,042.06	0.033123	16	977,990.00	0.022502
108	26.45	0.665268	71	429,334.06	0.034916	17	955,983.27	0.023001
109	8.85	0.760215	72	414,343.43	0.036986	18	933,994.70	0.023519
110	2.12	1.000000	73	399,018.52	0.039352	19	912,028.08	0.024045
			74	383,316.35	0.042033	20	890,098.36	0.024583
			75	367,204.41	0.044540	21	868,217.07	0.025133
			76	350,849.13	0.047104	22	846,396.17	0.025697
			77	334,322.73	0.049840	23	824,646.33	0.026269
			78	317,660.08	0.052794	24	802,983.70	0.026857
			79	300,889.54	0.056017	25	781,417.96	0.027457
			80	284,034.61	0.059556	26	759,962.57	0.028071
			81	267,118.64	0.063460	27	738,629.66	0.028704
			82	250,167.29	0.067777	28	717,428.04	0.029345
			83	233,211.70	0.072556	29	696,375.11	0.029999
			84	216,290.80	0.077845	30	675,484.55	0.030661
			85	199,453.64	0.083693	31	654,773.52	0.031331
			86	182,760.77	0.090148	32	634,258.81	0.032006
			87	166,285.25	0.097260	33	613,958.72	0.032689
			88	150,112.35	0.105075	34	593,889.03	0.033405
			89	134,339.29	0.113643	35	574,050.16	0.034184
			90	119,072.57	0.123012	36	554,426.83	0.034981
			91	104,425.22	0.133216	37	535,032.43	0.035796
			92	90,514.11	0.143634	38	515,880.41	0.036634
			93	77,513.20	0.155581	39	496,981.64	0.037493
			94	65,453.62	0.169181	40	478,348.31	0.038373
			95	54,380.11	0.184537	41	459,992.65	0.039272
			96	44,344.97	0.201757	42	441,927.82	0.040189
			97	35,398.06	0.222043	43	424,167.18	0.041122
			98	27,538.17	0.243899	44	406,724.58	0.042071
			99	20,821.64	0.268185	45	389,613.27	0.043033
			100	15,237.59	0.295187	46	372,847.04	0.044007
			101	10,739.65	0.325225	47	356,439.16	0.044993
			102	7,246.85	0.358897	48	340,401.90	0.045989
			103	4,645.98	0.395842	49	324,747.15	0.046993
			104	2,806.90	0.438360	50	309,486.31	0.048004
			105	1,576.47	0.487816	51	294,629.73	0.049021
			106	807.44	0.545886	52	280,186.69	0.050042
			107	366.67	0.614309	53	266,165.58	0.051067
			108	141.42	0.694884	54	252,573.31	0.052093
			109	43.15	0.789474	55	239,416.00	0.053120
			110	9.08	1.000000	56	226,698.23	0.054144
						57	214,423.88	0.055089
						58	202,611.48	0.056068
						59	191,251.46	0.057080
						60	180,334.83	0.058118
						61	169,854.13	0.059172
						62	159,803.52	0.060232
						63	150,178.23	0.061303
						64	140,971.86	0.062429
						65	132,171.12	0.063669
						66	123,755.92	0.065082
						67	115,701.64	0.066724
						68	107,981.56	0.068642
						69	100,569.49	0.070834
						70	93,445.75	0.073284
						71	86,597.67	0.075979
						72	80,018.07	0.078903
						73	73,704.40	0.082070
						74	67,655.48	0.085606
						75	61,863.77	0.088918
						76	56,362.97	0.092208

MORTALITY TABLE FOR
DISABILITIES OCCURRING IN
PLAN YEARS BEGINNING AFTER
DECEMBER 31, 1994

The following mortality table is the mortality table that is permitted to be used for individuals entitled to benefits under the plan on account of disability, whose disabilities occur in plan years beginning after December 31, 1994. This mortality table may be used only for individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. The table sets forth the number living based upon a starting population of one million lives at age 15 (l_x), and the annual rate of mortality (q_x), to be used for each age and each gender.

Age	l_x male	q_x male	Age	l_x female	q_x female	Age	l_x female	q_x female
77	51,165.85	0.095625	35	784,858.55	0.017654	92	30,512.99	0.176332
78	46,273.11	0.099216	36	771,002.66	0.018204	93	25,132.57	0.189011
79	41,682.08	0.103030	37	756,967.32	0.018770	94	20,382.24	0.202571
80	37,387.58	0.107113	38	742,759.05	0.019355	95	16,253.39	0.217045
81	33,382.88	0.111515	39	728,382.95	0.019957	96	12,725.67	0.232467
82	29,660.19	0.116283	40	713,846.61	0.020579	97	9,767.37	0.248870
83	26,211.21	0.121464	41	699,156.36	0.021219	98	7,336.57	0.266289
84	23,027.49	0.127108	42	684,320.96	0.021880	99	5,382.92	0.284758
85	20,100.52	0.133262	43	669,348.02	0.022561	100	3,850.09	0.303433
86	17,421.88	0.139974	44	654,246.86	0.023263	101	2,681.85	0.327385
87	14,983.27	0.147292	45	639,027.11	0.023988	102	1,803.85	0.359020
88	12,776.35	0.155265	46	623,698.13	0.024734	103	1,156.23	0.395842
89	10,792.63	0.163939	47	608,271.58	0.025504	104	698.55	0.438360
90	9,023.30	0.173363	48	592,758.22	0.026298	105	392.33	0.487816
91	7,458.99	0.183585	49	577,169.87	0.027117	106	200.95	0.545886
92	6,089.63	0.194653	50	561,518.75	0.027961	107	91.25	0.614309
93	4,904.27	0.206615	51	545,818.12	0.028832	108	35.20	0.694884
94	3,890.97	0.219519	52	530,081.10	0.029730	109	10.74	0.789474
95	3,036.83	0.234086	53	514,321.79	0.030655	110	2.26	1.000000
96	2,325.95	0.248436	54	498,555.25	0.031609			
97	1,748.10	0.263954	55	482,796.42	0.032594			
98	1,286.68	0.280803	56	467,060.15	0.033608			
99	925.38	0.299154	57	451,363.19	0.034655			
100	648.55	0.319185	58	435,721.20	0.035733			
101	441.54	0.341086	59	420,151.58	0.036846			
102	290.94	0.365052	60	404,670.67	0.037993			
103	184.73	0.393102	61	389,296.02	0.039176			
104	112.11	0.427255	62	374,044.96	0.040395			
105	64.21	0.469531	63	358,935.41	0.041653			
106	34.06	0.521945	64	343,984.68	0.042950			
107	16.28	0.586518	65	329,210.53	0.044287			
108	6.73	0.665268	66	314,630.79	0.045666			
109	2.25	0.760215	67	300,262.86	0.046828			
110	0.54	1.000000	68	286,202.15	0.048070			
			69	272,444.41	0.049584			
			70	258,935.53	0.051331			
			71	245,644.11	0.053268			
			72	232,559.14	0.055356			
			73	219,685.59	0.057573			
			74	207,037.63	0.059979			
			75	194,619.72	0.062574			
			76	182,441.59	0.065480			
			77	170,495.31	0.068690			
			78	158,783.99	0.072237			
			79	147,313.91	0.076156			
			80	136,095.07	0.080480			
			81	125,142.14	0.085243			
			82	114,474.65	0.090480			
			83	104,116.98	0.096224			
			84	94,098.43	0.102508			
			85	84,452.59	0.109368			
			86	75,216.18	0.116837			
			87	66,428.15	0.124948			
			88	58,128.08	0.133736			
			89	50,354.26	0.143234			
			90	43,141.82	0.153477			
			91	36,520.54	0.164498			

EFFECTIVE DATE

This revenue ruling is effective for plan years beginning after December 31, 1995.

DRAFTING INFORMATION

The principal author of this revenue ruling is Edward Sypher of the Employee Plans Division. For further information regarding this revenue ruling, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6076 between 2:30 and 4:00 Eastern time (not a toll-free number) Monday through Thursday. Mr. Sypher's number is (202) 622-6245 (also not a toll-free number).

Section 483. Interest on Certain Deferred Payments

26 CFR 1.483-1: Computation of interest on certain deferred payments.

As defined by section 1274A, the definitions for both "qualified debt instruments" and "cash method debt instruments" have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 1996 calendar year. See Rev. Rul. 96-4, page 16.

Section 761.—Definitions

The Service will not rule on certain issues raised in connection with the transfer of a life

insurance policy to an unincorporated organization. See Rev. Proc. 96-12, page 30.

Section 1274. Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

26 CFR 1.1274A-1: Special rules for certain transactions where stated principal amount does not exceed \$2,800,000.

As defined by section 1274A, the definitions for both "qualified debt instruments" and "cash method debt instruments" have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 1996 calendar year. See Rev. Rul. 96-4, this page.

Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed \$2,800,000

(Also §§ 1274, 483; 1.483-1, 1.1274A-1.)

Section 1274A inflation-adjusted numbers for 1996. This ruling provides the dollar amounts, increased by the 1996 inflation-adjustment, for section 1274A of the Code. Rev. Rul. 95-10 supplemented and superseded.

Rev. Rul. 96-4

This revenue ruling provides the dollar amounts, increased by the 1996 inflation adjustment, for § 1274A of the Internal Revenue Code.

BACKGROUND

In general, §§ 483 and 1274 of the Code determine the principal amount of

a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a "qualified debt instrument," the discount rate used for purposes of §§ 483 and 1274 of the Code may not exceed 9 percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is \$2,800,000.

In the case of a "cash method debt instrument," as defined in § 1274A(c) of the Code, the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1,

1990, the stated principal amount does not exceed \$2,000,000, (B) The lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged, (C) Section 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) An election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A-1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) of the Code provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of \$100 (or, if the increase is a multiple of \$50 and not of \$100, the increase is increased to the nearest multiple of \$100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

INFLATION-ADJUSTED AMOUNTS

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

TABLE 1

REV. RUL. 96-4
Inflation-Adjusted Amounts Under § 1274A

<i>Calendar Year of Sale or Exchange</i>	<i>1274A(b) Amount (qualified debt instrument)</i>	<i>1274A(c) (2) (A) Amount (cash method debt instrument)</i>
1990	\$2,933,200	\$2,095,100
1991	\$3,079,600	\$2,199,700
1992	\$3,234,900	\$2,310,600
1993	\$3,332,400	\$2,380,300
1994	\$3,433,500	\$2,452,500
1995	\$3,523,600	\$2,516,900
1996	\$3,622,500	\$2,587,500

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 95-10, 1995-1 C.B. 168, is supplemented and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is David B. Silber of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Mr. Silber on (202) 622-3930 (not a toll-free call).

Section 2031.—Definition of Gross Estate

26 CFR 20.2031-6: Valuation of household and personal effects.

Executors and administrators of estates including art appraised at \$50,000 or more may request that the Service issue a Statement of Value for the art. See Rev. Proc. 96-15, page 41.

Section 2512.—Valuation of Gifts

26 CFR 25.2512-1: Valuation of property, in general.

The donor of a gift of art appraised at \$50,000 or more may request that the Service issue a Statement of Value for the art. See Rev. Proc. 96-15, page 41.

Section 3402.—Income Tax Collected at Source

26 CFR 31.3402(r)-1: Withholding on distributions of Indian gaming profits to tribal members.

T.D. 8634

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 31**

Withholding on Distributions of Indian Gaming Profits to Tribal Members

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Internal Revenue Code of 1986. Those affected by the regulations are persons, including Indian tribes, making payments to members of Indian tribes from net revenues of certain gaming activities conducted or licensed by the tribes. Also affected are members of Indian tribes who receive the payments.

DATES: These regulations are effective December 19, 1995. For the date of applicability, see § 31.3402(r)-1(b).

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622-6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3402(r). Section 3402(r) was added by section 701 of the Uruguay Round Agreements Act, which approved the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the Statement of Administrative Action to implement the Agreements.

On December 22, 1994, temporary regulations (TD 8574 [1995-1 C.B. 194]) relating to withholding on distributions of Indian gaming profits to tribal members under section 3402(r) were published in the Federal Register (59 FR 65939). A notice of proposed rulemaking (EE-60-94 [1995-1 C.B. 857]) cross-referencing the temporary regulations was published in the Federal Register for the same day (59 FR 65982). No public hearing was requested or held.

Also on December 22, 1994, the IRS mailed a copy of Notice 1026, providing withholding tables for use in 1995, to Indian tribes and gaming establishments listed with the National Indian Gaming Commission. For 1996 and

subsequent years, tables will be printed in a supplement to Circular E.

The IRS received written comments responding to the notice of proposed rulemaking. After consideration of the comments, the regulations proposed by EE-60-94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The regulations contain no substantive changes.

Explanation of Provisions

1. *Indian Gaming Regulatory Act.* Net revenue from certain gaming activities conducted or licensed by an Indian tribe may be used to make taxable distributions to members of the Indian tribe. The tribe must notify its members of the tax liability at the time the payments are made. 25 U.S.C. 2710(b)(3) and (d)(1).

2. *Prior law.* Prior to the addition of section 3402(r) in 1994, a tribe was not required to withhold on these distributions to tribal members except to the extent backup withholding rules applied under section 3406.

3. *Code section 3402(r).* Section 3402(r) generally requires that, for payments made after December 31, 1994, persons, including Indian tribes, making payments to members of Indian tribes from the net revenues of certain gaming activities conducted or licensed by the tribes deduct and withhold income taxes from those payments. Section 3402(r) provides that the withholding amount be calculated assuming that the taxpayer is single and has one exemption.

4. *Legislative history.* The legislative history of section 3402(r) indicates that the goal of the new withholding requirement was to make it easier for tribal members who receive gaming distributions to meet their tax responsibilities:

Distributions of net revenues from gaming activity by an Indian tribe may result in significant tax liability to the tribe's members. Establishing withholding on such payments will more closely match estimated tax payments to ultimate tax liability. For some tribal members, this change may eliminate the need to make quarterly estimated tax payments. For others, it will reduce the likelihood that they will face penalties for underpayment of tax at the time of tax filing.

H.R. Rep. No. 826, 103d Cong., 2d Sess., pt.1, at 170-171 (1994).

5. *Proposed regulations.* The proposed regulations implement the withholding method prescribed by section 3402(r). They also permit additional withholding by agreement between the tribal member and the tribe.

6. *Comments and final regulations.* The IRS received only two written comments on the proposed regulations. After consideration of both comments, the proposed regulations are adopted with no substantive changes.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for section 31.3402(r)-1T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 ***
Section 31.3402(r)-1 also issued under 26 U.S.C. 3402(p) and (r),***

Par. 2. Section 31.3402(r)-1 is added to read as follows:

§ 31.3402(r)-1 Withholding on distributions of Indian gaming profits to tribal members.

(a)(1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year. For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly, a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures—(i) In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the amount to be deducted and withheld under section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

5. *Additional withholding permitted.* Consistent with the provisions of section 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)-1 (with respect to voluntary withholding agreements between employees and employers).

(b) *Effective date.* This section applies to payments made after December 31, 1994.

§ 31.3402(r)-1T [Removed]

Par. 3. Section 31.3402(r)-1T is removed.

Margaret Milner Richardson,
*Commissioner of
Internal Revenue.*

Approved November 28, 1995.

Leslie Samuels,
*Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on December 18, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 19, 1995, 60 F.R. 65237)

Section 7478.—Declaratory Judgements Relating to Status of Certain Governmental Obligations

A revenue procedure sets forth procedures for requesting a ruling under §§ 103, 141-150, 1395, and 7871(c) of the Code. See Rev. Proc. 96-16, page 45.

Section 7520.—Valuation Tables

26 CFR 1.7520-3: *Limitation on the application of section 7520.*

T.D. 8630

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 20, and 25

Actuarial Tables Exceptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income, estate, and gift tax regulations relating to exceptions to the use of the valuation tables in the regulations for valuing annuities, interests for life or a term of years, and remainder or reversionary interests, the valuation of which was the subject of final regulations published on June 10, 1994. These regulations are necessary in order to provide guidance consistent with court decisions concluding that the valuation tables are not to be used in certain situations.

EFFECTIVE DATE: These regulations are effective December 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1994, the IRS published in the Federal Register (59 FR 30100) final income tax regulations under sections 170, 642, 664 and 7520 of the Internal Revenue Code (Code), and final estate and gift tax regulations under sections 2031, 2512 and 7520 of the Code providing actuarial tables to be used in valuing annuities, interests for life or a term of years, and remainder or reversionary interests under section 7520. On June 10, 1994, the IRS also published in the Federal Register (59 FR 30180) proposed amendments to the income, estate, and gift tax regulations prescribing circumstances when the published actuarial tables cannot be used to value interests. This regulation finalizes those amendments.

Written comments responding to the notice of proposed rulemaking were received. Requests for a public hearing were also received but were subsequently withdrawn. After consideration of all the comments received, those amendments are revised and adopted by this Treasury decision.

Explanation of Provisions

Section 7520(a), which is effective for transfers after April 30, 1989,

provides that the value of annuities, interests for life or a term of years, and remainder or reversionary interests is to be determined under tables published by the IRS. Section 7520(e) provides that, for purposes of section 7520, the term *tables* includes formulas. Section 7520(b) provides that section 7520 shall not apply for purposes of any provision specified in regulations. The Conference Report accompanying the Technical and Miscellaneous Revenue Act of 1988, H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 113 (1988) (1988-3 C.B. 603), states that section 7520 does not apply in "situations specified in Treasury regulations." A summary of the principal comments received and revisions made in the final regulations in response to those comments is provided below.

1. *Valuation of Annuities, Income Interests, etc.*

Under the proposed regulations, the tables cannot be used if the instrument of transfer does not provide the beneficiary of the annuity, income interest, or remainder interest with the degree of beneficial enjoyment that is consistent with the traditional character of that property interest under applicable local law. One comment letter suggested that, as a result of enactment of section 2702, it may no longer be necessary to prescribe special rules in the case of a trust corpus consisting of nonproductive property. It was decided to retain these rules because this issue will continue to arise in certain situations where section 2702 does not apply; e.g., the valuation of a gift of an income interest for purposes of determining the section 2503(b) gift tax exclusion; the valuation of the bequest of an income interest for purposes of the section 2013 estate tax credit.

In response to comments, the final regulations provide additional guidance for determining under what circumstances a life tenant or term certain beneficiary of tangible property possesses adequate beneficial use such that the tables would be used to value the interest.

A number of comments were received on the valuation of an annuity that is payable from a trust corpus that will exhaust prior to the annuitant reaching the presumed terminal age prescribed by the tables (age 110). Under the proposed regulations, the

interest would be valued, not as a right to receive the annuity for the life of the annuitant, but rather as the right to receive the annuity for the shorter of the life of the annuitant or the date on which the corpus will exhaust. One commentator agreed that the possibility of exhaustion of corpus should be taken into account in cases of relatively severe underfunding of the trust. However, it was suggested that, if the underfunding was relatively less severe, it should be disregarded. After further consideration of this issue, the IRS has concluded that the method described in the proposed regulations for determining the value of the annuity is consistent with fundamental principles for determining present value and long-standing IRS position. See, Rev. Rul. 77-454 (1977-2 C.B. 351); Rev. Rul. 70-452 (1970-2 C.B. 199); *Moffett v. Commissioner*, 269 F.2d 738 (4th Cir. 1959); *United States v. Dean*, 224 F.2d 26 (1st Cir. 1955). However, in response to requests, the explanation of the methodology and computation has been amplified.

2. Terminal Illness

Under the proposed regulations, the tables cannot be used if the individual, who is the measuring life with respect to the property interest, is terminally ill. Under the proposed regulations, the individual is terminally ill if that individual was known to have an incurable illness or deteriorating physical condition such that there is at least a 50 percent probability that the individual will die within one year.

One commentator suggested that the value of a property interest that is dependent upon a measuring life should be determined in all events based on the mortality component contained in Table 80CNSMT (which is based on the life experience of the general population), rather than a mortality component that reflects the actual terminally ill condition of the individual. The commentator also suggested that if departure from the actuarial tables is deemed appropriate in the case of terminally ill individuals, then the standard in Rev. Rul. 80-80 (1980-1 C.B. 194), which is not explicitly expressed in the form of a percentage probability of survival (as is the standard in the proposed regulations), adequately differentiates between individuals that should not be considered terminally ill and those that should.

This commentator also questioned whether a percentage probability standard, such as the one used in the proposed regulations, would be feasible to administer.

The IRS continues to believe that mortality tables such as Table 80CNSMT should not be used to predict the survival probabilities of an individual whose time of death is reasonably predictable based on the facts presented. To determine whether the proposed test for classifying an individual as terminally ill would be feasible, the IRS consulted with a number of medical specialists. Medical experts called upon to assess the probability of survival of a terminally ill individual base their assessment on statistical compilations of the percentage of individuals who survive for a specified period of time when suffering with a particular disease. Thus, the IRS believes that a test for classifying an individual as terminally ill can reasonably be based upon the probability of survival for a specified period of time.

One commentator suggested that the mortality test should take into account the actual period of survival after the transfer. For example, if the individual actually survived for one year, that individual should not be deemed to have been terminally ill. Although post-transaction events are not ordinarily determinative for valuation purposes, such events may provide evidence of value as of the valuation date. Accordingly, the final regulations provide a presumption that if the individual who is the measuring life survives for eighteen months or longer after the transfer, that individual shall be presumed to have not been terminally ill on the date of the transfer unless the contrary is established by clear and convincing evidence.

The commentator also questioned whether the proposed test for classifying an individual as terminally ill would result in the classification of elderly people suffering from the general infirmities of old age as "terminally ill." The IRS continues to believe that the test should be consistently applied to people of all ages. Under the regulations, the individual must be inflicted with an incurable illness or other deteriorating physical condition that is life threatening. Thus, elderly people suffering from the general infirmities of old age, but not from a specific incurable life-threatening illness, would not be considered termi-

nally ill under the test. Consequently, if an elderly person has one or more illnesses, none of which, standing alone or considered together, is life-threatening, that person would not be considered to be terminally ill.

The same commentator suggested that "knowledge" of the terminal illness should be limited to actual knowledge by the taxpayer or the decedent, rather than to "knowledge" by any of the parties involved. However, limitation of the requisite "knowledge" to the taxpayer or decedent would present a significant burden to the IRS regarding proof and would present opportunities for easy circumvention. Thus, the IRS believes that the requirement that the condition of the individual be "known," although not necessarily by the taxpayer or decedent, is reasonable.

Commentators suggested that the regulations should make it clear that a special actuarial factor taking into account a transferor's terminal illness may be used in valuing a transfer to a pooled income fund. The final regulations incorporate that suggestion.

Comments were received that the language in § 20.7520-3(b)(3)(ii) of the proposed regulations regarding the valuation of a property interest that is based upon a terminally ill measuring life, for purposes of determining the applicable credit for tax on prior transfers under section 2013, was ambiguous. Generally, if the final determination of the estate tax liability in the transferor's estate was dependent on the valuation of the life interest received by the transferee, then the value of the property transferred, for purposes of determining the credit allowable for the transferee's estate, is the value determined previously for the transferor's estate. Section 20.7520-3(b)(3)(ii) of the final regulations clarifies this rule. The IRS invites comments on whether the value of a reversionary interest under section 673 should be determined without regard to the physical condition of the decedent immediately before death, a related issue that was raised by commentators.

3. Application of Actuarial Tables

One commentator suggested that the tables prescribed by the regulations must be used for valuing all interests transferred between April 30, 1989 (the effective date of section 7520) and

December December 13, 1995 (the effective date of the regulations). However, these regulations generally adopt principles established in case law and published IRS positions. See, e.g., *O'Reilly v. Commissioner*, 973 F.2d 1403 (8th Cir. 1992), *rem'd*, T.C.M. 1994-61 (underproductive income interest); *Estate of McLendon v. Commissioner*, T.C.M. 1993-459; Rev. Rul. 80-80 (1980-1 C.B. 194) (terminal illness of measuring life); *Moffett v. Commissioner*, 269 F.2d 738 (4th Cir. 1959); Rev. Rul. 77-454 (1977-2 C.B. 351) (exhausting corpus). There is no indication that Congress intended to supersede this well-established case law and administrative ruling position when it enacted section 7520. Consequently, in the case of transfers prior to the effective date of these regulations, the question of whether a particular interest must be valued based on the tables will be resolved based on applicable case law and revenue rulings.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20 and 25 are amended as follows:

Part 1—INCOME TAXES

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

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

Par. 2. Section 1.7520-3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 1.7520-3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520—*(1) *In general—*

(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive \$1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from, or the use of, property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of \$1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive \$1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or

reversionary interest that is subject to a contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraph (b)(4) *Example 2* of this section, which illustrates a situation where a special section 7520 actuarial factor is needed to take into account the shorter life expectancy of the terminally ill measuring life. See § 1.7520-1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment—*(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest

rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 1.7520-1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520-3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests—*

(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible

property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520-1 may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years or for one or more measuring lives if—

(1) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(2) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit during the income beneficiary's term of enjoyment without the consent of and accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the

surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)-6 and, when applicable, the rules set forth in paragraph (b)(3) of this section, if the individual who is the measuring life is terminally ill at the time of the transfer.

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the transaction. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the transaction, that individual shall be presumed to have not been terminally ill at the time of the transaction unless the contrary is established by clear and convincing evidence.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Annuity funded with unproductive property. The taxpayer transfers corporation stock worth \$1,000,000 to a trust. The trust provides for a 6 percent (\$60,000 per year) annuity in cash or other property to be paid to a charitable organization for 25 years and for the remainder to be distributed to the donor's child. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The section 7520 interest rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuitant or the

remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 25-year term of the trust, or even indefinitely. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and the standard section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive \$1.00 per year for a term of 25 years.

Example 2. Terminal illness. The taxpayer transfers property worth \$1,000,000 to a charitable remainder unitrust described in section 664(d)(2) and § 1.664-3. The trust provides for a fixed-percentage 7 percent unitrust benefit (each annual payment is equal to 7 percent of the trust assets as valued at the beginning of each year) to be paid quarterly to an individual beneficiary for life and for the remainder to be distributed to a charitable organization. At the time the trust is created, the individual beneficiary is age 60 and has been diagnosed with an incurable illness and there is at least a 50 percent probability of the individual dying within 1 year. Assuming the presumption in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that this beneficiary will die within 1 year, the standard section 7520 unitrust remainder factor for a person age 60 from the valuation tables may not be used to determine the present value of the charitable remainder interest. Instead, a special unitrust remainder factor must be computed that is based on the section 7520 interest rate and that takes into account the projection of the individual beneficiary's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to transactions after December 13, 1995.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

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

Par. 4. Section 20.7520-3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 20.7520-3 *Limitation on the application of section 7520.*

* * * * *

(b) *Other limitations on the application of section 7520—*(1) *In general—*(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive \$1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of \$1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive \$1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs (b)(2)(v) *Example 4* and (b)(4) *Example 1* of this section, which illustrate situations where special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 20.7520-1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment—*(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 20.7520-1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or

fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520-3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests—*
(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520-1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(1) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(2) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (*e.g.*, from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)-6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. A died, survived by B and C. B died two years after A. A's will provided for a bequest of corporation stock in trust under the terms of which all of the trust income was paid to B for life. After the death of B, the trust terminated and the trust property was distributed to C. The trust specifically authorized, but did not require, the trustee to retain the shares of stock. The corporation paid no dividends on this stock during the 5 years before A's death and the 2 years before B's death. There was no indication that this policy would change after A's death. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that B did not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, B's life income interest in this case is considered nonproductive. Consequently, B's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of stock. Further, the terms of the trust specifically provide that B, the life income beneficiary, may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate for the month of A's death. In this case, because B has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income interest factor may be used to determine the present value of B's income interest.

Example 3. Discretionary invasion of corpus. The decedent, A, transferred property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder of the trust is to be distributed to a grandchild. The trust authorizes the trustee without restriction to distribute corpus to A's surviving spouse for the spouse's comfort and happiness. In this case, because the trustee's power to invade trust corpus is unrestricted, the exercise of the power could result in the termination of the income interest at any time. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and may not be valued actuarially under this section.

Example 4. Limited invasion of corpus. The decedent, A, bequeathed property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder is to be distributed to A's grandchild. The trust authorizes the child to withdraw up to \$5,000 per year from the trust corpus. In this case, the child's power to invade trust corpus is limited to an ascertainable amount each year. Annual invasions of any amount would be expected to progressively diminish the property from which the child's income is paid. Consequently, the

income interest is not considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 income interest factor may not be used to determine the present value of the income interest. Nevertheless, the present value of the child's income interest is ascertainable by making a special actuarial calculation that would take into account not only the initial value of the trust corpus, the section 7520 interest rate for the month of the transfer, and the mortality component for the child's age, but also the assumption that the trust corpus will decline at the rate of \$5,000 each year during the child's lifetime. The child's right to receive an amount not in excess of \$5,000 per year may be separately valued in this instance and, assuming the trust corpus would not exhaust before the child would attain age 110, would be considered an ordinary annuity interest.

Example 5. Power to consume. The decedent, A, devised a life estate in 3 parcels of real estate to A's surviving spouse with the remainder to a child, or, if the child doesn't survive, to the child's estate. A also conferred upon the spouse an unrestricted power to consume the property, which includes the right to sell part or all of the property and to use the proceeds for the spouse's support, comfort, happiness, and other purposes. Any portion of the property or its sale proceeds remaining at the death of the surviving spouse is to vest by operation of law in the child at that time. The child predeceased the surviving spouse. In this case, the surviving spouse's power to consume the corpus is unrestricted, and the exercise of the power could entirely exhaust the remainder interest during the life of the spouse. Consequently, the remainder interest that is includible in the child's estate is not considered an ordinary remainder interest for purposes of this paragraph and may not be valued actuarially under this section.

(3) *Mortality component*—(i) *Terminal illness.* Except as provided in paragraph (b)(3)(ii) of this section, the mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the

individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date of the decedent's death, that individual shall be presumed to have not been terminally ill at the date of death unless the contrary is established by clear and convincing evidence.

(ii) *Terminal illness exceptions.* In the case of the allowance of the credit for tax on a prior transfer under section 2013, if a final determination of the federal estate tax liability of the transferor's estate has been made under circumstances that required valuation of the life interest received by the transferee, the value of the property transferred, for purposes of the credit allowable to the transferee's estate, shall be the value determined previously in the transferor's estate. Otherwise, for purposes of section 2013, the provisions of paragraph (b)(3)(i) of this section shall govern in valuing the property transferred. The value of a decedent's reversionary interest under sections 2037(b) and 2042(2) shall be determined without regard to the physical condition, immediately before the decedent's death, of the individual who is the measuring life.

(iii) *Death resulting from common accidents.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if the decedent, and the individual who is the measuring life, die as a result of a common accident or other occurrence.

(4) *Examples.* The provisions of paragraph (b)(3) of this section are illustrated by the following examples:

Example 1. Terminal illness. The decedent bequeaths \$1,000,000 to a trust under the terms of which the trustee is to pay \$103,000 per year to a charitable organization during the life of the decedent's child. Upon the death of the child, the remainder in the trust is to be distributed to the decedent's grandchild. The child, who is age 60, has been diagnosed with an incurable illness, and

there is at least a 50 percent probability of the child dying within 1 year. Assuming the presumption provided for in paragraph (b)(3)(i) of this section does not apply, the standard life annuity factor for a person age 60 may not be used to determine the present value of the charitable organization's annuity interest because there is at least a 50 percent probability that the child, who is the measuring life, will die within 1 year. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the child's actual life expectancy.

Example 2. Deaths resulting from common accidents, etc. The decedent's will establishes a trust to pay income to the decedent's surviving spouse for life. The will provides that, upon the spouse's death or, if the spouse fails to survive the decedent, upon the decedent's death the trust property is to pass to the decedent's children. The decedent and the decedent's spouse die simultaneously in an accident under circumstances in which it was impossible to determine who survived the other. Even if the terms of the will and applicable state law presume that the decedent died first with the result that the property interest is considered to have passed in trust for the benefit of the spouse for life, after which the remainder is to be distributed to the decedent's children, the spouse's life income interest may not be valued by use of the mortality component described under section 7520. The result would be the same even if it was established that the spouse survived the decedent.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to estates of decedents dying after December 13, 1995.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

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

Par. 6. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

<i>Section</i>	<i>Remove</i>	<i>Add</i>
25.2522(c)–3(c)(2)(i) 6th sentence	(e)(2)(ii), (iii), and (iv)	(c)(2)(ii), (iii), and (iv)
25.2522 (c)–3(c)(2)(vi)(a) 2nd sentence	subdivision (v)	paragraph (c)(2)(vi)
25.2522 (c)–3(c)(2)(vii)(a) sentence	subdivision (vi)	paragraph (c)(2)(vii)
25.2522 (c)–3(d)(2) introductory text	subdivision (iv), (V), or (vi) of paragraph (c)(2)	paragraph (c)(2)(v), (vi), or (vii)
25.2522 (c)–3(d)(2)(iv) 1st sentence	paragraph (c)(2)(v)	paragraph (c)(2)(vi)
25.2522 (c)–3(d)(2)(iv), <i>Example (1)</i> 1st sentence	paragraph (c)(2)(v)	paragraph (c)(2)(vi)
25.2522 (c)–3(d)(2)(iv), <i>Example (2)</i> 1st sentence	paragraph (c)(2)(v)	paragraph (c)(2)(vi)
25.2522 (c)–3(d)(2)(iv), <i>Example (3)</i> 1st sentence (in each place it appears)	paragraph (c)(2)(v)	paragraph (c)(2)(vi)
25.2522 (c)–3(d)(2)(iv), <i>Example (4)</i> last sentence	paragraph (c)(2)(V)(e)	paragraph (c)(2)(vi)(e)
25.2522(c)–3(d)(2)(v)	paragraph (c)(2)(vi)	paragraph (c)(2)(vii)

Par. 7. Section 25.7520–3 is amended by revising paragraph (b) and adding a sentence at the end of paragraph (c) to read as follows:

§ 25.7520–3 *Limitation on the application of section 7520.*

(b) *Other limitations on the application of section 7520—(1) In general—(i) Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive \$1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income

interest represents the present worth of the right to receive the use of \$1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. However, in the case of certain gifts made after October 8, 1990, if the donor does not retain a qualified annuity, unitrust, or reversionary interest, the value of any interest retained by the donor is considered to be zero if the remainder beneficiary is a member of the donor’s family. See § 25.2702–2.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive \$1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may

not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs (b)(2)(v) *Example 5* and (b)(4) of this section, which illustrate situations in which special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 25.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment—(i) Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or

other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate on the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 25.7520-1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms.

(ii) *Income and similar interests*—

(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's

intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520-1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(1) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(2) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law

of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)-6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. The donor transfers corporation stock to a trust under the terms of which all of the trust income is payable to A for life. Considering the applicable federal rate under section 7520 and the appropriate life estate factor for a person A's age, the value of A's income interest, if valued under this section, would be \$10,000. After A's death, the trust is to terminate and the trust property is to be distributed to B. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that the income beneficiary would not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, the life income interest in this case is

considered nonproductive. Consequently, A's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of corporation stock. Further, the terms of the trust specifically provide that the life income beneficiary may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate on the valuation date. In this case, because A, the income beneficiary, has the right to compel the trustee to make the trust productive for purposes of applicable local law during A's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income factor may be used to determine the value of A's income interest. However, in the case of gifts made after October 8, 1990, if the donor was the life income beneficiary, the value of the income interest would be considered to be zero in this situation. See § 25.2702-2.

Example 3. Annuity trust funded with unproductive property. The donor, who is age 60, transfers corporation stock worth \$1,000,000 to a trust. The trust will pay a 6 percent (\$60,000 per year) annuity in cash or other property to the donor for 10 years or until the donor's prior death. Upon the termination of the trust, the trust property is to be distributed to the donor's child. The section 7520 rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on the stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuity beneficiary or the remainder beneficiary. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 10-year term of the trust, or even indefinitely. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and a section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive \$1.00 per year for a term of 10 years or the prior death of a person age 60.

Example 4. Unitrust funded with unproductive property. The facts are the same as in *Example 3*, except that the donor has retained a unitrust interest equal to 7 percent of the value of the trust property, valued as of the beginning of each year. Although the trust corpus is nonincome-producing, the present value of the donor's retained unitrust interest may be determined by using the section 7520 unitrust factor for a term of years or a prior death.

Example 5. Eroding corpus in an annuity trust. (i) The donor, who is age 60 and in normal health, transfers property worth \$1,000,000 to a

trust. The trust will pay a 10 percent (\$100,000 per year) annuity to a charitable organization for the life of the donor, payable annually, and the remainder will be distributed to the donor's child. The section 7520 rate for the month of the transfer is 6.8 percent. First, it is necessary to determine whether the annuity may exhaust the corpus before all annuity payments are made. Because it is assumed that any measuring life may survive until age 110, any life annuity could require payments until the measuring life reaches age 110. Based on a section 7520 interest rate of 6.8 percent, the determination of whether the annuity may exhaust the corpus before the annuity payments are made is computed as follows:

Age to which life annuity may continue	110
less: Age of measuring life at date of transfer	60
Number of years annuity may continue	50
Annual annuity payment	\$100,000.00
times: Table B annuity factor for 50 years	14.1577
Present value of term certain annuity	\$1,415,770.00

(ii) Since the present value of an annuity for a term of 50 years exceeds the corpus, the annuity may exhaust the trust before all payments are made. Consequently, the annuity must be valued as an annuity payable for a term of years or until the prior death of the annuitant, with the term of years determined by when the fund will be exhausted by the annuity payments.

(iii) Using factors based on Table 80CNSMT at 6.8 percent, it is determined that the fund will be sufficient to make 17 annual payments, but not to make the entire 18th payment. Specifically, the initial corpus will be able to make payments of \$67,287.26 per year for 17 years plus payments of \$32,712.74 per year for 18 years. The annuity is valued by adding the value of the two separate temporary annuities.

(iv) Based on Table H of Publication 1457 (a copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402), the present value of an annuity of \$67,287.26 per year payable for 17 years or until the prior death of a person aged 60 is \$579,484.61 (\$67,287.26 × 8.6121). The present value of an annuity of \$32,712.74 per year payable for 18 years or until the prior death of a person aged 60 is \$287,731.45 (\$32,712.74 × 8.7957). Thus, the present value of the charitable annuity interest is \$867,216.06 (\$579,484.61 + \$287,731.45).

(3) *Mortality component.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time the gift is completed. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent

probability that the individual will die within 1 year. However, if the individual survives for eighteen months or longer after the date the gift is completed, that individual shall be presumed to have not been terminally ill at the date the gift was completed unless the contrary is established by clear and convincing evidence.

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example. Terminal illness. The donor transfers property worth \$1,000,000 to a child in exchange for the child's promise to pay the donor \$103,000 per year for the donor's life. The donor is age 60 but has been diagnosed with an incurable illness and has at least a 50 percent probability of dying within 1 year. The section 7520 interest rate for the month of the transfer is 10.6 percent, and the standard annuity factor at that interest rate for a person age 60 in normal health is 7.4230. Thus, if the donor were not terminally ill, the present value of the annuity would be \$764,569 (\$103,000 × 7.4230). Assuming the presumption provided in paragraph (b)(3) of this section does not apply, because there is at least a 50 percent probability that the donor will die within 1 year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) * * * The provisions of paragraph (b) of this section are effective with respect to gifts made after December 13, 1995.

Michael P. Dolan,
Acting Commissioner of
Internal Revenue.

Approved October 29, 1995.

Leslie Samuels,
Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on December 12, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 13, 1995, 60 F.R. 63913)

Section 7701.—Definitions

The Service will not rule on certain issues raised in connection with the transfer of a life

insurance policy to an unincorporated organization. See Rev. Proc. 96-12, page 30.

Section 7872.—Treatment of Loans with Below-Market Interest Rates

CPI adjustment for below-market loans—1996. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987–1996. Rev. Rul. 95–11 supplemented and superseded.

Rev. Rul. 96–5

This revenue ruling publishes the amount that § 7872(g) of the Internal Revenue Code permits a taxpayer to lend to a qualifying continuing care facility without incurring imputed interest. The amount is adjusted for inflation for the years after 1986.

Section 7872 of the Code generally treats loans bearing a below-market interest rate as if they bore interest at the market rate.

Section 7872(g)(1) of the Code provides that, in general, § 7872 does not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of the year.

Section 7872(g)(2) of the Code provides that, in the case of loans made after October 11, 1985, and before 1987, § 7872(g)(1) applies only to the extent that the aggregate outstanding amount of any loan to which § 7872(g) applies (determined without regard to § 7872(g)(2)), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which § 7872(g)(1) applies, does not exceed \$90,000.

Section 7872(g)(5) of the Code provides that, for loans made during any calendar year after 1986 to which § 7872(g)(1) applies, the \$90,000 limit specified in § 7872(g)(2) is increased by an inflation adjustment. The inflation adjustment for any calendar year is the percentage (if any) by which the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for calendar year 1985. Section 7872(g)(5) states that the CPI for any calendar year is the average of the CPI as of the close of the 12-month period ending on September 30 of that calendar year.

Rev. Rul. 95–11, 1995–1 C.B. 224, publishes the amount specified in § 7872(g)(2) of the Code, increased by the inflation adjustment, for the years 1987–95.

Table 1 sets forth the amount specified in § 7872(g)(2) of the Code. The amount is increased by the inflation adjustment for the years 1987–96.

TABLE 1
REV. RUL. 96–5

Limit under 7872(g)(2) 3

<i>Year</i>	<i>Amount</i>
Before 1987	\$ 90,000
1987	\$ 92,200
1988	\$ 94,800
1989	\$ 98,800
1990	\$103,500
1991	\$108,600
1992	\$114,100
1993	\$117,500
1994	\$121,100
1995	\$124,300
1996	\$127,800

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 95–11, 1995–1 C.B. 224, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is David B. Silber of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Mr. Silber on (202) 622-3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Empowerment Zone Employment Credit

Notice 96-1

The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (OBRA'93) added sections 1391 through 1397D (relating to empowerment zones and enterprise communities) to the Internal Revenue Code. See sections 13301 through 13303 of OBRA'93. Section 1397D of the Code authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate to carry out the purposes of sections 1394 through 1397C.

The empowerment zone employment credit is set forth in section 1396 of the Code. The amount of the credit is equal to a specified percentage of qualified zone wages, which are certain wages paid or incurred by an employer for services performed by a qualified zone employee. Certain questions have arisen about the definition of a 'qualified zone employee' in section 1396(d). In particular, questions have been raised about the appropriate period under section 1396(d)(1)(A) during which substantially all of the services performed by an employee for his or her employer must be performed within an empowerment zone in a trade or business of the employer.

The Internal Revenue Service intends to issue a notice of proposed rulemaking, pursuant to the authority provided by sections 1397D and 7805(a), clarifying the relevant period for this purpose. The proposed regulations will provide that an employer may elect either of the following two approaches with respect to each calendar year. The employer must use the same approach with respect to all of its employees in computing the credit for the year.

Under the first alternative, the relevant period for an employee is each pay period in which the employee provides services to the employer. If an employer has one pay period for certain employees and a different pay period for other employees (e.g., a weekly pay period for hourly wage employees and a bi-weekly pay period for salaried employees), the pay period actually applicable to a particular employee is the relevant pay period for

that employee under this alternative. The credit may be claimed with respect to qualified zone wages (within the meaning of section 1396(c)) for services provided during each pay period in which substantially all of the services performed by the employee for the employer are performed within an empowerment zone in a trade or business of the employer.

Under the second alternative, the relevant period for an employee is the entire calendar year with respect to which the credit is being claimed by that employer (or, for any employee who is employed by the employer for less than the entire calendar year, the portion of that calendar year during which the employee is employed by the employer). Under this alternative, an employee is not a qualified zone employee within the meaning of section 1396(d)(1) unless substantially all of the services performed by the employee for the employer during the calendar year are performed within an empowerment zone in a trade or business of the employer. If the employee is a qualified zone employee, the credit may be claimed with respect to qualified zone wages (within the meaning of section 1396(c)) for all services performed by the employee for the employer during the calendar year.

While the Service does not anticipate imposing specific record-keeping requirements in the regulations, under either alternative an employer would be expected to have and maintain records sufficient to establish, for each employee with respect to whom the empowerment zone employment credit is claimed, where the employee actually worked during the relevant period. The nine empowerment zones are located in portions of Atlanta, Baltimore, Chicago, Detroit, New York, Philadelphia/Camden, and the Kentucky Highlands (Clinton, Jackson, and Wayne Counties, Kentucky), Mid-Delta (Bolivar, Sunflower, Leflore, Washington, Humphreys, and Holmes Counties, Mississippi), and Rio Grande Valley (Starr, Cameron, Hidalgo, and Willacy Counties, Texas) regions.

These regulations will be proposed to be effective December 21, 1994, the date on which the nine empowerment zones authorized by OBRA'93 were designated by the Secretaries of Housing and Urban Development and Agriculture.

The Service requests comments regarding these alternative approaches, as well as comments on other issues relating to the empowerment zone employment credit with respect to which guidance may be helpful to employers. These comments should be submitted in writing by March 29, 1996, to Internal Revenue Service, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), CC:EBEO:4, Room 5203, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attn: Robert G. Wheeler.

The principal author of this notice is Robert Wheeler of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice contact Mr. Wheeler on (202) 622-6060 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 101, 761, 7701.)

Rev. Proc. 96-12

SECTION 1. BACKGROUND

Rev. Proc. 96-3, 1996-1 I.R.B. 82, sets forth areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Internal Revenue Service will not issue advance rulings or determination letters.

SECTION 2. PROCEDURE

Rev. Proc. 96-3 is amplified by adding to section 5 the following: Sections 101, 761 and 7701.—Definitions.—Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under §§ 761 and 7701 of the Internal Revenue Code, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer for value rules of § 101, when substantially all of the organization's assets consist or will consist of life insurance policies on the lives of the members.

SECTION 3. EFFECTIVE DATE

This revenue procedure applies to all ruling requests pending in the National Office as of January 16, 1996, and ruling requests received after that date.

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 96-3 is amplified.

DRAFTING INFORMATION

The principal author of this revenue

ruling is Brian M. Blum of the Office of Assistant Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Blum on (202) 622-3050 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 96-13

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DRAFTING INFORMATION

SECTION 1. PURPOSE OF MUTUAL AGREEMENT PROCESS

This revenue procedure sets forth the procedures concerning requests by taxpayers for assistance of the U.S. competent authority under the provisions of an income, estate or gift tax treaty to which the United States is a party. Rev. Proc. 91-23, 1991-1 C.B. 534, and Rev. Proc. 91-26, 1991-1 C.B. 543, are superseded by this revenue procedure.

SEC. 2. SCOPE

.01 *General.* The U.S. competent authority assists taxpayers with respect to matters covered in the mutual agreement procedure provisions of tax treaties in the manner specified in those provisions. A tax treaty generally permits taxpayers to request competent authority assistance when they consider that actions of the United States, the treaty country, or both, result or will result in taxation that is contrary to the provisions of a treaty. For example, tax treaties generally permit taxpayers to request assistance in order to relieve economic double taxation arising from an allocation under § 482 of the Internal Revenue Code or an equivalent provision under the laws of a treaty country. Competent authority assistance may also be available with respect to issues specifically dealt with in other provisions of a treaty. For example, Article XIII(8) of the U.S.-Canada income tax treaty permits taxpayers to request the competent authority to defer the recognition of profit, gain or income with respect to property alienated in the course of a corporate organization, reorganization or similar transaction. In addition, many tax treaties contain provisions concerning fiscal residence or concerning whether a taxpayer is entitled to the benefits of a treaty under specific limitation on benefits provisions. See section 3.07 and 3.08 of this revenue procedure. Taxpayers are urged to examine the specific mutual agreement procedure provisions or other specific provisions of the treaty under which they seek relief, in order to determine whether relief is available in their particular case. This revenue procedure is not intended to limit or expand any specific treaty provisions relating to competent authority matters.

.02 *Requests for Assistance.* In general, all requests for competent au-

thority assistance must be submitted in accordance with this revenue procedure. However, where a treaty provides specific procedures for requests for competent authority assistance, those procedures shall apply, and the provisions of this revenue procedure shall not apply to the extent inconsistent with such treaty procedures. See also Rev. Proc. 91-22, 1991-1 C.B. 526, concerning requests for competent authority assistance with respect to an Advance Pricing Agreement (“APA”).

.03 *U.S. Competent Authority.* The Assistant Commissioner (International) acts as the U.S. competent authority in administering the operating provisions of tax treaties (including entering into a competent authority settlement in a specific case) and in interpreting and applying these treaties. The Tax Treaty Division assists the Assistant Commissioner (International) in these matters. In interpreting or applying tax treaties, the Assistant Commissioner (International) acts only with the concurrence of the Associate Chief Counsel (International). See Delegation Order No. 114 (Rev. 10).

.04 *General Process.* If a taxpayer’s request for competent authority assistance is accepted, the U.S. competent authority generally will consult with the appropriate foreign competent authority and attempt to reach a mutual agreement that is acceptable to all parties. The U.S. competent authority also may initiate competent authority negotiations in any situation deemed necessary to protect U.S. interests. Such a situation may arise, for example, when a taxpayer fails to request competent authority assistance after agreeing to a U.S. or foreign tax assessment that is contrary to the provisions of an applicable tax treaty or for which correlative relief may be available.

.05 *Failure to Request Assistance.* Failure to request competent authority assistance or to take appropriate steps to maintain availability of the remedy may cause a denial of part or all of any foreign tax credits claimed. See § 1.901-2(e)(5)(i) of the Income Tax Regulations. See also section 11 of this revenue procedure concerning the determination of creditable foreign taxes.

SEC. 3. GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *General.* The exclusions, exemptions, deductions, credits, reductions in

rate, and other benefits and safeguards provided by treaties are subject to conditions and restrictions that may vary in different treaties. Taxpayers should examine carefully the specific treaty provisions applicable in their cases to determine the nature and extent of treaty benefits or safeguards they are entitled to and the conditions under which such benefits or safeguards are available. In particular, taxpayers should be aware of statutes of limitations and other procedural barriers under U.S. or foreign law that may preclude or limit the extent of the assistance under this revenue procedure. See section 9 of this revenue procedure which prescribes protective measures to be taken by the taxpayer and any concerned related person with respect to U.S. and foreign tax authorities. See also section 12.02 of this revenue procedure for circumstances in which competent authority assistance may be denied.

.02 *Requirements of a Treaty.* There is no authority for the U.S. competent authority to provide relief from U.S. tax or to provide other assistance due to taxation arising under the tax laws of the foreign country or the United States, unless such authority is granted by a treaty. See Rev. Proc. 89-8, 1989-1 C.B. 778, for procedures for requesting the assistance of the Internal Revenue Service (“the Service”) when a taxpayer is or may be subject to inconsistent tax treatment by the Service and a U.S. possession tax agency.

.03 *Applicable Standards in Allocation Cases.* With respect to requests for competent authority assistance involving the allocation of income and deductions between a U.S. taxpayer and a related person, the U.S. competent authority, in seeking to arrive at an agreement with a treaty country, will be guided by the arm’s length standard, as reflected in the regulations under § 482 of the Code. When negotiating mutual agreements on the allocation of income and deductions, the U.S. competent authority will take into account all of the facts and circumstances of the particular case and the purpose of the treaty to avoid double taxation.

.04 *Who Can File Requests for Assistance.* Unless otherwise permitted under an applicable tax treaty, the U.S. competent authority will only consider requests for assistance from U.S. persons, as defined in § 7701(a)(30) of the Code. For purposes of this revenue procedure, a U.S. person is referred to

as “the taxpayer.” Thus, non-U.S. persons generally must present their initial request for assistance to the relevant foreign competent authority.

.05 *Closed Cases.* A case previously closed after examination shall not be reopened in order to make an adjustment unfavorable to the taxpayer unless the exceptional circumstances described in Rev. Proc. 94-68, 1994-2 C.B. 803, are present. The U.S. competent authority may, but is not required to, accept a taxpayer’s request for competent authority consideration that will require the reopening of a case closed after examination.

.06 *Foreign Initiated Competent Authority Request.* When a foreign competent authority refers a request from a foreign taxpayer to the U.S. competent authority for consultation under the mutual agreement procedure, the U.S. competent authority generally will require the U.S. related taxpayer (in the case of an allocation of income or deductions between related persons) or may require the foreign taxpayer (in other cases) to file a request for competent authority assistance under this revenue procedure.

.07 *Requests Relating to Residence Issues.* U.S. competent authority assistance may be available to taxpayers seeking to establish their residency status in the United States. Examples include cases in which taxpayers believe that they are erroneously treated as non-U.S. residents by treaty countries or cases where taxpayers are treated as dual residents despite the objective tie-breaker provisions contained in the applicable treaties. Generally, competent authority assistance is limited to situations where resolution of a residency issue is necessary in order to avoid double taxation or to determine the applicability of a benefit under the treaty. Further, a request for assistance regarding a residency issue will be accepted only if it is established that the issue requires consultation with the foreign competent authority in order to ensure consistent treatment by the United States and the applicable treaty country. The U.S. competent authority does not issue unilateral determinations with respect to whether an individual is a resident of the United States or of a treaty country.

.08 *Determinations Regarding Limitation on Benefits.* Many treaties contain a limitation on benefits article that enumerates prescribed requirements

that must be met to qualify as a resident eligible for benefits under the treaty. The U.S. competent authority will not issue determinations regarding a taxpayer’s status under one of the prescribed requirements in a limitation on benefits provision. However, certain treaties provide that the competent authority may, as a matter of discretion, determine the availability of treaty benefits where the prescribed requirements are not met. *See, e.g.,* Article 26(7) of the U.S.-Netherlands income tax treaty. Requests for assistance in such cases should comply with this revenue procedure and any other specific procedures that may be issued from time to time.

SEC. 4. PROCEDURES FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 *Time for Filing.* A request for competent authority assistance generally may be filed at any time after an action occurs which would give rise to a claim for competent authority assistance. In a case involving a U.S. initiated adjustment of tax or income resulting from a tax examination, a request for competent authority assistance may be submitted as soon as practicable after the amount of the proposed adjustment is communicated in writing to the taxpayer. Where a U.S. initiated adjustment has not yet been communicated in writing (*e.g.,* a notice of proposed adjustment) to the taxpayer, the U.S. competent authority generally will deny the request as premature. In the case of a foreign examination, a request may be submitted as soon as the taxpayer believes such filing is warranted based on the actions of the country proposing the adjustment. In a case involving the reallocation of income or deductions between related entities, the request should not be filed until such time that the taxpayer can establish that there is the probability of double taxation. In cases not involving an examination, a request can be made when the taxpayer believes that an action or potential action warrants the assistance of the U.S. competent authority. Examples of such action include a ruling or promulgation by a foreign tax authority concerning a taxation matter, or the withholding of tax by a withholding agent. Except where otherwise provided in an applicable treaty, taxpayers have discretion over the time for filing a

request; however, delays in filing may preclude effective relief. *See* section 9 of this revenue procedure concerning protective measures for taxpayers that need or wish to delay the filing of a request for assistance. *See also* section 7.06 of this revenue procedure for rules relating to accelerated issue resolution and competent authority assistance.

.02 *Place of Filing.* The taxpayer must send all written requests for, or any inquiries regarding, competent authority assistance to the Assistant Commissioner (International), Attn: Tax Treaty Division, Internal Revenue Service, P.O. Box 23598, Washington D.C. 20026-3598.

.03 *Additional Filing.* In the case of U.S. initiated adjustments, the taxpayer also must file a copy of the request with the office of the Service where the taxpayer’s case is pending. If the request is filed after the matter has been designated for litigation or while a suit contesting the relevant tax liability of the taxpayer is pending in a U.S. court, a copy of the request also must be filed with the Chief Counsel, Attention: Associate Chief Counsel (International), Internal Revenue Service, Washington, D.C. 20224, with a separate statement attached identifying the court where the suit is pending and the docket number of the action.

.04 *Form of Request.* A request for competent authority assistance must be in the form of a letter addressed to the Assistant Commissioner (International). It must be dated and signed by a person having the authority to sign the taxpayer’s federal tax returns. The request must contain a statement that competent authority assistance is being requested and must include the information described in section 4.05 of this revenue procedure. *See* section 5 of this revenue procedure for requests involving small cases.

.05 *Information Required.* The following information shall be included in the request for competent authority assistance:

(a) a reference to the specific treaty and the provisions therein pursuant to which the request is made;

(b) the names, addresses, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and, if applicable, all related persons involved in the matter;

(c) if applicable, a description of the control and business relationships between the taxpayer and any relevant

related person for the years in issue, including any changes in such relationship to the date of filing the request;

(d) a brief description of the issues for which competent authority assistance is requested, including a brief description of the relevant transactions, activities or other circumstances involved in the issues raised and the basis for the adjustment, if any;

(e) the years and amounts involved with respect to the issues in both U.S. dollars and foreign currency;

(f) if applicable, the district office which has made or is proposing to make the adjustment;

(g) an explanation of the nature of the relief sought or the action requested in the United States or in the treaty country with respect to the issues raised, including a statement as to whether the taxpayer wishes to avail itself of the relief provided under Rev. Proc. 65-17, 1965-1 C.B. 833, as amplified, amended, clarified and modified by Rev. Proc. 65-31, 1965-2 C.B. 1024, Rev. Proc. 65-17 Amendment I, 1966-2 C.B. 1211, Rev. Proc. 65-17 Amendment II, 1974-1 C.B. 411, Rev. Proc. 70-23, 1970-2 C.B. 505, Rev. Proc. 71-35, 1971-2 C.B. 573, Rev. Proc. 72-48, 1972-2 C.B. 829, Rev. Proc. 72-53, 1972-2 C.B. 833, and Rev. Proc. 91-24, 1991-1 C.B. 542, (hereinafter referred to as "Rev. Proc. 65-17"), as indicated in section 10 of this revenue procedure;

(h) a statement whether the period of limitations for the years for which relief is sought has expired in the United States or in the treaty country;

(i) a statement whether the request for competent authority assistance involves issues that are currently, or were previously, considered as part of an APA proceeding in the United States or in a similar proceeding in the foreign country;

(j) if applicable, powers of attorney with respect to the taxpayer;

(k) a statement whether the taxpayer is requesting the Simultaneous Appeals procedure as provided in section 8 of this revenue procedure;

(l) an amended return, if required under section 9.02 of this revenue procedure;

(m) on a separate document, a statement that the taxpayer consents to the disclosure to the competent authority of the treaty country (with the name of the treaty country specifically

stated) and the competent authority's staff of any or all of the items of information set forth or enclosed in the request for U.S. competent authority assistance within the limits contained in the tax treaty under which the taxpayer is seeking relief. This statement must be dated and signed by a person having authority to sign the taxpayer's federal tax returns and is required to facilitate the administrative handling of the request by the U.S. competent authority for purposes of the record-keeping requirements of § 6103(p) of the Code. Failure to provide such a statement will not prevent the U.S. competent authority from disclosing information under the terms of a treaty. See § 6103(k)(4) of the Code; and

(n) a penalties of perjury statement in the following form: "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 facts presented in support of the request for competent authority assistance are true, correct and complete." The declaration must be signed by the person or persons on whose behalf the request is being made and not by the taxpayer's representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts. The person signing for a trust, an estate or a partnership must be respectively, a trustee, an executor or a partner who has personal knowledge of the facts.

.06 APAs. Requests for competent authority assistance that involve an APA request must include the information required under Rev. Proc. 91-22, 1991-1 C.B. 526, as well as the applicable information under section 4.05 of this revenue procedure.

.07 Other Documentation. In addition, the taxpayer shall, on request, submit any other information or documentation deemed necessary by the U.S. or foreign competent authority for purposes of reaching an agreement. This includes English translations of any documentation required in connection with the competent authority request.

.08 Updates. The taxpayer must keep the U.S. competent authority informed of all material changes in the information or documentation previously submitted as part of, or in connection with, the request for competent authority

assistance. The taxpayer also must provide any updated information or new documentation that becomes known or is created after the request is filed and which is relevant to the resolution of the issues under consideration.

.09 Conferences. The taxpayer may, at any time, request a pre-filing conference with the U.S. competent authority to discuss the mutual agreement process with respect to matters covered under a treaty, including discussion of the proper time for filing, the practical aspects of obtaining relief and actions necessary to facilitate the proceedings. Similarly, after a matter is resolved by the competent authorities, a taxpayer may also request a conference with the U.S. competent authority to discuss the resolution.

SEC. 5. SMALL CASE PROCEDURE FOR REQUESTING COMPETENT AUTHORITY ASSISTANCE

.01 General. To facilitate requests for assistance involving small cases, this section provides a special procedure simplifying the form of a request for assistance and, in particular, the amount of information that initially must be submitted. All other requirements of this revenue procedure continue to apply to requests for assistance made pursuant to this section.

.02 Small Case Standards. Eligible taxpayers may file an abbreviated request for competent authority assistance in accordance with this section if the total proposed adjustment involved in the matter is not greater than the following:

<i>Taxpayer</i>	<i>Proposed Adjustment</i>
Individual	\$100,000
Corporation	\$200,000
Other	\$200,000

.03 Small Case Filing Procedure. The abbreviated request for competent authority assistance under the small case procedure must be dated and signed by a person having the authority to sign the taxpayer's federal tax returns. Although other information and documentation may be requested at a later date, the initial request for assistance should include the following information and materials:

(a) a statement indicating that this is a matter subject to the small case procedure;

(b) the name, address, U.S. taxpayer identification number and foreign taxpayer identification number (if any) of the taxpayer and if applicable, all related persons involved;

(c) a description of the issue and the nature of the relief sought;

(d) the taxable years and amounts involved with respect to the issues in both U.S. and foreign currency;

(e) the name of the treaty country;

(f) an amended return, if required under section 9.02 of this revenue procedure; and

(g) the statements described in section 4.05(m) and (n) of this revenue procedure.

SEC. 6. RELIEF REQUESTED FOR FOREIGN INITIATED ADJUSTMENT WITHOUT COMPETENT AUTHORITY INVOLVEMENT

Taxpayers seeking correlative relief with respect to a foreign initiated adjustment involving a treaty matter should present their request to the U.S. competent authority. However, when the adjustment involves years under the jurisdiction of the District Director or Appeals, taxpayers sometimes try to obtain relief from these offices. This may occur, for example, if the adjustment involves a re-allocation of income or deductions involving a related person in a country with which the United States has an income tax treaty. In these cases, taxpayers will be advised to contact the U.S. competent authority office. In appropriate cases, the U.S. competent authority will advise the District or Appeals office on appropriate action. The U.S. competent authority may request the taxpayer to provide the information described under sections 4.05 and 4.07 of this revenue procedure. Failure to request competent authority assistance may result in denial of correlative relief with respect to the issue, including applicable foreign tax credits.

SEC. 7. COORDINATION WITH OTHER ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

.01 *Suspension of Administrative Action with Respect to U.S. Adjustments.*

When a request for competent authority assistance is accepted with respect to a U.S. initiated adjustment, the Service will postpone further administrative action with respect to the issues under competent authority consideration, except (a) in situations in which the Service may be requested otherwise by the U.S. competent authority, or (b) in situations involving cases pending in court and in other instances in which action must be taken to avoid prejudicing the U.S. Government's interest. The normal administrative procedures continue to apply, however, to all other issues not under U.S. competent authority consideration. For example, if there are other issues raised during the examination and the taxpayer is not in agreement with these issues, the usual procedures for completing the examination with respect to these issues apply. If the taxpayer is issued a thirty day letter with respect to these issues and prepares a protest of the unagreed issues, the taxpayer need not include any unagreed issue under consideration by the competent authority. Following the receipt of a taxpayer's protest, normal Appeals procedures shall be initiated with respect to those issues not subject to competent authority consideration.

.02 *Coordination with Appeals.* Taxpayers that disagree with a proposed U.S. adjustment may either pursue their right of administrative review with Appeals before requesting competent authority assistance or may request competent authority assistance immediately. *See, however,* section 8 of this revenue procedure for Simultaneous Appeals procedures. Appeals' consideration of potential competent authority matters will be made without regard to other issues or considerations that do not involve potential competent authority matters.

.03 *Coordination with Litigation.* The U.S. competent authority will not, without the consent of the Chief Counsel, accept (or continue to consider) a taxpayer's request for assistance if the request involves a taxable period pending in a U.S. court or involves a matter pending in a U.S. court or designated for litigation for any taxable period. If the case is pending in the United States Tax Court, the taxpayer may, in appropriate cases, be asked to join the Service in a motion to sever issues or delay trial pending completion of the competent authority proceedings. If the case is

pending in any other court, the Chief Counsel will consult with the Department of Justice about appropriate action, and the taxpayer may, in appropriate cases, be asked to join the U.S. Government in a motion to sever issues or delay trial pending completion of the competent authority proceedings. Final decision on severing issues or delaying trial rests with the court. The filing of a competent authority request does not, however, relieve the taxpayer from taking any action that may be necessary or required with respect to litigation.

.04 *Coordination with the APA Procedure.* Rev. Proc. 91-22, 1991-1 C.B. 526, informs taxpayers how to request an APA from the office of the Associate Chief Counsel (International). If an APA request involves a treaty country, taxpayers are encouraged to seek a competent authority agreement with respect to the matters that are the subject of the APA. The purpose of a competent authority agreement in this case is to avoid double taxation that otherwise may occur. Further, where the taxpayer requests that, as part of the APA process, consideration be given to resolving an issue raised by the Service for earlier taxable periods, the taxpayer is encouraged to seek competent authority consideration of the issue for these periods.

.05 *Effect of Agreements or Judicial Determinations on Competent Authority Proceedings.* If a taxpayer either executes a closing agreement with the District (whether or not contingent upon competent authority relief) with respect to a potential competent authority issue or reaches a settlement on the issue with Appeals or Counsel pursuant to a closing agreement or other written agreement, the U.S. competent authority will endeavor only to obtain a correlative adjustment from the treaty country and will not undertake any actions that would otherwise change such agreements. However, the U.S. competent authority will, in appropriate cases, consider actions necessary for the purpose of providing relief pursuant to Rev. Proc. 65-17. Once a taxpayer's tax liability for the taxable periods in issue has been determined by a U.S. court (including settlement of the proceedings before or during trial), the U.S. competent authority similarly will endeavor only to obtain correlative relief from the treaty country and will not undertake any action that would otherwise reduce the taxpayer's federal

tax liability for the taxable periods in issue as determined by a U.S. court. Taxpayers therefore should be aware that in these situations, as well as in situations where a treaty country takes a similar position with respect to issues resolved under its domestic laws, relief from double taxation may be jeopardized.

.06 *Accelerated Competent Authority Procedure.* A taxpayer requesting competent authority assistance with respect to an issue raised by the Service also may request that the competent authorities attempt to resolve the issue for subsequent taxable periods ending prior to the date of the request for assistance if the same issue continues in those periods. *See also* Rev. Proc. 94-67, 1994-2 C.B. 800, concerning the Accelerated Issue Resolution (“AIR”) process. The U.S. competent authority will consider the request and will contact the appropriate District to consult on whether the issue should be resolved for subsequent taxable periods. If the District consents to this procedure, the U.S. competent authority will present to the foreign competent authority the request to consider such taxable periods. For purposes of resolving the issue, the taxpayer must furnish all relevant information and statements that may be requested by the U.S. competent authority pursuant to this revenue procedure. In addition, if the case involves a Coordinated Examination Program (“CEP”) taxpayer, the taxpayer must furnish all relevant information and statements requested by the District Director, as described in Rev. Proc. 94-67, 1994-2 C.B. 800. If the case involves a non-CEP taxpayer, the taxpayer must furnish all relevant information and statements that may be requested by the District Director. A request for the accelerated competent authority procedure may be made at the time of filing a request for competent authority assistance or at any time thereafter, but generally before conclusion of the mutual agreement in the case; however, taxpayers are encouraged to request the procedure as early as practicable. The application of the accelerated procedure may require the prior consent of the Chief Counsel. *See* section 7.03 of this revenue procedure. A request for the accelerated competent authority procedure must contain a statement that the taxpayer agrees that: (1) the inspection of books of account or records under the accelerated competent authority procedure will

not preclude or impede (under § 7605(b) or any administrative provision adopted by the Service) a later examination of a return or inspection of books of account or records for any taxable period covered in the accelerated competent authority assistance request and (2) the Service need not comply with any applicable procedural restrictions (for example, providing notice under § 7605(b)) before beginning such examination or inspection. For competent authority assistance with respect to prospective periods, *see* Rev. Proc. 91-22, 1991-1 C.B. 526. The accelerated competent authority procedure is not subject to the AIR process limitations.

SEC. 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *General.* A taxpayer filing a request for competent authority assistance under this revenue procedure may, at the same time or at a later date, request Appeals’ consideration of the competent authority issue under the procedures and conditions provided in this section. The U.S. competent authority also may request Appeals’ involvement if it is determined that such involvement would facilitate the negotiation of a mutual agreement in the case or otherwise would serve the interest of the Service. The taxpayer may, at any time, request a pre-filing conference with the offices of the National Director of Appeals and the U.S. competent authority to discuss the Simultaneous Appeals procedure.

.02 *Time for Requesting the Simultaneous Appeals Procedure.*

(a) *When Filing For Competent Authority Assistance.*

The Simultaneous Appeals procedure may be invoked at any of the following times:

(1) When the taxpayer applies for competent authority assistance with respect to an issue for which the District has proposed an adjustment and before the protest is filed;

(2) When the taxpayer files a protest with Appeals and decides to sever the competent authority issue and seek competent authority assistance while other issues are referred to Appeals; and

(3) When the case is in Appeals and the taxpayer later decides to request competent authority assistance with respect to the competent authority

issue. The taxpayer may sever the competent authority issue for referral to the U.S. competent authority and invoke the Simultaneous Appeals procedure at any time when the case is in Appeals but before settlement of the issue. Taxpayers, however, are encouraged to invoke the Simultaneous Appeals procedure as soon as possible, preferably as soon as practicable after the first Appeals conference.

(b) *After Filing For Competent Authority Assistance.* The taxpayer may request the Simultaneous Appeals procedure at any time after requesting competent authority assistance. However, a taxpayer’s request for the Simultaneous Appeals procedure generally will be denied if made after the date the U.S. position paper is communicated to the foreign competent authority, unless the U.S. competent authority determines that the procedure would facilitate an early resolution of the competent authority issue or otherwise is in the best interest of the Service.

.03 *Cases Pending in Court.* If the matter is pending before a U.S. court or has been designated for litigation and jurisdiction has been released to the U.S. competent authority, a request for the Simultaneous Appeals procedure may be granted only with the consent of the Chief Counsel.

.04 *Request for Simultaneous Appeals Procedure.* The taxpayer’s request for the Simultaneous Appeals procedure should be addressed to the U.S. competent authority either as part of the initial competent authority assistance request or, if made later, as a separate letter to the U.S. competent authority. The request should state whether the issue was previously protested to Appeals for the periods in competent authority or for prior periods (in which case a copy of the relevant portions of the protest and an explanation of the outcome, if any, should be provided). The U.S. competent authority will send a copy of the request to the National Director of Appeals, who, in turn, will forward a copy to the appropriate Regional Director of Appeals. When the U.S. competent authority invokes the Simultaneous Appeals procedure, the taxpayer will be notified. The U.S. competent authority has jurisdiction of the issue when the Simultaneous Appeals procedure is invoked.

.05 *Role of Appeals in the Competent Authority Process.*

(a) *Appeals Process.* The Appeals representative assigned to the case will consult with the taxpayer and the U.S. competent authority for the purpose of reaching a resolution of the unagreed issue under competent authority jurisdiction before the issue is presented to the foreign competent authority. For this purpose, established Appeals procedures apply. The Appeals representative will consult with the U.S. competent authority during this process to ensure appropriate coordination of the Appeals process with the competent authority procedure, so that the terms of a tentative resolution and the principles and facts upon which it is based are compatible with the position that the U.S. competent authority intends to present to the foreign competent authority with respect to the issue. Any resolution reached with the Service under this procedure is subject to the competent authority process and, therefore, is tentative and not binding on the Service or the taxpayer. The Service will not request the taxpayer to conclude the Appeals process with a written agreement. The conclusions of the tentative resolution, however, generally will be reflected in the U.S. position paper used for negotiating a mutual agreement with the foreign competent authority. The procedures under this section do not give taxpayers the right to receive a fresh consideration of the issue by Appeals where the taxpayer applied for competent authority assistance after having received substantial Appeals consideration. Rather, the Service shall rely upon such previous consideration by Appeals when considering the case under the Simultaneous Appeals procedure.

(b) *Assistance to U.S. Competent Authority.* The U.S. competent authority is responsible for developing a U.S. position paper with respect to the issue and for conducting the mutual agreement procedure. Generally, requesting Appeals' consideration of an issue under competent authority jurisdiction will not affect the manner in which taxpayers normally are involved in the competent authority process.

.06 *Denial or Termination of Simultaneous Appeals Procedure.* (a) *Taxpayer's Termination.* The taxpayer may, at any time, withdraw its request for the Simultaneous Appeals procedure.

(b) *Service's Denial or Termination.* The U.S. competent authority, the National Director of Appeals, or the

appropriate Regional Director of Appeals may decide to deny or terminate the Simultaneous Appeals procedure if the procedure is determined to be prejudicial to the mutual agreement procedure or to the administrative appeals process. For example, a taxpayer that received Appeals consideration before requesting competent authority assistance, but was unable to reach a settlement in Appeals, may be denied the Simultaneous Appeals procedure. A taxpayer may request a conference with the offices of the U.S. competent authority and the National Director of Appeals to discuss the denial or termination of the procedure.

.07 *Returning to Appeals.* If the competent authorities fail to agree or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer will be permitted to refer the issue to Appeals for further consideration.

.08 *Appeals Consideration of Non-Competent Authority Issues.* The Simultaneous Appeals procedure does not affect the taxpayer's rights to Appeals' consideration of other unresolved issues. The taxpayer may pursue settlement discussions with respect to the other issues without waiting for resolution of the issues under competent authority jurisdiction.

SEC. 9. PROTECTIVE MEASURES

.01 *General.* In any matter subject to this revenue procedure, the taxpayer must take (or, if necessary, advise a related person to take) such protective measures as may be necessary with the U.S. and foreign tax authorities so that the implementation of any agreement reached by the competent authorities is not barred by administrative, legal or procedural barriers. Such barriers may arise either before or after a competent authority request is filed. Protective measures include, but are not limited to: (a) filing amended returns or protective claims for refund or credit; (b) staying the expiration of any period of limitations on the making of a refund or other tax adjustment; (c) avoiding the lapse or termination of the taxpayer's right to appeal any tax determination; (d) complying with all applicable procedures for invoking competent authority consideration, including applicable treaty provisions dealing with time limits within which to invoke such remedy; and (e) contest-

ing an adjustment or seeking an appropriate correlative adjustment with respect to the U.S. or treaty country tax. A taxpayer should take protective measures in a timely manner, that is, in a manner that allows sufficient time for appropriate procedures to be completed and effective before barriers arise. Generally, a taxpayer should consider, at the time an adjustment is first proposed, which protective measures may be necessary and when such measures should be taken. However, earlier consideration of appropriate actions may be desirable, for example, in the case of a recurring adjustment or where the taxpayer otherwise is on notice that an adjustment is likely to be proposed. See section 9.05 of this revenue procedure regarding treaty provisions waiving procedural and other barriers. Taxpayers may consult with the U.S. competent authority to determine the need for and timing of protective measures in their particular case.

.02 *Filing of Amended Tax Return in the United States.* At the time the request for competent authority assistance is filed, the taxpayer also must file, in cases involving an adjustment proposed by a treaty country, an amended federal tax return (for example, a Form 1120X, *Amended U.S. Corporation Income Tax Return*, if a Form 1120 was originally filed) in the manner provided in the regulations under § 6402 of the Code. The amended tax return shall be limited to a claim for credit or refund of the taxes attributable to the matters under competent authority consideration. The amended tax return shall be filed by attaching it to the request for competent authority assistance. An amended return filed in accordance with this section should not be filed with any other office of the Service, notwithstanding any instructions concerning the place for filing on such forms or in such regulations. Final disposition of the amended return will be deferred by the Service until the U.S. competent authority disposes of the issues under consideration.

.03 *Filing a Protective Claim in the United States.*

(a) *In General.* There may be situations where a taxpayer is unable to file a formal competent authority assistance request before the statute of limitations expires with respect to the affected U.S. return. In this situation, before the statute of limitations expires, the tax-

payer should file a protective claim for refund or credit of the taxes attributable to the potential competent authority issue to ensure that assistance will not be barred. Situations for which a protective filing may be appropriate include: (i) the treaty country is considering but has not yet proposed an adjustment; (ii) the treaty country has proposed an adjustment but the related taxpayer in the treaty country decides to pursue administrative or judicial remedies in the foreign country; or (iii) the terms of the applicable treaty require notification to be made to the competent authority within a certain time period. In considering whether to accept a taxpayer's request for competent authority assistance, the U.S. competent authority will consider whether the taxpayer has filed a protective claim in accordance with this subsection.

(b) *Filing of Protective Claim.* A protective claim is made by filing an appropriate amended federal tax return, as provided in section 9.02 of this revenue procedure. The amended tax return is filed with the U.S. competent authority at the address indicated in section 4.02 of this revenue procedure and before the expiration of any applicable time limitations. The amended return shall indicate that the taxpayer is filing a protective claim and shall set forth, to the extent available, the information required under section 4.05 (a) through (j) or under section 5.03 (a) through (e) of this revenue procedure. An amended tax return filed in this manner will be considered a properly filed amended tax return, notwithstanding any other instruction on the form or in regulations concerning the place for filing.

(c) *Notification Requirement.* After filing a protective claim, the taxpayer periodically must notify the U.S. competent authority whether the taxpayer still is considering filing for competent authority assistance. The notification must be filed every six months until the formal request for competent authority assistance is filed. The U.S. competent authority may deny competent authority assistance if the taxpayer fails to file this semi-annual notification.

(d) *No Consultation between Competent Authorities until Formal Request is Filed.* The U.S. competent authority generally will not undertake any consultation with the treaty country's competent authority with respect to a

protective claim. The U.S. competent authority shall place the protective claim in suspense until either a formal request for competent authority assistance is filed or the taxpayer notifies the U.S. competent authority that competent authority consideration is no longer needed.

.04 *Effect of an Amended Tax Return.* An amended tax return filed under either sections 9.02 and 9.03 of this revenue procedure only allows a credit or a refund to the extent agreed to by the U.S. and foreign competent authorities or to the extent unilaterally allowed by the U.S. competent authority. This revenue procedure does not grant a taxpayer the right to invoke § 482 of the Code in its favor or compel the Service to allocate income or deductions or grant a tax credit or refund.

.05 *Treaty Provisions Waiving Procedural Barriers.* In those cases where the mutual agreement procedure provision of a tax treaty waives or removes procedural barriers to the credit or refund of tax, taxpayers may be allowed a credit or refund of U.S. or foreign tax even though the otherwise applicable period of limitations has expired, prior closing agreements have been entered into, or other actions have been taken or omitted that ordinarily would foreclose relief in the form of a credit or refund of tax. However, because of differences in interpreting these waiver provisions or other difficulties that may arise in their application, taxpayers nonetheless should take appropriate protective measures as described under this revenue procedure or under applicable foreign procedures. In considering whether to accept a taxpayer's request for competent authority assistance, the U.S. competent authority will consider whether the taxpayer took protective measures in accordance with this section.

SEC. 10. APPLICATION OF REV. PROC. 65-17

Rev. Proc. 65-17 generally provides for the tax-free repatriation of certain amounts following an allocation of income between related U.S. and foreign corporations under § 482 of the Code. If a taxpayer intends to request competent authority assistance to resolve the underlying double taxation matter with the treaty country, the taxpayer should file for Rev. Proc. 65-

17 relief in conjunction with its request for competent authority assistance. See Rev. Proc. 96-14, page 00, this Bulletin, which also sets forth the procedures for securing relief under Rev. Proc. 65-17 when a taxpayer does not intend to request competent authority assistance.

SEC. 11. DETERMINATION OF CREDITABLE FOREIGN TAXES

For purposes of determining the amount of foreign tax creditable under §§ 901 and 902 of the Code, any amounts paid to foreign tax authorities that would not have been due if the treaty country had made a correlative adjustment may not constitute a creditable foreign tax. See § 1.901-2(e)(5)(i) of the regulations and Rev. Rul. 92-75, 1992-2 C.B. 197. Acts or omissions by the taxpayer that preclude effective competent authority assistance, including failure to take protective measures as described in section 9 of this revenue procedure or failure to seek competent authority assistance, may constitute failure to exhaust all effective and practical remedies for purposes of § 1.901-2(e)(5)(i). Further, the fact that the taxpayer has sought competent authority assistance but obtained no relief, either because the competent authorities failed to reach an agreement or because the taxpayer rejected an agreement reached by the competent authorities, generally will not, in and of itself, demonstrate for purposes of § 1.901-2(e)(5)(i) that the taxpayer has exhausted all effective and practical remedies to reduce the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment). Any determination within the Service of whether a taxpayer has exhausted the competent authority remedy must be made in consultation with the U.S. competent authority.

SEC. 12. ACTION BY U.S. COMPETENT AUTHORITY

.01 *Notification of Taxpayer.* Upon receiving a request for assistance pursuant to this revenue procedure, the U.S. competent authority will notify the taxpayer whether the facts provide a basis for assistance.

.02 *Denial of Assistance.* The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to the taxpayer if:

(a) the taxpayer is not entitled to the treaty benefit or safeguard in question or to the assistance requested;

(b) the taxpayer is willing only to accept a competent authority agreement under conditions that are unreasonable or prejudicial to the interests of the U.S. Government;

(c) the taxpayer rejected the competent authority resolution of the same or similar issue in a prior case;

(d) the taxpayer does not agree that competent authority negotiations are a government-to-government activity that does not include the taxpayer's participation in the negotiation proceedings;

(e) the taxpayer does not furnish upon request sufficient information to determine whether the treaty applies to the taxpayer's facts and circumstances;

(f) the taxpayer was found to have acquiesced in a foreign initiated adjustment that involved significant legal or factual issues that otherwise would be properly handled through the competent authority process and then unilaterally made a corresponding correlative adjustment or claimed an increased foreign tax credit, without initially seeking U.S. competent authority assistance; or

(g) the taxpayer: (i) fails to comply with this revenue procedure; (ii) fails to cooperate with the U.S. competent authority (including failing to provide sufficient facts and documentation to support its claim of double taxation or taxation contrary to the treaty); or (iii) failed to cooperate with the Service during the examination of the periods in issue and such failure significantly impedes the ability of the U.S. competent authority to negotiate and conclude an agreement (e.g., the period of limitations for assessment in the foreign country has expired or significant factual development is required that cannot effectively be completed outside the examination process).

.03 Extending Period of Limitations for Assessment. If the U.S. competent authority accepts a request for assistance, the taxpayer may be requested to execute a consent extending the period of limitations for assessment of tax for the taxable periods in issue. Failure to comply with the provisions of this subsection can result in denial of assistance by the U.S. competent authority with respect to the request.

.04 No Review of Denial of Request for Assistance. The U.S. competent authority's denial of a taxpayer's re-

quest for assistance or dismissal of a matter previously accepted for consideration pursuant to this revenue procedure is final and not subject to administrative review.

.05 Notification. The U.S. competent authority will notify a taxpayer requesting assistance under this revenue procedure of any agreement that the U.S. and the foreign competent authorities reach with respect to the request. If the taxpayer accepts the resolution reached by the competent authorities, the agreement shall provide that it is final and is not subject to further administrative or judicial review. If the competent authorities fail to agree, or if the agreement reached is not acceptable to the taxpayer, the taxpayer may withdraw the request for competent authority assistance and may then pursue all rights to review otherwise available under the laws of the United States and the treaty country. Where the competent authorities fail to agree, no further competent authority remedies generally are available, except with respect to treaties that provide for arbitration of the dispute. *See, e.g.,* Article 25(5) of the U.S.- German income tax treaty. A request for arbitration shall be made in accordance with the procedures prescribed under the applicable treaty and related documents, including procedures which the Service may promulgate from time to time.

.06 Closing Agreement. When appropriate, the taxpayer will be requested to reflect the terms of the mutual agreement and of the competent authority assistance provided in a closing agreement, in accordance with section 6.07 and 6.17 of Rev. Proc. 68-16, 1968-1 C.B. 770.

.07 Unilateral Withdrawal or Reduction of U.S. Initiated Adjustments. With respect to U.S. initiated adjustments under § 482 of the Code, the primary goal of the mutual agreement procedure is to obtain a correlative adjustment from the treaty country. For other types of U.S. initiated adjustments, the primary goal of the U.S. competent authority is the avoidance of taxation in contravention of an applicable treaty. Unilateral withdrawal or reduction of U.S. initiated adjustments, therefore, generally will not be considered. For example, the U.S. competent authority will not withdraw or reduce an adjustment to income, deductions, credits or other items solely because the period of limitations has expired in the foreign country and the foreign competent

authority has declined to grant any relief. If the period provided by the foreign statute of limitations has expired, the U.S. competent authority may take into account other relevant facts to determine whether such withdrawal or reduction is appropriate and may, in extraordinary circumstances and as a matter of discretion, provide such relief with respect to the adjustment to avoid actual or economic double taxation. In no event, however, will relief be granted where there is fraud or negligence with respect to the relevant transactions. In keeping with the U.S. Government's view that tax treaties should be applied in a balanced and reciprocal manner, the United States normally will not withdraw or reduce an adjustment where the treaty country does not grant similar relief in equivalent cases.

SEC. 13. REQUESTS FOR RULINGS

.01 General. Requests for advance rulings regarding the interpretation or application of a tax treaty, as distinguished from requests for assistance from the U.S. competent authority pursuant to this revenue procedure, must be submitted to the Associate Chief Counsel (International) in accordance with Rev. Proc. 96-1, 1996-1 I.R.B. 8.

.02 Foreign Tax Rulings. The Service does not issue advance rulings on the effect of a tax treaty on the tax laws of a treaty country for purposes of determining the tax of the treaty country.

SEC. 14. FEES

Rev. Proc. 96-1, 1996-1 I.R.B. 8, sec. 14, requires the payment of user fees for requests to the Service for rulings, opinion letters, determination letters and similar requests. No user fees are required for requests for competent authority assistance pursuant to this revenue procedure.

SEC. 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 91-23 and Rev. Proc. 91-26 are superseded by this revenue procedure. Rev. Proc. 91-22 is amplified. Rev. Rul. 72-437, 1972-2 C.B. 660, is modified. Rev. Rul. 92-75 is clarified.

SEC. 16. EFFECTIVE DATE

This revenue procedure is effective for requests for competent authority assistance filed after January 16, 1996.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Edward G. Turco of the Office of International Programs, Tax Treaty Division and Judith Cavell Cohen of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, contact either Mr. Turco on (202) 874-1570 or Ms. Cohen on (202) 622-3880 (not toll-free calls).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 96-14

SECTION 1. PURPOSE

This revenue procedure prescribes additional conditions associated with obtaining relief otherwise available under Rev. Proc. 65-17, 1965-1 C.B. 833.

SEC. 2. BACKGROUND

Rev. Rul. 82-80, 1982-1 C.B. 89, and Rev. Proc. 65-17, 1965-1 C.B. 833, as amplified, amended, clarified and modified by Rev. Proc. 65-31, 1965-2 C.B. 1024, Rev. Proc. 65-17 Amendment I, 1966-2 C.B. 1211, Rev. Proc. 65-17 Amendment II, 1974-1 C.B. 411, Rev. Proc. 70-23, 1970-2 C.B. 505, Rev. Proc. 71-35, 1971-2 C.B. 573, Rev. Proc. 72-48, 1972-2 C.B. 829, Rev. Proc. 72-53, 1972-2 C.B. 833, and Rev. Proc. 91-24, 1991-1 C.B. 542, (hereinafter referred to as "Rev. Proc. 65-17") provide for the tax-free repatriation of certain amounts following an allocation of income between related U.S. and foreign corporations under section 482 of the Code. Generally, in order to obtain the treatment provided by Rev. Proc. 65-17, the taxpayer must file a written statement requesting such relief with the appropriate District Director. However, in situations involving a country with which the United States has an income tax convention in force which contains a mutual agreement procedure article ("treaty cases"), Rev. Proc. 91-

24 provides that the relief provided under Rev. Proc. 65-17 is available only in conjunction with a request for assistance from the U.S. competent authority. This revenue procedure supersedes Rev. Proc. 91-24.

SEC. 3. PROCEDURES FOR OBTAINING REV. PROC. 65-17 RELIEF IN TREATY CASES

If a taxpayer intends to request competent authority assistance pursuant to Rev. Proc. 96-13, page 31, this Bulletin, to resolve a double taxation matter in a treaty case, the taxpayer should request relief under Rev. Proc. 65-17 in conjunction with its request for competent authority assistance under the provisions of Rev. Proc. 96-13, sec. 4 and sec. 10. In addition, where a request for relief under Rev. Proc. 65-17 is already pending before the Service at the time a request for competent authority assistance is made, the taxpayer must forward a copy of the pending Rev. Proc. 6-17 request to the U.S. competent authority. The U.S. competent authority will consider relief under Rev. Proc. 65-17 in conjunction with consideration of the competent authority matter. If a taxpayer does not intend to request competent authority assistance in a treaty case, the taxpayer must follow the procedures under Rev. Proc. 65-17 to request relief provided thereunder; however, the closing agreement required in that revenue procedure cannot be entered into except with the concurrence of the Assistant Commissioner (International).

SEC. 4. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 82-80, 1982-1 C.B. 89, and Rev. Proc. 65-17, 1965-1 C.B. 833, as amplified, amended, clarified and modified by Rev. Proc. 65-31, 1965-2 C.B. 1024, Rev. Proc. 65-17 Amendment I, 1966-2 C.B. 1211, Rev. Proc. 65-17 Amendment II, 1974-1 C.B. 411, Rev. Proc. 70-23, 1970-2 C.B. 505, Rev. Proc. 71-35, 1971-2 C.B. 573, Rev. Proc. 72-48, 1972-2 C.B. 829, and Rev. Proc. 72-53, 1972-2 C.B. 833, are modified. Rev. Proc. 91-24, 1991-1 C.B. 542, is superseded.

SEC. 5. EFFECTIVE DATE

This revenue procedure is effective

for requests for Rev. Proc. 65-17 relief filed after January 16, 1996.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Edward G. Turco of the Office of International Programs, Tax Treaty Division and Judith Cavell Cohen of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, contact either Mr. Turco on (202) 874-1570 or Ms. Cohen on (202) 622-3880 (not toll-free calls).

26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 170, 2031, 2512; 1.170A-13; 20.2031-6; 25.2512-1.)

Rev. Proc. 96-15

SECTION 1. PURPOSE

This revenue procedure informs taxpayers how to request from the Internal Revenue Service a Statement of Value that can be used to substantiate the value of art for income, estate, or gift tax purposes. A taxpayer that complies with the provisions of this revenue procedure may rely on the Statement of Value in completing the taxpayer's federal income tax, estate tax, or gift tax return that reports the transfer of art.

SECTION 2. BACKGROUND

.01 *Income Tax Charitable Deduction.*

(1) Section 170(a) of the Internal Revenue Code allows as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made during the taxable year.

(2) Section 1.170A-1(c)(1) of the Income Tax Regulations provides that if a charitable contribution is made in property other than money, the amount of the contribution is generally the fair market value of the property at the time of the contribution.

(3) Section 1.170A-1(c)(2) provides that the fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(4) Section 1.170A-13 sets forth the recordkeeping and return requirements for deductions for charitable contributions. For a deduction for a charitable contribution of property in excess of \$5,000, § 1.170A-13(c) requires a qualified appraisal and an appraisal summary.

(5) Rev. Proc. 66-49, 1966-2 C.B. 1257, provides guidelines for review of appraisals of contributed property for purposes of § 170. Section 4.01 of Rev. Proc. 66-49 states that the Service will not approve valuations or appraisals prior to the actual filing of the tax return to which the appraisal pertains, and will not issue advance rulings approving or disapproving appraisals.

.02 Estate Tax.

(1) Section 2031 provides that the value of the gross estate of a decedent is determined by including the value at the time of death of all property wherever situated.

(2) Section 20.2031-1(b) of the Estate Tax Regulations provides that the value of property includible in a decedent's gross estate is its fair market value at the time of the decedent's death.

(3) Section 2032(a) provides that the executor may elect to determine the value of all the property included in the gross estate as of 6 months after the decedent's death. However, property distributed, sold, exchanged, or otherwise disposed of within 6 months after death must be valued as of the date of distribution, sale, exchange, or other disposition.

(4) Section 20.2031-6(a) provides that the fair market value of a decedent's household and personal effects is the price that a willing buyer would pay to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts.

(5) Section 20.2031-6(b) provides that if there are included among the household and personal effects articles having marked artistic or intrinsic value of a total in excess of \$3,000, the appraisal of an expert or experts, under oath, must be filed with the estate tax return.

(6) Section 20.2031-6(d) provides that if, pursuant to § 20.2031-6 (a) and (b), expert appraisers are employed, care must be taken to see that they are reputable and of recognized competency to appraise the particular class of

property involved. In listing paintings having artistic value, the size, subject, and artist's name must be stated.

.03 Gift Tax.

(1) Section 2512(a) provides that if a gift is made in property, the value thereof at the date of the gift is the amount of the gift.

(2) Section 25.2512-1 of the Gift Tax Regulations provides that the value of property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts.

.04 *Legislation Authorizing User Fees.* Section 10511 of the Revenue Act of 1987, 1987-3 C.B. 1, 166, as amended by § 11319 of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 511, and by § 743 of the Uruguay Round Agreements Act, 1995-11 I.R.B. 5, 14, requires the Secretary of the Treasury or delegate to establish a program requiring the payment of user fees for requests to the Service for letter rulings, opinion letters, determination letters, and similar requests. The fees apply to requests made on or after February 1, 1988, and before October 1, 2000. The fees charged under the program (1) vary according to categories or subcategories established by the Secretary; (2) are determined after taking into account the average time for, and difficulty of, complying with requests in each category and subcategory; and (3) are payable in advance.

SECTION 3. SCOPE

.01 Except as provided in section 3.02, this revenue procedure applies to an item of art that has been appraised at \$50,000 or more, and has been transferred (1) as a "charitable contribution" within the meaning of § 170(c), (2) by reason of a decedent's death, or (3) by inter vivos gift.

.02 The Service may issue a Statement of Value for items appraised at less than \$50,000 if (1) the request for the Statement of Value includes a request for appraisal review for at least one item appraised at \$50,000 or more, and (2) the Service determines that issuance of such a Statement would be in the best interest of efficient tax administration.

.03 The Service may decline to issue a Statement of Value when appropriate

in the interest of efficient tax administration. If the Service declines to issue a Statement of Value under this section 3.03, the Service will refund the user fee.

SECTION 4. DEFINITIONS

.01 The term "art" includes paintings, sculpture, watercolors, prints, drawings, ceramics, antique furniture, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

.02 The term "taxpayer" includes an executor or administrator acting on behalf of an estate, and a donor of a gift.

.03 The term "valuation date" refers to the date of death, the alternate valuation date (as established under § 2032(a)), or the date of the gift.

SECTION 5. REQUESTING A STATEMENT OF VALUE FOR INCOME TAX CHARITABLE DEDUCTION PURPOSES

.01 To request a Statement of Value from the Service for an item of art transferred as a charitable contribution within the meaning of § 170(c), a taxpayer must submit to the Service a request for a Statement of Value for the item prior to filing the income tax return that first reports the charitable contribution. The request must include the following:

(1) a copy of an appraisal (as described in section 6 of this revenue procedure) of the item of art;

(2) a check or money order payable to the Internal Revenue Service (user fee) in the amount of \$2,500 for a request for a Statement of Value for one, two, or three items of art, plus \$250 for each additional item of art for which a Statement of Value is requested;

(3) a completed appraisal summary (Section B of Form 8283, Noncash Charitable Contributions) that meets the requirements of § 1.170A-13(c)(4); and

(4) the location of the District Office that has or will have examination jurisdiction over the return (not the Service Center where the return is filed).

.02 A taxpayer may withdraw the request for a Statement of Value at any time before it is issued by the Service. The user fee will not be refunded for a

request that is withdrawn. When a request is withdrawn, the appropriate District Director will be notified.

.03 If a request for a Statement of Value lacks information essential to the issuance of a Statement of Value for an item of art, the Service will notify the taxpayer that the request will not be processed for that item unless the Service receives the missing information within 30 calendar days after the date of such notification.

SECTION 6. APPRAISAL FOR INCOME TAX CHARITABLE DEDUCTION PURPOSES

.01 An appraisal submitted to the Service by a taxpayer under section 5 of this revenue procedure must meet the requirements for a qualified appraisal under § 1.170A-13(c)(3)(i)-(iii), and must also include the following:

(1) a complete description of the item of art, including:

- (a) the name of the artist or culture,
- (b) the title or subject matter,
- (c) the medium, such as oil on canvas, or watercolor on paper,
- (d) the date created,
- (e) the size,
- (f) any marks, signatures, or labels on the item of art, on the back of the item of art, or affixed to the frame,
- (g) the history (provenance) of the item, including proof of authenticity, if that information is available,

(h) a record of any exhibitions at which the item was displayed,

(i) any reference source citing the item, and

(j) the physical condition of the item;

(2) a professional quality photograph of a size and quality fully showing the item, preferably an 8 × 10 inch color photograph or a color transparency not smaller than 4 × 5 inches; and

(3) the specific basis for the valuation.

.02 The appraisal must be made no earlier than 60 days prior to the date of the contribution of the item of art.

.03 Taxpayers are encouraged to include in the request any additional information that may affect the determination of the fair market value of the item of art.

.04 The requirements of section 6 of this revenue procedure must be met by Subchapter C corporations, even though

they would otherwise be exempt under § 1.170A-13(c)(2)(ii)(B)(3) from the appraisal requirements.

SECTION 7. REQUESTING A STATEMENT OF VALUE FOR ESTATE TAX OR GIFT TAX PURPOSES

.01 To request a Statement of Value from the Service for an item of art transferred as part of an estate or as an inter vivos gift, a taxpayer must submit to the Service a request for a Statement of Value for the item prior to filing the federal estate tax return or the federal gift tax return that first reports the transfer of the item. The request must include the following:

(1) a copy of an appraisal (as described in section 8 of this revenue procedure) of the item of art;

(2) a check or money order payable to the Internal Revenue Service (user fee) in the amount of \$2,500 for a request for a Statement of Value for one, two, or three items of art, plus \$250 for each additional item of art for which a Statement of Value is requested;

(3) a description of the item of art;

(4) the appraised fair market value;

(5) the cost, date, and manner of acquisition;

(6) the date of death (or the alternate valuation date, if applicable) or the date of the gift; and

(7) the location of the District Office that has or will have examination jurisdiction over the return (not the Service Center where the return is filed).

.02 A taxpayer may withdraw the request for a Statement of Value at any time before it is issued by the Service. The user fee will not be refunded for a request that is withdrawn. When a request is withdrawn, the appropriate District Director will be notified.

.03 If a request for a Statement of Value lacks information essential to the issuance of a Statement of Value for an item of art, the Service will notify the taxpayer that the request will not be processed for that item unless the Service receives the missing information within 30 calendar days after the date of such notification.

SECTION 8. APPRAISAL FOR ESTATE TAX OR GIFT TAX PURPOSES

.01 An appraisal submitted to the Service by a taxpayer under section 7

of this revenue procedure must include the following:

(1) a complete description of the item of art, including:

(a) the name of the artist or culture,

(b) the title or subject matter,

(c) the medium, such as oil on canvas, or watercolor on paper,

(d) the date created,

(e) the size,

(f) any marks, signatures, or labels on the item of art, on the back of the item of art, or affixed to the frame,

(g) the history (provenance) of the item, including proof of authenticity, if such information is available,

(h) a record of any exhibitions at which the item was displayed,

(i) any reference source citing the item, and

(j) the physical condition of the item;

(2) a professional quality photograph of a size and quality fully showing the item, preferably an 8 x 10 inch color photograph or a color transparency not smaller than 4 x 5 inches;

(3) a statement that the appraisal was prepared for estate tax purposes or gift tax purposes;

(4) the date (or dates) on which the item of art was appraised;

(5) the appraised fair market value (within the meaning of § 20.2031-6(a) or 25.2512-1); and

(6) the specific basis for the valuation.

.02 The appraisal must be made no earlier than 60 days prior to the valuation date.

.03 Taxpayers are encouraged to include in the request any additional information that may affect the determination of the fair market value of the item of art.

.04 An appraisal must:

(1) be prepared, signed, and dated by an appraiser, and contain a statement by the appraiser that:

(a) the appraiser either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(b) the appraiser is qualified to make appraisals of the item of art;

(c) the appraiser is not the taxpayer;

(d) the appraiser was not a party to the transaction in which the decedent or donor of the gift acquired the item of art being appraised, unless the valuation date is within 2 months of

the date of acquisition and the appraised value is not less than the acquisition price;

(e) the appraiser is not the beneficiary or donee receiving the item of art;

(f) the appraiser is not a person who was employed by the decedent or is employed by the taxpayer;

(g) the appraiser is not related to any of the foregoing persons under § 267-(b) or married to a person who is in a relationship described in § 267(b) with any of the foregoing persons;

(h) the appraiser is not an appraiser who was regularly used by the decedent or who is regularly used by the taxpayer or the beneficiary or donee; and

(i) the appraisal fee is not based on the appraised value of the item of art;

(2) include the name, address, and taxpayer identification number (if a taxpayer identification number is otherwise required by § 6109 and the regulations thereunder) of the appraiser. If the appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnership), or an independent contractor engaged by a person other than the taxpayer, the appraiser must include the name, address, and taxpayer identification number (if a taxpayer identification number is otherwise required by § 6109 and the regulations thereunder) of the partnership or the person who employs or engages the appraiser; and

(3) include the qualifications of the appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations.

.05 The appraisal will not satisfy the requirements of this section if the taxpayer has knowledge of facts that would cause a reasonable person to expect the appraiser to overstate or understate the value of the item of art.

SECTION 9. TAXPAYER'S DECLARATION

.01 A request to obtain a Statement of Value, any factual representations associated with the request, and any amendments to the request must be accompanied by the following declaration: **"Under penalties of perjury, I declare that I have examined this request, including the accompanying**

documents, and to the best of my knowledge and belief, the facts presented in support of this request are true, correct, and complete."

.02 The declaration must be signed by the taxpayer, and not the taxpayer's representative. The person signing for an estate must be the executor or administrator of the estate. The person signing for a trust or partnership must be a trustee or general partner who has personal knowledge of the facts. The person signing for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts. If a corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties-of-perjury statement must also be signed and submitted by an officer of the common parent of the group.

.03 A taxpayer that submits additional factual information on several occasions may provide one declaration that refers to all submissions.

SECTION 10. WHERE TO SUBMIT REQUESTS

Requests for a Statement of Value should be sent to the Internal Revenue Service, POB 120, Ben Franklin Station, Washington, DC 20044, Attn: C:AP:AS:ART.

SECTION 11. NATIONAL OFFICE CONSIDERATION OF REQUESTS

.01 For a completed request for a Statement of Value received after July 15, but on or before January 15, the Service will ordinarily issue a Statement of Value by the following June 30. For a completed request for a Statement of Value received after January 15, but on or before July 15, the Service will ordinarily issue a Statement of Value by the following December 31. It is the responsibility of taxpayers to obtain extensions, as necessary, to file the appropriate tax returns.

.02 If the Service agrees with the value reported on the taxpayer's appraisal, the Service will issue a Statement of Value approving the appraisal.

.03 If the Service disagrees with the value reported on the taxpayer's appraisal, the Service will issue a Statement of Value with the Service's determination of value, and the basis for its disagreement with the taxpayer's appraisal.

SECTION 12. ATTACHMENT OF STATEMENT OF VALUE TO RETURN

.01 A copy of the Statement of Value, regardless of whether the taxpayer agrees with it, must be attached to and filed with the taxpayer's income, estate, or gift tax return that reports the transfer of the item of art valued in the Statement of Value. However, if, prior to receiving a Statement of Value, the taxpayer files an income, estate, or gift tax return reporting the transfer of an item of art for which a Statement of Value was requested, the taxpayer must indicate on the return that a Statement of Value has been requested and attach a copy of the request to the return. Upon receipt of the Statement of Value, the taxpayer must file an amended income or gift tax return, or a supplemental estate tax return, with the Statement of Value attached.

.02 If a taxpayer disagrees with a Statement of Value issued by the Service, the taxpayer may submit with the tax return additional information in support of a different value.

SECTION 13. EFFECT OF STATEMENT OF VALUE

.01 A taxpayer may rely on a Statement of Value received from the Service for an item of art, except as provided in sections 13.02 and 13.03 of this revenue procedure.

.02 A taxpayer may not rely on a Statement of Value issued to another taxpayer.

.03 A taxpayer may not rely on a Statement of Value if the representations upon which the Statement of Value was based are not accurate statements of the material facts.

SECTION 14. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 66-49 is modified.

SECTION 15. EFFECTIVE DATE

This revenue procedure applies to a request for a Statement of Value for an item of art if the request is submitted after January 15, 1996.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Jefferson K. Fox of the

Office of Chief Counsel (Income Tax and Accounting) and Deborah Ryan of the Office of Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue procedure, contact Karen Carolan of the Office of Art Appraisal Services at (202) 401-4128 (not a toll-free call).

26 CFR 601.105: Rulings and determination letters.
(Also Part I, §§ 103, 7478.)

Rev. Proc. 96-16

SECTION 1. BACKGROUND AND PURPOSE

A prospective issuer of bonds, the interest on which is intended to be excludable from gross income under § 103(a) of the Internal Revenue Code, can request a ruling that is subject to the declaratory judgment procedures of § 7478. Section 7478 provides the United States Tax Court with jurisdiction to issue declaratory judgments with respect to certain governmental obligations. A prospective issuer can file a petition under § 7478 if the Service determines that the interest on bonds will not be excludable from gross income under § 103(a) or if the Service fails to make a determination with respect to the excludability of the interest within 180 days from the time the request for a determination is made. In a declaratory judgment case, the Tax Court determines whether the interest on the bonds will be excludable under § 103 and thus must consider all of the requirements for the exclusion.

A prospective issuer or holder of bonds may also request a ruling that is not subject to the declaratory judgment provisions of § 7478. For example, the request may ask for a ruling about one or more of the various requirements for excludability under § 103(a) rather than excludability in general under § 103(a). Alternatively, the request may relate to the effect of a proposed transaction on an outstanding issue of bonds.

This revenue procedure updates existing procedures with respect to both reviewable and nonreviewable rulings. Thus, Rev. Proc. 88-32, 1988-1 C.B. 833, relating to reviewable rulings, and Rev. Proc. 88-33, 1988-1 C.B. 835, relating to nonreviewable rulings, are obsolete as provided in section 7 of this revenue procedure.

This revenue procedure provides definitions of the two types of ruling

requests and procedures for each. The procedures are designed to make it clear to both the requesting party and the Service whether a ruling request is reviewable under § 7478. For a request that is reviewable, the procedures are designed to ensure that the administrative record is fully developed with respect to each requirement for exclusion of interest under § 103(a). In addition, for a request that is reviewable, the procedures are designed to ensure that all necessary information with respect to the proposed issue of bonds is provided in a timely manner that will allow the Service to make its determination within 180 days from the date the request for a ruling is filed.

SECTION 2. SCOPE

This revenue procedure applies to any request for a letter ruling under §§ 103, 141 through 150, 1394, and 7871(c) of the Code. This revenue procedure does not apply to a request for a determination that an organization meets the requirements of § 501(c)(3) as a condition to the issuance of qualified 501(c)(3) bonds under § 145.

SECTION 3. COORDINATION WITH REV. PROC. 96-1

Unless otherwise specifically stated in this revenue procedure, the definitions and requirements set forth in Rev. Proc. 96-1, 1996-1 I.R.B. 8, apply. Any reference to Rev. Proc. 96-1 is also a reference to any successor of Rev. Proc. 96-1.

SECTION 4. PROCEDURE FOR REVIEWABLE RULINGS

.01 *Issuer Must Submit Request.* A request for a reviewable ruling must be submitted by the prospective issuer. The term "issuer" includes any state, any political subdivision of a state, and any corporation described in § 150(d). It also includes any "on-behalf-of" issuer described in Rev. Rul. 63-20, 1963-1 C.B. 24, and any constituted authority described in Rev. Rul. 57-187, 1957-1 C.B. 65, if the on-behalf-of issuer or constituted authority has been designated by a state or political subdivision to issue the prospective obligations. It does not include a conduit borrower of the proceeds of the prospective obligations.

.02 *Specific Prospective Issuance of Obligations.* A request for a reviewable

ruling must address a specific, prospective issuance of obligations. A resolution must have been adopted before the request is submitted, in accordance with state or local law authorizing the issuance of a specific issue of obligations. The resolution may state that the issuance of obligations is contingent upon a favorable ruling by the Service or a favorable decision by the Tax Court.

.03 *Statement of Facts.* The statement of facts in a request for a reviewable ruling must be complete, accurate, and detailed. Each request must contain all relevant facts. These facts include but are not limited to the following:

(1) the name, address, and taxpayer identification number of the issuer, each underwriter, and each conduit borrower (except conduit borrowers of the proceeds of bonds such as qualified mortgage bonds, qualified veterans' mortgage bonds, and qualified student loan bonds);

(2) a description of all uses and users of proceeds of the obligations;

(3) a description of the accounting method or methods that will be used to account for investments and expenditures of gross proceeds of the obligations;

(4) an estimate of all fees that will be paid in connection with the issuance of the obligations;

(5) a description of any elections made pursuant to the regulations under § 148 including elections on the application of the various versions of the those regulations;

(6) the expected principal amount, expected yield, expected issue price, and expected issue date of the prospective obligations and of the expected investments to be acquired with bond proceeds;

(7) a statement whether proceeds are expected to be invested at a yield that exceeds the yield on the issue of obligations by more than the amount permitted in § 1.148-2(d)(2) of the Income Tax Regulations (definition of materially higher yield) and a statement indicating which definition the issuer expects will apply;

(8) descriptions of any obligations that are to be refunded by the prospective obligations and representations whether the interest on each obligation that is to be refunded has been treated by the issuer as excludable from gross income under § 103; and

(9) a representation whether the issuer has received an appropriate allocation of volume cap under § 146 for the prospective obligations.

.04 *Supporting Documentation.* Rulings are based on the documents that are submitted. The initial request for a reviewable ruling, and any additional submission at a later date, must be accompanied by copies of all documentation that is relevant to the determination whether interest on the prospective obligations will be excludable from gross income under § 103. If the prospective obligations are refunding obligations, the documentation must also include the relevant documents underlying the refunded obligations. The request must include a representation that each document accompanying the request is a complete and accurate copy of the original document. The documents to be submitted include—

(1) the resolution for the issuance of the obligations;

(2) management and service contracts, leases, output contracts, and agreements that affect any facility financed with the proceeds from the obligations;

(3) the official statement and trust indenture;

(4) the arbitrage certificate and other documents containing covenants about arbitrage rebate and about subsequent intentional acts to earn arbitrage; and

(5) any relevant provision of state or local law.

.05 *Cross-references.* Relevant provisions in submitted documents must be appropriately described, analyzed, and cross-referenced in the request for a reviewable ruling.

.06 *Legal Analysis.* A request for a reviewable ruling must set forth a complete and detailed analysis of the rationale on which the requester relies to support its request for a determination that each condition for exclusion of interest on the prospective obligations under § 103 will be satisfied. The analysis submitted must include citations to the Code, regulations, revenue rulings, revenue procedures, judicial authority, and any other authority relevant to the issues raised by the request. A simple statement that a provision of the Code is satisfied is insufficient. The request must also describe in detail any relevant provision of state or local law. The following is a recommended format for the legal analysis:

(1) Whether the obligations will be issued by or on behalf of a state or political subdivision of a state;

(2) Whether the obligations will be private activity bonds under § 141;

(3) Whether the obligations will satisfy each of the provisions of §§ 142 through 147;

(4) Whether the obligations will be arbitrage bonds under § 148;

(5) Whether the obligations will satisfy the requirements of § 149;

(6) Whether the obligations will satisfy the requirements of § 150;

(7) Whether the obligations satisfy any other requirements for the exclusion of interest under § 103.

.07 *Acknowledgement.* The request for a ruling must be accompanied by a statement, signed by the issuer, acknowledging that the issuer is aware that it cannot exhaust its administrative remedies unless it complies with section 4 of this revenue procedure. Appendix A sets forth a form for this acknowledgement.

.08 *Number of Copies.* Three copies must be submitted of the initial submission and of each additional submission, including the statement of facts, legal analysis, supporting documents, cross-referenced documents, and acknowledgement.

.09 *Time Periods.* The 180-day period specified in § 7478 begins as of the date the Service receives the initial request for a ruling. To ensure a sufficient amount of time to properly process a ruling request within this 180-day period, all time periods specified by Rev. Proc. 96-1 for processing a ruling request are 14 days for purposes of processing a ruling request under this procedure. The Service may grant extensions of these 14-day periods in accordance with the procedures set forth in Rev. Proc. 96-1 for extending the time period for additional information.

.10 *Substantial compliance of initial request.* If the initial request for a reviewable ruling substantially complies with section 4 of this revenue procedure, the Service will send a written notice of initial compliance. If a request for a reviewable ruling has only minor deficiencies, the deficiencies may be corrected in the same manner that additional information is provided under section 4.11 of this revenue procedure. If the initial request for a reviewable ruling does not

substantially comply with section 4 of this revenue procedure, the Service will immediately close the request. The Service will also send written notice to the issuer, or its authorized representative, stating that the request has been closed and stating the specific nature of the defects. If a request for a reviewable ruling is closed because it does not substantially comply with section 4 of this revenue procedure, the issuer has failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court.

.11 *Additional information.* If additional information is not received within 14 days of the date the Service requests it, the request will be closed, and the issuer will have failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court. Once a request is closed, the issuer must submit a new request, and pay an additional fee, if it wishes to request a reviewable or nonreviewable ruling. If the new request is submitted not later than 30 days after the request is closed, the new request may incorporate the information and documents already submitted. To do so, the issuer must clearly state in writing that it is submitting a new request and incorporating by reference previously submitted materials.

.12 *Taxpayer conferences.*

(1) *Taxpayer conference is a step in securing a ruling.* Taxpayer conferences ensure that the requester fully participates in the processing of a request for a ruling and that the Service fully understands the requester's position. Thus, if an issuer has been notified of a tentative adverse position by the Service and does not participate in the conference, the issuer has failed to have timely taken all reasonable steps to secure a ruling subject to review by the Tax Court. After the first conference, the issuer need not participate in any additional conference offered by the Service under Rev. Proc. 96-1.

(2) *Location of conference.* The conference generally will be held at the National Office. The issuer, however, may request in writing that the conference be held by telephone.

(3) *Conference report.* If the Service prepares a conference report, a copy will be sent to the issuer. The issuer will have 14 calendar days to correct any factual errors made in the report. If the Service does not receive corrections

within the 14-day period, it may base its ruling on the facts stated in the report. The Service may grant extensions of the 14-day period in accordance with the procedures set forth in Rev. Proc. 96-1 for extending the scheduling of conferences. The conference report may be included in the administrative record filed with the Tax Court.

.13 *Withdrawal of Requests.* Any withdrawal of a request for a reviewable ruling must be made in a written statement signed by the issuer. The statement must contain an acknowledgment that the issuer has not taken all reasonable steps to secure a reviewable ruling. If a request is not withdrawn in the manner described in this paragraph, the Service will continue to process the request and may issue a ruling.

.14 *Exhaustion of Administrative Remedies.*

(1) *Compliance With Procedures Required.* The issuer must comply with the procedures described in Rev. Proc. 96-1 and in section 4 of this revenue procedure in order to have reasonably taken all steps necessary to obtain a ruling that is subject to review by the Tax Court.

(2) *Each Issuer Must Exhaust Its Remedies.* An issuer that petitions the Tax Court must itself have exhausted administrative remedies for each request for a ruling. It may not base its petition on the response to any other request for a letter ruling that it submits or that is submitted by another issuer or other person.

SECTION 5. PROCEDURE FOR NONREVIEWABLE RULINGS

.01 *Issuer or Holder Must Submit Request.* A request for a nonreviewable ruling must be submitted by an issuer or holder. The term "issuer" includes any state, any political subdivision of a state, and any corporation described in § 150(d). It also includes any "on-behalf-of" issuer described in Rev. Rul. 63-20, 1963-1 C.B. 24, and any constituted authority described in Rev. Rul. 57-187, 1957-1 C.B. 65, if the on-behalf-of issuer or constituted authority has been designated by a state or political subdivision to issue the prospective obligations. It does not include a conduit borrower of the proceeds of the prospective obligations.

Other parties may join an issuer or holder in requesting a ruling. For example, an underwriter that is not a holder may join an issuer in requesting a nonreviewable ruling but may not by itself request a ruling. However, the Service may rule in accordance with the methodology and procedure indicated in § 9(f) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839).

.02 *Specific Transaction.* The Service generally rules only on specific transactions. Thus, a request for a nonreviewable ruling must address a specific proposal to issue obligations or a specific proposed transaction that may affect the application of §§ 103, 141 through 150, 1394, or 7871(c) to obligations already issued.

.03 *Prospective Obligations.* The Service may issue a nonreviewable ruling on whether a proposed obligation meets one or more conditions for the exclusion of interest on the obligation from gross income under § 103. Before the request is submitted, a resolution must have been adopted in accordance with state or local law authorizing the issuance of the obligation that is the subject of the ruling request. Among other things, the resolution may state that the issuance of obligations is contingent upon a favorable ruling by the Service.

.04 *Outstanding Obligations.*

(1) *Whether an outstanding obligation meets conditions under § 103.* The Service will not issue a nonreviewable ruling on whether an issued and outstanding obligation that is part of an issue of obligations meets one or more conditions for the exclusion of interest on the obligation from gross income under § 103 unless the request is received by the Service before interest on any obligation in that issue is required to be reported by a holder.

(2) *Transactions affecting outstanding obligations.* The Service may issue a nonreviewable ruling on the effect of a proposed act or transaction on one or more conditions for the exclusion from gross income under § 103 of interest on an issued and outstanding obligation. The request, however, must contain a statement by the issuer that the outstanding obligation has met the conditions for the exclusion of interest under § 103 from the issue date to the date the request is submitted.

.05 *Status Rulings.* The Service will not issue a nonreviewable ruling under this procedure on the status or classification of an issuer of obligations unless the status or classification of the issuer affects the exclusion of interest under § 103 on a specific, prospective issue of obligations.

.06 *Statement of Facts.* Although a request for a nonreviewable ruling may address only one or a few of the conditions for exclusion under § 103, the requester should describe the entire transaction in the request. The requester should consider submitting the following information in complying with the procedures set forth in Rev. Proc. 96-1 for submitting requests:

(1) the name, address, and taxpayer identification number of the issuer, each underwriter, each conduit borrower (except conduit borrowers of the proceeds of bonds such as qualified mortgage bonds, qualified veterans' mortgage bonds, and qualified student loan bonds);

(2) a description of all uses and users of proceeds of the obligations;

(3) a description of the accounting method or methods that have been or will be used to account for investments and expenditures of gross proceeds of the obligations, including refunding obligations;

(4) an accounting of all fees that will be paid in connection with the issuance of the obligations;

(5) for outstanding obligations, including refunded obligations, the actual principal amount, actual issue price, actual issue date, and actual yield of the obligations and investments;

(6) for prospective obligations, the expected principal amount, expected yield, expected issue price, and expected issue date of the prospective obligations and of the expected investments to be acquired with bond proceeds;

(7) descriptions of any obligations that have been or will be refunded and representations whether the interest on each obligation that has been or will be refunded has been treated by the issuer as excludable from gross income under § 103;

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Notice of Significant Reduction in the Rate of Future Benefit Accrual

EE-34-95

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In *** [T.D. 8631, page 7, this Bulletin], the Federal Register, the IRS is issuing temporary regulations relating to the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Section 204(h) of ERISA applies to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by March 14, 1996.

ADDRESSES: Send submissions to CC:DOM:CORP:R (EE-34-95), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (EE-34-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for

review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 13, 1996.

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

The collection of information is in § 1.411(d)-6T which implements the statutory requirement of section 204(h) of ERISA that a plan administrator provide notice to participants and certain other parties if certain pension plans are amended to provide for a significant reduction in the rate of future benefit accrual. This collection of information is required to assure that the rights of participants in plans subject to section 204(h) of ERISA are protected. The likely respondents are small businesses. Responses to this collection of information are required under section 204(h) of ERISA in order for certain amendments to qualified plans to become effective.

These regulations do not involve any issues of confidentiality.

Estimated total annual reporting burden: 15,000 hours.

The estimated annual burden per respondent varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Background

Temporary regulations in *** [T.D. 8631, page 7, this Bulletin] amend the Income Tax Regulations (26 CFR part 1) (relating to section 411(d)). The text of those temporary regulations also

serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *
Section 1.411(d)-6 also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

Par. 2. Section 1.411(d)-6 is added to read as follows:

§ 1.411(d)-6 Section 204(h) notice.

[The text of this proposed section is the same as the text of § 1.411(d)-6T published elsewhere in *** [T.D. 8631, page 7, this Bulletin].]

Margaret Milner Richardson,
*Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 12, 1995, 1:23 p.m., and published in the issue of the Federal Register for December 15, 1995, 60 F.R. 64401)

Mortality Assumptions Used to Calculate an Underfunded Defined Benefit Pension Plan's Current Liability for Individuals Entitled to Benefits on Account of Disability

Announcement 96-4

The Internal Revenue Service has issued Rev. Rul. 96-7, page 12, this Bulletin, to provide guidance regarding the mortality assumptions used under § 412(l)(7)(C)(iii) of the Internal Revenue Code for plans that are subject to the additional funding requirements of § 412(l), to calculate a plan's current liability for individuals who are entitled

to benefits under the plan on account of disability. Section 412(l) provides additional funding requirements for certain underfunded defined benefit pension plans that have more than 100 participants and that are not multi-employer plans. In general, the additional funding requirements are determined based on a plan's unfunded current liability. Rev. Rul. 95-28, 1995-1 C.B. 74, sets forth the mortality table that generally must be used to determine current liability under § 412(l). Section 412(l)(7)(C)(iii)(I) provides that the Secretary shall establish mortality tables that may be used, in lieu of the generally applicable mortality tables, to determine current liability under § 412(l) for individuals who are entitled to benefits under the plan on account of disability.

Rev. Rul. 96-7 provides two mortality tables that may be used in calculating current liability for individuals who are entitled to benefits under the plan on account of disability. Rev. Rul. 96-7 provides a mortality table that may be used for plan years beginning after December 31, 1995, in lieu of the mortality table required to be used under § 412(l)(7)(C)(ii), for purposes of determining current liability for individuals entitled to benefits under the plan on account of disability, whose disabilities occurred in plan years beginning before January 1, 1995. The mortality table takes into account the experience for individuals who are entitled to benefits on account of disability under the Railroad Retirement System and the Civil Service Retirement System. This experience covers a large workforce over a broad range of occupational categories and is the best available information.

Rev. Rul. 96-7 also provides a mortality table that may be used for plan years beginning after December 31, 1995, in lieu of the mortality table required to be used under § 412(l)(7)(C)(ii), for purposes of determining current liability for individuals entitled

to benefits under the plan on account of disability, whose disabilities occur in plan years beginning after December 31, 1994. This mortality table may be used only for individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. The mortality table takes into account the Social Security Administration's experience for individuals who are receiving disability benefits under its program.

Rev. Rul. 96-7 is effective for plan years beginning after December 31, 1995. The Service plans to review the mortality tables set forth in Rev. Rul. 96-7 and, if appropriate, to issue new guidance for plan years beginning after December 31, 1996. Accordingly, the Service is soliciting public comment regarding the mortality tables in Rev. Rul. 96-7, as well as other aspects of Rev. Rul. 96-7, including the desirability of any adjustment to these aggregate mortality tables to reflect a select and ultimate pattern of mortality. Public comments should be submitted in writing on or before July 1, 1996. Comments should be sent to the following address:

Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224
Attn: Edward Sypher
CP:E:EP:A:1, Room 2548

DRAFTING INFORMATION

The principal author of this announcement is Edward Sypher of the Employee Plans Division. For further information regarding this announcement, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6076 between 2:30 and 4:00 Eastern time (not a toll-free number) Monday through Thursday. Mr. Sypher's number is (202) 622-6245 (also not a toll-free number).

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

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

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

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

Abbreviations

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

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

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

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

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.

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