

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. 2005-59, page 505.

Valid return; election to file joint return. This ruling clarifies when documents prepared or executed by the Secretary under section 6020 of the Code, or waivers on assessment constitute valid returns under *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), for purposes of the election to file a joint return under section 6013. Rev. Rul. 74-203 revoked.

T.D. 9217, page 498.

REG-121584-05, page 523.

Final, temporary, and proposed regulations under section 263A of the Code relate to the definition of self-constructed property that is considered produced on a "routine and repetitive" basis in the ordinary course of a taxpayer's trade or business for purposes of the simplified service cost method and the simplified production method provided by the regulations. For purposes of these methods, property is produced on a routine and repetitive basis only if numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of the property determined under section 168(c) is not longer than 3 years.

T.D. 9218, page 503.

Final regulations under section 883 of the Code amend the applicability date of final regulations (T.D. 9087, 2003-2 C.B. 781) that relate to income derived by a foreign corporation from the international operation of ships or aircraft. Section 423 of the American Jobs Creation Act of 2004 delayed the applicability date of the final regulations under section 883 for one year so that they will apply to taxable years of foreign corporations beginning after September 24, 2004.

Rev. Proc. 2005-61, page 507.

This procedure amplifies Rev. Proc. 2005-3, 2005-1 I.R.B. 118, which sets forth areas of the Code in which the Service will not issue advance rulings or determination letters. The procedure provides that the Service will not issue advance rulings or determination letters involving the recovery of costs by any investor-owned public utility through a legislatively authorized securitization mechanism. Rev. Proc. 2005-3 amplified.

Rev. Proc. 2005-62, page 507.

This procedure modifies, amplifies, and supersedes Rev. Proc. 2002-49, 2002-2 C.B. 172. Rev. Proc. 2005-62 extends the safe harbor provisions for certain investor-owned utility companies to recover transition costs through a legislatively authorized securitization mechanism to any utility company for the recovery of costs other than transition costs through such legislatively authorized securitization mechanisms. Additionally, this procedure clarifies that payments of principal and interest with respect to evidences of indebtedness in a utility's securitization transaction for the recovery of transition or specified costs need not be exactly level. Rev. Proc. 2002-49 modified, amplified, and superseded.

(Continued on the next page)

Finding Lists begin on page ii.



EMPLOYEE PLANS

Rev. Rul. 2005–60, page 502.

Minimum cost requirement; deductibility; section 101 of Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). This ruling holds that the employer subsidy for maintaining prescription drug coverage provided under section 1860D–22 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, is not taken into account in computing the applicable employer cost for purposes of determining whether the minimum cost requirement of § 420(c)(3) of the Code is satisfied.

Rev. Proc. 2005–61, page 507.

This procedure amplifies Rev. Proc. 2005–3, 2005–1 I.R.B. 118, which sets forth areas of the Code in which the Service will not issue advance rulings or determination letters. The procedure provides that the Service will not issue advance rulings or determination letters involving the recovery of costs by any investor-owned public utility through a legislatively authorized securitization mechanism. Rev. Proc. 2005–3 amplified.

Rev. Proc. 2005–66, page 509.

Qualification; determination letters; staggered remedial amendment periods. This procedure contains the Service's procedures for issuing determination letters pursuant to section 401(a) of the Code with respect to a staggered remedial amendment period system both for plans that are and are not pre-approved. Rev. Proc. 2000–27 modified and superseded. Notice 2001–42, Rev. Procs. 2005–6 and 2005–16, and Announcement 2005–36 modified.

Announcement 2005–59, page 524.

Nonbank trustees; section 1.408–2(e) of the regulations. This announcement contains a list of entities previously approved to act as nonbank trustees and nonbank custodians within the meaning of section 1.408–2(e) of the regulations. In addition, the announcement contains instructions on how errors in the list may be corrected. Announcement 2004–72 updated and superseded.

EXEMPT ORGANIZATIONS

Rev. Proc. 2005–61, page 507.

This procedure amplifies Rev. Proc. 2005–3, 2005–1 I.R.B. 118, which sets forth areas of the Code in which the Service will not issue advance rulings or determination letters. The procedure provides that the Service will not issue advance rulings or determination letters involving the recovery of costs by any investor-owned public utility through a legislatively authorized securitization mechanism. Rev. Proc. 2005–3 amplified.

ADMINISTRATIVE

Rev. Rul. 2005–59, page 505.

Valid return; election to file joint return. This ruling clarifies when documents prepared or executed by the Secretary under section 6020 of the Code, or waivers on assessment constitute valid returns under *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), for purposes of the election to file a joint return under section 6013. Rev. Rul. 74–203 revoked.

Announcement 2005–64, page 537.

This document contains a correction to final regulations (T.D. 9210, 2005–33 I.R.B. 290) regarding the LIFO recapture by corporations converting from C corporations to S corporations.

The IRS Mission

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

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 61.—Gross Income Defined

This revenue procedure amplifies Revenue Procedure 2005-3, 2005-1 I.R.B. 118, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue advance rulings or determination letters, by providing that the Internal Revenue Service will not issue advance rulings or determination letters involving the recovery of costs by any investor owned public utility through a legislatively authorized securitization mechanism. See Rev. Proc. 2005-61, page 507.

This revenue procedure amplifies Revenue Procedure 2002-49, 2002-2 C.B. 172, by extending the safe harbor provisions for certain investor-owned utility companies to recover transition costs through a legislatively authorized securitization mechanism, to any utility company for the recovery of specified costs other than transition costs through such legislatively authorized securitization mechanisms. Additionally, this revenue procedure clarifies that payments of principal and interest with respect to evidences of indebtedness in a utility's securitization transaction for the recovery of transition or specified costs are not required to be exactly level. See Rev. Proc. 2005-62, page 507.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A-1: Uniform capitalization of costs.

T.D. 9217

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to

the capitalization of costs under the simplified service cost method and the simplified production method provided by the Income Tax Regulations. The regulations affect taxpayers that use the simplified service cost method or the simplified production method for self-constructed assets that are produced on a routine and repetitive basis in the ordinary course of their businesses. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-121584-05) on this subject in this issue of the Bulletin. The portions of this rule that are final regulations provide necessary cross-references to the temporary regulations.

DATES: Effective Date: These regulations are effective August 2, 2005.

Applicability Date: These regulations apply to taxable years ending on or after August 2, 2005. See §§1.263A-1T(1) and 1.263A-2T(f).

FOR FURTHER INFORMATION CONTACT: Scott Rabinowitz, (202) 622-4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 263A of the Internal Revenue Code (Code), producers of real or tangible personal property and resellers of real or personal property must capitalize the direct costs and a proper share of the indirect costs of such property. Indirect costs include indirect labor costs, overhead, and service costs. Service costs are indirect costs that can be identified specifically with an administrative or support department. Service costs consist of capitalizable service costs, deductible service costs, and mixed service costs. Capitalizable service costs are service costs that directly benefit, or are incurred by reason of, a production or resale activity. Deductible service costs are service costs that do not directly benefit, or are not incurred by reason of, a production or resale activity. Mixed service costs are service costs that are partially allocable to production or

resale activities and partially allocable to non-production or non-resale activities.

Although section 263A requires capitalization of indirect costs, the statute generally does not set forth methods for allocating indirect costs, including mixed service costs. Instead, in accordance with the legislative history of the section, the regulations under section 263A generally provide that indirect costs are to be allocated to property using detailed or specific (facts-and-circumstances) cost allocation methods, including a specific identification method, the standard cost method, and methods using burden rates. The regulations further provide that allocations of mixed service costs are to be made on the basis of a factor or relationship that reasonably relates such costs with the benefit provided. To alleviate the administrative burdens of using these detailed or specific methods, the Treasury Department and the Internal Revenue Service developed simplified methods. In particular, the simplified production method provided by §1.263A-2(b) determines aggregate amounts of additional section 263A costs allocable to produced "eligible property." Additional section 263A costs are those costs, other than interest, that were not capitalized under a taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. In addition, the final regulations provide a simplified method, the simplified service cost method provided by §1.263A-1(h), for determining capitalizable mixed service costs incurred during the taxable year with respect to "eligible property."

On March 30, 1987, temporary regulations under section 263A were published in the **Federal Register** (T.D. 8131, 1987-1 C.B. 98 [52 FR 10052]). The temporary regulations limited the availability of the simplified production method and the simplified service cost method to two types of "eligible property": stock in trade or other property properly includible in the inventory of the taxpayer and non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The

preamble to the temporary regulations indicates that this limitation was prescribed because the simplified production method is not appropriate to account for the casual or occasional production of property (*i.e.*, property that is not mass-produced on a repetitive and routine basis and that does not have a high “turnover” rate.) Similarly, the simplified service cost method is not appropriate to account for the casual or occasional production of property.

On August 22, 1988, the IRS published Notice 88–86, 1988–2 C.B. 401. Notice 88–86 states that forthcoming regulations will expand the categories of property eligible for the simplified production method and simplified service cost method to other types of property that share characteristics that are appropriate for application of the methods. In particular, the notice indicates that the regulations will provide that the simplified production method and the simplified service cost method are available to (1) self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer’s trade or business, and (2) self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer’s production activities.

On August 9, 1993, final regulations under section 263A were published in the **Federal Register** (T.D. 8482, 1993–2 C.B. 77 [58 FR 42198]). The final regulations follow Notice 88–86 and expand the categories of eligible property for the simplified production method and the simplified service cost method.

Notice 2003–36, 2003–1 C.B. 992, as modified by Notice 2003–59, 2003–2 C.B. 429, indicates that the Treasury Department and the IRS are aware that uncertainty exists as to what types of property constitute “eligible property” under §§1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D) for purposes of the simplified service cost method and the simplified production method. These sections provide that self-constructed assets produced by a taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer’s trade or business are “eligible property.”

To provide guidance as to what types of property constitute “eligible property”

under the final regulations, Rev. Rul. 2005–53, 2005–35 I.R.B. 425 (dated August 29, 2005), holds that a taxpayer’s production of property will be considered “routine and repetitive” for purposes of §§1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D) only if the property is mass-produced (*i.e.*, numerous identical goods are manufactured using standardized designs and assembly line techniques) *or* the produced property has a high degree of turnover (*i.e.*, the costs of production are recovered over a relatively short amount of time).

Explanation of Provisions

Upon further consideration of the simplified service cost method and the simplified production method under §§1.263A–1(h)(2)(i)(D) and 1.263A–2(b)(2)(i)(D), the Treasury Department and the IRS believe that, to minimize the distortion of income that may arise from the use of those methods, a taxpayer’s production of property is considered “routine and repetitive” for purposes of those sections only if the property is mass-produced and has a high degree of turnover. Accordingly, the temporary regulations provide that self-constructed property is considered produced on a routine and repetitive basis for purposes of the simplified service cost method and the simplified production method only if numerous substantially identical units of tangible personal property are produced within a taxable year using standardized designs and assembly line techniques *and* the applicable recovery period of the assets under §168(c) is not longer than 3 years.

A change in a taxpayer’s treatment of mixed service costs or additional section 263A costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. For the taxpayer’s first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the applicable administrative procedures for obtaining the Commissioner’s automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc.

2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432). For purposes of Form 3115, “*Application for Change in Accounting Method*”, the designated number for the automatic accounting method change authorized by this regulation is “95.” If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. For the taxpayer’s second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures for obtaining the Commissioner’s advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97–27, 1997–1 C.B. 680, as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432). However, notwithstanding section 5.04(1) of Rev. Proc. 2002–9 and section 5.02(3)(a) of Rev. Proc. 97–27, the section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the 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 Scott Rabinowitz of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

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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 continues to read, in part, as follows:

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

Par. 2. Section 1.263A-1 is amended by revising paragraph (h)(2)(i)(D) and adding paragraphs (k) and (l) to read as follows:

§1.263A-1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) [Reserved]. For further guidance, see §1.263A-1T(h)(2)(i)(D).

* * * * *

(k) and (l) [Reserved]. For further guidance, see §1.263A-1T(k) and (l).

Par 3. Section 1.263A-1T is added to read as follows:

§1.263A-1T Uniform capitalization of costs (temporary).

(a) through (h)(2)(i)(C) [Reserved]. For further guidance, see §1.263A-1(a) through (h)(2)(i)(C).

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis*—(1) *In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in §1.263A-10(c)) are mass-produced, *i.e.*,

numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of the property determined under section 168(c) is not longer than 3 years. For purposes of this paragraph, the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of §1.46-3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph.

(2) *Examples.* The following examples illustrate this paragraph (h)(2)(i)(D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have a recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(c). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

(h)(2)(ii) through (j) [Reserved]. For further guidance, see §1.263A-1(h)(2)(ii) through (j).

(k) *Change in method of accounting*—(1) *In general.* A change in a taxpayer's treatment of mixed service costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. See §1.263A-7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, issued under §1.446-1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a

change in accounting method (for further guidance, for example, see Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and §601.601(d)(2)(ii)(b) of this chapter). For purposes of Form 3115, "*Application for Change in Accounting Method*," the designated number for the automatic accounting method change authorized by this paragraph (k) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is treated as a reference to the revised or renumbered form. For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (k)(2) through (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and §601.601(d)(2)(ii)(b) of this chapter).

(2) *Scope limitations.* Any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (k) to comply with these temporary regulations does not receive audit protection if its method of accounting for mixed service costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to these temporary regulations requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

(1) *Effective date.* This section applies for taxable years ending on or after August 2, 2005.

Par. 4. Section 1.263A-2 is amended by revising paragraph (b)(2)(i)(D) and adding paragraphs (e) and (f) to read as follows:

§1.263A-2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) [Reserved]. For further guidance, see §1.263A-2T(b)(2)(i)(D).

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(e) and (f) [Reserved]. For further guidance, see §1.263A-2T(e) and (f).

Par. 5. Section 1.263A-2T is added to read as follows:

§263A-2T Rules relating to property produced by the taxpayer (temporary).

(a) through (b)(2)(i)(C) [Reserved]. For further guidance, see §1.263A-2(a) through (b)(2)(i)(C).

(D) *Self-constructed tangible personal property produced on a routine and repetitive basis—(1) In general.* Self-constructed tangible personal property produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business. Self-constructed tangible personal property is produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business when units of tangible personal property (as defined in §1.263A-10(c)) are mass-produced, *i.e.*, numerous substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, and the applicable recovery period of the property determined under section 168(c) is not longer than 3 years. For purposes of this paragraph, the applicable recovery period of the assets will be determined at the end of the taxable year in which the assets are placed in service for purposes of §1.46-3(d). Subsequent changes to the applicable recovery period after the assets are placed in service will not affect the determination of whether the assets are produced on a routine and repetitive basis for purposes of this paragraph.

(2) *Examples.* The following examples illustrate this paragraph (D):

Example 1. Y is a manufacturer of automobiles. During the taxable year Y produces numerous substantially identical dies and molds using standardized designs and assembly line techniques. The dies and molds have a 3-year applicable recovery period for purposes of section 168(c). Y uses the dies and molds to produce or process particular automobile components and does not hold them for sale. The dies and molds are produced on a routine and repetitive basis in the ordinary course of Y's business for purposes of this paragraph because the dies and molds are both mass-produced and have an applicable recovery period of not longer than 3 years.

Example 2. Z is an electric utility that regularly manufactures and installs identical poles that are used in transmitting and distributing electricity. The poles have a 20-year applicable recovery period for purposes of section 168(a). The poles are not produced on a routine and repetitive basis in the ordinary course of Z's business for purposes of this paragraph because the poles have an applicable recovery period that is longer than 3 years.

(b)(2)(ii) through (d) [Reserved]. For further guidance, see §1.263A-2(b)(2)(ii) through (d).

(e) *Change in method of accounting—(1) In general.* A change in a taxpayer's treatment of additional section 263A costs to comply with these temporary regulations is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. See §1.263A-7. For a taxpayer's first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with these temporary regulations, provided the taxpayer follows the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, issued under §1.446-1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and §601.601(d)(2)(ii)(b) of this chapter). For purposes of Form 3115, "Application for Change in Accounting Method," the designated number for the automatic accounting method change authorized by this paragraph (e) is "95." If Form 3115 is revised or renumbered, any reference in this section to that form is

treated as a reference to the revised or renumbered form. For the taxpayer's second and subsequent taxable years ending on or after August 2, 2005, requests to secure the consent of the Commissioner must be made under the administrative procedures, as modified by paragraphs (e)(2) through (4) of this section, for obtaining the Commissioner's advance consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and §601.601(d)(2)(ii)(b) of this chapter).

(2) *Scope limitations.* Any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting to comply with this section for its first taxable year ending on or after August 2, 2005.

(3) *Audit protection.* A taxpayer that changes its method of accounting in accordance with this paragraph (e) to comply with these temporary regulations does not receive audit protection if its method of accounting for additional section 263A costs is an issue under consideration at the time the application is filed with the national office.

(4) *Section 481(a) adjustment.* A change in method of accounting to conform to these temporary regulations requires a section 481(a) adjustment. The section 481(a) adjustment period is two taxable years for a net positive adjustment for an accounting method change that is made to conform to these temporary regulations.

(f) *Effective date.* This section applies for taxable years ending on or after August 2, 2005.

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

Approved July 14, 2005.

Eric Solomon,
*Acting Deputy Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on August 2, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 3, 2005, 70 FR. 44467)

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

26 CFR 1.401(b)-1: Certain retroactive changes in plan.

The timing of submissions for individually designed and pre-approved Employee Plans is described. See Rev. Proc. 2005-66, page 509.

Section 420.—Transfers of Excess Pension Assets to Retiree Health Accounts

Minimum cost requirement; deductibility; section 101 of Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). This ruling holds that the employer subsidy for maintaining prescription drug coverage provided under section 1860D-22 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, is not taken into account in computing the applicable employer cost for purposes of determining whether the minimum cost requirement of § 420(c)(3) of the Code is satisfied.

Rev. Rul. 2005-60

ISSUE

Is the employer subsidy for maintaining prescription drug coverage provided under section 1860D-22 of the Social Security Act (SSA), as added by section 101 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173 (MMA) taken into account in computing the applicable employer cost for purposes of determining whether the minimum cost requirement of § 420(c)(3) is satisfied?

FACTS

Company M, a calendar year taxpayer, maintains Plan A, a single employer defined benefit plan qualified under § 401(a) of the Internal Revenue Code. Company M also maintains Plan B, a retiree medical benefit plan. In 2005, in accordance with § 420 of the Code, Company M transfers a portion of Plan A's assets to an account described in § 401(h) in order to provide for retiree medical benefits under Plan B.

Company M's applicable employer cost was \$3,600 for 2003, \$3,800 for 2004 and \$4,000 for 2005. By September 30, 2005, Company M applies for the employer subsidy for maintaining prescription drug coverage pursuant to section 1860D-22 of SSA. In 2006, Company M receives a payment of the employer's subsidy in an amount equal to \$600 per covered retiree. In 2006, the aggregate amount paid by Company M with respect to applicable health benefits, without regard to the employer subsidy for maintaining prescription drug coverage, is \$4,300 per covered retiree.

LAW AND ANALYSIS

Section 420(a) provides that if there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account which is part of the plan, the related trust is not treated as failing to meet the requirements of § 401(a) or (h) solely by reason of the transfer. In addition, no amount is includible in gross income of the employer solely by reason of the transfer, and the transfer is not treated as an employer reversion for purposes of § 4980 or as a prohibited transaction for purposes of § 4975.

Among the requirements for a transfer to be a qualified transfer, as defined in § 420(b), is that the minimum cost requirements of § 420(c)(3) must be satisfied. Section 420(c)(3)(A) provides, in relevant part, that each group health plan or arrangement under which applicable health benefits are provided must provide that the applicable employer cost for each taxable year during the cost maintenance period is not less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer.

Section 420(c)(3)(B) generally defines applicable employer cost for a taxable year as the amount determined by dividing the qualified current retiree health liabilities of the employer for the year by the number of individuals to whom coverage for applicable health benefits was provided during the year. Section 420(c)(3)(C) allows the minimum cost requirements to be applied separately with regard to individuals eligible for benefits under Title XVIII of the Social Security Act. Under § 420(c)(3)(D),

the cost maintenance period is the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. Section 420(c)(3)(E) provides that the Secretary shall prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement. Section 420(c)(3)(E) also provides that an employer will not be treated as reducing retiree health coverage when an employer reduces applicable employer cost by an amount not in excess of the reduction in cost which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage permitted under the regulations.

Section 420(e)(1)(A) defines "qualified current retiree health liabilities" as the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for the taxable year with respect to applicable health benefits provided during the year if (i) the benefits were provided directly by the employer, and (ii) the employer used the cash receipts and disbursements method of accounting. Section 420(e)(1)(C) defines "applicable health benefits" as health benefits or coverage which are provided to (i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and (ii) their spouses and dependents.

Section 1860D-22 of SSA provides a subsidy for sponsors of retiree prescription drug plans that provide drug coverage that is at least "actuarially equivalent" to the Medicare Part D benefit. The subsidy is available only with respect to retirees who are eligible for, but do not enroll in, Medicare Part D and who are covered under the employer's retiree prescription drug plan.

Section 139A of the Code provides that gross income does not include any employer subsidy payment received under section 1860D-22 of SSA. Under § 139A, this exclusion is not taken into account in determining whether any deduction is allowable with respect to any cost taken into account in determining the payment.

The applicable employer cost is based on qualified current retiree health liabilities which in turn is based on aggregate

amounts which would be allowable as a deduction to the employer for the taxable year with respect to applicable health benefits. In accordance with § 139A, the determination of the aggregate amounts which would be allowable as a deduction to the employer for the taxable year with respect to applicable health benefits is made without regard to the employer subsidy for maintaining prescription drug coverage. Accordingly, the receipt of that subsidy is not taken into account in determining applicable employer cost. Company M satisfies the minimum cost requirements of § 420(c)(3) for 2006 because the applicable employer cost of \$4,300 is not less than \$3,800 (the higher of the applicable employer cost for 2003 and 2004).

HOLDING

The employer subsidy for maintaining prescription drug coverage provided under Section 1860D-22 of SSA as added by section 101 of MMA is not taken into account in computing the applicable employer cost for purposes of determining whether the minimum cost requirement of § 420(c)(3) is satisfied.

DRAFTING INFORMATION

The principal drafter of this revenue ruling is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. Ms. Herrmann may be reached at (202) 283-9888 (not a toll-free number).

Section 451.—General Rule for Taxable Year of Inclusion

This revenue procedure amplifies Revenue Procedure 2005-3, 2005-1 I.R.B. 118, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue advance rulings or determination letters, by providing that the Internal Revenue Service will not issue advance rulings or determination letters involving the recovery of costs by any investor owned public utility through a leg-

islatively authorized securitization mechanism. See Rev. Proc. 2005-61, page 507.

This revenue procedure amplifies Revenue Procedure 2002-49, 2002-2 C.B. 172, by extending the safe harbor provisions for certain investor-owned utility companies to recover transition costs through a legislatively authorized securitization mechanism, to any utility company for the recovery of specified costs other than transition costs through such legislatively authorized securitization mechanisms. Additionally, this revenue procedure clarifies that payments of principal and interest with respect to evidences of indebtedness in a utility's securitization transaction for the recovery of transition or specified costs are not required to be exactly level. See Rev. Proc. 2005-62, page 507.

Section 883.—Exclusions From Gross Income

26 CFR 1.883-5: *Effective dates.*

T.D. 9218

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This document amends the applicability date of final regulations under sections 883(a) and (c) (T.D. 9087, 2003-2 C.B. 781) which were published in the **Federal Register** on August 26, 2003 (68 FR 51394). Those final regulations relate to income derived by a foreign corporation from the international operation of ships or aircraft.

DATES: *Effective Date:* These regulations are effective August 8, 2005.

Applicability Date: These regulations are applicable to taxable years of foreign corporations beginning after September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Bray, (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 883(a)(1) and (a)(2) of the Internal Revenue Code (Code) provide that income derived by a foreign corporation from the international operation of ships or aircraft may be excluded from gross income.

In 2003, the Treasury Department and the IRS issued final regulations under section 883 applicable to taxable years of a foreign corporation beginning 30 days or more after August 26, 2003. The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of U.S. Federal income taxation, provided that the corporation can satisfy certain stock ownership and related documentation requirements.

The regulations provide that a foreign corporation may satisfy the stock ownership requirement if it meets one of three tests under § 1.883-1(c)(2). One such test provides that a controlled foreign corporation, as defined in section 957(a) (CFC), satisfies the stock ownership test of § 1.883-1(c)(2) if it meets the requirements of § 1.883-3, including the income inclusion test of § 1.883-3(b). The income inclusion test requires that more than 50 percent of the adjusted net foreign base company income derived by the CFC from the international operation of a ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations.

Need for Change

Pursuant to section 423 of the American Jobs Creation Act of 2004, 118 Stat. 1418 (2004), Public Law 108-357 (AJCA), the applicability date of the final regulations under section 883 is delayed for one year, so that they apply to taxable years of foreign corporations seeking qualified foreign corporation status beginning after September 24, 2004. This regulation makes the conforming changes to the final regulations.

Request for Comments

Pursuant to section 415 of AJCA, sections 954(a)(4) and 954(f), relating to foreign base company shipping income, were repealed effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of U.S. shareholders with or within which such taxable years of the foreign corporations end. Questions have arisen as to the proper interpretation of §1.883-3(b) in light of the statutory amendments to section 954. Foreign corporations have expressed concern that they may no longer satisfy the CFC test if they no longer derive foreign base company income from the international operation of their ships or aircraft as a result of the statutory amendments to sections 954(a)(4) and (f).

The IRS and the Treasury Department believe the better interpretation of §1.883-3(b) is that a CFC that satisfied the CFC test prior to the effective date of the new legislation may continue to satisfy it after the effective date of the new legislation, provided the CFC can demonstrate that had sections 954(a)(4) and (f) not been repealed, more than 50 percent of its current earnings and profits derived from its international operation of ships or aircraft would have been attributable to amounts includible in the gross income of one or more U.S. citizens, individual residents of the United States or domestic corporations (pursuant to section 951(a)(1)(A) or another provision of the Code) for the taxable years of such persons in which the taxable year of the CFC ends. Conversely, a CFC will not qualify for the exception if it cannot make such a showing.

The IRS and the Treasury Department expect to revise this section of the regulations to clarify this point. Comments are invited on the most appropriate way to accomplish this goal consistent with the principles of the existing regulations and AJCA.

Special Analyses

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

not apply to these regulations. The collection of information referenced in this rule was previously reviewed by the Office of Management and Budget and approved under control number 1545-1677. The collection of information referenced in these regulations also was previously certified not to have a significant economic impact on a substantial number of small entities. This certification was based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) was not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (REG-208280-86; REG-136311-01, 2002-2 CB. 485 [67 FR 50510]) was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Patricia Bray, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.883-5 is revised to read as follows:

§1.883-5 *Effective dates.*

(a) *General rule.* Sections 1.883-1 through 1.883-4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

(b) *Election for retroactive application.* Taxpayers may elect to apply §§1.883-1 through 1.883-4 for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of §1.883-1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§1.883-2(f), 1.883-3(d) and 1.883-4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before September 25, 2004. Such election shall apply to the taxable year of the election and to all subsequent taxable years beginning before September 25, 2004.

(c) *Transitional information reporting rule.* For taxable years of the foreign corporation beginning after September 24, 2004, and until such time as the Form 1120-F, “U.S. Income Tax Return of a Foreign Corporation,” or its instructions are revised to provide otherwise, the information required in §1.883-1(c)(3) and §1.883-2(f), §1.883-3(d) or §1.883-4(e), as applicable, must be included on a written statement attached to the Form 1120-F and filed with the return.

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

Approved June 24, 2005.

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

(Filed by the Office of the Federal Register on August 5, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 8, 2005, 70 F.R. 45529)

Section 1001.—Determination of Amount of and Recognition of Gain or Loss

This revenue procedure amplifies Revenue Procedure 2005-3, 2005-1 I.R.B. 118, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue advance rulings or determination letters, by providing that the Internal Revenue Service will not issue advance rulings or determination letters involving the recovery of costs by any investor owned public utility through a leg-

islatively authorized securitization mechanism. See Rev. Proc. 2005-61, page 507.

This revenue procedure amplifies Revenue Procedure 2002-49, 2002-2 C.B. 172, by extending the safe harbor provisions for certain investor-owned utility companies to recover transition costs through a legislatively authorized securitization mechanism, to any utility company for the recovery of specified costs other than transition costs through such legislatively authorized securitization mechanisms. Additionally, this revenue procedure clarifies that payments of principal and interest with respect to evidences of indebtedness in a utility's securitization transaction for the recovery of transition or specified costs are not required to be exactly level. See Rev. Proc. 2005-62, page 507.

Section 6013.—Joint Returns of Income Tax by Husband and Wife

This revenue ruling clarifies when documents prepared or executed by the Secretary under section 6020 of the Code, or waivers on assessment, constitute valid returns under *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), for purposes of the election to file a joint return under section 6013. See Rev. Rul. 2005-59, page 505.

Section 6020.—Returns Prepared for or Executed by Secretary

26 CFR 301.6020-1T: Returns prepared or executed by the Commissioner or other internal revenue officers (temporary).
(Also: 6213(d).)

Valid return; election to file joint return. This ruling clarifies when documents prepared or executed by the Secretary under section 6020 of the Code, or waivers on assessment constitute valid returns under *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), for purposes of the election to file a joint return under section 6013. Rev. Rul. 74-203 revoked.

Rev. Rul. 2005-59

ISSUES

1. Are documents made by the Internal Revenue Service, as authorized under section 6020(b) of the Internal Revenue Code, joint returns of income tax for the husband and wife?

2. Is a document prepared by the Service under section 6020(a) and executed by a husband and wife a joint return of income tax for the husband and wife?

3. Is a Form 870 prepared by the Service and executed by a husband and wife a joint return of income tax for the husband and wife?

SITUATION 1

Taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent all information necessary for the preparation of the return. The revenue agent made separate returns using information from other sources using tax rates applicable to married individuals filing separate returns. The taxpayers did not sign the documents made by the revenue agent.

SITUATION 2

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers provided the revenue agent with all information necessary for the preparation of the return and expressed their intention to file a joint return. The revenue agent prepared a joint return using the information provided by the taxpayers. The taxpayers signed the joint return prepared by the revenue agent under penalties of perjury.

SITUATION 3

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent all information necessary for the preparation of the return. The revenue agent did not prepare a joint return and instead prepared a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*, and the taxpayers consented to the immediate assessment of taxes for the 1999 tax year by signing the Form 870. Form 870 is not verified by a written declaration that it is made under the penalties of perjury.

LAW

In general, a document filed with the Service is treated as a return if the document: (1) contains sufficient data to calculate the tax liability; (2) purports to be a return; (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law; and (4) is executed under penalties of perjury. *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986) (citing *Badaracco v. Commissioner*, 464 U.S. 386 (1984); *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172 (1934); and *Florsheim Bros. Drygoods Co. v. United States*, 280 U.S. 453 (1930)).

Section 6013 generally authorizes a husband and wife to make a single return jointly of income tax. Section 1.6013-1(a)(1) of the Income Tax Regulations provides that a husband and wife may elect to make a joint return. Taxpayers must make an election to make a joint return on a validly filed return.

Section 6020(a) authorizes the Secretary to prepare a return for a taxpayer who fails to make and file a return if the taxpayer discloses all information necessary for the preparation of the return. If the taxpayer signs the return prepared by the Secretary, the return may be received as the taxpayer's return.

If a taxpayer fails to make a return, or makes a false or fraudulent return, section 6020(b) authorizes the Secretary to make a return from his own knowledge and from such information as he can obtain through testimony or otherwise.

Section 6065 requires that a return "shall contain or be verified by a written declaration that it is made under the penalties of perjury."

Joint return filing status under section 6013(a) is predicated on the husband and wife making an election and intending to file a joint return. Accordingly, the Service may not elect joint filing status on behalf of taxpayers in a return it prepares and signs under the authority of section 6020(b). See *Millsap v. Commissioner*, 91 T.C. 926 (1988), *acq. in result*, 1991-2 C.B. 1 (filing status used by IRS in preparing return under section 6020(b) does not bind taxpayers in later deficiency proceeding).

ANALYSIS

SITUATION 1

In Situation 1, the documents made by the revenue agent under the authority of section 6020(b) are not returns of income tax filed by the husband and wife for purposes of section 6013 because they did not sign the returns under penalties of perjury. The documents made by the revenue agent under the authority of section 6020(b) also do not constitute valid elections to file a joint return under section 6013.

SITUATION 2

In Situation 2, the document prepared by the revenue agent under the authority of section 6020(a) was signed by the husband and wife under penalties of perjury. The section 6020(a) document (1) contains sufficient data to calculate the tax liability, (2) purports to be a return, (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) is executed under penalties of perjury. The section 6020(a) document, therefore, constitutes a valid return under the four-part *Beard* test and, because it is signed by both the husband and wife, it is a joint return of income tax for purposes of section 6013.

SITUATION 3

A Form 870, although signed by both husband and wife, is not verified by a writ-

ten declaration that it is made under the penalties of perjury. A Form 870 is not a return under the *Beard* test because it does not purport to be a return and it is not signed under penalties of perjury as required by section 6065. *Beard*, 82 T.C. at 777.

In Rev. Rul. 74-203, 1974-1 C.B. 330, the Service determined that a Form 870 signed by taxpayers, husband and wife, was a return of the taxpayers for purposes of section 6020(a) and a valid election to file a joint return under section 6013. Rev. Rul. 74-203 is inconsistent with *Beard* and the cases cited therein on what constitutes a valid return, because a Form 870 does not purport to be a return and is not executed under penalties of perjury.

HOLDINGS

ISSUE 1. Documents made under the authority of section 6020(b) that are not signed by the taxpayers under penalties of perjury are not returns filed by the taxpayers for purposes of section 6013 and are not valid elections to file a joint return.

ISSUE 2. A document prepared by the Service under the authority of section 6020(a) that is signed by the taxpayers under penalties of perjury is a return of the taxpayers for purposes of section 6013 and constitutes a valid election to file a joint return.

ISSUE 3. A Form 870, which includes a waiver signed by the taxpayers, is not a

return filed by the taxpayers for purposes of section 6013 and does not constitute a valid election to file a joint return. This holding also applies to Form 1902, *Report of Individual Income Tax Audit Changes* (obsoleted 1988), and Form 4549, *Income Tax Examination Changes*, and any successor forms to these forms.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 74-203 is revoked. A Form 870 signed by taxpayers, husband and wife, is not a return under section 6020(a) and it is not an election to file a joint return under section 6013. This holding also applies to Form 1902, *Report of Individual Income Tax Audit Changes* (obsoleted 1988), and Form 4549, *Income Tax Examination Changes*, and any successor forms to these forms, because these documents do not purport to be returns and do not contain a jurat with a penalties of perjury clause.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael E. Hara of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Michael E. Hara at (202) 622-4910 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also: §§ 61, 451 and 1001.)

Rev. Proc. 2005-61

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2005-3, 2005-1 I.R.B. 118, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue advance rulings or determination letters.

SECTION 2. BACKGROUND

.01 Section 3 of Rev. Proc. 2005-3 sets forth a list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

.02 In Rev. Proc. 2005-62, page 507, this Bulletin, the Service provides a safe harbor with respect to the tax treatment of certain cost recovery transactions by regulated investor owned utility companies.

SECTION 3. PROCEDURE

Rev. Proc. 2005-3 is amplified by adding the following to section 3.01: Sections 61, 451 and 1001. Gross Income Defined; General Rule for Taxable Year of Inclusion; Determination of Amount and Recognition of Gain or Loss. Whether, under authorization by an appropriate State agency to recover certain costs pursuant to State specified cost recovery legislation, any investor-owned utility company realizes income upon: (1) the creation of an intangible property right; (2) the transfer of that intangible property right; or (3) the securitization of the intangible property right.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005-3 is amplified.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to all ruling requests pending or submitted after September 12, 2005.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas M. Preston of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Preston at (202) 622-3970 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part 1, §§ 61, 451, 1001.)

Rev. Proc. 2005-62

SECTION 1. PURPOSE

This revenue procedure sets forth the manner in which a public utility company may treat the issuance of a financing order by a State agency authorizing the recovery of certain specified costs incurred by the utility and the securitization of the rights created by that financing order.

SECTION 2. BACKGROUND

Revenue Procedure 2002-49, 2002-2 C.B. 172, provides a safe-harbor regarding the treatment of legislatively authorized transactions entered into by investor-owned electric utilities to recover transition costs resulting from the restructuring of the electric utility industry and the institution of a competitive marketplace. Some States enacted legislation to allow the recovery of these transition costs through a non-bypassable surcharge to customers within a utility's historic service area.

Utilities continue to operate in wholly or partially regulated environments and

maintain exclusive distribution networks for customers in their historic service areas. Rates charged for these operations are determined by local authorities to allow for the recovery of costs and an appropriate return on capital. Some States have enacted legislation that allows utilities to recover certain specified costs through a surcharge based on consumption by customers within the utilities' historic service areas and also authorizes securitization of the surcharge. These statutes are unique to regulated utilities. Accordingly, the tax treatment allowed by this revenue procedure for these transactions is peculiar to this situation. See Revenue Procedure 2005-61, page 507, this Bulletin, which adds certain related issues to areas in which rulings or determination letters will not be issued.

SECTION 3. CHANGES

The scope of Revenue Procedure 2002-49 was limited to transition costs that resulted from the deregulation of the generation operations of electric utility companies. This revenue procedure expands the scope of Revenue Procedure 2002-49 to all public utility companies, and costs that are recoverable through a securitization mechanism are not limited to transition costs. Additionally, this revenue procedure eliminates certain requirements in section 4.04(3) of Revenue Procedure 2002-49 relating to level payments and now requires that payments be made on a quarterly or semiannual basis.

SECTION 4. SCOPE

This revenue procedure applies to investor-owned public utility companies that, pursuant to specified cost recovery legislation, receive an irrevocable financing order from an appropriate State agency that determines the amount of certain specified costs the utility will be permitted to recover through qualifying securitization of an intangible property right created by the special legislation.

SECTION 5. DEFINITIONS

.01 PUBLIC UTILITY

For purposes of this revenue procedure, the terms “public utility” or “utility” refer to any investor owned utility company (electric or non-electric) that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

.02 SPECIFIED COST RECOVERY LEGISLATION

For purposes of this revenue procedure, specified cost recovery legislation is legislation that—

(1) Is enacted by a State to facilitate the recovery of certain specified costs incurred by a public utility company;

(2) Authorizes the utility to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;

(3) Provides that pursuant to the financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility’s historic service territory who receive utility goods or services through the utility’s transmission and distribution system, even if those customers elect to purchase these goods or services from a third party;

(4) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation;

(5) Provides procedures assuring that the sale, assignment, or other transfer of the intangible property right from the utility to a financing entity that is wholly owned, directly or indirectly, by the utility will be perfected under State law as an absolute transfer of the utility’s right, title, and interest in the property; and

(6) Authorizes the securitization of the intangible property right to recover the fixed amount of specified costs through the issuance of bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interest that are issued pursuant to an indenture, contract, or other agreement of a utility or a financing entity that is wholly owned, directly or indirectly, by the utility.

.03 SPECIFIED COSTS

For purposes of this revenue procedure, specified costs are those costs identified by the State legislature as appropriate for recovery through the securitization mechanism of the specified cost recovery legislation.

.04 QUALIFYING SECURITIZATION

For purposes of this revenue procedure, a qualifying securitization is an issuance of any bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interests that—

(1) Is secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of the financing entity that is wholly owned, directly or indirectly, by the utility;

(2) Is issued by a financing entity that is wholly owned, directly or indirectly, by the utility that is initially capitalized by the utility in such a way that equity interests in the financing entity are at least 0.5 percent of the aggregate principal amount of the non-equity instruments issued; and

(3) Provides for payments on a quarterly or semiannual basis.

SECTION 6. APPLICATION

.01 The utility will be treated as not recognizing gross income upon—

(1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;

(2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or

(3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.

.02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.

.03 The non-bypassable charges are gross income to the utility recognized under the utility’s usual method of accounting.

SECTION 7. EFFECT ON OTHER DOCUMENTS

This document modifies, amplifies, and supersedes Rev. Proc. 2002–49.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective September 12, 2005.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas M. Preston of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Preston at (202) 622–3970 (not a toll-free call).

Rev. Proc. 2005-66

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SECTION 1. PURPOSE

.01 This revenue procedure establishes a system of cyclical remedial amendment periods under § 401(b) of the Internal Revenue Code (Code) for individually designed and pre-approved qualified plans.

(1) Under this system, every individually designed plan qualified under § 401(a) has a regular, five-year remedial amendment cycle. The cycles are staggered and spread over five-year periods. That is, the cycles commence in different years for different plans within a five-year period, so that different plans have different cycles. The effect of this system is that plan sponsors need to apply for new determination letters generally only once every five years;

(2) In addition, under this system, every pre-approved plan (that is, every master and prototype (M&P) and volume submitter plan), generally has a regular, six-year remedial amendment cycle. As a result, sponsors, practitioners, and adopters of pre-approved plans generally need to apply for new opinion, advisory, or determination letters only once every six years. Pre-approved defined contribution plans have different six-year cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle applies with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle applies with respect to all pre-approved defined benefit plans. Also, this revenue procedure provides rules for adopting employers to adopt a pre-approved plan after the review process is completed.

.02 This revenue procedure provides that on February 1, 2006, the Service will begin to accept applications for determination letters for individually designed plans that take into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA), and other items that will be identified on the 2005 Cumulative List of Changes in Plan Qualification Requirements.

.03 The system for staggered five-year remedial amendment cycles and the system for six-year amendment/approval cycles are established pursuant to the Commissioner's authority under § 401(b) of the

Code and its underlying regulations to extend the remedial amendment period, and pursuant to the Commissioner's authority under § 7805(b) to establish the effective date of any rule or regulation. As a result, sponsors, practitioners, and plan sponsors submit their plan only once for an opinion, advisory, or determination letter that rules on all amendments adopted and made effective within the applicable remedial amendment cycle.

.04 This revenue procedure also further extends the EGTRRA remedial amendment period for both individually designed and pre-approved plans.

(1) The EGTRRA remedial amendment period for individually designed plans is extended to the end of the initial applicable five-year remedial amendment cycle as provided in the chart found in section 12.01. Therefore, plan sponsors may avoid unnecessarily filing two determination letter applications by waiting to file their EGTRRA determination letter applications until the twelve-month period preceding the end of the plan's initial applicable five-year remedial amendment cycle;

(2) The EGTRRA remedial amendment period for pre-approved plans is extended to the end of the initial applicable six-year remedial amendment cycle as provided in section 18.01. Plan sponsors or practitioners maintaining non-mass submitter plans, as well as word-for-word identical adopters and minor modifiers, have until January 31, 2006, the end of the initial applicable remedial amendment cycle submission period (as stated in section 23 of Rev. Proc. 2005-16, 2005-10 I.R.B. 674), to submit their defined contribution M&P and volume submitter plans for review. This revenue procedure also extends the October 31, 2005 submission deadline set forth in Announcement 2005-36, 2005-21 I.R.B. 1095, to January 31, 2006, for sponsors and practitioners maintaining mass submitter plans and national sponsors who submit applications for defined contribution M&P and volume submitter plans.

SECTION 2. BACKGROUND

.01 Section 401(b) of the Code provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes

the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

.02 Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of § 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment period. Under § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan which causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. Under § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (ii) is integral to a qualification requirement of the Code that has been changed. For this purpose § 1.401(b)-1(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date the change in those requirements became effective with respect to the plan. Under § 1.401(b)-1(c)(3), the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions described in § 1.401(b)-1(b)(3).

.03 For a disqualifying provision of a new plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the date the plan is put into effect and, in the case of a plan maintained by one employer, ends on the later of the due date (including extensions) for filing the employer's tax return for the taxable year in

which the plan is put into effect or the last day of the plan year in which the plan is put into effect. A new plan maintained by more than one employer need not be amended until the last day of the tenth month following the last day of the plan year that includes the date the plan is put into effect.

.04 For a disqualifying provision that is an amendment to an existing plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the earlier of the date the plan amendment is adopted or put into effect and, in the case of a plan maintained by one employer, ends on the later of the due date for filing the employer's tax return (including extensions) for the taxable year in which the amendment is adopted or effective (whichever is later) or the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the plan need not be amended until the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

.05 For a disqualifying provision described in § 1.401(b)-1(b)(3), the remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer

need not be amended until the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

.06 Section 1.401(b)-1(f) provides that the Commissioner may extend the remedial amendment period at his discretion.

.07 Notice 2001-42, 2001-2 C.B. 70, provides a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial plan amendments for EGTRRA must be adopted (the EGTRRA remedial amendment period). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. In general, a good faith EGTRRA plan amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST remedial amendment period.¹ Notice 2001-42 further provides that until further notice, determination letters will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA. However, an employer's ability to rely on a favorable determination letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments.²

.08 The end of the EGTRRA remedial amendment period is also the last day on which retroactive remedial amendments may be adopted with respect to the requirements of the final regulations under § 401(a)(9) of the Code (required minimum distributions), Rev. Rul. 2001-62, 2001-2 C.B. 632 (applicable mortality table) and Rev. Rul. 2002-27, 2002-1 C.B. 925 (deemed section 125 compensation). Except with respect to the requirements of the final § 401(a)(9) regulations for defined benefit plans, the availability of the remedial amendment period with respect to the three requirements is conditioned on

the adoption of plan amendments by the time specified in the applicable guidance (or, in the case of the final § 401(a)(9) regulations published on April 17, 2002 with respect to defined contribution plans, in Rev. Proc. 2002-29, 2002-1 C.B. 1176, as modified by Rev. Proc. 2003-10, 2003-1 C.B. 259).

.09 Rev. Proc. 2004-25, 2004-1 C.B. 791, extends the remedial amendment period with respect to disqualifying provisions described in § 1.401(b)-1(b)(1) that are put into effect (in the case of new plans) or adopted (in the case of existing plans) after December 31, 2001, to the end of the EGTRRA remedial amendment period. The effect of Rev. Proc. 2004-25 is to ensure that plan sponsors do not need to apply for more than one determination letter during the EGTRRA remedial amendment period simply because they have put a plan into effect or adopted voluntary plan amendments after December 31, 2001. The revenue procedure does not extend any other existing plan amendment or determination letter submission deadlines, such as the deadline for adoption of good faith plan amendments for EGTRRA or the final § 401(a)(9) regulations.

.10 In Announcement 2004-32, 2004-1 C.B. 860, the Service announced its decision to implement a system of five-year staggered remedial amendment periods under § 401(b) of the Code for individually designed plans. The Service also announced that it was considering implementation of a system of six-year amendment/approval cycles for pre-approved plans. These announcements were the outcome of the Service's comprehensive review of its policies and procedures for issuing determination letters on the qualified status of retirement plans. As part of that review, the Service considered public comments on two white papers on the future of the determination letter program which the Service published in 2001 and 2003 (that is, Announcement 2001-83,

¹ The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

The GUST remedial amendment period generally ended on the later of February 28, 2002, or the end of a plan's 2001 plan year. However, for certain plans eligible for an extended GUST remedial amendment period under Rev. Proc. 2000-20, 2000-1 C.B. 553, the period generally ended on September 30, 2003.

² Section 3.03 of Rev. Proc. 2005-6, 2005-1 I.R.B. 200, provides that until further notice, a determination letter will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA.

2001–2 C.B. 205 and Announcement 2003–32, 2003–1 C.B. 933).

.11 In Announcement 2004–33, 2004–1 C.B. 862, the Service published for comment a draft revenue procedure containing the procedures for issuing opinion and advisory letters for pre-approved plans. In the announcement, the Service also asked for comments on its proposal to implement a system of six-year amendment/approval cycles for pre-approved plans. After receiving favorable comments in response to Announcement 2004–33, the Service has decided to proceed with implementation of this system in conjunction with the implementation of the five-year staggered remedial amendment period system for individually designed plans. This revenue procedure implements both systems, effective with the opening of the determination, opinion, and advisory letter programs for EGTRRA.

.12 In Announcement 2004–71, 2004–40 I.R.B. 569, the Service published for comment a draft revenue procedure which consisted of a description of the five-year remedial amendment cycles for individually designed plans and a description of the procedures for implementing the six-year amendment/approval cycle for pre-approved plans.

.13 In Notice 2004–84, 2004–52 I.R.B. 1030, the Service published the 2004 Cumulative List of Changes in Plan Qualification Requirements which contains qualification requirements for defined contribution pre-approved plans to be used for their first submission under the six-year remedial amendment cycle.

.14 In Rev. Proc. 2005–16, 2005–10 I.R.B. 674, the Service announced the opening of the initial six-year remedial amendment cycle for defined contribution pre-approved plans. As of February 17, 2005, the Service began to accept applications for opinion and advisory letters for defined contribution pre-approved plans which take into account the qualification requirements set forth in the 2004 Cumulative List. The revenue procedure also contains the rules for issuing opinion and advisory letters for pre-approved plans.

.15 In Announcement 2005–36, 2005–21 I.R.B. 1095, the Service announced the submission deadline for sponsors and practitioners maintaining defined contribution mass submitter and national sponsor plans for the initial six-year re-

medial amendment cycle is October 31, 2005.

SECTION 3. CHANGES FROM DRAFT REVENUE PROCEDURE IN ANNOUNCEMENT 2004–71

.01 Announcement 2004–71 contained a draft revenue procedure setting forth the rules and procedures for both the five-year remedial amendment cycle for individually designed plans and six-year amendment/approval cycle for pre-approved plans. The Service sought public comment before finalizing these rules and procedures. This revenue procedure retains much of the original substance of the draft revenue procedure but the revenue procedure has been restructured (that is, Part II applies to all plans) and minor revisions and clarifying language have been added. The most significant of the changes are listed below.

.02 The application and extension of the remedial amendment period under § 401(b) to the end of the remedial amendment cycle has been expanded to include pre-approved plans, as well as individually designed plans. In addition, the EGTRRA remedial amendment period is extended to the end of the initial six-year remedial amendment cycle. (sections 5, 16, 18)

.03 When a plan qualification requirement changes either due to a statutory change, a regulation, or other published guidance, causing a plan to no longer be qualified, a timely adopted interim amendment will generally be required. Any other change to a plan must also be reflected in a timely adopted plan amendment. If the timely adopted plan amendment (including any required interim amendment) does not satisfy the qualification requirements, then a remedial amendment must be adopted by the end of the remedial amendment cycle. (sections 5, 6)

.04 In addition to changes and requirements identified in each year's Cumulative List of Changes in Plan Qualification Requirements, the Service will consider in its review of any opinion, advisory or determination letter application all qualification requirements in effect, or guidance published, before the issuance of the Cumulative Lists. (section 4.05)

.05 This revenue procedure provides that the submission deadline for minor modifier placeholder applications and

word-for-word identical adopter applications is January 31, 2006. In addition, the January 31, 2006 submission deadline also applies to mass submitter sponsors and practitioners and national sponsors maintaining defined contribution pre-approved plans for the initial six-year remedial amendment cycle (that is, the EGTRRA remedial amendment period). (section 18.02)

.06 Rather than Cycle A, the remedial amendment cycle for multiemployer plans is Cycle D and the remedial amendment period for multiple employer plans is Cycle B. (sections 10.02, 10.03)

.07 The election offered to members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m) is available only in situations where there is more than one plan sponsored by the members of the controlled group or affiliated service group. (section 10.06)

.08 The revenue procedure clarifies the eligibility rules for an employer who qualifies for the six-year remedial amendment/approval cycle. (section 17)

.09 This revenue procedure provides guidance for filing procedures for an employer who amends an M&P plan but remains in the six-year remedial amendment/approval cycle as provided in section 24.02 of Rev. Proc. 2005–16, except under limited circumstances. (section 19)

.10 An adopting employer of a pre-approved plan who amends the approved plan document to incorporate a type of plan not permitted in the pre-approved plan program (that is, a type listed in sections 6.03 and 16.02 of Rev. Proc. 2005–16) or adopts an individually designed plan whose underlying plan document is not based upon a pre-approved plan will remain in the six-year remedial amendment cycle in effect on the date of such amendment or adoption, but will then shift to the five-year remedial amendment cycle for individually designed plans. Thus, the subsequent five-year remedial amendment cycle that ends after the closing of the six-year remedial amendment cycle in effect on the date of such amendment or adoption will be determined under Part III of this revenue procedure applicable to individually designed plans. (section 17.09(2))

.11 An employer who amends a pre-approved plan to such an extent that the Service determines the plan falls under

section 24.03 of Rev. Proc. 2005-16 will be considered an individually designed plan for the current and future remedial amendment cycles. Thus, the remedial amendment cycle in which the employer impermissibly amends the pre-approved plan and subsequent remedial amendment cycles will be determined under Part III of this revenue procedure. (section 17.09(3))

Part II — All Plans

SECTION 4. CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

.01 The Service intends to publish annually a Cumulative List of Changes in Plan Qualification Requirements (Cumulative Lists). The Cumulative Lists are intended to identify, on a year-by-year basis, all changes in the qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin that are required to be taken into account in the written plan document.

.02 The 2004 Cumulative List (that is, Notice 2004-84) was issued in anticipation of the opening of the EGTRRA opinion and advisory letter program for defined contribution pre-approved plans. The target date for publication of the Cumulative List is mid-November of each year.

.03 Each annual Cumulative List identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings, that will be considered by the Service in its review of plans whose submission period (whether for an opinion or advisory letter in the case of a pre-approved plan, or for a determination letter in the case of an individually designed plan) begins on February 1st following issuance of the Cumulative List. For example, sponsors or practitioners maintaining non-mass submitter defined contribution pre-approved plans have until January 31, 2006 to submit opinion and advisory letter applications. The Service will review these plans based upon the 2004 Cumulative List. Similarly, Cycle A individually designed plans will be submitted for determination letters between February 1, 2006 and January 31, 2007. The Service will review these plans on

the basis of the Cumulative List that is expected to be issued in the latter part of 2005.

.04 The Service will not consider in its review of any opinion, advisory or determination letter application any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the applicable Cumulative List (unless the item has been identified in that Cumulative List). Thus, an opinion, advisory or determination letter may not be relied on for statutory changes enacted, or guidance published, after the applicable Cumulative List unless so identified.

.05 The Service will, however, consider in its review of any opinion, advisory or determination letter application all qualification requirements in effect, or guidance published before the issuance of the applicable Cumulative List whether or not included in that Cumulative List. Thus, an opinion, advisory or determination letter may be relied on for statutory changes enacted, or guidance published, before the applicable Cumulative List whether or not identified.

SECTION 5. ADOPTION OF INTERIM PLAN AMENDMENTS AND EXTENSION OF THE REMEDIAL AMENDMENT PERIOD

.01 Designation of disqualifying provision. Unless otherwise provided in future guidance, in addition to the plan provisions designated as disqualifying provisions subject to the EGTRRA remedial amendment period as described in sections 2.07, 2.08, and 2.09 of this revenue procedure, a plan provision is designated as a disqualifying provision under § 1.401(b)-1(b)(3) if the provision either —

(1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001; or

(2) is integral to a qualification requirement of the Code that has been changed effective after December 31, 2001, but only if the provision is integral to a plan provision that is a disqualifying provision under section 5.01(1) with respect to the plan.

.02 A change in a qualification requirement includes a statutory change or

a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. For purposes of section 5.01, a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code.

.03 This section 5.03 extends the remedial amendment periods for disqualifying provisions described in § 1.401(b)-1(b)(1) that would otherwise apply under § 1.401(b)-1 to the end of the remedial amendment cycles described in section 6.01 if the disqualifying provision was a provision of, or absence of a provision from, a new plan and the plan was intended, in good faith, to be qualified. The same extension of the remedial amendment period applies to a disqualifying provision (including a disqualifying provision described in section 5.01) in the case where the employer adopts an amendment to an existing plan and the amendment was adopted timely and in good faith with the intent of maintaining the qualified status of the plan. In addition, the same extension of the remedial amendment period applies to a disqualifying provision described in section 5.01 in the case where the employer (or sponsor or practitioner, if applicable) reasonably and in good faith determines during the period when an interim amendment to reflect a qualification change would otherwise be required under section 5.05 that no amendment is required because the qualification change does not impact provisions of the written plan document. Thus, for example, if a sponsor, practitioner, or employer makes such a determination and the Service in its review of the opinion, advisory, or determination letter application finds that an amendment is required, the plan would still be eligible for the five or six-year remedial amendment cycle to correct the disqualifying provision as described in section 5.01. The Service will make the final determination in all cases as to whether the adoption of an interim amendment or the absence of an interim amendment was reasonable and in good faith.

.04 A qualified plan must be operated in accordance with written plan documents. Thus, when there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document, the

adoption of an interim amendment will generally be required by the deadline set forth in section 5.05. The Service intends to concurrently identify statutory and regulatory changes to facilitate compliance with this requirement.

.05 The deadline for the timely adoption of an interim or discretionary amendment with respect to any plan is determined as follows:

(1) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a plan amendment with respect to a disqualifying provision described in section 5.01(1), if the plan amendment is adopted by the end of the remedial amendment period described in section 2.05;

(2) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a plan amendment with respect to a plan provision that is integral to a disqualifying provision as described in section 5.01(2), if the plan amendment is adopted by the end of the remedial amendment period described in section 2.05;

(3) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a discretionary plan amendment (that is, a plan amendment not described in section 5.01), if the plan amendment is adopted by the end of the plan year in which the plan amendment is effective.

.06 For purposes of this revenue procedure, a pre-approved or individually designed plan restatement which is generally effective as of a certain date should not be treated as superseding a previously adopted interim plan amendment that is effective after the restatement's effective date and that has not been incorporated or reflected in the restatement provided the pre-approved or individually designed plan is operated in a manner consistent with the interim plan amendment. For this purpose, a plan is presumed to be operating in compliance with the interim plan amendments in any case (such as a determination letter application) in which the operation of the plan cannot be determined. This section 5.06 applies for all purposes, including the determination of plan qualification, funding requirements, and deductions.

SECTION 6. PLAN AMENDMENTS AND OPERATIONAL REQUIREMENTS UNDER FIVE YEAR AND SIX YEAR REMEDIAL AMENDMENT CYCLES

.01 The five-year remedial amendment cycles for individually designed plans are established in section 9, and the extension and schedule of the end of the five-year remedial amendment cycles are provided in section 12.01. The six-year remedial amendment cycles for pre-approved plans are established in section 16, and the extension and schedule of the end of the six-year remedial amendment cycles are provided in section 18.01. The effect of these extensions is that a sponsor, practitioner, or employer generally will not need to apply for a new opinion, advisory, or determination letter more than once during any remedial amendment cycle.

.02 An interim amendment adopted timely and in good faith to correct a disqualifying provision as described in section 5.01 can itself be a disqualifying provision as described in § 1.401(b)-1(b)(1). In this situation, a remedial amendment to correct this second disqualifying provision (that is, the interim amendment which was found to be itself a disqualifying provision) must be adopted by the end of the five or six-year cycle for individually designed plans or pre-approved plans, respectively. This remedial amendment will correct both disqualifying provisions.

.03 If as described in section 5.03, a sponsor, practitioner, or employer determined that no amendment was required, but that determination was incorrect, then the sponsor, practitioner, or employer must adopt a remedial amendment to correct the disqualifying provision by the end of the five-year remedial amendment cycle for individually designed plans, or the end of the six-year remedial amendment cycle for pre-approved plans, whichever is applicable.

.04 Operational compliance with an amended plan provision that has a retroactive effective date is required for the remedial amendment period for the amended provision to begin as of the retroactive effective date. In the situation where a sponsor, practitioner, or employer timely adopted in good faith an interim amendment which is not a disqualifying provision as described in § 1.401(b)-1(b)(1)

and the sponsor, practitioner, or employer failed to operate the plan according to the terms of the interim amendment, the employer should correct the operational failure under the Employee Plans Compliance Resolution System (see Rev. Proc. 2003-44, 2003-1 C.B. 1051).

.05 This revenue procedure does not provide relief from the requirements of § 411(d)(6) for any plan amendments including plan amendments adopted as a result of statutory or guidance changes in the plan qualification requirements. Except to the extent permitted under § 411(d)(6) and the regulations thereunder, § 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate § 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

SECTION 7. EXTENSION OF EGTRRA REMEDIAL AMENDMENT PERIOD

.01 The EGTRRA remedial amendment period is extended to the end of the initial five and six-year remedial amendment cycles, respectively.

.02 This extension of the EGTRRA remedial amendment period extends the remedial amendment period for all disqualifying provisions to which the EGTRRA remedial amendment period applies, including plan provisions required or permitted to be amended for EGTRRA, final regulations under § 401(a)(9) of the Code, Rev. Rul. 2001-62, Rev. Rul. 2002-27, and disqualifying provisions described in Rev. Proc. 2004-25.

.03 This extension is only available to plans that satisfy the conditions for eligibility for the EGTRRA remedial amendment period as set forth in Notice 2001-42 which requires the adoption of timely good faith EGTRRA plan amendments or other plan amendments.

SECTION 8. PLAN TERMINATION

The termination of a plan ends the plan's remedial amendment period, and

thus, will generally shorten the remedial amendment cycle for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan must be adopted in connection with the plan termination (that is, plan amendments required to be adopted to reflect qualification requirements that apply as of the date of termination even if the date of termination is subsequent to the latest annual Cumulative Lists). An application will be deemed to be filed in connection with plan termination if it is filed no later than the later of (i) one year from the effective date of the termination, or (ii) one year from the

date on which the action terminating the plan is adopted. However, in no event can the application be filed later than twelve months from the date of distribution of substantially all plan assets in connection with the termination of the plan.

PART III — Individually Designed Plans

SECTION 9. ESTABLISHMENT OF FIVE-YEAR REMEDIAL AMENDMENT CYCLES FOR INDIVIDUALLY DESIGNED PLANS

.01 This Part III sets forth rules and procedures for the five-year remedial

amendment cycles for individually designed plans.

.02 In general, a plan's five-year remedial amendment cycle is determined by reference to the last digit of the employer identification number (EIN) of the employer that sponsors the plan (including a self-employed person with no employees). However, in particular circumstances, as described in section 10, a different rule is, or may be, used to determine a plan's five-year remedial amendment cycle.

.03 Under the general rule, a plan's five year remedial amendment cycle is determined as follows:

If the last digit of the plan sponsor's EIN is —	The plan's cycle is —
1 or 6	Cycle A
2 or 7	Cycle B
3 or 8	Cycle C
4 or 9	Cycle D
5 or 0	Cycle E

SECTION 10. EXCEPTIONS TO THE GENERAL RULE FOR DETERMINING A PLAN'S FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The following rules apply to determine the five-year remedial amendment cycle of a plan maintained by more than one employer and a plan maintained by multiple members of a controlled group under § 414(b) or (c) or employers that are members of an affiliated service group under § 414(m).

.02 For a plan that is a multiemployer plan under § 414(f), the plan's five-year remedial amendment cycle is Cycle D.

.03 For a plan that is a multiple employer plan, the plan's five-year remedial amendment cycle is Cycle B.

.04 For a plan that is a governmental plan under § 414(d), including a governmental plan that is a multiple employer plan, the plan's five-year remedial amendment cycle is Cycle C.

.05 For a plan maintained by multiple members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the plan's five year remedial amendment cycle is determined with reference to the last digit of the EIN that is or will be used to report the plan on

Form 5500, *Annual Return/Report of Employee Benefit Plan*.

.06 Notwithstanding the rules set forth in sections 9 and 10.05 for determining a plan's five-year remedial amendment cycle, if more than one plan is maintained by members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the employers may elect that the five-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans or multiple employer plans) will be Cycle A. The election must be made jointly by all members of the controlled or affiliated service group.

.07 If more than one plan is maintained by a controlled group under § 414(b) or (c) that falls under section 10.06 and that is a parent-subsidiary controlled group organization, an election may be made that the remedial amendment cycle be determined by reference to the last digit of the parent's EIN. This election is to be made by the parent, in the case of a parent-subsidiary controlled group.

.08 The election described in section 10.06 or 10.07 must be made by the end of the earliest cycle (determined as of the date of the election) for which a determination letter application would have been required to be submitted. For example, if one

member uses Cycle B and another member uses Cycle C, the election must be made by the due date for Cycle B. The election must list all members of the group, including each member's EIN, and all plans (other than multiemployer plans and multiple employer plans) that are maintained by each member of the group. The election must be filed with the first determination letter application that is submitted in accordance with this revenue procedure for any plan (other than multiemployer plans and multiple employer plans) maintained by any member of the group. Once filed, the election will apply and may not be modified or revoked, except as provided below in section 11.01.

SECTION 11. RULES FOR DETERMINING FIVE-YEAR REMEDIAL AMENDMENT CYCLE IN CASES OF MERGER OR ACQUISITION, CHANGE IN PLAN SPONSORSHIP, OR PLAN SPIN-OFF

.01 Except as provided in section 11.02, in the case of a merger or acquisition, a change in plan sponsorship, or a plan spin-off, a plan's five-year remedial amendment cycle is determined as follows regardless of whether this would shorten or extend the five-year remedial amendment cycle of the plan. The change could result

in the need to file a new election pursuant to section 10.08:

(1) If plans with different five-year remedial amendment cycles are merged, the five-year remedial amendment cycle of the merged plan is thereafter determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that maintains the merged plan;

(2) If one employer acquires another employer and maintains its plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that is maintaining the plan;

(3) If there is a change in the EIN (including the expiration of the EIN), controlled group status, affiliated service group status, etc., of the employer that maintains a plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in section 9 or 10 on the basis of the changed EIN, controlled

group status, affiliated service group status, etc., of the employer that maintains the plan;

(4) If a portion of a plan is spun off, the five-year remedial amendment cycle of the spun-off plan is determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that maintains the spun-off plan.

(5) If a self-employed person with no employees submits a determination letter application based upon the last digit of the individual's social security number (SSN) instead of the EIN for the first determination letter submitted under this revenue procedure, the determination letter application will be processed based upon the SSN with the other on-cycle determination letter applications. However, subsequent five-year remedial amendment cycles will be determined based upon the last digit of the employer's EIN as provided in section 9 or 10 (see Publication 583, *Starting a Business and Keeping Records*);

.02 If, as a result of one of the transactions described in this section, a plan's current five-year remedial amendment cycle is shortened such that the period remaining in the cycle following the transaction is less than twelve calendar months, the plan's current cycle is extended for twelve months and the next five-year cycle will be shortened accordingly. This extension does not apply to other plans of the employer that are not similarly affected. Thereafter, the plan's five-year remedial amendment cycles will be determined as provided in section 9 or 10.

SECTION 12. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD AND SCHEDULE OF NEXT FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The end of the initial remedial amendment cycle (*i.e.*, EGTRRA remedial amendment period) as extended in section 6 is illustrated in the following chart. The chart also provides the end dates of the next five-year remedial amendment cycle.

Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Five-Year Remedial Amendment Cycle			
If the TIN of the employer ends in —	The plan's cycle is —	The last day of the initial cycle (<i>i.e.</i> , EGTRRA remedial amendment period) is —	The next five-year remedial amendment cycle ends on —
1 or 6	Cycle A	January 31, 2007	January 31, 2012
2 or 7	Cycle B	January 31, 2008	January 31, 2013
3 or 8	Cycle C	January 31, 2009	January 31, 2014
4 or 9	Cycle D	January 31, 2010	January 31, 2015
5 or 0	Cycle E	January 31, 2011	January 31, 2016

.02 In accordance with section 7 of this revenue procedure, the end of a plan's EGTRRA remedial amendment cycle is the time by which plan sponsors must apply for a new determination letter for qualification changes that have first been listed in the Cumulative Lists at least twelve months before the end of the plan's EGTRRA remedial amendment period and other qualification changes published prior to the issuance of the applicable Cumulative Lists but not so identified.

For the following examples, refer to the chart found above in section 12.01 which is the Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Five-Year Remedial Amendment Cy-

cle. In the following examples, both the tax year of the employer and the plan year are the calendar years.

Example 1: Employer M is a C corporation. The last digit of Employer M's EIN is 7. Employer M adopts a new plan, Plan X on January 1, 2006. The cycle for Plan X is Cycle B. Since Employer M timely adopted Plan X in good faith with the intent of sponsoring a qualified plan, the initial remedial amendment cycle for Plan X ends January 31, 2008. Any remedial amendments required for Plan X to correct a disqualifying provision as described in § 1.401(b)-1(b)(1) must be adopted by January 31, 2008, unless an application for a determination letter is submitted by that date. The plan would then be retroactively effective to the first day Employer M adopted Plan X in 2006. The subsequent 5-year remedial amendment cycles end on January 31, 2013, January 31, 2018, etc.

Example 2: Same facts as Example 1. On July 1, 2010, Employer M starts to operate the plan in a manner which is inconsistent with the written plan document but an amendment to reflect the plan change when made retroactively effective would not violate § 411(d)(6). This change is unrelated to a change in qualification requirement or published guidance. To conform with plan operation, Employer M must adopt an amendment by the end of the plan year in which the plan amendment is effective. Employer M adopts an amendment by December 31, 2010 in good faith with the intent of maintaining the qualified status of Plan X. Employer M submits a determination letter application on or before the end of the second five-year remedial amendment cycle (that is, January 31, 2013). During the review of the determination letter application, the Service finds that the adoption of the amendment caused the plan to fail to satisfy the requirements of the Code as of the date the amendment was first made

effective. Once the Service informs Employer M that the amendment is a disqualifying provision as described in § 1.401(b)-1(b)(1), Employer M would be required to adopt an amendment which corrects the disqualifying provision. The amendment would be retroactively effective as of July 1, 2010.

Example 3: Same facts as Example 1. The last day of the third five-year remedial amendment cycle for Employer M is January 31, 2018. Since the first day of the third remedial amendment cycle, Employer M has adopted interim plan amendments timely and in good faith with the intent of maintaining the qualified status of Plan X, as well as maintaining operational compliance. In 2017, Employer M updates Plan X for the qualification requirements stated in the 2016 Cumulative List by restating the plan in proposed form. Employer M submits a determination letter application using a working copy of the plan in a restated format on or before January 31, 2018. Employer M receives a favorable determination letter. Employer M must adopt the proposed restated plan by 91 days after the date of the favorable determination letter to be considered timely under § 401(b) of the Code.

Example 4: The remedial amendment cycle for Plan Y is based on the last digit of Employer N's EIN, which is a 4. Plan Y's cycle is therefore Cycle D. The initial remedial amendment cycle (that is, EGTRRA remedial amendment period) for Plan Y ends January 31, 2010, and the subsequent 5-year remedial amendment cycle ends January 31, 2015. In January 2009, guidance is published effective for the plan years beginning on or after January 1, 2010. The guidance first appears on the 2009 Cumulative List. Employer N updates Plan Y for the remedial amendment cycle that ends January 31, 2010 for qualification requirements listed on the 2008 Cumulative List. Employer N submits a determination letter application on July 1, 2009. Since the guidance was published after the issuance of the 2008 Cumulative List and not identified and included on such list, the Service will not consider in its review the published guidance until Employer N's subsequent remedial amendment cycle. To reflect this published guidance, Employer N must adopt an interim amendment timely and in good faith (that is, by the end of the 2010 tax filing date (including extensions)). The interim amendment is effective as of the first day of the 2010 plan year and will be reviewed as part of the determination letter application submitted in the subsequent five-year remedial amendment cycle.

SECTION 13. ON-CYCLE FILING FOR DETERMINATION LETTERS

.01 In general, plan sponsors of individually designed plans that wish to preserve reliance on a plan's favorable determination letter must apply for a new determination letter for each remedial amendment cycle during the last twelve months of their plan's remedial amendment cycle, that is between February 1 and January 31 of the last year of the cycle. This is referred to as "on-cycle" filing.

.02 Determination letters issued for individually designed plans will include a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received, and will include the specific "expiration date." Thus, determination letters issued for applications filed more than twelve months prior to the end of a five-year remedial amendment cycle may not be relied on after that cycle.

.03 In appropriate circumstances, the Service may, through generally applicable published guidance, extend the expiration dates of determination letters for a particular cycle year or years.

SECTION 14. OFF-CYCLE FILING FOR DETERMINATION LETTERS

If an application for a determination letter is submitted prior to or after the last twelve month period of a plan's remedial amendment cycle (that is, the twelve-month period beginning on February 1 and ending on January 31 of the last year of the cycle), the application is filed "off-cycle" and does not satisfy section 13.01. The off-cycle filing will be reviewed using the same Cumulative List that would be used for an application that was filed "on-cycle" on the same date as the "off-cycle" filing date. This means that the determination letter issued for the plan may not take into account any or all of the changes in qualification requirements for which the plan must be amended within the plan's current remedial amendment cycle. Further, as stated in section 13.02, the determination letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application is received. Consequently, the plan may need to be further amended within the cycle and another determination letter application will need to be filed within the last twelve months of the cycle if the plan sponsor wishes to preserve reliance on a determination letter. Also, the application submitted in a particular year will not be reviewed until all on-cycle plans for that particular year have been reviewed and processed.

Example 5: The remedial amendment cycle for Plan Z is based on the last digit of Employer L's EIN, which is 0. Plan Z's cycle is Cycle E. The

initial five-year remedial amendment cycle (that is, EGTRRA remedial amendment period) for Plan Z ends January 31, 2011, and the subsequent 5-year remedial amendment cycle ends January 31, 2016. Employer L submits a determination letter application on March 1, 2009. The 2008 Cumulative List will be used to review Employer L's determination letter submission. Since the initial five-year remedial amendment cycle will expire on January 31, 2011, Employer L must submit a new determination letter application during the last twelve months of the remedial amendment cycle (between February 1, 2010 to January 31, 2011) to continue to have reliance on a determination letter after that date.

SECTION 15. OPENING OF DETERMINATION LETTER PROGRAM FOR INITIAL REMEDIAL AMENDMENT CYCLE FOR INDIVIDUALLY DESIGNED PLANS

.01 This revenue procedure announces the opening, on February 1, 2006, of the determination letter program for the initial remedial amendment cycle (*i.e.*, EGTRRA remedial amendment period) for individually designed plans that fall in Cycle A. The Service will also accept determination letter applications for individually designed plans which would be considered to be filed off-cycle.

.02 Applications for determination letters for individually designed plans that are filed on or after February 1, 2006 will be reviewed taking into account the requirements of EGTRRA as well as other changes in qualification requirements and guidance identified on the applicable Cumulative List.

.03 In general, Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may not be used to apply for an initial remedial amendment cycle (that is, EGTRRA) determination letter and for all future determination letter application submissions in subsequent remedial amendment cycles.

.04 In general, individually designed plans must be restated when they are submitted for determination letter applications for the initial remedial amendment cycle (that is, EGTRRA remedial amendment period) and subsequent remedial amendment cycles. For this purpose, submission of a working copy of the plan in a restated format will suffice.

PART IV — Pre-approved Plans

SECTION 16. ESTABLISHMENT OF SIX-YEAR AMENDMENT/APPROVAL CYCLE FOR PRE-APPROVED PLANS

.01 This Part IV sets forth rules and procedures for the six-year remedial amendment/approval cycles for pre-approved plans.

.02 Sponsors and practitioners maintaining pre-approved plans generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion and advisory letters. However, sponsors and practitioners maintaining mass submitter plans and national sponsors generally have until October 31st of the calendar year in which the six-year remedial amendment cycle opens to submit opinion and advisory applications.³ In addition, the deadline for word-for-word identical adopters and minor modifier placeholder applications is January 31st of the calendar year following the opening of the six-year remedial amendment cycle (see section 12 of Rev. Proc. 2005-16 for more details). However, sponsors and practitioners maintaining mass submitter plans are encouraged to submit their word-for-word and minor modifier placeholder applications by the earlier mass submitter submission deadline, October 31st. The Service will evaluate this new provision (that is, a different deadline for applications of mass submitter plans versus word-for-word and minor modifier placeholder applications) and may, at its discretion and through applicable published guidance, change the deadline date for the word-for-word and minor modifier placeholder applications in future six-year remedial amendment cycles.

.03 When the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This will be a uniform date that will apply to all adopting employers. Depending upon the length of the review process, it is expected that this

date will give virtually all employers approximately a two-year window to adopt their updated plans. For purposes of this revenue procedure, an adopting employer means an employer who satisfies the requirements described under section 17 of this revenue procedure.

.04 An adopting employer that adopts the approved M&P or volume submitter plan by the announced deadline will have adopted the plan within the employer's six-year remedial amendment cycle. The announced deadline will be the end of the plan's remedial amendment cycle with respect to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle.

.05 If necessary, the Service may revise the schedule described in this section to respond to changing circumstances and needs of plan sponsors.

SECTION 17. ELIGIBILITY FOR SIX-YEAR AMENDMENT/APPROVAL CYCLE

.01 An employer's plan is treated as a pre-approved plan and is therefore eligible for a six-year amendment/approval cycle if:

(1) The employer is either a prior adopter described in section 17.02, a new adopter described in section 17.03, an intended adopter described in section 17.04, or the adopter of a replacement plan that meets the conditions described in section 17.05, and

(2) The sponsor or practitioner maintaining the pre-approved plan timely submits an opinion or advisory letter application:

(a) By the application deadline of October 31st in the calendar year opening the six-year remedial amendment cycle for mass submitter and national sponsor pre-approved plans, or

(b) By the application deadline of January 31st of the calendar year following the opening of the six-year remedial amendment cycle for non-mass submitter, word-for-word adopter, and minor modifier pre-approved plans.

.02 An employer is a prior adopter if the employer's pre-approved plan was both

adopted and effective as of the last day of the six-year remedial amendment cycle immediately preceding the opening of the current six-year cycle (or, in the case of the initial six-year remedial amendment cycle, February 16, 2005 for defined contribution pre-approved plans or January 31, 2007 for defined benefit pre-approved plans.

.03 An employer is a new adopter if the employer switches from an individually designed plan before the end of the employer's five-year remedial amendment cycle as determined under Part III of this revenue procedure by adopting either a pre-approved plan that was issued a valid opinion or advisory letter or an interim pre-approved plan (e.g., a new pre-approved plan that has yet to be issued an opinion or advisory letter).

.04 An employer is an intended adopter if the employer and the sponsor or practitioner who maintains the pre-approved plan execute Form 8905, *Certification of Intent to Adopt Pre-approved Plan*⁴, before the end of the employer's five-year remedial amendment cycle as determined under Part III of this revenue procedure. If the employer's five-year remedial amendment cycle ends with or after the applicable six-year remedial amendment cycle, the employer must adopt the current pre-approved plan rather than execute Form 8905. In this situation, the employer is not an intended adopter.

.05 An employer is an adopter of a replacement plan under the following circumstances:

(1) The employer timely adopted a pre-approved plan that is to be replaced by a "replacement" plan (that is, the plan document remaining after one of the situations described in section 17.05(3));

(2) A sponsor or practitioner maintaining the pre-approved plan does not request an opinion or advisory letter during the current six-year approval/amendment cycle because the plan is to be replaced by the plan of another sponsor or practitioner as a result of a change in business circumstances described in section 17.05(3);

(3) The sponsor or practitioner of the replacement plan and the sponsor or practitioner of the replaced plan are related in one of the following ways: (a) one was

³ Section 18.02(1) provides a later deadline of January 31, 2006 for the initial EGTRRA application for sponsors and practitioners maintaining mass submitter plans and national sponsors who submit applications for defined contribution M&P and volume submitter plans.

⁴ Form 8905, *Certification of Intent to Adopt Pre-approved Plan* is not expected to be available to the public for several months. Therefore, the Service will announce procedures for the submission of this and other relevant forms at www.irs.gov/ep, which will be updated periodically.

merged into the other before the last day of the submission period as described in section 17.01(2) or (b) as of the last day of the submission period as described in section 17.01(2) both are members of the same controlled group of corporations within the meaning of § 414(b) or are trades or businesses which are under common control within the meaning of § 414(c).

.06 If the employer intends to adopt a replacement plan, the employer will not be required to execute Form 8905, *Certification of Intent to Adopt Pre-approved Plan*.

.07 If the employer applies for a determination letter for a replacement plan, the application must include a statement from the sponsor or practitioner maintaining the replaced plan indicating that the sponsor or practitioner bought out or merged with the sponsor or practitioner maintaining the replacement plan.

.08 If an employer described in section 17.03 or 17.05 fails to adopt a pre-approved plan or if an employer described in section 17.02 or 17.04 fails to adopt a pre-approved plan or individually designed plan by the adoption and/or submission deadline established by the Service for the current six-year remedial amendment cycle and the employer is unable to utilize its five-year remedial amendment cycle, (e.g., the employer's submission deadline under the five-year remedial amendment cycle precedes the adoption and/or submission deadline under the current six-year cycle), then the adopting employer may be eligible to correct for late adoption under the Employee Plans Compliance Resolution System.

.09 Effect of Adoption of an Individually Designed Plan:

(1) Although an employer described in section 17.09(2) will no longer be treated as maintaining a pre-approved plan, the employer will remain eligible for the current six-year remedial amendment cycle. The subsequent remedial amendment cycle is the first five-year cycle, as determined under Part III of this revenue procedure, that ends after the closing of the six-year cycle in which the determination letter application was submitted or could have been submitted. However, if the employer is also described in either section 24.02 of Rev. Proc. 2005-16 with respect to a volume submitter plan or section 19 of this revenue procedure with respect to an M&P plan, then the remedial amend-

ment period under section 19 of this revenue procedure will apply;

(2) Under this section 17.09(2) an employer is entitled to remain in the six-year remedial amendment cycle in the current remedial amendment cycle if:

(a) the employer is a prior adopter of a pre-approved plan (as described in section 17.02) and after adopting this pre-approved plan the employer decides to adopt an individually designed plan whose underlying plan document is not based upon a pre-approved plan document, or

(b) the employer amends an approved M&P plan including its adoption agreement to incorporate a type of plan not allowed in the M&P program (e.g., as described in section 6.03 of Rev. Proc. 2005-16), or

(c) the employer amends an approved volume submitter plan to incorporate a type of plan not allowed in the volume submitter program (e.g., as described in section 16.02 of Rev. Proc. 2005-16);

(3) Notwithstanding section 17.09(1), if an employer amends an approved M&P plan including its adoption agreement or an approved volume submitter plan to such an extent that the Service determines in its discretion that the plan falls under section 24.03 of Rev. Proc. 2005-16, then the plan will be considered individually designed for purposes of this revenue procedure. The remedial amendment cycle in which the employer impermissibly amends the M&P plan or volume submitter plan and all subsequent remedial amendment cycles will be determined under Part III of this revenue procedure;

(4) If an employer described in section 17.09(2), submits a determination letter application prior to the end of any given six-year cycle, then the subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted. The employer's application will be reviewed using the applicable Cumulative List based on the date of the application. However, if the end of the first five-year cycle that ends after the closing of the six-year cycle is less than twelve calendar months after the date of the favorable determination letter, then the plan's current cycle is extended for twelve cal-

endar months and the next five-year cycle will be shortened accordingly.

Examples 6 through 9 below illustrate how different types of employer amendments to a pre-approved plan affect the employer's current and/or subsequent remedial amendment cycle and which Cumulative List the Service will use to review an employer's submission.

Example 6: Practitioner S maintains a defined contribution volume submitter specimen plan. Practitioner S timely submits an advisory letter application for the initial six-year remedial amendment cycle (that is, EGTRRA remedial amendment period) on or before January 31, 2006. Practitioner S receives an advisory letter dated January 31, 2008. The Service announces that February 1, 2008 until January 31, 2010 is the time period when employers must adopt a restated pre-approved plan and, if necessary, file a determination letter application. Employer T adopts the volume submitter specimen plan, now Plan K, on or before January 31, 2010. Employer T amends Plan K so that it is no longer word-for-word identical to the volume submitter specimen plan. Employer T submits a determination letter application using Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*, on January 15, 2010. The Service will review the determination letter application based upon the Cumulative List used to review the underlying plan document, the 2004 Cumulative List.

The 2004 Cumulative List is used in this instance because the Service in its review determined that the amendments to the volume submitter specimen plan did not rise to the level that necessitated the treatment of Plan K as an individually designed plan which would require Employer T to file Form 5300, *Application for Determination for Employee Benefit Plan*. Accordingly, Employer T's subsequent remedial amendment cycle will continue to be determined under Part IV of this revenue procedure. Practitioner S would submit an application for an advisory letter within the next six year remedial amendment cycle, which ends on January 31, 2017, on or before the submission deadline for such cycle of January 31, 2012. Employer T would adopt the restated pre-approved plan and, if necessary, file a determination letter application within the time period announced by the Service.

Example 7: Employer X has maintained Plan M, a defined contribution pre-approved plan, since 2002. The last digit of Employer X's EIN is 8. Plan M is timely submitted for the initial six-year remedial amendment cycle (that is, the EGTRRA remedial amendment period) by the sponsor/practitioner on or before January 31, 2006. Generally, Employer X will have until January 31, 2011 (unless otherwise provided by the Service) to adopt the EGTRRA approved version of the pre-approved plan and have such adoption be considered timely under § 401(b) of the Code.

In 2007, Employer X decides Plan M no longer offers the flexibility it desires in providing the retirement benefits to its employees. As a result, Employer X amends and restates Plan M in 2007 into a defined contribution individually designed plan (with the intent of maintaining the qualified status of Plan M). Though Employer X is now sponsoring

an individually designed plan, Employer X, a prior adopter as described in section 17.02, is still eligible for the six-year remedial amendment cycle under section 17.09(2). The Service announces that February 2, 2008 until January 31, 2010 is the time period when employers must adopt a restated pre-approved plan and, if necessary, file a determination letter application. On June 1, 2009, Employer X submits a determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan*, and pays the higher user fee. The Service will review the determination letter application based upon the 2008 Cumulative List (that is, the annual Cumulative List based on the date of the determination letter submission). The subsequent remedial amendment cycle is the first five-year cycle as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2014.

Example 8: Employer Y, whose EIN ends with an 8, maintains Plan N. Plan N is an adoption of an M&P defined benefit plan as of 2002. The M&P plan is timely submitted for the initial six-year remedial amendment cycle (that is, EGTRRA remedial amendment period) by the sponsor on or before January 31, 2008, and the sponsor receives an opinion letter dated January 31, 2010 for the M&P plan. Generally, Employer Y has until January 31, 2013 (unless otherwise provided by the Service) to adopt the EGTRRA approved version of the M&P plan and have such adoption be considered timely under § 401(b) of the Code.

On November 19, 2012, as part of adopting the EGTRRA approved version of an M&P plan, Employer Y adopts an amendment to Plan N that creates a plan described under §414(k). Although Employer Y adopts this amendment timely and in good faith with the intent of maintaining the qualified status of Plan N, this amendment changes the provisions of the M&P plan to create a type of plan that is not allowed in the M&P program. Since Employer Y has amended the M&P plan to incorporate a type of plan for which the Service will not issue an opinion letter,

Plan N is an individually designed plan. Though Employer Y is now sponsoring an individually designed plan, Employer Y, a prior adopter as described in section 17.02, is still eligible for the six-year remedial amendment cycle under section 17.09(2). The Service announces February 1, 2011 until January 31, 2013 as the time period for employers to adopt a restated pre-approved plan and, if necessary, file a determination letter application. Employer Y submits a determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan*, and pays the higher user fee on March 31, 2012. The Service will review the determination letter application based upon the 2011 Cumulative List (that is, the annual Cumulative List based on the date of the determination letter submission). Employer Y receives a favorable determination letter dated March 31, 2013. Employer Y's subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2014. However, since the end of the first five-year cycle that ends after the closing of the six-year cycle is less than twelve calendar months after the date of the favorable determination letter, the current five-year cycle is extended by twelve calendar months as provided in section 17.09(5); thus the end of the five-year cycle is January 31, 2015, and not January 31, 2014. The subsequent remedial amendment cycle is shortened accordingly but the submission period deadline remains January 31, 2019.

Example 9: Employer Z, whose EIN ends with a 2, maintains Plan V. Plan V is a defined contribution plan and is an adoption of a volume submitter plan as of 2011. The volume submitter specimen plan is timely submitted for the second six-year remedial amendment cycle by the practitioner on or before January 31, 2012. The volume submitter practitioner receives an advisory letter dated January 31, 2014 for the VS specimen plan. Generally, Employer Z will have until January 31, 2017 (unless otherwise provided by the Service) to adopt the approved volume

submitter plan and to have such adoption be considered timely under § 401(b) of the Code.

On November 15, 2013, Employer Z adopts an amendment to Plan V that creates an employee stock ownership plan. Although Employer Z adopts this amendment timely and in good faith with the intent of maintaining the qualified status of Plan V, this amendment changes the provisions of the volume submitter plan to create a type of plan that is not allowed in the volume submitter program. Since Employer Z has amended the volume submitter plan to incorporate a type of plan for which the Service will not issue an advisory letter, Employer Z submits a determination letter application for Plan V by November 20, 2013 using Form 5300, *Application for Determination for Employee Benefit Plan*, and pays the higher user fee. The Service would use the 2012 Cumulative List in its review of the determination letter submission. Employer Z receives a favorable determination letter dated November 20, 2014. Employer Z's subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2018.

SECTION 18. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD AND SCHEDULE OF NEXT SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 The end of the initial remedial amendment cycle (that is, EGTRRA remedial amendment period) as extended in section 6 is illustrated in the following chart. The chart also provides the end dates (unless otherwise provided by the Service) of the next six-year remedial amendment cycle.

Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Six-Year Remedial Amendment Cycle		
If the plan is —	The last day of the initial cycle (<i>i.e.</i> , EGTRRA remedial amendment period) is —	The next six-year remedial amendment cycle ends on —
Defined Contribution	January 31, 2011	January 31, 2017
Defined Benefit	January 31, 2013	January 31, 2019

.02 In general, sponsors of M&P plans and practitioners maintaining volume sub-

mitter plans must apply for new opinion

or advisory letters for the plans every six years, according to the following schedule:

(1) Defined Contribution Plans

Initial EGTRRA application due —

Next application due —

Non-Mass Submitter Sponsors and Practitioners, Word-for-Word Identical Adopters, and M&P Minor Modifier Placeholder Applications:

February 17, 2005
through January 31, 2006

February 1, 2011
through January 31, 2012

Mass Submitters and National Sponsors:

February 17, 2005
through January 31, 2006

February 1, 2011
through October 31, 2011

(2) Defined Benefit Plans

Initial EGTRRA application due —

Next application due —

Non-Mass Submitter Sponsors and Practitioners, Word-for-Word Identical Adopters and M&P Minor Modifier Placeholder Applications

February 1, 2007
through January 31, 2008

February 1, 2013
through January 31, 2014

Mass Submitters and National Sponsors:

February 1, 2007
through October 31, 2007

February 1, 2013
through October 31, 2013

.03 In accordance with section 7 of this revenue procedure, the end of a plan's EGTRRA remedial amendment cycle is the time by which an employer adopts the approved plan by the end of the deadline as announced by the Service. An adopting employer that timely adopts the approved plan will be treated as having adopted the plan within the employer's six-year remedial amendment cycle.

SECTION 19. OPTION TO PERMIT ADOPTING EMPLOYER TO AMEND M&P PLAN AND REMAIN IN SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 Generally, an employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options, if the plan permits or contemplates such a change) is considered to have adopted an individually designed plan. (See section 5.02 of Rev. Proc. 2005-16.)

.02 Plan amendments that are adopted timely and in good faith with the intent of maintaining the qualified status of the plan by employers sponsoring M&P plans will be disregarded for purposes of determining

an employer's remedial amendment cycle. Thus, the plan will continue to be treated as an M&P plan for purposes of this revenue procedure and therefore eligible for the six-year remedial amendment cycle on a continuing basis as provided in section 24.02 of Rev. Proc. 2005-16, unless one of the following occurs:

(1) The employer adopts one or a series of amendments that either by itself or taken together, causes the plan to fall into one of the categories listed in section 6.03 of Rev. Proc. 2005-16, or the Service uses its discretion under section 24.03 of Rev. Proc. 2005-16 to determine that the plan is individually designed due to the amendment, or

(2) The adopting employer severs ties with the M&P sponsor (that is, does not adopt a pre-approved plan with a current opinion or advisory letter for the applicable remedial amendment cycle).

.03 An employer that adopts an amendment which causes an M&P plan to be treated as an individually designed plan under section 19.01 of this revenue procedure, but for remedial amendment cycle purposes remains eligible for the six-year remedial amendment cycle under section 19.02 of this revenue procedure, must file

a determination letter application (that is, a Form 5300) for reliance. The determination letter application should be filed during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt and submit determination letter applications, (if applicable). The Service will use the applicable Cumulative List based on the date of the determination letter submission in its review. Procedures for filing the Form 5300 are similar to the procedures set forth in section 9.09 of Rev. Proc. 2005-6, for volume submitter plans, except for the following:

(1) A list of modifications is not required to be included.

(2) Any changes adopted by the employer must be made in the form of an amendment and not incorporated into the underlying M&P plan document.

.04 If the employer is required to obtain a determination letter in order to have reliance, then the sponsor's authority to amend on behalf of the adopting employer is conditioned on the plan being covered by a favorable determination letter. However, the sponsor will no longer have the authority to amend on behalf of the employer if the amendment falls into one of

the categories listed in section 6.03 of Rev. Proc. 2005-16 or section 24.03 of Rev. Proc. 2005-16.

SECTION 20. OFF-CYCLE FILING

If an opinion or advisory letter application for a new sponsor, new practitioner, or new pre-approved plan is submitted outside of the submission period within an applicable six-year cycle, the application is filed "off-cycle". The application will be reviewed using the Cumulative List the Service would have used if the plan had been submitted as an on-cycle plan during the most-recently expired submission pe-

riod that would have applied for that particular type of plan.

Example 10: Sponsor S submits an application for an opinion letter for a new defined contribution M&P pre-approved plan on January 1, 2008. This is after the submission period that ended on January 31, 2006 for the current cycle and before the submission period that begins on February 1, 2011 and ends on January 31, 2012 for the next six-year cycle. Sponsor S's application will be reviewed using the 2004 Cumulative List.

SECTION 21. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-27, 2000-1 C.B. 1272, is modified and superseded. Notice 2001-42, Rev. Proc. 2005-6, Rev. Proc.

2005-16 and Announcement 2005-36 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is Dana Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free call). Ms. Barry may be reached at (202) 283-9888 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Regarding the Simplified Service Cost Method and the Simplified Production Method

REG-121584-05

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9217) relating to the capitalization of costs under the simplified service cost method and the simplified production method provided by the Income Tax Regulations. The regulations affect taxpayers that use the simplified service cost method or the simplified production method for self-constructed assets that are constructed on a routine and repetitive basis in the ordinary course of their businesses. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by November 1, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-121584-05), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-121584-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the IRS Internet site at www.irs.gov/regs or the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-121584-05 or RIN-1545-BE57).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Scott Rabinowitz, (202)

622-4970; concerning submission of comments and/or requests for a public hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 263A of the Internal Revenue Code (Code). The temporary regulations provide that self-constructed property is considered produced on a routine and repetitive basis for purposes of the simplified service cost method and the simplified production method when numerous units of tangible personal property are mass-produced, *i.e.*, substantially identical assets are manufactured within a taxable year using standardized designs and assembly line techniques, *and* the recovery period of the assets under section 168(c) is not longer than 3 years. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration

will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. The IRS and the Treasury Department also request comments on whether additional simplified methods should be made available to taxpayers in certain industries. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Scott Rabinowitz of the Office of Associate Chief Counsel (Income Tax & Accounting). However other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

Authority: 26 USC 7805 * * *

Par. 2. Section 1.263A-1 is amended by revising paragraph (h)(2)(i)(D) and adding paragraphs (k) and (l) to read as follows:

§1.263A-1 Uniform capitalization of costs.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(D) [The text of this proposed paragraph (h)(2)(i)(D) is the same as the text of §1.263A-1T(h)(2)(i)(D) published elsewhere in this issue of the Bulletin.]

* * * * *

(k) [The text of this proposed paragraph (k) is the same as the text of §1.263A-1T(k) published elsewhere in this issue of the Bulletin.]

(l) [The text of this proposed paragraph (l) is the same as the text of §1.263A-1T(l) published elsewhere in this issue of the Bulletin.]

Par. 3. Section 1.263A-2 is amended by revising paragraph (b)(2)(i)(D) and adding paragraphs (e) and (f) to read as follows:

§1.263A-2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) [The text of this proposed paragraph (b)(2)(i)(D) is the same as the text of §1.263A-2T(b)(2)(i)(D) published elsewhere in this issue of the Bulletin.]

* * * * *

(e) The text of this proposed paragraph (e) is the same as the text of §1.263A-2T(e) published elsewhere in this issue of the Bulletin.]

(f) The text of this proposed paragraph (f) is the same as the text of §1.263A-2T(f) published elsewhere in this issue of the Bulletin.]

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

(Filed by the Office of the Federal Register on August 2, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 3, 2005, 70 F.R. 44535)

List of Nonbank Trustees and Custodians

Announcement 2005-59

The following is a list of entities that have been approved by the Commissioner of the Internal Revenue Service, pursuant to § 1.408-2(e) of the Income Tax Regulations, to serve as a nonbank trustee or custodian. This list updates and supercedes the list published with Announcement 2004-72, 2004-41 I.R.B. 650.

Archer medical savings accounts (Archer MSAs) established under § 220 of

the Internal Revenue Code, health savings accounts described in § 223, custodial accounts of retirement plans qualified under § 401, custodial accounts described in § 403(b)(7), trust or custodial accounts of individual retirement accounts (IRAs) established under §§ 408 and 408A (Roth IRAs), Coverdell education savings accounts described in §530, and custodial accounts of eligible deferred compensation plans described in § 457(b) will not be tax exempt if the trustee or custodian of such accounts is not a bank (as defined in § 408(n)) (and in the case of Archer MSAs and health savings accounts, a bank within the meaning of § 408(n) or an insurance company within the meaning of § 816) or an approved nonbank trustee or custodian.

An entity that is not a bank (as defined in § 408(n)) (and in the case of Archer MSAs and health savings accounts a bank within the meaning of § 408(n) or an insurance company within the meaning of § 816) must receive approval from the Service to serve as a nonbank trustee or nonbank custodian. A prospective nonbank trustee or custodian must file a written application with the Commissioner of Internal Revenue demonstrating that the requirements of § 1.408-2(e)(2) through § 1.408-2(e)(7) of the regulations will be met. If the application is approved, a written notice of approval will be issued to the applicant. The notice of approval will state the day on which it becomes effective, and (except as otherwise provided therein) will remain effective until revoked by the Service or withdrawn by the applicant. Entities that have received such approval from the Service may also sponsor certain retirement plans, custodial accounts under § 403(b)(7) and individual retirement arrangements established under §§ 408 and 408A. (See, Rev. Proc. 2005-16, 2005-10 I.R.B. 674, and Rev. Proc. 87-50, 1987-2 C.B. 647, as modified.)

A prospective nonbank trustee or custodian may not accept any fiduciary account before such notice of approval becomes effective. In addition, a nonbank trustee or custodian may not accept a fiduciary account until after the plan administrator or the person for whose benefit the account is to be established is furnished with a copy of the written notice of approval issued to the applicant.

The continued reliance on a notice of approval is dependent upon the continued satisfaction of the nonbank trustee requirements set forth in the regulations. The notice of approval issued to an applicant will be revoked if the Commissioner determines that the applicant is unwilling or unable to administer fiduciary accounts in a manner consistent with the requirements of the regulations. Generally, the notice will not be revoked unless the Commissioner determines that the applicant has knowingly, willfully, or repeatedly failed to administer fiduciary accounts in a manner consistent with the requirements of the regulations, or has administered a fiduciary account in a grossly negligent manner.

The written notice of approval to serve as a nonbank trustee or nonbank custodian is not an endorsement of any investment made with respect to any retirement plan or arrangement handled by the approved nonbank trustee or custodian. The Internal Revenue Service does not review or approve investments.

If the trustee or custodian of an account described above is not a bank (and in the case of Archer MSAs and health savings accounts, a bank or an insurance company) or an approved nonbank trustee or nonbank custodian, the amounts held in such account (including earned interest) will be deemed distributed and includible in gross income in the year(s) the account's trustee or custodian was not a bank or, if applicable, an insurance company, or an approved nonbank trustee or nonbank custodian. Contributions made to such account are not deductible from gross income and will be disallowed if claimed on an income tax return.

This list of approved nonbank trustees and nonbank custodians includes their names, addresses, and the date each application was approved.

If an approved nonbank trustee or custodian believes that the information about it is incorrect, incomplete, or that it has been incorrectly omitted from this list, it may, on or before November 14, 2005, notify the Service in writing of any changes it proposes to the list. This notification should include a copy of the notice of approval.

The notification should be addressed to:

Internal Revenue Service
 SE:T:EP:RA:T1
 Announcement 2005-59
 1111 Constitution Ave., NW — PE
 Washington, DC 20224

Drafting Information

The principal author of this announcement is Calvin Thompson of the Employee Plans, Tax Exempt and Government Entities Division. Please contact Mr. Thompson at 1-202-283-9596 (not

a toll-free number), if there are any questions regarding the publication of this list. Written inquiries concerning this announcement should be sent to the Internal Revenue Service at the above address.

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
1. A.B. Culbertson & Co.	1250 Continental Plaza Fort Worth, TX 76102	5/15/1984
2. A.G. Becker & Co.	Chicago, IL	12/12/1979
3. A.G. Edwards & Sons, Inc.	One North Jefferson St. Louis, MO 63103	11/26/1980
4. ABN AMRO Securities LLC	55 East 52nd Street New York, NY 10022	9/7/2000
5. Adler, Coleman Clearing Corp.	20 Broad St. New York, NY 10005	4/7/1987
6. Advest, Inc.	280 Trumbull Street Hartford, CT 06103	1/24/1989
7. Aisel & Co.	20 Broad Street New York, NY 10005	4/26/1991
8. American Brokerage Services, Inc.	131 Lafayette Ave. Detroit, MI 48226	9/18/1991
9. American Capital Marketing, Inc. (FKA American General Capital)	2777 Allen Parkway Houston, TX 77215	6/25/1984
10. American Express Financial Corp.	200 AXP Financial Center Minneapolis, MN 55474	8/12/1977
11. American Heritage Life Ins. Co.	76 South Laura Street Jacksonville, FL 32202	12/11/1984
12. American Transtech, Inc.	8000 Baymeadows Way Jacksonville, FL 32256	8/15/1990
13. Ameritrade, Inc.	4211 South 102nd Street Omaha, NE 68127-1031	4/18/1984
14. Analytic Investment Management, Inc.	2222 Martin Street, Suite 230 Irvine, CA 92715-1454	5/9/1989
15. Aspen Partnership	1895 Claremont Road Hoffman Estates, IL 60195	10/25/1990
16. B.C. Ziegler & Co.	215 North Main Street West Bend, WI 53095	9/27/1985
17. Banc of America Securities LLC	100 North Tryon Street NC 1-007-20-01 Charlotte, NC 28255	4/30/2003
18. Banc One Capital Corporation	P.O. Box 18277 90 North High Street Columbus, OH 43218	2/24/1992

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
19. Bank Hapoulim B.M.	6501 Wilshire Blvd. Los Angeles, CA 90048	5/15/1986
20. Bank Julius Baer & Co., LTD	330 Madison Avenue New York, NY 10017	12/15/1988
21. Bank Leumi Le — Israel B.N. Western Hemisphere Regional Mgt.	242 Fifth Avenue New York, NY 10022	2/10/1982
22. Bartlett & Co.	36 East Fourth Street Cincinnati, OH 45202	2/1/1989
23. Bear, Stearns & Co., Inc.	5 Hanover Square New York, NY 10004	6/2/1986
24. Bear, Sterns Securities Corp.	2 Broadway, 12th Floor New York, NY 10004	6/24/1991
25. Berklee College of Music, Inc.	1140 Boylston Street Boston, MA 02110	5/9/1989
26. Bernard L. Madoff Investment Securities LLC	885 Third Avenue New York, NY 10022	7/7/2004
27. BISYS Fund Services, Inc.	3425 Stelzer Road Columbus, OH 43219	12/31/2003
28. Blunt Ellis & Loewi, Inc.	225 East Mason Street Milwaukee, WI 53202	1/25/1982
29. BNY Clearing Services, LLC (FKA Kemper Clearing Corporation)	111 East Kilbourn Ave. Milwaukee, WI 53202	8/21/1989
30. Boettcher & Company, Inc.	828 Seventeenth Street Denver, CO 80201	8/10/1987
31. Brown & Company Securities Corporation	20 Winthrop Square Boston, MA 02110	2/27/1985
32. Bruns, Nordeman, Rea & Co.	New York, NY	10/31/1977
33. Burke, Christensen & Lewis Securities, Inc.	120 S. La Salle Street Suite 940 Chicago, IL 60603	3/11/1986
34. Burton J. Vincent, Chesley & Co.	105 West Adams Street Chicago, IL 60603	3/25/1982
35. Butler Wick & Co., Inc.	City Center One Bldg. Youngstown, OH 44501	10/8/1992
36. BUYandHold Securities Corporation	110 Wall Street New York, NY 10005	10/5/2000
37. Carolina Securities Corp.	239 Fayetteville St. Mall Raleigh, NC 27602	8/29/1983
38. Chapin, Davis & Company, Inc.	3 Village Square, Cross Keys Baltimore, MD 21210	12/7/1983
39. Charles Schwab & Co., Inc.	101 Montgomery Street San Francisco, CA 94104	1/8/1982
40. Christian & Missionary Alliance	P.O. Box C Nyack, NY 10960	8/15/1985

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
41. CIBC World Markets Corporation	200 Liberty Street New York, NY 10281	7/26/1977
42. Citigroup Global Markets, Inc.	388 Greenwich St. New York, NY 10105	7/22/1985
43. City Securities Corp.	135 North Pennsylvania Street Indianapolis, IN 46204	12/21/1982
44. Commerce First Thrift	Midvale, UT 84047	5/25/1978
45. Comprehensive Investment Services, Inc.	One Moody Plaza Galveston, TX 77550	6/16/2000
46. Continental Trust Co.	17110 Dallas Parkway Suite 200 Dallas, TX 75248	2/22/1977
47. D. A. Davidson & Co.	Davidson Building #8 Third Street North Great Falls, MT 59403	6/11/1982
48. D.J. St. Germain, Inc.	1500 Main Street Springfield, MA 01115	1/1/1977
49. Davenport & Co. of Virginia, Inc.	901 E. Cary Street Richmond, VA 23219	2/2/1987
50. Davenport & Company LLC	901 East Cary Street Richmond, VA 23219	3/31/1997
51. Deutsche Bank Securities Corp. d.b.a. C.J. Lawrence Deutsche	1290 Avenue of the Americas New York, NY 10104	3/14/1980
52. Deutsche Bank Securities, Inc.	1 South Street Baltimore, MD 21203	4/11/1994
53. Donaldson, Lufkin & Jenrette Securities Corp.	140 Broadway New York, NY 10005	12/4/1985
54. Dougherty, Dawkins, Strand & Yost, Inc.	100 South Fifth Street Suite 2300 Minneapolis, MN 55402	2/22/1986
55. Dresdner Kleinwort Wasserstein Securities LLC	75 Wall Street New York, NY 10005	10/9/2002
56. Dreyfus Investment Services Corp.	Two Mellon Bank Center Pittsburgh, PA 15259	5/18/1989
57. Duncan-Williams, Inc.	5860 Ridgeway Center Parkway Memphis, TN 38120	12/13/1995
58. E*Trade Clearing LLC	10951 White Rock Road Rancho Cordova, CA 95670	9/3/2002
59. E*Trade Securities LLC	4500 Bohannon Drive Menlo Park, CA 94025	8/30/2002
60. E*Trade Securities, Inc.	480 California Avenue Palo Alto, CA 94306	2/1/1996
61. Eads Generoe Trust	St. Louis, MO	2/3/1977
62. Edward D. Jones & Co.	201 Progress Parkway Maryland Height, MO 63043	5/30/1985

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
63. El Paso Electric Co.	P.O. Box 982 El Paso, TX 79960	6/15/1983
64. Elan Investment Services, Inc.	777 East Wisconsin Avenue Milwaukee, WI 53282	12/21/1987
65. Emmett A. Larkin Co., Inc.	100 Bush Street San Francisco, CA 94104	4/17/1986
66. Eppler, Guerin & Turner, Inc.	2001 Bryan Tower, Suite 2300 Dallas, TX 75201	9/6/1984
67. EVEREN Securities, Inc.	77 West Wacker Drive Chicago, IL 60601-1694	11/19/1998
68. Fahnestock & Co., Inc. (FKA Edward A. Viner & Co.)	110 Wall Street New York, NY 10005	4/15/1982
69. Fechtor, Detwiler & Co., Inc.	155 Federal Street Boston, MA 02110	3/26/1982
70. Ferris, Baker Watts, Inc. (FKA Ferris & Company)	1720 Eye Street, NW Washington, DC 20006	12/4/1987
71. Fiduciary Services Corporation	310 Commercial Drive Savannah, GA 31406	10/2/2003
72. Financial Data Services, Inc.	400 Atrium Drive Somerset, NJ 08873	11/14/1990
73. First Albany Corp.	41 State Street Albany, NY 12207	9/26/1979
74. First Clearing Corporation	10700 Wheat First Drive Glen Allen, VA 23060	4/21/1999
75. First Clearing, LLC (FKA First Clearing Corporation)	10700 Wheat First Drive Glen Allen, VA 23060	5/30/2003
76. First Illinois Capital Corp.	424 7th Street Plaza 7 Rockford, IL 61110	5/27/1982
77. First Manhattan Co.	437 Madison Avenue New York, NY 10022	1/26/1990
78. First of Michigan Corporation	100 Renaissance Center 26th Floor Detroit, MI 48243	8/31/1994
79. Fiserv Securities, Inc.	One Commerce Square 2005 Market Street Philadelphia, PA 19103	11/15/1984
80. Fleet Clearing Corporation	67 Wall Street New York, NY 10005	12/3/1986
81. Fleet Norstar Securities, Inc.	14 Wall Street New York, NY 10005	8/30/1991
82. Folger, Nolan, Fleming & Douglass	725 15th Street, N.W. Washington, DC 20015	9/16/1981
83. Freedom Capital Management Corporation	One Beacon Street Boston, MA 02108	8/29/1991

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
84. Freeman Welwood & Co., Inc.	1501 Fourth Avenue Suite 1700 Seattle, WA 98101	2/13/1996
85. G.T. Global Investors Services, Inc.	50 California Street San Francisco, CA 94111	5/27/1994
86. General Conference of the Mennonite Brethren Churches, Board of Trustees	315 South Lincoln Hillsboro, KS 67063	3/8/1983
87. Goldman, Sachs & Co.	85 Broad Street New York, NY 10004	12/8/1982
88. Greater Beneficial Union of Pittsburgh	4254 Clairton Blvd. Pittsburgh, PA 15227-3394	9/24/2004
89. Greek Catholic Union of the U.S.A.	5400 Tuscarawas Rd. Beaver, PA 15009-9513	5/24/2000
90. Gruntal & Co, Inc.	14 Wall Street New York, NY 10005	6/13/1984
91. H&R Block Financial Advisors, Inc.	735 Griswold Street Detroit, MI 48226	12/8/1983
92. H.G. Wellington & Co, Inc.	14 Wall Street New York, NY 10005	9/13/1993
93. H.M. Payson & Co.	One Portland Square P.O. Box 31 Portland, ME 04112	8/20/1987
94. Halpert and Company, Inc.	284 Millburn Avenue Millburn, NJ 07041	4/17/1996
95. Hamilton Investments, Inc. (FKA Illinois Company, Inc.)	30 North La Salle Street Chicago, IL 60602	8/6/1982
96. Hampshire Funding, Inc.	P.O. Box 2005 One Granite Place Concord, NH 03301	5/26/1988
97. Hanifen, Imhoff Clearing Corp.	1125 17th Street Denver, CO 80217	4/22/1997
98. Hanifen, Imhoff, Inc.	1125 17th Street, Suite 1700 Denver, CO 80202	12/3/1985
99. Harrisdirect, LLC	Harborside Financial Center 501 Plaza II Jersey City, NJ 07311	5/1/2002
100. Hartford Life Insurance Co.	Hartford Plaza Hartford, CT 06106	3/3/1982
101. Hazlett, Burt & Watson, Inc.	1300 Chapline Street Wheeling, WV 26003	4/11/1995
102. Heartland Securities, Inc.	208 South LaSalle Street Chicago, IL 60604	3/6/1984
103. Henry Scott, Inc.	Philadelphia, PA	3/23/1982
104. Herzfeld & Stern, Inc.	30 Broad Street New York, NY 10004	12/12/1984

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
105. Herzog, Heine, Geduld, Inc.	26 Broadway New York, NY 10004	2/11/1982
106. Holt & Collins	188 Embarcadero Suite 760 San Francisco, CA 94105	9/8/1988
107. Home Life Financial Assurance Corporation	2400 West Bay Drive Largo, FL 33540	11/13/1986
108. Howard, Weil, Labouisse, Friedrichs, Inc.	1100 Paydrus Street Suite 900 New Orleans, LA 70163	12/28/1987
109. Howe Barnes Investments, Inc.	135 S. LaSalle Street Chicago, IL 60603	7/6/1994
110. Huntleigh Securities Corporation	222 South Central Avenue St. Louis, MO 63102	10/22/1997
111. I.M. Simon & Co.	7730 Forsyth Blvd. Clayton, MO 63105	11/3/1981
112. iClearing, LLC	100 Wood Avenue South Iselin, NJ 08830	2/7/2001
113. Integrated Fund Services, Inc.	221 East Fourth Street Suite 300 Cincinnati, OH 45202	5/15/2003
114. Investment Advisers, Inc.	1100 Dain Tower Minneapolis, MN 55440	10/9/1981
115. Isler, Colling & McAdams	Portland, OR	10/5/1978
116. J.C. Bradford & Co.	330 Commerce Street Nashville, TN 37201	2/28/1982
117. J.J.B. Hilliard, W.L. Lyons, Inc.	Hilliard Lyons Center 501 South Fourth Street Louisville, KY 40202	2/11/1992
118. Jacob Engle Foundation, Inc. (The)	P.O. Box 1136 Upland, CA 91786	3/25/1983
119. Janney Montgomery Scott, Inc.	1801 Market Street Philadelphia, PA 19103	3/23/1982
120. Jefferson Pilot Investor Services, Inc.	100 North Greene Street Greensboro, NC 27401	10/22/1979
121. Jesup, Josephthal & Co., Inc.	One Whitehall Street New York, NY 10004	12/18/1990
122. John Hancock Clearing Corporation	200 Liberty Street New York, NY 10281	3/21/1991
123. John Hancock Mutual Life Insurance Company	John Hancock Place 200 Clarendon Street Boston, MA 02117	8/24/1993
124. Juran & Moody, Inc.	Minnesota Mutual Life Center 400 North Robert Street Suite 800 Saint Paul, MN 55101	5/27/1994

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
125. Kagin Numismatic Services, Ltd.	1000 Insurance Exchange Bldg. Des Moines, IA 50309	3/18/1980
126. KH Funding Company	10801 Lockwood Drive Suite 370 Silver Spring, MD 20901	2/13/2002
127. Kirkpatrick, Pettis, Smith, Polian, Inc.	1623 Farnam Street Suite 700 Omaha, NE 68102	8/18/1981
128. L.F. Rothchild, Unterberg, Towbin	55 Water Street New York, NY 10041	12/23/1985
129. Legg Mason Wood Walker, Inc.	111 S. Calvert Street P.O. Box 1476 Baltimore, MD 21203	6/4/1985
130. Lehman Brothers, Inc.	200 Vesey Street New York, NY 10285	12/20/2000
131. Lester Sumrall Evangelistic Association, Inc.	530 East Ireland Road South Bend, IN 46614	9/2/1988
132. Liberty Life Insurance Co.	P.O. Box 789 Greenville, SC 29602	9/3/1982
133. Manley, Bennett, McDonald & Co.	St. Louis, MO	1/1/1977
134. McDonald & Company Securities, Inc.	580 Walnut Street Cincinnati, OH 45202	12/15/1983
135. MEGA Life and Health Insurance Company	Service Road 501 West Interstate 44 Oklahoma City, OK 73118	5/29/1991
136. Menold, Crawford, Hippler & Co.	23930 Michigan Ave. Dearborn, MI 40126	12/9/1988
137. Merrill, Lynch, Pierce, Fenner & Smith, Inc.	1700 Merrill Lynch Drive MSC 0703 Pennington, NJ 08534	8/3/1987
138. Merrimack Valley Investment, Inc.	367 Kingsbury Ave. Haverhill, MA 01830	9/28/1984
139. Mesirow Financial, Inc.	350 N. Clark Street Chicago, IL 60610	5/28/1982
140. Metropolitan Life Insurance Co.	One Madison Avenue New York, NY 10010	1/28/1987
141. Metropolitan Mortgage & Securities Corporation	W. 292 Sprague Ave. Spokane, WA 99204	11/10/1976
142. Mid-Ohio Securities Corp.	225 Burns Road Elyria, OH 44036	1/28/1983
143. Mid-States Enterprises, Inc.	Carroll, IA	12/30/1976
144. Miller Johnson & Kuehn, Inc.	5500 Wayzata Blvd. Minneapolis, MN 55416	11/15/2000
145. Milwaukee Company (The)	250 East Wisconsin Avenue Milwaukee, WI 53202	9/15/1986

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Name	Address	Approval Date
146. MKI Securities Corp.	61 Broadway New York, NY 10006	4/17/1985
147. Money Management Associates	4922 Fairmont Avenue Bethesda, MD 20814	5/26/1987
148. Moody Bible Institute of Chicago	820 N. La Salle Boulevard Chicago, IL 60610-3284	4/25/2003
149. Moore & Schley, Cameron & Co.	Two Broadway New York, NY 10004	11/15/1977
150. Morgan Keegan & Company, Inc.	Morgan Keegan Tower Fifty Front Street Memphis, TN 38108	1/27/1982
151. Morgan Stanley DW Inc.	1585 Broadway New York, NY 10036	5/29/1986
152. Mortgage Loan Services, Inc.	780 Lynnhaven Parkway Suite 200 Virginia Beach, VA 23452	3/15/1995
153. Moseley, Hallgarten, Estabrook & Weeden, Inc.	One New York Plaza New York, NY	12/10/1985
154. Murphy Favre, Inc.	W. 601 Riverside, 9th Floor Spokane, WA 99201	8/2/1976
155. Mutual Service Cooperative	Two Pine Tree Drive Arden Hills, MN 55112	6/6/1996
156. Myriad Corporation	1400 50th Street West Des Moines, IA 50265	7/20/1977
157. National Bank of Greece, S.A.	33 State Street Boston, MA 02109	2/4/1988
158. National Covenant Properties	5701 N. Francisco Dr. Chicago, IL 60625	6/30/1978
159. National Investor Services Corp.	44 Wall Street New York, NY 10005	3/18/1996
160. National Life Insurance Company	One National Life Drive Montpelier, VT 05604	1/1/1998
161. National Securities Corporation	1001 Fourth Avenue Suite 2200 Seattle, WA 98154	12/31/1986
162. National Slovak Society of the U.S.A.	351 Valley Brook Road McMurray, PA 15317-3337	10/28/2004
163. Nationwide Advisory Services, Inc. (Nationwide Financial Services, Inc.)	One Nationwide Plaza Columbus, OH 43216	9/25/1985
164. Nationwide Credit Union	One Nationwide Plaza Columbus, OH 43216	4/13/1978
165. NBC Securities, Inc.	1927 First Avenue North Birmingham, AL 35203	7/16/1996
166. Neuberger & Berman	522 Fifth Ave. New York, NY 10036	10/4/1983

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Name	Address	Approval Date
167. Newhard, Cook & Co.	300 North Broadway St. Louis, MO 63102	6/4/1985
168. Oberweis Securities, Inc.	841 North Lake Street Aurora, IL 60506	2/11/1985
169. Parker/Hunter, Inc.	600 Grant Street Pittsburgh, PA 15219	6/15/1990
170. Partnership Services, Inc.	5520 LBJ Freeway Suite 430 Dallas, TX 75240	3/31/1993
171. Peninsular Securities Co.	Waters Building Grand Rapids, MI 49503	1/28/1985
172. Perelman-Carley & Associates, Inc.	Twin Towers 3000 Farnam Street Omaha, NE 68131	1/13/1989
173. Perkins Coie LLP	1201 Third Avenue Suite 4800 Seattle, WA 98101-3099	8/2/2004
174. Pflueger & Baerwald, Inc.	Mills Building, Room 1000 220 Montgomery Street San Francisco, CA 94104	11/9/1981
175. PFS Investments, Inc.	3120 Breckenridge Boulevard Duluth, GA 30199	9/28/1995
176. Pioneer Financial Services, Inc.	4233 Roanoke Road Kansas City, MO 64111	1/25/1985
177. Pioneer Investment Management USA	60 State Street Boston, MA 02109	2/21/1986
178. Piper Jaffray & Co.	800 Nicollet Mall Minneapolis, MN 55402-7020	4/21/1982
179. Polish Falcons of America	615 Iron City Drive Pittsburgh, PA 15205-4397	11/3/2004
180. Prescott, Ball & Turben, Inc.	1331 Euclid Ave. Cleveland, OH 44115	1/27/1983
181. PrimeVest Financial Services, Inc.	400 First Street South St. Cloud, MN 56301-3600	12/8/1993
182. Principal Life Insurance Company	711 High Street Des Moines, IA 50392-0001	7/27/1988
183. R. Rowland & Co., Inc.	St. Louis, MO	3/29/1984
184. R.G. Dickinson & Co.	200 Des Moines Building 405 6th Ave. Des Moines, IA 50309	7/20/1983
185. R.J. Steichen & Company	Midwest Plaza, Suite 100 801 Nicolett Mall Minneapolis, MN 55402-2526	5/21/1993
186. Raymond James & Associates, Inc.	880 Carillon Parkway P.O. Box 12749 St. Petersburg, FL 33733-2749	4/26/1982

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Name	Address	Approval Date
187. Raymond James & Associates, Inc.	880 Carillon Parkway P.O. Box 12749 St. Petersburg, FL 33733-2749	3/8/1982
188. RBC Dain Rauscher, Inc.	Dain Rauscher Plaza 60 South Sixth Street Minneapolis, MN 55402-4422	3/2/1998
189. RBC Dain Rauscher, Inc.	Dain Rauscher Plaza 60 South Sixth Street Minneapolis, MN 55402-4422	1/22/1982
190. Regan MacKenzie, Incorporated	999 Third Avenue Suite 4300 Seattle, WA 98104	8/31/1989
191. Regions Investment Company, Inc.	2011 Fourth Avenue North Birmingham, AL 35203	7/20/2000
192. Reserve Management Company, Inc.	810 Seventh Avenue New York, NY 10019	10/18/1989
193. Robert W. Baird & Co., Inc.	777 E. Wisconsin Avenue Milwaukee, WI 53202	6/10/2004
194. Robert W. Baird & Co., Inc.	777 E. Wisconsin Avenue Milwaukee, WI 53202	7/31/1986
195. Robinson-Humphrey Co., Inc. (The)	Two Peachtree Street, N.W. Atlanta, GA 30383	5/24/1982
196. Romano Bros. & Co.	820 Davis Street Evanston, IL 60201	9/28/1984
197. Rose & Company Investment Brokers, Inc.	141 West Jackson Blvd. Chicago, IL 60604	4/14/1982
198. Rotan Mosle, Inc.	1500 South Tower Pennzoil Place P.O. Box 3226 Houston, TX 77001	5/6/1980
199. Rushmore Investment Brokers, Inc.	4922 Fairmont Avenue Bethesda, MD 20814	9/24/1986
200. Sanford C. Bernstein & Co., Inc.	767 Fifth Avenue New York, NY 10153	11/13/1986
201. Santa Ana City Employees Credit Union	800 West Santa Ana Blvd. Santa Ana, CA 92701	3/25/1982
202. Saturna Capital Corporation	101 Prospect Street Bellingham, WA 98227-2838	3/28/1991
203. SBC Trust Services, Inc.	2401 Cedar Springs Road Dallas, TX 75201-1407	4/10/2001
204. SBCI Swiss Bank Corporation Investment Banking, Inc.	222 Broadway, 4th Floor New York, NY 10038	2/11/1992
205. SBM Financial Services, Inc.	8400 Normandale Lake Blvd. Suite 1150 Minneapolis, MN 55437	5/13/1995

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Name	Address	Approval Date
206. Scott & Stringfellow, Inc. (FKN Craige, Inc.)	823 E. Main Street Richmond, VA 23219	5/5/1999
207. Scottsdale Securities, Inc.	12855 Flushing Meadow Drive St. Louis, MO 63131	10/9/1996
208. Securities Management Research, Inc.	Two Moody Plaza Galveston, TX 77550	6/22/1978
209. Security Management Company, LLC (FKA Security Management Co.)	700 SW Harrison Street Topeka, KS 66636-0001	8/14/1996
210. SG Cowen Securities Corporation	1221 Avenue of the Americas New York, NY 10020	6/30/1998
211. ShareBuilder Securities Corporation	1000 124th Avenue, NE Bellevue, WA 98005	4/15/2003
212. SMA Services, Inc.	35 Lakeshore Drive Birmingham, AL 35209	8/27/1998
213. Smith, Moore & Co.	400 Locust Street St. Louis, MO 63102	1/18/1983
214. Southwest Securities, Inc.	Renaissance Tower, Suite 4300 1201 Elm Street Dallas, TX 75270	12/9/1992
215. Spear Rees & Co.	505 North Brand Boulevard Sixteenth Floor Glendale, CA 91203	1/13/1988
216. Spear, Leeds & Kellog	120 Broadway New York, NY 10271	3/29/1996
217. State Bond and Mortgage Company	8500 Normandale Lake Blvd. Minneapolis, MN 55437	12/21/1990
218. State Employees Credit Union	801 Hillsborough Street P.O. Box 26807 Raleigh, NC 27611-6807	1/1/1977
219. State Farm Investment Management Corporation	One State Farm Plaza Bloomington, IL 61410	9/22/1999
220. Stephens, Inc.	111 Center Street Little Rock, AR 72201	12/4/1987
221. Stern Brothers & Co.	1100 Main Street Suite 2200 Kansas City, MO 64199	12/15/1987
222. Sterne, Agee & Leach, Inc.	1500 Am South-Sonat Tower Birmingham, AL 35203	9/11/1981
223. Stifel, Nicolaus & Co., Inc.	500 North Broadway St. Louis, MO 63102	9/9/1981
224. Summit Discount Brokerage (FKA Lehigh Securities Corp.)	1457 MacArthur Road Lehigh Valley, PA 18002	4/4/1990
225. Sunpoint Securities, Inc.	911 W. Loop 281 Longview, TX 75604	4/1/1998
226. SunTrust Capital Markets, Inc.	3333 Peachtree Road, NE Atlanta, GA 30326	5/27/1982

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
227. Sutro & Company, Inc.	201 California Street San Francisco, CA 94111-5096	12/8/1988
228. Swiss American Securities, Inc.	100 Wall Street New York, NY 10005	12/2/1980
229. Texas First Securities Corporation	1360 Post Oak Blvd. Suite 120 Houston, TX 77056	11/17/1988
230. TIAA-CREF Individual & Institutional Services, Inc.	730 Third Avenue New York, NY 10017	9/9/2002
231. Tucker Anthony, Incorporated	One Beacon Street Boston, MA 02108	10/23/1980
232. U.S. Clearing Corporation	120 Wall Street New York, NY 10005	5/3/1983
233. UBS Financial Services, Inc. (FKA UBS Paine Webber, Inc.)	1285 Avenue of the Americas New York, NY 10019	5/12/1989
234. UBS Financial Services, Inc. (FKA UBS Paine Webber, Inc.)	1285 Avenue of the Americas New York, NY 10019	8/26/2004
235. Ukrainian National Association	2200 Route 10 Parsippany, NJ 07054	9/24/2004
236. Unified Financial Securities, Inc.	429 North Pennsylvania Street Indianapolis, IN 46204	10/28/1976
237. United of Omaha Life Insurance Co.	Mutual of Omaha Plaza Omaha, NE 68175	3/16/1982
238. USAA Transfer Agency Company of Delaware	USAA Building San Antonio, TX 78288	10/2/1990
239. W.H. Reaves & Co., Inc.	30 Montgomery Street Jersey City, NJ 07302	12/7/1990
240. W.H. Turlington & Co.	509 East Center Street Lexington, NC 27292	11/3/1980
241. Wachovia Securities, Inc.	201 North Tryon Street Charlotte, NC 28202	4/6/1990
242. Wachovia Securities, LLC	901 East Byrd Street Richmond, VA 23219	7/1/2003
243. Wayne Hummer & Co.	300 South Wacker Drive Chicago, IL 60606	1/25/1983
244. Web Street Securities, Inc.	222 South Riverside Plaza 11th Floor Chicago, IL 60601	4/27/2000
245. Wedbush Morgan Securities	1000 Wilshire Boulevard Los Angeles, CA 90030	12/24/1984
246. Weiss, Peck & Greer	One New York Plaza New York, NY 10004	6/16/1982
247. Wells Advisors, Inc.	3885 Holcomb Bridge Road Norcross, GA 30092	3/20/1992

APPROVED Nonbank Trustees/Custodians as of December 31, 2004

Name	Address	Approval Date
248. Wexford LLC Corporation	1 New York Plaza 11th Floor New York, NY 10292	6/30/1998
249. Wheat, First Securities, Inc.	707 East Main Street P.O. Box 1357 Richmond, VA 23211	3/23/1983
250. William R. Hough & Co., Inc.	100 2nd Avenue South Suite 800 St. Petersburg, FL 33701	4/18/1995

LIFO Recapture Under Section 1363(d); Correction

Announcement 2005-64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9210, 2005-33 I.R.B. 290) that were published in the **Federal Register** on July 12, 2005 (70 FR 39920) regarding the LIFO recapture by corporations converting from C Corporations to S Corporations.

DATES: This correction is effective July 12, 2005.

FOR FURTHER INFORMATION CONTACT: Pietro Canestrelli, at (202) 622-3060 and Martin Schaffer, at (202) 622-3070 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1363 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (T.D. 9210), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the correction notice (T.D. 9210), which was the subject of FR Doc. 05-13383, is corrected as follows:

On page 39920, column 3, in the preamble, under the paragraph heading “Summary of Comments and Explanation of Revisions” first paragraph, lines 23 through 25, the language “corporation, the date of recapture event is a transfer of a partnership interest to an S corporation, the date of the transfer” is corrected to read as “corporation, the date of the transfer”.

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

(Filed by the Office of the Federal Register on August 10, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 11, 2005, 70 F.R. 46758)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

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