SON OF BOSS SETTLEMENT INITIATIVE FAQS
[Revised, Expanded and Renumbered – 6/3/04]
[Items 2a.9, 2b.14-17, 4a.3-4 added – 6/14/04]

(These FAQs are grouped and numbered by the sections of Announcement 2004-46 to which they refer.)

Section 1 — Purpose and Scope of Initiative (Q&A 1.1)

Q-1.1. How is "substantially similar transactions" defined?

A-1.1. The term "substantially similar" includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Transactions that are the same as, or substantially similar to, the transaction described in Notice 2000-44 include the Son of Boss Loan Premium Transaction (described in Chief Counsel Notice 2003-030) and Son of Boss option transaction (described in Chief Counsel Notice 2003-020). Transactions using short sales, futures, derivatives, and any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000-44. See §1.6011-4(c)(4) Example 1. The use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000-44. See §1.6011-4(c)(4) Example 1.

Section 2 — Terms of Initiative

(a) Tax Adjustments (Q&As 2a.1—2a.9)

Q-2a.1. What is included in the phrase "all claimed tax benefits and attributes"?

A-2a.1. Taxpayers will be entitled to no ordinary or capital losses from the transactions. This includes, but is not limited to: inflated basis loss, inflated basis in retained assets, loss carryforwards or carrybacks, fee deductions, losses passed through from partnerships or other flow-through entities, and net interest expense on loans from third parties.

Q-2a.2. Which items are included in computing the net out-of-pocket costs and fees?

A-2a.2. "Net out-of-pocket costs and fees" include the net cost of property contributed to the partnership (including cash) and fees paid to third parties to facilitate the taxpayer's investment in the Son of Boss transaction, reduced by the cash and the fair market

value of assets distributed from the partnership to the taxpayer, amounts received by the taxpayer on the sale of the partnership interest, and amounts received by the taxpayer in connection with the transaction from any other source, or any combination of such. For example, in the loan premium transaction, the "net" cost of property contributed to the partnership does not include any cash received from the premium borrowing. Similarly, in a transaction involving offsetting options, the "net" cost of the property contributed is the amount of premium paid for the purchased option reduced by the amount of premium received for the written option.

Q-2a.3. How should the taxpayer treat a refund or reimbursement of the fees paid to the accounting firm or other party (or reduction of previously accrued but unpaid fees) relating to the tax shelter investment?

A-2a.3. If the refund (which, for purposes of these FAQ, includes any reimbursement or reduction) was received before the taxpayer and the Service execute the settlement agreement, the refund is included in the net out-of-pocket computation by reducing the fees paid or accrued. The closing agreement will provide that, if the refund is received after the taxpayer and Service execute the settlement agreement, the taxpayer must recognize income from the refund in the tax year the amount was received.

Q-2a.4. Please explain the character of the out-of-pocket costs. Can I choose the character? Can I use some of the fees as long-term loss and some as ordinary loss? When must I make that choice?

A-2a.4. Taxpayers have a choice of treating the net out-of-pocket costs as either a long-term capital loss or as an ordinary loss equal to one-half the net out-of-pocket costs, but neither both nor any combination of each. For example, the net out-of-pocket costs are $2 million. The taxpayer may elect to treat the $2 million as if it were a long-term capital loss on Schedule D or the taxpayer may elect to treat $1 million (one-half of $2 million) as if it were an ordinary loss on Line 14 of the 1040 (Form 4797) in the year the fees were paid or accrued. The taxpayer may not elect to treat, for example, $1 million as a long-term capital loss and $500,000 (one-half of the remaining $1 million) as an ordinary loss. Taxpayers elect long-term capital or ordinary treatment during the 60-day period for providing additional information and documentation on the form that will be provided.

Q-2a.5. If a taxpayer claimed an inflated-basis loss from one of these transactions in a year barred by the statute of limitations, is the taxpayer eligible to claim the net out-of-pocket costs?

A-2a.5. Yes, but only to the extent that those costs and fees exceed any tax benefits (including tax benefits with respect to costs and fees) claimed in the barred years.

Q-2a.6. If the taxpayer paid or accrued costs and fees from one of these transactions in a year barred by the statute of limitations, is the taxpayer eligible to claim the net out-of-pocket expenses?

A-2a.6. Yes, but subject to the limitation that, if the tax benefits were claimed in a year barred by the statute of limitations, the costs and fees will be allowed only to the extent that they exceed the tax benefits claimed in the barred years. The costs and fees will be permitted in the first open year.

Q-2a.7. How are "net out-of-pocket costs" treated when the taxpayer's loss from the Son of Boss transaction was claimed in a year other than the year in which the expenses were paid or accrued?

A-2a.7. Under Section 2(a)(2), the taxpayer may treat the net out-of-pocket costs as a loss in the year those costs were paid or accrued. The taxpayer may account for the net out-of-pocket costs in the year the taxpayer claimed the loss for the Son of Boss transaction only if that was the year in which those costs were paid or accrued.

Q-2a.8. If the taxpayer realized "actual" losses and elects to participate in the settlement, can the taxpayer deduct 100 percent of the "actual" losses?

A-2a.8. Actual losses incurred in the Son of Boss transaction (for example, a taxpayer realized a small loss on the offsetting options) are included in the "net out-of-pocket" costs determination and thus are not separately deductible under the terms of the settlement.

Q-2a.9. In computing their net out-of-pocket costs, how should taxpayers determine the appropriate valuation of the property (if any) distributed from the partnership?

A-2a.9. Taxpayers should use fair market value in computing their net out-of-pocket costs. Taxpayers will have the burden of proving the fair market value as of the date of distribution from the partnership. If taxpayers cannot reasonably determine fair market value, the Service, in its discretion, may agree to treat the cost of the asset to the partnership as a proxy for fair market value. In all events, in the closing agreement, the parties will adjust the basis of the distributed property as appropriate, including by the valuation (either cost or fair market value) used in calculating the taxpayer's net out-of-pocket cost.

(b) Application of Penalties (Q&As 2b.1 — 2b.17)

Q-2b.1. If the taxpayer made a proper and timely disclosure under Announcement 2002-2, will the Service assert that the taxpayer is subject to penalties if the taxpayer does not elect to participate in the settlement initiative?

A-2b.1. In general, a taxpayer that made a proper and timely disclosure (for which the taxpayer was eligible) under Announcement 2002-2 will not be subject to accuracy-related penalty **as provided** in that announcement, regardless of whether the taxpayer elects to participate in the settlement initiative.

Q-2b.2. Which penalty will apply to taxpayers that failed to disclose the Son of Boss transaction before the issue was raised on examination, and therefore were not eligible under Announcement 2002-2?

A-2b.2. Taxpayers that were not eligible under Announcement 2002-2 cannot qualify for the penalty of 0 percent. A penalty of 10 percent will apply if the taxpayer was involved in only one Son of Boss transaction and no other listed transactions, and a penalty of 20 percent will apply if the taxpayer was involved in more than one Son of Boss transaction or involved in one or more other listed transactions.

Q-2b.3. If the taxpayer did not properly disclose the Son of Boss tax shelter in accordance with Announcement 2002-2, and the taxpayer participated in one Son of Boss tax shelter with tax consequences in multiple tax years, but did not participate in any other Son of Boss tax shelter or other listed tax shelter, is the 10 percent penalty applicable?

A-2b.3. Yes, see section 2(b)(2)(i) of the Announcement 2004-46.

Q-2b.4. If the taxpayer did not properly disclose the Son of Boss tax shelter in accordance with Announcement 2002-2, and the taxpayer participated in the same Son of Boss tax shelter promotion involving multiple entities, but did not participate in any other Son of Boss tax shelter or other listed tax shelter, is the 10 percent penalty applicable?

A-2b.4. Yes, see section 2(b)(2)(i) of Announcement 2004-46.

Q-2b.5. If the taxpayer claimed the tax benefits from more than one Son of Boss transaction or another listed transaction in a current, prior or subsequent year return, whether or not the statute of limitations is still open, does the 20 percent penalty apply?

A-2b.5. Yes, see section 2(b)(2)(ii) of Announcement 2004-46.

Q-2b.6. A taxpayer did not disclose under Announcement 2002-2; however, the taxpayer attached a disclosure to the return. Is the taxpayer eligible for the 0 percent penalty?

A-2b.6. No, only those taxpayers who filed a proper disclosure under Announcement 2002-2 are eligible for the 0 percent penalty. Disclosure with the return does not provide penalty relief for tax shelter items.

Q-2b.7. Does the fact that a tax shelter registration number was shown on the return give penalty waiver?

A-2b.7. No, only taxpayers who disclosed under Announcement 2002-2 qualify for the 0 percent penalty.

Q-2b.8. If the taxpayer claimed the tax benefits of one Son of Boss transaction and also claimed the tax benefits of another listed transaction and the taxpayer was not required to disclose the other listed transaction under section 6011, does the 20 percent penalty apply?

A-2b.8. Yes, see section 2(b)(2)(ii) of Announcement 2004-46.

Q-2b.9. Will the Service consider changing the settlement terms regarding penalties as listed in Announcement 2004-46 on a case-by-case basis depending on the taxpayer's specific circumstances?

A-2b.9. No.

Q-2b.10. If a taxpayer filed a qualified amended return but did not disclose the transaction under Announcement 2002-2 is the taxpayer eligible for the settlement initiative?

A-2b.10. If a taxpayer filed a qualified amended return with respect to the Son of Boss transaction and the taxpayer is otherwise eligible for the settlement initiative, the taxpayer is eligible for the settlement initiative. In determining the amount of the underpayment attributable to the Son of Boss transaction on which the penalty described in Section 2(b) will be calculated, the amount shown as the tax by the taxpayer on his return will include the amount shown as additional tax on the taxpayer's qualified amended return. See Treas. Reg. § 1.6664-2(c)(3) and Notice 2004-38, 2004-21 I.R.B. 949 (May 24, 2004), for the definition of qualified amended return.

Q-2b.11. If the taxpayer is under examination for another listed transaction and properly disclosed the Son of Boss transaction under Announcement 2002-2, does the taxpayer qualify for the zero, ten, or twenty percent penalty?

A-2b.11. Under Section 2(b)(1), the taxpayer is eligible for the zero percent penalty because the taxpayer properly disclosed the Son of Boss transaction.

Q-2b.12. If a taxpayer entered into two Son of Boss transactions in the same year, does the taxpayer qualify for the 10 percent penalty under Section 2(b)(2)?

A-2b.12. No. Under Section 2(b)(2), the taxpayer claimed tax benefits from another listed transaction, the other Son of Boss transaction.

Q-2b.13. If the taxpayer could not properly disclose the Son of Boss transaction under Announcement 2002-2 and participated in another listed transaction that the taxpayer disclosed under Announcement 2002-2, does the taxpayer qualify for the ten percent penalty?

A-2b.13. No. Under Section 2(b)(2), the taxpayer does not qualify for the ten percent penalty because the taxpayer claimed benefits from another listed transaction.

Q-2b.14. If a taxpayer has filed a qualified amended return completely removing another listed transaction from his return, can the taxpayer get the benefit of the 10 percent penalty provision under section 2(b)(2)(i) of Announcement 2004-46 rather than the 20 percent penalty under section 2(b)(2)(ii)?

A-2b.14. For purposes of section 2(b)(2), the Service will consider the taxpayer as not claiming tax benefits from any other listed transaction because of the qualified amended return only if the taxpayer agrees to sign a closing agreement fully conceding the tax benefits on the other listed transaction.

Q-2b.15. Are amended returns filed after the release of Announcement 2004-46 eligible to be "qualified amended returns" within the meaning of Treas. Reg. § 1.6664-2(c), if they otherwise satisfy the conditions of a qualified amended return?

A-2b.15. Announcement 2004-46 does not affect whether an amended return is eligible to be a qualified amended return. Whether an amended return is a qualified amended return is determined under Treas. Reg. §1.6664-2(c) and Notice 2004-38, 2004-21 I.R.B. 949.

Q-2b.16. If a taxpayer participated in a Son of Boss transaction, did not disclose the transaction under Announcement 2002-2, and has not yet disposed of the inflated basis asset(s) to claim the loss, what penalty will apply to the taxpayer's transaction under the terms of Announcement 2004-46?

A-2b.16. The penalty under the Announcement applies to any underpayment attributable to the Son of Boss transaction. Because the taxpayer has no underpayment attributable to the Son of Boss transaction, the taxpayer who settles pursuant to the settlement initiative will not owe a penalty.

Q-2b.17. A taxpayer participated in two Son of Boss transactions, neither of which the taxpayer disclosed under Announcement 2002-2. In one transaction, the taxpayer sold assets in which the taxpayer claimed an inflated basis and, in the other transaction, the taxpayer has not yet disposed of the assets with the inflated basis. What penalty applies to the taxpayer under the settlement initiative?

A-2b.17. Because the taxpayer participated in more than one Son of Boss transaction, the taxpayer must pay a penalty of 20 percent on the underpayment attributable to the Son of Boss transaction in which the taxpayer sold the inflated basis assets.

Section 3 — Eligibility Requirements (Q&As 3.1 — 3.9)

Q-3.1. Can a partner in a TEFRA partnership accept the settlement offer independently of any other partners in the partnership?

A-3.1. Yes, a partner can agree to the adjustments at any stage of the partnership proceedings by signing a waiver and a closing agreement.

Q-3.2. Can a partner who has received a Notice of Final Partnership Administrative Adjustment on or before June 21, 2004, participate in the settlement initiative?

A-3.2. Partners that have received a Notice of Final Partnership Administrative Adjustment (FPAA) on or before June 21, 2004, may participate in the settlement initiative so long as no partner has petitioned the FPAA in court at the time the partner elects to participate in the settlement. Partners that decide to elect must follow the election procedures in Announcement 2004-46. In the Notice of Election, they should indicate that they have received an FPAA. If the period for obtaining judicial review of the FPAA will expire before the execution of the closing agreement is completed, the partner may preserve the right to judicial review by petitioning a court. In cases in which the taxpayer filed a notice of election to participate before any partner filed a petition (and so long as the partner is otherwise eligible for the settlement initiative), Chief Counsel will accept a settlement offer or recommend that the Department of Justice accept a settlement offer consistent with the terms of this initiative.

Q-3.3. Can a taxpayer who has received a Statutory Notice of Deficiency on or before June 21, 2004, participate in this initiative?

A-3.3. A taxpayer that has received a Statutory Notice of Deficiency (SNOD) on or before June 21, 2004, may participate in the settlement initiative if the taxpayer has not yet filed a petition in the United States Tax Court and has not filed a suit for refund in any other court. The taxpayer must follow the election procedures in Announcement 2004-46. In the Notice of Election, the taxpayer should indicate that the taxpayer has received a SNOD. If within the 90-day period and there is sufficient time remaining on the statute (including if the taxpayer signs a consent to extend the period of limitations on assessment), the revenue agent will consider withdrawing the SNOD in accordance with Rev. Proc. 98-54, 1998-2 C.B. 531.

Q-3.4. A taxpayer entered into a Son of Boss transaction, but has not claimed any tax benefits from the transaction. Is the taxpayer eligible for the settlement and how would it be applied?

A-3.4. Yes, if the taxpayer incurred net out-of-pocket expenses, the taxpayer may file an election to participate. The taxpayer's adjusted basis in the appropriate assets will be adjusted in the closing agreement to account for the disallowance of the tax benefit.

Q-3.5. A taxpayer entered into a Son of Boss transaction and put it on his or her return, but received no current benefit due to a net operating loss (NOL). Is the taxpayer eligible for the settlement?

A-3.5. Yes, if the taxpayer received no benefit, the taxpayer may still file an election to participate and claim the out-of-pocket expenses under the terms of the settlement initiative. The NOL will be adjusted in the closing agreement to account for the disallowance of any losses from the Son of Boss transaction.

Q-3.6. Does Section 3(1) preclude a partner from accepting the settlement offer if any other partners in the partnership are described in Section 3(1)?

A-3.6. Under Section 3(1)(i) and (ii), any person who organized or participated directly or indirectly in the sale of any Son of Boss transaction or received fees for organizing, selling, or promoting a Son of Boss transaction is not eligible for the settlement initiative. Under Section 3(1)(iii), if a person, at the time that person participated in the Son of Boss transaction, was a partner in a partnership that organized, sold, or promoted a Son of Boss transaction (including received fees for such activities), that person is not eligible for the settlement initiative. Also under Section 3(1)(iii), if a person, at the time that person participated in the Son of Boss transaction, was an employee of a person that organized, sold, or promoted a Son of Boss transaction (including received fees for such activities), that person (the employee) is not eligible for the settlement initiative.

If an ineligible person (as described in Section 3(1)) is a partner in a TEFRA partnership and that person directly or indirectly claimed tax benefits in a manner described in Notice 2000-44 with respect to that TEFRA partnership, then no partners in the partnership are eligible for the settlement initiative under Section 3(2), **except as described in Q&A-3.7 and Q&A-3.8**.

Although an ineligible person (as described in Section 3(1)) is a partner in a non-TEFRA partnership and that person directly or indirectly claimed tax benefits in a manner described in Notice 2000-44 with respect to that partnership, other partners in the partnership may be eligible for the settlement initiative under Section 3(2).

Q-3.7. If a partner in a TEFRA partnership is excluded from the settlement initiative under Section 3(2) of Announcement 2004-46, are there other circumstances in which such partner may participate in the settlement initiative despite the participation in that partnership of a person described in Section 3(1) (an "ineligible person")? (See Sections 3(1) and 3(2) of Announcement 2004-46 and Q&A-3.6 of this FAQ.)

A-3.7. Yes. In the following circumstances, partners (other than ineligible persons) may participate in the settlement initiative:

(1) Ineligible person claimed a small tax benefit.

(a) Participation in the settlement initiative is available for partners (other than an ineligible person) in a TEFRA partnership described in Section 3(2), if no ineligible person claimed more than two percent of the tax benefits described in Notice 2000-44 with respect to the partnership and the total tax benefits claimed by all ineligible persons in the partnership were less than five percent of the tax benefits described in Notice 2000-44 with respect to the partnership.

(b) A partner that believes that these conditions are satisfied should include with the Notice of Election: (i) a statement that the taxpayer was a partner in a partnership in which one or more ineligible persons held an interest; (ii) a statement that, to the best of the taxpayer's knowledge, no ineligible person claimed more than two percent of the tax benefits described in Notice 2000-44 with respect to the partnership and all ineligible persons collectively claimed less than five percent of the tax benefits described in Notice 2000-44 with respect to the partnership; and (iii) as much of the following information for each ineligible person that is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and claimed percentage of the tax benefits described in Notice 2000-44 with respect to the partnership. The Service will notify the partner by mail whether the partner may participate in the settlement initiative.

(2) Ineligible person waives right to consistent settlement under § 6224(c)(2).

(a) Participation in the settlement initiative is available for partners (other than ineligible persons) in a TEFRA partnership described in Section 3(2), if each ineligible person waives the right under § 6224(c)(2) to a consistent settlement agreement.

(b) A partner that satisfies this requirement should include with the Notice of Election: (i) a statement that the taxpayer was a partner in a partnership in which one or more ineligible persons held an interest; (ii) a statement that, to the best of the taxpayer's knowledge, each ineligible person intends to waive its rights under §6224(c)(2); and (iii) as much of the following information for each ineligible person that is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and percentage interest held in the partnership. The Service will notify the partner by mail whether the partner may participate in the settlement initiative.

(c) A waiver of § 6224(c)(2) must be in the manner prescribed under Treas. Reg. § 301.6224(b)-1. However, instead of filing the waiver with the service center where the partnership return is filed under Treas. Reg. § 301.6224(b)-1(b)(5), the waiver must be sent to: INTERNAL REVENUE SERVICE, Attn: Announcement 2004-46, 1901 Butterfield Road, Ste. 310, Downer’s Grove, IL 60515. The Service must receive the waiver before the end of the period for Additional Information and Documentation under Section 4(b) of Announcement 2004-46.

(d) If only some ineligible persons waive their consistent settlement rights but the remaining ineligible persons are partners described in (1) of this Q&A-3.7, the partners

(other than an ineligible person) can participate in the settlement initiative under this Q&A.

Q-3.8. If a partner in a TEFRA partnership is excluded from the settlement initiative under Section 3(2) of Announcement 2004-46 and does not satisfy either (1) or (2) in Q&A-3.7, are there any other circumstances in which such partner may participate in the settlement initiative despite the participation in that partnership of a person described in Section 3(1) (an "ineligible person")?

A-3.8. Yes. The purpose of the settlement initiative is to promote efficient tax administration by offering the maximum number of Son of Boss taxpayers an opportunity to resolve quickly their tax disputes while not allowing ineligible persons the same opportunity. Because of the consistent settlement rule under § 6224(c)(2), partners described in Section 3(2) were excluded from this settlement to prevent ineligible persons from benefiting from the initiative. After further consideration, the Service has decided that in certain circumstances, such as those described in Q&A-3.7, partners described in Section 3(2) may participate in the settlement initiative. In addition, given the potential variety and complexity of Son of Boss transactions, the Service has decided it will review requests to participate by partners and may allow participation on a case-by-case basis. Furthermore, the Service will take steps, where appropriate, to prevent ineligible persons from benefiting from this settlement initiative.

Participation in the settlement initiative is available for partners (other than ineligible persons) in a TEFRA partnership described in Section 3(2) in situations where, after considering the purposes of the settlement initiative, the Service determines such settlement would be in the best interests of tax administration. Partners desiring to participate in the settlement initiative must file the Notice of Election in a timely manner to be considered under this Q&A-3.8. In the Notice of Election, the partner should include: (i) a statement as to why the partner believes that participation in the settlement initiative is appropriate, and (ii) as much of the following information concerning each ineligible person as is known to the taxpayer: name, taxpayer identification number (TIN), current address, daytime telephone number, and percentage interest held in the partnership. To ensure consistent treatment of such elections, the Service will centralize the evaluation of requests to participate filed under this Q&A-3.8. The Service will notify the partner by mail whether the partner may participate in the settlement initiative.

Q-3.9. In a docketed Tax Court case, may the taxpayer elect to participate in the settlement initiative in light of Sec. 3(3)?

A-3.9. Under Section 3(3), taxpayers who are a party to a court proceeding to determine the tax treatment of the Son of Boss transaction are not eligible to participate in the initiative. However, the taxpayer may propose a settlement on the same terms as in Announcement 2004-46, and the respondent will consider that offer in light of the purposes of the settlement initiative.

Section 4 — Required Procedures for Electing Participants

(a) Notice of Election (Q&As 4a.1 — 4a.4)

Q-4a.1. How do I make the notice of election? What formats are acceptable and what is required?

A-4a.1. A *Notice of Election* — Form 13586 — has been created for this announcement and is available on the IRS Web site at www.irs.gov. In addition, revenue agents will have copies of this form. The forms must contain original signatures and must be sent via certified mail or designated delivery service (within the meaning of §7502(f)) to both the examining agent (if you are currently under examination or any TEFRA partnership in which you are (or were) a partner is under examination) and to the address listed in the announcement. If you are not currently under examination, you must send it only to the address listed in the announcement. The *Notice of Election* must be complete (as required by Announcement 2004-46) and submitted on or before June 21, 2004. Incomplete forms will be rejected and must be re-submitted on or before June 21, 2004 to be considered. The *Notice of Election* is required to be signed under penalties of perjury.

Q-4a.2. Does the power of attorney for a partner in a TEFRA partnership need any special language?

A-4a.2. Yes, in the case of taxpayers that invested through a TEFRA partnership. In order for the power of attorney to qualify under Section 6223, the following language must be included under number 3 or number 5 of Form 2848.

> "*The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code.*"

Q-4a.3. If a taxpayer claims eligibility for the zero percent penalty because the taxpayer disclosed the Son of Boss transaction under Announcement 2002-2, must the taxpayer identify on the Notice of Election (Form 13582) all other listed transactions he engaged in?

A-4a.3. Yes. See Section 4(a)(5) and Form 13582, Section IV.

Q-4a.4. If a taxpayer participated in a Son of Boss transaction through a grantor trust, does the taxpayer need to file two Notices of Election?

A-4a.4. No, the taxpayer need only file one Notice of Election for the transaction.

(b) Additional Information and Documentation – 60 days (Q&As 4b.1 — 4b.4)

Q-4b.1. The announcement states that taxpayers will be notified of eligibility and additional information will be requested. Will taxpayers be notified if they are not eligible for the settlement initiative?

A-4b.1. Yes, taxpayers will be informed whether they are eligible or ineligible to participate in the settlement initiative.

Q-4b.2. The announcement states that taxpayers will be notified of eligibility and additional information will be requested. What additional information and documentation will be requested?

A-4b.2. The Service has created forms that will be sent to the taxpayer for completion and are available on the IRS Web site at www.irs.gov. These forms indicate what taxpayers are asked to provide. Taxpayers must provide, within 60 days, specific information on Form 13586 as to all the losses claimed, whether they were ordinary or capital, the entities with respect to which the losses were denied and the line items of the return on which they were claimed. They are also asked to provide specific information regarding their net out-of-pocket costs (discussed below), the cash contributed, cost of property contributed, the amount of liability assumed, and cash and fair market value of property distributed. They must provide the names, TINs and type of return for all entities used for the transaction. A Form 13586 will be required for each year any benefit was claimed, including any years barred by the statute of limitations.

Q-4b.3. Which information will be requested regarding out-of-pocket expenses?

A-4b.3. Taxpayers will use Form 13586-A to attest, under penalties of perjury, to the total losses claimed, the net out-of-pocket costs claimed, and whether they elect to treat the out-of-pocket costs as a long-term capital loss or an ordinary loss. Taxpayers will be asked to provide the amount of net out-of-pocket costs and fees related to the Son of Boss transaction, the tax year in which the taxpayer paid or accrued those costs and fees, and the manner and year in which the taxpayer claimed those costs and fees for tax purposes. They will be asked to provide specific information regarding fees paid to financial advisors, accountants, attorneys, and others, the identity of parties to whom the fees were paid, and any refund or reimbursement of costs or fees. In addition, specific documentation to support the fees paid, including promotional materials in the taxpayer's possession, if not previously provided, may be requested.

Q-4b.4. What is the period for providing additional information and documentation? Under what circumstances will an extension of this period be granted to the taxpayer to submit requested information and documentation under Section 4 of Announcement 2004-46?

A-4b.4. Announcement 2004-46 allows the taxpayer 60 days for submission. Only under unusual circumstances will an extension of this period be granted. Any extensions

granted must be approved by the revenue agent's manager. Extensions will not be automatic and the taxpayer must explain to the satisfaction of the Service the reasons an extension is being requested. The Service has the discretion to grant or to refuse an extension.

(c) Closing Agreement and Payment – 30 days (Q&As 4c.1 — 4c.4)

Q-4c.1. After submission by the taxpayer of an election to participate in the settlement resolution, when should the revenue agent mail a notification to the taxpayer and a request for additional information or documents?

A-4c.1. The revenue agent should mail the notification to the taxpayer as soon as possible, but generally not later than 10 business days after receipt of the taxpayer election. This notification will include all the applicable forms the taxpayer is required to complete within the 60-day timeframe.

Q-4c.2. Under what circumstances will the Service grant an extension to the taxpayer to submit the signed closing agreement?

A-4c.2. The announcement allows the taxpayer 30 days for submission. Only under unusual circumstances will this extension be granted. Any extensions granted must be approved by the revenue agent's manager. Extensions will not be automatic and the taxpayer must explain to the satisfaction of the Service the reasons an extension is being requested. The Service has the discretion to grant or to refuse an extension.

Q-4c.3. The announcement requires either full payment at the time of signing the closing agreement or that the electing taxpayer make other arrangements. How do I make other arrangements if I cannot make full payment?

A-4c.3. At the time a taxpayer submits their signed closing agreement, if the taxpayer does not make payment, the taxpayer must submit complete financial statements. The taxpayer will be referred to a Collection Officer who will determine, within 30 days, the taxpayer's eligibility for other payment arrangements. Once the alternative payment arrangements are finalized, the closing agreements will be executed and assessment will be made. Failure to reach acceptable financial arrangements will make the taxpayer ineligible to participate in this settlement initiative.

Q-4c.4. Once a taxpayer has submitted all required forms within the 60 days, when can the taxpayer expect to receive the revenue agent's report and closing agreement?

A-4c.4. The revenue agents will generally review the documents provided and prepare a report and closing agreement for the taxpayer's signature within 30 days of receipt of the completed forms.

Additional Questions (Q&As Misc.1 — Misc.8)

Q-Misc.1. The audit is still in process for unrelated issues. The taxpayer submitted an election to participate in the settlement initiative. How should the revenue agent proceed?

A-Misc.1. The case should be treated as a partially agreed case and the settlement should be processed following the same time requirements under the announcement. A partial agreement should be obtained with appropriate modification to the closing agreement language for a partial agreement. The taxpayer retains their Appeal rights for the unrelated issues if they are unagreed.

Q-Misc.2. May taxpayers request that the closing agreement include language pertaining to "innocent spouse" relief under section 6015?

A-Misc.2. Yes. Information relating to "innocent spouse" provisions can be included in the Form 906. This type of situation will be handled on a case-by-case basis and determined on the facts of the particular case. Appropriate closing agreement language can be inserted. The taxpayer should inform the Service of his or her desire to claim "innocent spouse" relief when submitting the additional information.

Q-Misc.3. How should the revenue agent handle a joint return where one spouse elects to participate but the other spouse does not and "innocent spouse" relief is not being claimed?

A-MIsc.3. One spouse can elect to participate even if the other spouse does not. There are Non-Masterfile procedures for dealing with this situation. The revenue agent should seek assistance for this situation.

Q-Misc.4. Should a copy of the announcement be sent to the taxpayer and their POA to advise them of its issuance?

A-Misc.4. Although not a requirement, as a courtesy, the revenue agent may send a taxpayer under examination the announcement and the *Notice of Election* form. The agent may consult the Technical Advisor's website for the form letter to be issued for transmitting the announcement and election form. If a joint return, separate letters to each spouse are required. If a TEFRA entity, the letter will be sent to the tax matters partner. Copies will be sent to the POA as appropriate.

Q-Misc.5. A taxpayer with a Notice 2000-44 transaction also engaged in another listed transaction in the same or earlier year. The taxpayer did not disclose the Notice 2000-44 transaction under Announcement 2002-2. How should the revenue agent treat the Notice 2000-44 settlement since it will be impacted by any adjustment related to the other listed transaction?

A-Misc.5. The taxpayer may participate in the settlement of the Son of Boss issue. The closing agreement should cover only the Son of Boss issue and will be a partial agreement. The taxpayer will have the 20 percent penalty applied to the underpayment attributable to the Son of Boss adjustment. If the disallowance related to the other listed transaction results in a future refund to the taxpayer, the 20 percent penalty applied to the Son of Boss adjustment will not be offset by any future refunds due to disallowance.

Q-Misc.6. Is the Notice of Election filed by the taxpayer binding on the taxpayer?

A-Misc.6. No. The terms of the settlement are not binding until execution of the closing agreement. The filing of the Notice of Election does not obligate or bind the taxpayer to enter into the closing agreement.

Q-Misc.7. Will electing to participate in the settlement initiative or settling under the initiative deprive a taxpayer of the benefit of interest suspension under section 6404(g) on the tax liability attributable to the Son of Boss transaction for the period preceding the taxpayer's participation?

A-Misc.7. No. Neither filing a Notice of Election, nor executing a closing agreement will undo the suspension of interest under section 6404(g).

Q-Misc.8. When will the interest suspension period under section 6404(g) end for taxpayers participate in the settlement initiative?

A-Misc.8. Section 6404(g)(3) provides that the suspension period ends 21 days after the Service provides notice to the taxpayer of the amount and the basis for the liability. Section 4(c) of Announcement 2004-46 provides that the Service will mail a draft closing agreement to the taxpayer reflecting the terms of the settlement. With the draft closing agreement, the Service will include a Revenue Agent's Report, which will provide notice to the taxpayer of the amount and the basis for the liability. The Service will treat the mailing of the Revenue Agent's Report as the notice required by section 6404(g)(1)(A). The suspension period will end 21 days after the date the Revenue Agent's Report is mailed to the taxpayer.