Internal Revenue
bulletin

Bulletin No. 2003-50
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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. 2003–123, page 1200.

Qualified conservation contribution. This ruling clarifies the Service's position that a trust is not allowed either a charitable deduction under section 642(c) or a distribution deduction under section 661(a)(2) of the Code with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h). Rev. Rul. 68–667 amplified.

T.D. 9094, page 1201.
REG–115472–03, page 1215.

Final, temporary, and proposed regulations under section 6031(a) of the Code allow the Commissioner to publish in the Internal Revenue Bulletin guidance that excepts, from the partnership income tax reporting requirements, partnerships whose income is primarily from tax-exempt bonds.

Notice 2003–75, page 1204.

This notice describes the new simplified reporting regime for taxpayers who hold interests in Canadian registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs). The new reporting regime, which is effective for taxable years beginning after December 31, 2002, is in lieu of the Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520–A, *Annual Information Return of Foreign Trust With a U.S. Owner*, filing obligations that otherwise apply to U.S. citizens and resident aliens who hold interests in RRSPs and RRIFs and to the custodians of such plans. Notices 97–34 (section II-E), 2003–25, and 2003–57 superseded.

Notice 2003–79, page 1206.

Section 1(h) of the Code provides that certain dividends paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" are subject to tax at the reduced rates applicable to certain capital gains. This notice provides guidance for persons required to make returns and provide statements under section 6042 (*e.g.*, Form 1099-DIV) regarding distributions with respect to securities issued by a foreign corporation, and for individuals receiving such statements. The notice also describes when a security (or an American depositary receipt in respect to such security) issued by a foreign corporation that is other than ordinary or common stock (such as preferred stock) will satisfy the readily tradable test.

Announcement 2003–79, page 1219.

This announcement withdraws proposed regulations (REG–209817–96, 1997–1 C.B. 754) concerning the treatment of obligation-shifting transactions. REG–209817–96 withdrawn.

Announcement 2003–80, page 1220.

This document contains corrections to proposed regulations (REG–133791–02, 2003–35 I.R.B. 493) under section 41 of the Code relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control.

Announcement 2003–81, page 1220.

This document contains corrections to final regulations (T.D. 9078, 2003–39 I.R.B. 630) under section 1361 of the Code relating to a qualified subchapter S trust election for testamentary trust.

(Continued on the next page)

Department of the Treasury
Internal Revenue Service

EMPLOYEE PLANS

Rev. Proc. 2003–86, page 1211.
Professional employer organizations; employee leasing; plan qualification. This procedure describes certain transitional rules that may be used by defined contribution retirement plans of professional employer organizations. Rev. Proc. 2002–21 amplified.

EXEMPT ORGANIZATIONS

Announcement 2003–82, page 1220.
Code Red Cross Training of San Ramon, CA, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

EMPLOYMENT TAX

Notice 2003–78, page 1205.
This notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under sections 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code for railroad employees, employers, and employee representatives, respectively. For 2004, the tier 2 tax rate on employees is 4.9 percent of compensation and the tier 2 tax rate on employers and employee representatives is 13.1 percent of compensation.

ADMINISTRATIVE

T.D. 9094, page 1201.
REG–115472–03, page 1215.
Final, temporary, and proposed regulations under section 6031(a) of the Code allow the Commissioner to publish in the Internal Revenue Bulletin guidance that excepts, from the partnership income tax reporting requirements, partnerships whose income is primarily from tax-exempt bonds.

Notice 2003–75, page 1204.
This notice describes the new simplified reporting regime for taxpayers who hold interests in Canadian registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs). The new reporting regime, which is effective for taxable years beginning after December 31, 2002, is in lieu of the Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520–A, *Annual Information Return of Foreign Trust With a U.S. Owner*, filing obligations that otherwise apply to U.S. citizens and resident aliens who hold interests in RRSPs and RRIFs and to the custodians of such plans. Notices 97–34 (section II-E), 2003–25, and 2003–57 superseded.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The 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.*

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

* **Beginning with Internal Revenue Bulletin 2003–43**, we are publishing the index at the end of the month, rather than at the beginning.

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

Section 1.—Tax Imposed

Section 1(h) of the Code provides that certain dividends paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" are subject to tax at the reduced rates applicable to certain capital gains. See Notice 2003-79, page 1206.

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

Is a trust allowed a charitable deduction under section 642(c) of the Internal Revenue Code or a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

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

26 CFR 1.401(a)–2: Impossibility of diversion under qualified plan or trust.

A revenue procedure describes limited relief from disqualification for certain defined contribution retirement plans currently maintained by Professional Employer Organizations. See Rev. Proc. 2003-86, page 1211.

Section 641.—Imposition of Tax

26 CFR 1.641(a)–2: Gross income of estates and trusts.

Is a trust allowed a charitable deduction under section 642(c) of the Internal Revenue Code or a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)–1: Unlimited deduction for amounts paid for a charitable purpose.
(Also §§ 170, 661, 662, 663; 1.641(a)–2, 1.663(a)–2.)

Qualified conservation contribution. This ruling clarifies the Service's position that a trust is not allowed either a charitable deduction under section 642(c) or a distribution deduction under section 661(a)(2) of the Code with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h). Rev. Rul. 68–667 amplified.

Rev. Rul. 2003–123

ISSUE

Is a trust allowed a charitable deduction under § 642(c) of the Internal Revenue Code or a distribution deduction under § 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under § 170(h)?

FACTS

Trust is a complex trust subject to the provisions of §§ 661–663. Since its inception, Trust has owned two adjacent parcels of real property located in State *A*. One parcel is 20 acres of undeveloped land, and the other parcel is 50 acres with improvements. The governing instrument of Trust authorizes the trustee to make contributions to charity, including contributions of Trust's gross income. The trustee conveys a perpetual conservation easement, valued at $10*x*, in the 20-acre parcel to State Agency, an organization described in § 170(c)(1). The contribution meets the requirements of a qualified conservation contribution within the meaning of § 170(h). For the year of the contribution, Trust's gross income is $20*x*, and no distributions are made to Trust's beneficiaries.

LAW AND ANALYSIS

Section 642(c)(1) provides that a trust (other than a trust subject to §§ 651 and 652) is allowed a deduction in computing its taxable income for any amount of gross income, without limitation, that pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in § 170(c) (determined without regard to § 170(c)(2)(A)). This deduction is in lieu of the charitable deduction allowed by § 170(a).

Section 1.641(a)–2 of the Income Tax Regulations provides that the gross income of an estate or trust is determined in the same manner as that of an individual.

Section 661(a) provides that a trust (other than a trust subject to §§ 651 and 652) is allowed as a deduction in computing its taxable income the sum of (1) any amount of income for the taxable year required to be distributed currently (including any amount required to be distributed that may be paid out of income or corpus to the extent the amount is paid out of income for the taxable year) and (2) any amount properly paid or credited or required to be distributed for a taxable year. The deduction, however, cannot exceed the distributable net income of the trust.

Section 662(a) provides that the beneficiary of a trust must include in the beneficiary's gross income the amount described in § 661(a) that is paid, credited, or required to be distributed by the trust to that beneficiary.

Section 663(a)(2) provides that any amount paid or permanently set aside or otherwise qualifying for the deduction provided in § 642(c) (computed without regard to §§ 508(d), 681, and 4948(c)(4)) shall not be included as an amount falling within §§ 661(a) and 662(a).

Section 1.663(a)–2 provides that any amount that is paid, permanently set aside, or to be used for the charitable purposes specified in § 642(c) and that is allowable as a deduction under that section is not allowed as a deduction to an estate or trust under § 661 or treated as an amount distributed for purposes of determining the amounts includible in gross income of beneficiaries under § 662. Amounts paid, permanently set aside, or to be used for charitable purposes are deductible by estates or trusts only as provided in § 642(c). *See also* Rev. Rul. 68–667, 1968–2 C.B. 289, holding that an amount paid to charity from a trust's corpus does not qualify either for the charitable deduction under § 642(c) or for the distribution deduction under § 661(a)(2).

Under § 642(c), a trust is generally allowed an unlimited charitable deduction for amounts that are paid from gross income for charitable purposes pursuant to the terms of the governing instrument. Because § 642(c) specifically requires that a charitable deduction is available only if the source of the contribution is

gross income, tracing of the contribution is required in determining its source. *Van Buren v. Commissioner*, 89 T.C. 1101, 1109 (1987); *Riggs National Bank v. United States*, 352 F.2d 812 (Ct. Cl. 1965); *Mott v. United States*, 462 F.2d 512 (Ct. Cl. 1972), *cert. denied*, 409 U.S. 1108 (1973); *see also Crestar Bank v. Internal Revenue Service*, 47 F. Supp. 2d 670 (E.D. Va. 1999).

In the present situation, Trust's contribution of the conservation easement in the 20-acre parcel is made pursuant to the terms of Trust's governing instrument. The contribution meets the requirements of a qualified conservation contribution within the meaning of § 170(h) and thus is for a charitable purpose. The charitable contribution, however, is made with respect to Trust principal, not from the gross income of Trust. Because the contribution of the conservation easement is not paid from Trust's gross income, Trust is not allowed a charitable deduction under § 642(c) for the contribution.

Furthermore, no deduction is allowed under § 661(a)(2) because amounts paid, permanently set aside, or to be used for charitable purposes are deductible by trusts only as provided in § 642(c). Section 1.663(a)–2. *See also U.S. Trust Company v. Internal Revenue Service*, 803 F.2d 1363 (5th Cir. 1986); *Mott*, *supra*; Rev. Rul. 68–667.

HOLDING

A trust is not allowed a charitable deduction under § 642(c) and is not allowed a distribution deduction under § 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under § 170(h).

EFFECT ON OTHER REVENUE RULING

Rev. Rul. 68–667 is amplified.

DRAFTING INFORMATION

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

Section 661.—Deduction for Estates and Trusts Accumulating Income or Distributing Corpus

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 662.—Inclusion of Amounts in Gross Income of Beneficiaries of Estates and Trusts Accumulating Income or Distributing Corpus

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 663.—Special Rules Applicable to Sections 661 and 662

26 CFR 1.663(a)–2: Charitable, etc., distributions.

Is a trust allowed a distribution deduction under section 661(a)(2) with respect to a contribution to charity of trust principal that meets the requirements of a qualified conservation contribution under section 170(h)? See Rev. Rul. 2003-123, page 1200.

Section 3201.—Rate of Tax

A notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under sections 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code. See Notice 2003-78, page 1205.

Section 3211.—Rate of Tax

A notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under sections 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code. See Notice 2003-78, page 1205.

Section 3221.—Rate of Tax

A notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under sections 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code. See Notice 2003-78, page 1205.

Section 3241.—Determination of Tier 2 Tax Rate Based on Average Account Benefits Ratio

A notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under sections 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code. See Notice 2003-78, page 1205.

Section 6031(a).—Return of Partnership Income

26 CFR 1.6031(a)–1: Return of partnership income.

T.D. 9094

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of these temporary regulations also serves as the text of the proposed regulations (REG–115472–03) set forth in this issue of the Bulletin.

DATES: *Effective Date*: These regulations are effective November 5, 2003.

Applicability Date: For dates of applicability, see §§1.6031(a)–1(f)(2) and 1.6031(a)–1T(f)(2).

FOR FURTHER INFORMATION CONTACT: David A. Shulman, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A partnership may be used to create the economic equivalent of a variable-rate tax-exempt bond. The partnership acquires a tax-exempt obligation and issues both interests that are entitled to preferred returns based on current short-term yields on tax-exempt obligations (variable-rate interests) and interests that are entitled to the rest of the partnership's income (inverse interests). As a consequence of this structure, the partner that holds a variable-rate interest in the partnership receives a return that is equivalent to the return on a variable-rate tax-exempt bond. Under section 702(b), income received by a partnership generally retains its character when allocated to a partner.

Section 6031(a) requires every partnership to make a return for each taxable year stating specifically the items of its gross income and the deductions allowable by subtitle A of the Internal Revenue Code, as well as other specified information. Section 6031(b) requires every partnership that is required to file a return under section 6031(a) to provide each person who is a partner with such information as may be required by regulations. Section 1.6031(b)–1T(a)(3) provides that the partner must be provided such information as is required by any form or instructions that may be required. Generally, a Schedule K–1 (Form 1065) must be provided to each partner.

Section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248; 96 Stat. 324, 669) (TEFRA) authorizes regulations that provide exceptions to the filing requirement of section 6031. Current §1.6031(a)–1(a)(3) and (c) provides exceptions for partnerships that have no income, deductions, or credits for a taxable year and for eligible partnerships that elect to be excluded from the application of subchapter K in the manner specified by §1.761–2(b)(2)(i) or are deemed to have so elected under §1.761–2(b)(2)(ii).

The Treasury Department and the IRS believe that it is in the interest of sound and efficient administration of the tax laws to permit the Commissioner to provide in a timely and flexible manner for an additional exception to the requirements of section 6031(a) in situations in which all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations or shares in a regulated investment company (as defined in section 851(a)) (RIC) that pays exempt-interest dividends (as defined in section 852(b)(5)).

Explanation of Provisions

Under temporary regulations, the Commissioner may, in guidance published in the Internal Revenue Bulletin, provide an exception to the reporting requirements of section 6031(a) for partnerships in situations in which all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and §1.1275–1(e)) or shares in a RIC that pays exempt-interest dividends (as defined in section 852(b)(5)). The exception may be conditioned on substitute reporting and eligibility and other requirements. In conjunction with issuance of this temporary regulation, the Commissioner is publishing Rev. Proc. 2003–84, 2003–48 I.R.B. 1159, which provides for an exception to section 6031 for specified eligible partnerships.

Effective Date

These regulations are effective November 5, 2003.

Special Analyses

These temporary regulations are necessary to allow the publication of guidance in the Internal Revenue Bulletin to reduce the burden on certain partnerships. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). 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. Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. 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 its impact on small business.

Drafting Information

The principal author of these regulations is David A. Shulman of the Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the IRS and 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 is amended by adding the following citation:

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

Section 1.6031(a)–1T is also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248; 96 Stat. 324, 669) (TEFRA). * * *

Par. 2. Section 1.6031(a)–1 is amended as follows:

1. In paragraph (a)(1), the first sentence is amended by adding the language "and §1.6031(a)–1T" immediately following the language "of this section".

2. The text of paragraph (a)(3) is redesignated as paragraph (a)(3)(i).

3. Paragraph (a)(3)(ii) is added.

4. Paragraph (f) is revised.

The additions and revisions read as follows:

§1.6031(a)–1 Return of partnership income.

(a) * * *

(3) * * * (i) * * *

(ii) [Reserved]. For further guidance see §1.6031(a)–1T(a)(3)(ii).

* * * * *

(f) *Effective dates*. This section applies to taxable years of a partnership beginning after December 31, 1999, except that—

(1) Paragraph (b)(3) of this section applies to taxable years of a foreign partnership beginning after December 31, 2000; and

(2) [Reserved]. For further guidance, see §1.6031(a)–1T(f)(2).

Par. 3. Section 1.6031(a)–1T is added to read as follows:

§1.6031(a)–1T Return of partnership income (temporary).

(a) through (a)(3)(i) [Reserved]. For further guidance, see §1.6031(a)–1(a) through (a)(3)(i).

(ii) The Commissioner may, in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter), provide for an exception to partnership reporting under section 6031 and for conditions for the exception, if all or substantially all of a partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and §1.1275–1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(5)).

(a)(4) through (f)(1) [Reserved]. For further guidance, see §1.6031(a)–1(a)(4) through (f)(1).

(f)(2) *Effective dates*. Paragraph (a)(3)(ii) of this section applies to taxable years of a partnership beginning on or after November 5, 2003. The applicability of paragraph (a)(3)(ii) of this section expires on or before November 6, 2006.

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

Approved October 30, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 5, 2003, 1:41 p.m., and published in the issue of the Federal Register for November 10, 2003, 68 F.R. 63733)

Section 6042.—Returns Regarding Payments of Dividends and Corporate Earnings and Profits

A notice provides guidance for persons required to make returns and provide statements under section 6042 (*e.g.*, Form 1099-DIV) regarding distributions with respect to securities issued by a foreign corporation, and for individuals receiving such statements. See Notice 2003-79, page 1206.

Section 6048.—Information With Respect to Certain Foreign Trusts

A notice describes information reporting for certain Canadian retirement plans. See Notice 2003-75, page 1204.

Part III. Administrative, Procedural, and Miscellaneous

RRSP and RRIF Information Reporting

Notice 2003–75

SECTION 1. BACKGROUND.

Notice 2003–25, 2003–18 I.R.B. 855, and Notice 2003–57, 2003–34 I.R.B. 397, provided guidance to taxpayers regarding their 2002 taxable year information reporting obligations with respect to Canadian registered retirement savings plans ("RRSPs") and registered retirement income funds ("RRIFs"). These Notices stated that Treasury and the IRS intended to develop an alternative, simplified reporting regime for these Canadian retirement plans for future taxable years.

This notice describes the new simplified reporting regime that Treasury and the IRS have developed for taxpayers who hold interests in RRSPs and RRIFs. The new reporting regime, which is effective for taxable years beginning after December 31, 2002, is in lieu of the filing obligations under section 6048 (Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520–A, *Annual Information Return of Foreign Trust With a U.S. Owner*) that otherwise apply to U.S. citizens and resident aliens who hold interests in RRSPs and RRIFs and to the custodians of such plans. The new simplified reporting regime is designed to permit taxpayers to meet their reporting obligations by using information that is readily available to them.

SECTION 2. NEW REPORTING REGIME.

.01. *New Form*. Under the authority of section 6001 of the Internal Revenue Code, Treasury and the IRS are designing a new form that a U.S. citizen or resident alien who holds an interest in an RRSP or RRIF must complete and attach to his or her Form 1040. The new form also will coordinate the reporting rules with the procedure set forth in section 4 of Revenue Procedure 2002–23, 2002–1 C.B. 744, for making the election under Article XVIII(7) of the U.S.-Canada income tax convention to defer U.S. income taxation of income accrued in the RRSP or RRIF.

.02. *Interim Reporting Rules for Beneficiaries Making the Election to Defer U.S. Income Taxation on Income of an RRSP or RRIF*. Until the form referred to in section 2.01 of this notice is available, any U.S. citizen or resident alien who is a beneficiary (as defined in section 2.06 of this notice) of an RRSP or RRIF and who has made the election described in section 4 of Revenue Procedure 2002–23 with respect to the RRSP or RRIF, or who is making such election effective for the 2003 taxable year and subsequent taxable years, must

i. attach a copy of each such election to his or her Form 1040;

ii. indicate the balance in each RRSP or RRIF at the end of the taxable year either on the copy of the election or by attaching a copy of a statement issued by the custodian of the RRSP or RRIF; and

iii. comply with section 2.05 of this notice if he or she has received any distributions during the taxable year from such RRSP or RRIF.

.03. *Interim Reporting Rules for Beneficiaries Not Making the Election to Defer U.S. Income Taxation on Income of an RRSP or RRIF*. Until the form referred to in section 2.01 of this notice is available, any U.S. citizen or resident alien who is a beneficiary (as defined in section 2.06 of this notice) of an RRSP or RRIF and who has not made the election described in section 4 of Revenue Procedure 2002–23 with respect to the RRSP or RRIF, and who is not making such election for the 2003 taxable year, must attach a statement to his or her Form 1040 that includes the following information:

i. The caption "CANADIAN RRSP" or "CANADIAN RRIF," whichever is applicable;

ii. The taxpayer's name and taxpayer identification number;

iii. The taxpayer's address;

iv. The name and address of the custodian of the RRSP or RRIF and the plan account number, if any;

v. The amount of contributions to the RRSP or RRIF during the taxable year;

vi. The undistributed earnings of the RRSP or RRIF during the taxable year in each of the following categories: interest, dividends, capital gains, and other;

vii. The total amount of distributions received from the RRSP or RRIF during the taxable year; and

viii. The balance in the RRSP or RRIF at the end of the taxable year.

The taxpayer must provide a separate statement for each RRSP or RRIF of which he or she is a beneficiary. In addition to attaching the statement described in this section 2.03 to his or her Form 1040, the taxpayer must report the undistributed earnings for that taxable year of all such RRSPs and RRIFs on Schedule B (Interest and Ordinary Dividends) or D (Capital Gains and Losses), as appropriate, and on line 8a, 9, 13, or 21 of the Form 1040. The taxpayer must also comply with section 2.05 of this notice if the taxpayer has received any distributions during the taxable year from such RRSP or RRIF.

.04. *Interim Reporting Rules for Annuitants of RRSPs and RRIFs*. Until the form referred to in section 2.01 of this notice is available, if a U.S. citizen or resident alien is an annuitant (as defined in section 2.06 of this notice) under an RRSP or RRIF that has no beneficiary (as defined in section 2.06 of this notice), and the annuitant receives a distribution from the RRSP or RRIF, the annuitant must in the year of distribution attach a statement to his or her Form 1040 that includes the following information:

i. The caption "ANNUITANT UNDER CANADIAN RRSP" or "ANNUITANT UNDER CANADIAN RRIF," whichever is applicable;

ii. The annuitant's name and taxpayer identification number;

iii. The annuitant's address;

iv. The name and address of the custodian of the RRSP or RRIF and the plan account number, if any;

v. The total amount of distributions received from the RRSP or RRIF during the taxable year; and

vi. The balance in the RRSP or RRIF at the end of the taxable year.

The annuitant must provide a separate statement for each such RRSP or RRIF from which he or she has received a distribution during the taxable year. The annuitant must comply with section 2.05 of this notice with respect to such distributions.

.05. *Distributions*. A U.S. citizen or resident alien who has received any distributions during the taxable year from an RRSP or RRIF must report the total amount of distributions received during the taxable year from all such RRSPs and RRIFs on line 16a of the Form 1040 and the taxable amount of all such distributions (as determined under section 72) on line 16b of the Form 1040.

.06. *Definition of Beneficiary and Annuitant.* For purposes of the new simplified reporting regime described in this notice, a beneficiary of an RRSP or RRIF is an individual who is subject to current U.S. income taxation on income accrued in the RRSP or RRIF or would be subject to such taxation had the individual not made the election under Article XVIII(7) of the U.S.-Canada income tax convention to defer U.S. income taxation of income accrued in the RRSP or RRIF. For these purposes, an annuitant of an RRSP or RRIF is an individual who is designated pursuant to the RRSP or RRIF as an annuitant.

.07. *Record Retention*. Taxpayers must retain supporting documentation relating to information required by the new reporting regime, including Canadian Forms T4RSP, T4RIF, or NR4, and periodic or annual statements issued by the custodian of the RRSP or RRIF.

SECTION 3. SECTIONS 6048 AND 6677 ARE NOT APPLICABLE

The new simplified reporting regime, instituted under the authority of section 6001, provides the information needed for tax compliance purposes. Therefore, pursuant to section 6048(d)(4), no reporting will be required under section 6048 with respect to RRSPs and RRIFs that have beneficiaries or annuitants who are subject to the new simplified reporting regime. Accordingly, the associated penalties described in section 6677 do not apply to such RRSPs and RRIFs and their beneficiaries or annuitants. A beneficiary or annuitant of an RRSP or RRIF may, however, be subject to other penalties.

SECTION 4. EFFECT ON OTHER DOCUMENTS.

Notice 2003–25, Notice 2003–57, and section II.E of Notice 97–34 (pertaining to reporting for certain transfers to RRSPs), 1997–1 C.B. 422, are superseded to the extent inconsistent with this notice.

SECTION 5. EFFECTIVE DATE.

This notice is effective for taxable years beginning after December 31, 2002.

SECTION 6. PAPERWORK REDUCTION ACT.

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1865.

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

The collection of information in this notice is in section 2. This information will be used to compute and collect the right amount of tax. The likely respondents are individuals.

The estimated total annual reporting burden under the new simplified reporting regime for taxpayers who hold interests in RRSPs and RRIFs is 1,500,000 hours. The estimated annual burden per respondent varies from 0.5 hour to 5 hours, depending on individual circumstances, with an estimated average of 2 hours. The estimated number of respondents is 750,000.

The estimated annual frequency of responses is once per respondent per plan.

The new simplified reporting regime substantially reduces the reporting burden of taxpayers who hold interests in RRSPs and RRIFs. Under the prior regime, the average estimated reporting burden was more than 50 hours per Form 3520 (more than 100 hours per respondent). In addition, the new simplified reporting regime eliminates the requirement to file Form 3520–A, reducing the burden of a custodian by more than 40 hours per RRSP or RRIF.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION.

The principal author of this notice is Willard W. Yates of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Willard W. Yates at (202) 622–3880 (not a toll-free call).

Tier 2 Tax Rates for 2004

Notice 2003–78

This notice publishes the tier 2 Railroad Retirement Tax Act (RRTA) tax rates for 2004 under §§ 3201(b), 3221(b), and 3211(b) of the Internal Revenue Code for railroad employees, employers, and employee representatives, respectively. For 2004, the tier 2 tax rate on employees is 4.9 percent of compensation and the tier 2 tax rate on employers and employee representatives is 13.1 percent of compensation.

BACKGROUND

Under RRTA, railroad employment is subject to a separate and distinct system of taxes from the taxes imposed under the Federal Insurance Contributions Act (Old-Age, Survivors, and Disability Insurance (social security) and Hospital Insurance (Medicare) taxes), which covers most other employees. Parts of the RRTA system are the responsibility of Internal Revenue Service and parts of the system are the responsibility of the U. S. Railroad Retirement Board (RRB), an independent agency of the Federal Government. The

role of the RRB is to administer the benefits under the railroad retirement system.

The taxes under the RRTA on compensation paid to railroad employees and employee representatives (a group unique to the railroad industry) are the primary source of funding for the railroad retirement system. There are two levels of taxes or "tiers." Tier 1 provides equivalent social security and Medicare benefits, and tier 2 provides a private pension benefit.

Tier 1 benefits are financed by tier 1 taxes imposed under §§ 3201(a), 3211(a), and 3221(a). The same tax rates apply to employees and employers. The tier 1 tax rate is 7.65 percent (6.2 percent for railroad retirement and 1.45 percent for Medicare). Tier 1 uses the same annual contribution and benefit base as the social security wage base for earnings subject to the 6.2 percent rate. The contribution and benefit base is $87,900 for compensation paid in 2004. *See* 68 Fed. Reg. 60,437 (Oct. 22, 2003). There is no maximum on earnings subject to tier 1 tax at the 1.45 percent rate for Medicare. The tier 1 tax rates for employee representatives are 12.4 percent for railroad retirement and 2.9 percent for Medicare.

Tier 2 benefits are financed by tier 2 taxes imposed under §§ 3201(b), 3211(b), and 3221(b). A separate annual base applies to the tier 2 tax. The contribution and benefit base is $65,100 for compensation paid in 2004. *See* 68 Fed. Reg. 60,437 (Oct. 22, 2003). The tax rates for tier 2 differ from those applicable for tier 1 and tier 2 tax is not assessed equally on the employer and employee (the employer pays a significantly greater share of this tax).

The Railroad Retirement and Survivors' Improvement Act of 2001 (Act), Pub. L. 107–90, 115 Stat. 878, set the tier 2 tax rates for 2002 and 2003. Under the Act, the tier 2 tax rates for employers were 15.6 percent for 2002 and 14.2 percent for 2003. The tier 2 tax rates for employee representatives were 14.75 percent for 2002 and 14.2 percent for 2003. The tier 2 tax rate for employees was 4.9 percent for 2002 and 2003. The Act also provided a means of determining future adjustments in the tier 2 tax rates, depending on railroad retirement fund levels. This change allows tier 2 tax rates to "be raised or lowered automatically, without further action by Congress, depending on the level of funds available to pay benefits." H.R. Rep. No. 82, 107th Cong., 1st Sess., 13 (2001).

Beginning with 2004, tier 2 tax rates will be based on an average account benefits ratio. Section 3241(c)(1) provides that the term "average account benefits ratio" means, with respect to any calendar year, the average determined by the Secretary of the Treasury of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. The account benefits ratios, used to determine the average account benefits ratio, are computed by the RRB. Pursuant to 45 U.S.C. § 231v, each year the RRB must compute the account benefits ratio for the fiscal year ending in such year and certify the account benefits ratio for such fiscal year to the Secretary of the Treasury. *See* 20 C.F.R. §§ 206.1 and 206.2 (2003) for information on how the account benefits ratios are computed.

Section 3241(b) provides the schedule for the tier 2 tax rates based on the average account benefits ratio. Depending on the average account benefits ratio, the tier 2 tax rate for employers and employee representatives will range between 8.2 percent and 22.1 percent, while the tier 2 tax rate for employees will be between 0 percent and 4.9 percent.

The average of the account benefits ratios certified by RRB for the 10 most recent fiscal years ending before 2004, increased to the next highest multiple of 0.1, is 5.9. Section 3241(b) provides that, if the average account benefits ratio is at least 4.0, but less than 6.1, the applicable percentage for employers and employee representatives under §§ 3221(b) and 3211(b), respectively, is 13.1 percent and the applicable percentage for employees under § 3201(b) is 4.9 percent.

TIER 2 TAX RATES

The tier 2 tax rate on employees will remain at 4.9 percent in 2004, but the tier 2 tax rates on employers and employee representatives will decrease to 13.1 percent in 2004. These rates were published in the Federal Register on November 25, 2003, as required by § 3241(d).

DRAFTING INFORMATION

The principal author of this notice is Margaret A. Owens of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Margaret A. Owens at (202) 622–6040 (not a toll-free call).

Information Reporting for Distributions With Respect to Securities Issued by Foreign Corporations

Notice 2003–79

SECTION 1. OVERVIEW

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27, 117 Stat. 752) (the "2003 Act") was enacted on May 28, 2003. Subject to certain limitations, the 2003 Act generally provides that a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" is subject to tax at the reduced rates applicable to certain capital gains. A qualified foreign corporation includes certain foreign corporations that are eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this provision and which includes an exchange of information program. In addition, a foreign corporation not otherwise treated as a qualified foreign corporation is so treated with respect to any dividend it pays if the stock with respect to which it pays such dividend is readily tradable on an established securities market in the United States.

This notice provides guidance for persons required to make returns and provide statements under section 6042 of the Internal Revenue Code (*e.g.*, Form 1099–DIV) regarding distributions with respect to securities issued by a foreign corporation, and for individuals receiving such statements. The notice provides simplified procedures for persons required to make such returns and provide such statements for 2003. The notice also describes when a security (or an American depositary receipt in respect of such security) issued by a foreign corporation that is other than ordinary

or common stock (such as preferred stock) will satisfy the readily tradable test (as described in Section 2.01 below). The notice also describes generally the certification process that Treasury and the IRS intend to develop for future years.

Section 2 of this notice describes the "qualified foreign corporation" determination under the 2003 Act and describes the information reporting requirements with respect to dividends generally. Section 3 addresses the determinations required under the 2003 Act for information reporting of a distribution with respect to a security of a foreign corporation, including how the readily tradable test applies to a security that is other than ordinary or common stock. Section 4 sets forth simplified procedures for information reporting for 2003. Section 5 briefly describes the certification procedure Treasury and the IRS intend to develop for use beginning in 2004.

SECTION 2. BACKGROUND

.01 *The 2003 Act*

Section 1(h)(1) of the Internal Revenue Code generally provides that a taxpayer's "net capital gain" for any taxable year will be subject to a maximum tax rate of 15 percent (or 5 percent in the case of certain taxpayers). The 2003 Act added section 1(h)(11), which provides that net capital gain for purposes of section (1)(h) means net capital gain (determined without regard to section 1(h)(11)) increased by "qualified dividend income". Qualified dividend income means dividends received during the taxable year from domestic corporations and "qualified foreign corporations." Section 1(h)(11)(B)(i). Subject to certain exceptions, a qualified foreign corporation is any foreign corporation that is either (i) incorporated in a possession of the United States (the "possessions test"), or (ii) eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this provision and which includes an exchange of information program (the "treaty test").[1] Section 1(h)(11)(C)(i). Subject to the same exceptions, a foreign corporation that does not satisfy either of these two tests is treated as a qualified foreign corporation with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States (the "readily tradable test"). [2] Section 1(h)(11)(C)(ii). A qualified foreign corporation does not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a foreign personal holding company (as defined in section 552) (a "FPHC"), a foreign investment company (as defined in section 1246(b)) (a "FIC"), or a passive foreign investment company (as defined in section 1297) (a "PFIC") (the "foreign investment company exclusion test"). Section 1(h)(11)(C)(iii).

A distribution with respect to a security issued by a qualified foreign corporation also is subject to the other limitations in section 1(h)(11). In particular, the recipient must satisfy the holding period requirements of section 1(h)(11)(B)(iii) (the "holding period test"). In addition, the distribution must constitute a dividend for U.S. federal income tax purposes. Accordingly, the security with respect to which the distribution is made must be equity rather than debt for U.S. federal income tax purposes (the "equity test"), and the distribution must be out of the corporation's earnings and profits rather than a return of capital (the "E&P test").

The determination whether a distribution with respect to a security issued by a foreign corporation is eligible for the reduced rates of tax under the 2003 Act therefore requires a series of separate determinations. These determinations are discussed in more detail in Section 3. First, the security with respect to which the distribution is made must satisfy the equity test. Second, the distribution must satisfy the E&P test. Third, the security must satisfy the readily tradable test, or the foreign corporation must satisfy either the possessions test or the treaty test. Fourth, the foreign corporation must satisfy the foreign investment company exclusion test. Fifth, the recipient of the distribution must satisfy the holding period test.

.02 *Information Reporting*

In General. Any person that makes payments of dividends aggregating $10 or more during any calendar year, or any person that receives payments of dividends as a nominee and makes payments aggregating $10 or more in a calendar year to another person with respect to the dividends received, must report those payments to the IRS by filing an information return. Section 6042(a). In addition, a person filing such a return must furnish to every person with respect to whom such information is reported a statement of the aggregate amount of payments required to be shown on the information return. Section 6042(c). If a person furnishing such a statement is unable to determine the portion of the payment that constitutes a dividend or is paid with respect to a dividend, the person making the payment is required to treat it as a dividend or an amount paid with respect to a dividend. Section 6042(b)(3).[3]

Information Returns. Information returns under section 6042 must be filed on Form 1099, which specifies that the aggregate amount of dividends (or, in the case of a nominee, amounts paid with respect to dividends) is reported on Form 1099–DIV.[4] Form 1099–DIV and its instructions have been revised to reflect the 2003 Act. The instructions require filers to enter in Box 1a of the form the aggregate amount of ordinary dividends paid and to enter in Box 1b the portion of dividends in Box 1a that qualifies for reduced rates under the 2003 Act ("qualified dividends"). The instructions direct filers to include in Box 1b dividends for which it is impractical to determine whether the holding period test has been met. As described above, a distribution with respect to a security issued by a foreign corporation must satisfy specific requirements under the 2003 Act in order to be considered a qualified dividend.

Regulations under section 6042 provide that a person required to make an information return under that section generally must do so not later than February

[1] Notice 2003–69, 2003–42 I.R.B. 851, contains the current list of the U.S. tax treaties that meet these requirements.

[2] Notice 2003–71, 2003–43 I.R.B. 922, provides guidance on when ordinary or common stock is considered readily tradable on an established securities market in the United States.

[3] Notice 2003–67, 2003–40 I.R.B. 752, provides guidance to brokers and individuals regarding provisions in the 2003 Act that affect information reporting for payments in lieu of dividends.

[4] Revenue Procedure 2002–57, 2002–2 C.B. 575, provides circumstances under which a person required to file Form 1099 may file a substitute.

28 (March 31 if filed electronically) of the year following the calendar year in which the dividend was paid. Section 1.6042–2(c) of the Income Tax Regulations. A person required to furnish a payee statement under that section generally must do so not later than January 31 of the year in which the information return is to be filed.[5]

Penalties. Section 6721 imposes a penalty if a person fails to file a timely correct information return, including a return under section 6042. Section 6722 imposes a penalty if a payor fails to furnish to a payee a timely correct information statement, including a statement under section 6042. Section 6724(a) provides that the penalties under sections 6721 and 6722 do not apply if the failure to comply is due to reasonable cause and not to willful neglect.

Recipients of Payee Statements. Section 6662 imposes a penalty if a taxpayer substantially understates its income tax liability. Section 6664(c) provides that no penalty shall be imposed under section 6662 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. The regulations under section 6664 provide that the determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Under those regulations, a taxpayer's reliance on erroneous information reported on a Form 1099 indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Section 1.6664–4(b)(1) of the Income Tax Regulations. For these purposes, a taxpayer generally knows, or has reason to know, that the information on an information return is incorrect if such information is inconsistent either with other information reported or furnished to the taxpayer or with the taxpayer's knowledge of the transaction. *Id.*

The instructions to Form 1040 for 2003 state that some distributions that are reported as qualified dividends in Box 1b of Form 1099–DIV may not actually be qualified dividends. For example, the instructions provide examples illustrating situations in which amounts reported as qualified dividends in Box 1b of Form 1099–DIV are not qualified dividends because the recipient of the dividends failed to satisfy the holding period test.

SECTION 3. ANALYSIS

This Section discusses the information reporting determinations with respect to each of the tests relevant to whether a distribution with respect to a security issued by a foreign corporation is a qualified dividend.

.01 *Equity Test*

In order to be a qualified dividend, a distribution must be made with respect to equity rather than indebtedness, as determined under U.S. federal income tax principles. The characterization of an instrument for U.S. federal income tax purposes depends on the terms of the instrument and all surrounding facts and circumstances. *See*, *e.g.*, Notice 94–47, 1994–1 C.B. 357.

Common or ordinary shares generally are treated as equity for U.S. federal income tax purposes. For a security issued by a foreign corporation other than a common or an ordinary share (such as a preferred share), a person required to make a return under section 6042 may not be aware of all the information relevant to determining whether a particular security is debt or equity, although such a person does have access to information contained in public filings with the SEC. A foreign corporation generally will have all the information relevant to applying the equity test.

For 2003 information reporting, a person required to make a return under section 6042 for a distribution with respect to a security issued by a foreign corporation shall treat the security as satisfying the equity test if the security is a common or an ordinary share. In addition, if the security is not a common or an ordinary share, such person shall treat the security as satisfying the equity test if the foreign corporation has a public statement filed with the SEC stating that the security will be, should be, or more likely than not will be properly classified as equity rather than as debt for U.S. federal income tax purposes.

For 2004 and future information reporting, Treasury and the IRS intend to issue regulations providing a certification procedure under which foreign corporations may certify that a security with respect to which a distribution is made meets the equity test. As discussed below, it is expected that it will be possible to make such certification either in a public SEC filing (such as in a Form 20–F) or in a public statement with a copy filed with the IRS.

.02 *E&P Test*

In order to be a qualified dividend, a distribution must be a dividend. Section 316 generally provides that a dividend means any payment made by a corporation to its shareholders out of earnings and profits. A person required to file an information return under section 6042 may not know in a given circumstance whether a distribution by a corporation represents a distribution of earnings and profits. If a person making a payment of or with respect to a distribution by a corporation is unable to determine the portion of such a payment that is a dividend or is paid with respect to a dividend, then under section 6042 the person making the payment must treat the entire payment as a dividend or as an amount paid with respect to a dividend. Section 6042(b)(3).

.03 *Tests in the Alternative: Readily Tradable Test, Possessions Test, and Treaty Test*

(a) *Readily Tradable Test*. A foreign corporation is treated as a qualified foreign corporation with respect to any dividend paid by such corporation if the stock with respect to which that dividend is paid is readily tradable on an established securities market in the United States. Notice 2003–71 defines when ordinary or common stock is considered readily tradable on an established securities market in the United States. In addition, for 2003, a security (or an American depositary receipt in respect of such security) issued by a foreign corporation that is other than ordinary or common stock (such as preferred stock) will satisfy the readily tradable test if it is listed on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. § 78f) or on the Nasdaq Stock Market as described in Notice 2003–71. (See Section 3.01 for discussion of the equity test.)

[5] See Section 1.6042–3 of the Income Tax Regulations for guidance on when dividends are subject to information reporting.

(b) *Possessions Test*. The 2003 Act provides that, in order to satisfy the possessions test, a corporation must be incorporated in a possession of the United States. For 2003 and future years, a person required to make a return under section 6042 shall treat a corporation incorporated in a possession of the United States as satisfying the possessions test.

(c) *Treaty Test*. The 2003 Act provides that, in order to satisfy the treaty test, a corporation must be eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of section 1(h)(11) and which includes an exchange of information program. Notice 2003–69 contains the current list of treaties that meet the requirements of the 2003 Act.

Treaties generally confer benefits only on "residents" of the countries that are parties to the treaty and frequently include a "limitation on benefits" provision designed to ensure that treaty benefits are not available to persons engaged in "treaty shopping." For example, the mere fact that a corporation is organized in a country may not be sufficient for the corporation to qualify for benefits under the relevant treaty. The terms of each treaty, including any limitation on benefits provision, reflect the particular circumstances of the relevant treaty partner relative to the United States. The determination as to whether a particular foreign corporation would be eligible for benefits under a particular treaty can be a fact-intensive determination. A foreign corporation generally will have all the information relevant to applying the treaty test. For example, a foreign corporation that receives U.S. source income eligible for a reduced rate of withholding under a treaty generally must complete a Form W–8BEN certifying under penalties of perjury that, among other items, it is a resident of the relevant country within the meaning of the relevant treaty and satisfies the limitation on benefits provision, if any, provided in that treaty. As discussed in Section 5 below, for 2004 and future information reporting Treasury and the IRS intend to develop a certification procedure under which a foreign corporation may certify that it meets the treaty test. For corporations that complete a Form W–8BEN for other purposes, it is expected that filing a copy of this form with the IRS could be used as a means of meeting the certification requirement with respect to the treaty test, depending on the circumstances.

Treasury and the IRS recognize that the fact-intensive nature of the determination whether a foreign corporation is eligible for benefits under a treaty, coupled with the need for persons required to make information returns to begin work now on processing those returns and related payee statements, makes it appropriate to use a simplified procedure for 2003 information reporting.

For 2003 information reporting, a person required to make a return under section 6042 shall treat a foreign corporation as satisfying the treaty test provided that (i) the foreign corporation is organized in a country whose income tax treaty with the United States is listed in Notice 2003–69, and (ii) if the relevant treaty contains a limitation on benefits provision, the corporation's common or ordinary stock is listed on an exchange covered by the public trading test in that limitation on benefits provision. However, a person required to make such a return shall not treat a foreign corporation as satisfying the treaty test if such person knows or has reason to know that the corporation is not eligible for benefits under the relevant treaty. For this purpose, a person will be considered to have reason to know the corporation is not eligible for treaty benefits if the corporation has so stated in its most recent SEC annual filing (if any) for the security (*e.g.*, Form 20–F).

For example, assume that a foreign corporation is incorporated in Austria and that its common stock is listed on the Vienna exchange. The U.S.-Austria income tax treaty is listed in Notice 2003–69, and the Vienna exchange is covered by the public trading test in the limitation on benefits provision of the U.S.-Austria income tax treaty. A person required to make a return under section 6042 would treat the Austrian corporation as satisfying the treaty test unless the person knew or had reason to know that the corporation was not eligible for benefits of the U.S.-Austria income tax treaty.

.04 *Foreign Investment Company Exclusion Test*

The 2003 Act provides that a qualified foreign corporation does not include any foreign corporation that is a FPHC, FIC, or PFIC for the taxable year in which the dividend was paid or the preceding year. A foreign corporation generally will have all of the information relevant to making these determinations. Many foreign corporations that are publicly traded in the United States currently make these determinations each year and provide discussions regarding one or more of these determinations in their annual filings with the SEC, such as Form 20–F. However, not all foreign companies provide such a discussion in their U.S. public filings. Additionally, many foreign companies that are not publicly traded in the United States do not include discussions regarding these determinations in their public filings in their home jurisdiction.

As discussed below, Treasury and the IRS intend to develop a certification procedure for 2004 and future information reporting under which a foreign corporation may certify that it satisfies the foreign investment company exclusion test. For 2003 information reporting, Treasury and the IRS believe it is appropriate to use a simplified procedure that is based on the knowledge of persons required to make a return under section 6042. Accordingly, a person required to make a return under section 6042 for 2003 shall treat a foreign corporation as satisfying the foreign investment company exclusion test unless the person knows or has reason to know that the corporation is or expects to be a FPHC, FIC, or PFIC. For this purpose, a person would have the requisite reason to know if a corporation has stated in its most recent annual public filing with the SEC that it is or expects to be a FPHC, FIC, or PFIC.[6]

.05 *Holding Period Test*

The 2003 Act provides that a recipient of a dividend must satisfy certain holding period requirements in order for the dividend to be considered a qualified dividend. The instructions to Form 1099–DIV direct a person required to file Form 1099–DIV to report in Box 1b as qualified dividends any dividends for which it is impractical to determine whether the recipient has met the holding period requirements for the stock with respect to which the dividend is paid. Accordingly, if a person required to

[6] A U.S. person owning a share in a foreign corporation may be subject to a number of separate reporting rules. *See e.g.*, Form 8621 (annual return for shareholders owning stock in a PFIC).

make a return under section 6042 has determined that a recipient has satisfied the relevant holding period requirements or if it is impractical for such person to determine whether a recipient has satisfied the holding period requirements, the person required to make such return shall treat the recipient as satisfying the holding period test.

.06 *Waiver of Penalties for Reporting Based on Simplified Procedures*

The IRS will exercise its authority under section 6724(a) of the Code to waive penalties under sections 6721 and 6722 with respect to reporting of calendar year 2003 payments if a person required to make a return under section 6042 makes a good faith effort to report payments consistent with the simplified procedures contained in this notice.

.07 *Distributions That Do Not Satisfy the Simplified Procedures In This Notice*

This notice describes simplified information reporting procedures for 2003 for a distribution with respect to a security issued by a foreign corporation. A person required to make a return under section 6042 may believe a particular distribution should be reported in Box 1b of Form 1099–DIV as a qualified dividend even though the distribution does not satisfy the simplified information reporting procedures. In that case, the person required to make a return under section 6042 may report the distribution in Box 1b as a qualified dividend, subject to the applicable penalty provisions.

For example, assume that a foreign corporation incorporated in the United Kingdom issues equity securities to U.S. persons in a private placement under SEC Rule 144A. Assume further that the foreign corporation does not have its ordinary or common stock listed on any stock exchange. Finally, assume that the equity, E&P and holding period tests are satisfied. Under these facts, the securities would not satisfy the readily tradable test (because the privately placed securities would not be considered readily tradable) and the foreign corporation would not satisfy the possessions test (because the corporation is not incorporated in a possession). Additionally, the simplified procedure described in this notice regarding the treaty test would not be satisfied (because the foreign corporation's ordinary or common stock is not listed on exchange covered by the public trading test in the limitation on benefits provision of the U.S.-U.K. income tax treaty). A person required to make a return under section 6042 may nonetheless believe that the foreign corporation is in fact eligible for benefits under the U.S.-U.K. income tax treaty and thus satisfies the treaty test. Such a person could report a distribution with respect to the security in Box 1b of Form 1099–DIV as a qualified dividend. However, a person doing so could be subject to applicable penalty provisions if the foreign corporation did not in fact satisfy the treaty test and such person did not have reasonable cause for believing the foreign corporation satisfied the treaty test.

.08 *Payments Reported on Form 1099–DIV for 2003*

For taxable years beginning in 2003, a recipient of Form 1099–DIV may treat amounts reported in Box 1b as qualified dividends, unless and to the extent that the recipient knows or has reason to know that such amounts are not qualified dividends. As provided in § 1.6664–4(b)(1), such reliance may constitute reasonable cause and good faith reliance for purposes of applicable penalties, depending on the facts and circumstances. In addition, a recipient of Form 1099–DIV may treat a dividend excluded from Box 1b as a qualified dividend if such person believes the dividend is a qualified dividend, subject to applicable penalties in the event the amount so reported is not in fact a qualified dividend.

SECTION 4. SUMMARY OF GUIDANCE FOR 2003

.01 *Persons Required to File Form 1099–DIV*

For 2003 information reporting, a person required to make a return under section 6042 shall report a distribution with respect to a security issued by a foreign corporation in Box 1b of Form 1099–DIV as a qualified dividend if:

1. either the security with respect to which the distribution is made is a common or an ordinary share, or a public SEC filing contains a statement that the security will be, should be, or more likely than not will be treated as equity rather than debt for U.S. federal income tax purposes; *and*

2. either:

a. the security is considered "readily tradable on an established securities market in the United States";

b. the foreign corporation is organized in a possession of the United States; *or*

c. the foreign corporation is organized in a country whose income tax treaty with the United States is listed in Notice 2003–69, and if the relevant treaty contains a limitation on benefits provision, the corporation's common or ordinary stock is listed on an exchange covered by that limitation on benefits provision's public trading test, unless the person required to file an information return knows or has reason to know that the corporation is not eligible for benefits under that treaty; *and*

3. the person required to file Form 1099–DIV does not know or have reason to know that the foreign corporation is or expects to be, in the taxable year of the corporation in which the dividend was paid or was, in the preceding taxable year, a FPHC, FIC, or PFIC; *and*

4. the person required to make a return under section 6042 determines that the owner of the distribution has satisfied the holding period test or it is impractical for such person to make such determination.

The IRS will exercise its authority under section 6724(a) of the Code to waive penalties under sections 6721 and 6722 with respect to reporting of calendar year 2003 payments if persons required to file Form 1099–DIV make a good faith effort to report payments consistent with the above rules. A person required to make a return under section 6042 may report a distribution in Box 1b as a qualified dividend even if the distribution does not satisfy the simplified information reporting procedures for 2003, subject to the applicable penalty provisions.

.02 *Recipients of Form 1099–DIV for 2003*

For taxable years beginning in 2003, a recipient of Form 1099–DIV may treat amounts reported in Box 1b as qualified dividends, unless and to the extent the recipient knows or has reason to know that such amounts are not qualified dividends.

SECTION 5. SUMMARY OF EXPECTED GUIDANCE FOR FUTURE YEARS

For years after 2003, Treasury and the IRS intend to issue regulations providing

procedures for a foreign corporation to certify that it is a qualified foreign corporation. It is expected that such regulations generally will require persons required to file information returns to report a distribution with respect to a security issued by a foreign corporation as a qualified dividend if the corporation has made an appropriate certification under penalties of perjury to the effect that:

1. for any security that is not a common or an ordinary share, the security is equity rather than debt for U.S. federal income tax purposes;

2. where a security is not readily tradable on an established securities market in the United States and where the foreign corporation is not incorporated in a possession, the foreign corporation is eligible for the benefits of a tax treaty with the United States that meets the requirements of the 2003 Act; *and*

3. the foreign corporation is not, in the taxable year of the corporation in which the dividend was paid, and was not, in the preceding taxable year, a FPHC, FIC, or PFIC.

It is expected that certifications will be made annually and that these certifications would be made available by the foreign corporation to the public. It is further expected that the regulations will provide procedures under which a foreign corporation submits its certification to the IRS for date stamping. For publicly traded companies, it is expected that the regulations will provide that such certification may be made in a public SEC filing (such as in a Form 20–F).

SECTION 6. EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2003.

SECTION 7. COMMENTS

Treasury and the IRS invite interested persons to comment on the information reporting and certification procedures to be developed for years after 2003. Written comments may be submitted to CC:PA:LPD:PR (Notice 2003–79), room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:PA:LPD:PR (Notice 2003–79), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2003–79" in the subject line of any electronic communications.

SECTION 8. PAPERWORK REDUCTION ACT

The information collection referenced in this notice has been previously reviewed and approved by the Office of Management and Budget as part of the promulgation of Form 1099–DIV. *See* OMB Control Number 1545–0110. This notice merely provides additional guidance regarding the proper filing of such returns and furnishing of such statements.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 9. CONTACT INFORMATION

The principal author of this notice is Michelle S. Lyon of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Lyon at (202) 622–3880 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters. (Also, Part I, §401, §1.401(a)–2.)

Rev. Proc. 2003–86

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2002–21, 2002–1 C.B. 911, relating to relief provided to certain defined contribution plans maintained by professional employer organizations (PEOs) that benefit Worksite Employees who perform services for a client organization (CO). These plans are referred to below as PEO Retirement Plans. The questions and answers contained in this revenue procedure provide guidance on certain transitional issues that were raised by practitioners after the publication of Rev. Proc. 2002–21.

SECTION 2. BACKGROUND

.01 If a PEO satisfies the requirements under Rev. Proc. 2002–21, the Service will not disqualify the PEO Retirement Plan solely on the grounds that the plan has violated the exclusive benefit rule of § 401(a)(2) of the Internal Revenue Code by benefiting Worksite Employees who perform services for a CO. Under section 5 of Rev. Proc. 2002–21, a plan sponsor of a PEO Retirement Plan has two options for taking remedial action in order to obtain the relief provided in section 4 of that revenue procedure. Under the first option, the PEO can terminate the PEO Retirement Plan in accordance with section 5.02 of the revenue procedure. Under the second option, the PEO can convert its single-employer PEO Retirement Plan into a Multiple Employer Retirement Plan in accordance with the requirements under section 5.03 of the revenue procedure. The PEO must have made a decision regarding these options by the PEO Decision Date, which is defined in Rev. Proc. 2002–21 as the date that is 120 days after the first day of the plan year beginning on or after January 1, 2003 (for a calendar year plan, May 2, 2003). Section 7 of Rev. Proc. 2002–21 provides transitional and procedural rules for PEO Retirement Plans and Multiple Employer Retirement Plans.

.02 The definitions in Rev. Proc. 2002–21 also apply for purposes of this revenue procedure.

SECTION 3. SCOPE

The guidance provided by the questions and answers in this revenue procedure may be relied upon by PEO Retirement Plans that are eligible for relief under section 4 of Rev. Proc. 2002–21 and Multiple Employer Retirement Plans.

SECTION 4. QUESTIONS AND ANSWERS

.01 The following questions and answers provide guidance on common inquiries that the Service has received relating to certain transitional issues for a PEO Retirement Plan and a Multiple Employer Retirement Plan.

.02 A PEO electing to use the transitional rules in the questions and answers in this revenue procedure must adopt conforming plan amendments for the Multiple Employer Retirement Plan no later than the last day of the remedial amendment period relating to the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (115 Stat. 38) (EGTRRA). The EGTRRA remedial amendment period is the period under § 401(b) during which plan sponsors may adopt retroactive remedial amendments with regard to EGTRRA. As provided in Notice 2001–42, 2001–2 C.B. 70, the EGTRRA remedial amendment period will end no earlier than the last day of the first plan year beginning on or after January 1, 2005.

.03 Unless otherwise specified, the guidance in this revenue procedure applies to the first plan year beginning after the Compliance Date.

.04 Generally, for purposes of § 401(a), it is permissible for a Multiple Employer Retirement Plan to treat Worksite Employees who perform services for a CO as if they were employees of the PEO for all plan years up to and including the plan year in which the Compliance Date occurs.

.05 Alternatively, for purposes of § 401(a), it would be permissible for a Multiple Employer Retirement Plan to treat Worksite Employees who perform services for a CO as employees of the CO for all plan years.

.06 Plan documents should reflect whether a Multiple Employer Retirement Plan has chosen under this revenue procedure to treat all the Worksite Employees who perform services for a CO as employees of the PEO for plan years up to and including the plan year in which the Compliance Date occurs or to treat all the Worksite Employees as employees of the CO for all plan years, and such treatment should be consistent for all § 401(a) purposes, except as specifically provided for in this revenue procedure.

Q–1: **Successor Plans.** Can a Spinoff Retirement Plan make distributions upon termination of the plan in accordance with section 5.04(2) of Rev. Proc. 2002–21 to Worksite Employees who perform services for a CO, if (following termination of the PEO Retirement Plan or conversion of the PEO Retirement Plan to a Multiple Employer Retirement Plan) the CO maintains a defined contribution plan for its employees (whether or not the plan covers Worksite Employees) or if the PEO maintains another plan that covers the PEO's own employees?

A–1: (a) Section 1.401(k)–1(d)(3) of the Income Tax Regulations provides that a distribution may not be made upon termination of a § 401(k) plan if the employer establishes or maintains a successor plan. A successor plan is defined as any other defined contribution plan maintained by the same employer if the plan exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. The plan is not a successor plan if at all times during the 24-month period beginning 12 months before the termination, fewer than two percent of the employees who were eligible under the terminated plan as of the date of plan termination are eligible under the plan.

(b) Neither a defined contribution plan maintained by the CO for its employees (whether or not the plan covers Worksite Employees) nor a plan maintained by the PEO covering the PEO's own employees will be treated as a successor plan to the Spinoff Retirement Plan for purposes of § 1.401(k)–1(d)(3). Accordingly, the Spinoff Retirement Plan is permitted to make a distribution to Worksite Employees regardless of whether the CO or the PEO maintains a plan described in the preceding sentence.

Q–2: **Top-heavy rules.** After a PEO Retirement Plan converts to a Multiple Employer Retirement Plan, how do the top-heavy rules apply with respect to participants' benefits that accrued in the PEO Retirement Plan by the Compliance Date?

A–2: (a) Q&A G–2 of § 1.416–1 provides that a multiple employer plan is subject to the requirements of § 416, but only with respect to each individual employer. Q&A T–2 of § 1.416–1 provides that, for top-heavy purposes, a multiple employer plan to which an employer makes contributions on behalf of its employees is treated as a plan of that employer to the extent that benefits under the plan are provided to its employees because of service with the employer.

(b) Section 7.01(3) of Rev. Proc. 2002–21 provides that, for purposes of determining whether a Multiple Employer Retirement Plan is top-heavy (as defined in § 416(g)(1)(A)(ii)) in its first plan year, the determination date with respect to the first plan year will be the last day of such plan year.

(c) In general, a CO that is a sponsor of a Multiple Employer Retirement Plan may treat the benefits of Worksite Employees who perform services for the CO that accrued in the PEO Retirement Plan on or before the Compliance Date as attributable to contributions made by the CO when determining whether the plan is top heavy for plan years beginning after the Compliance Date. If a CO chooses this option, in subsequent years the CO must continue to treat the benefits of Worksite Employees who provide services to the CO that accrued in the PEO Retirement Plan on or before the Compliance Date as attributable to contributions made by the CO when determining whether the plan is top-heavy.

(d) However, it is also permissible for a CO that is a sponsor of the Multiple Employer Retirement Plan to treat the benefits of Worksite Employees who perform services for the CO that accrued in the PEO Retirement Plan prior to the plan conversion as attributable to contributions made by the PEO and not the CO. Thus, when testing the Multiple Employer Retirement Plan for top-heaviness, a CO may treat the benefits of Worksite Employees who perform services for the CO that accrued in the PEO Retirement Plan on or before the Compliance Date prior to the plan conversion as being zero. Nevertheless, the Multiple Employer Retirement Plan must include in these Worksite Employees' benefits the amounts that accrued in the PEO Retirement Plan prior to the plan conversion and compute the gains and losses attributable to these benefits in subsequent plan years.

(e) For purposes of this Q&A–2, the following applies:

(1) The consistency rule of section 4.06 of this revenue procedure is deemed

satisfied if each CO is consistent in treating the accrued benefits of all Worksite Employees who perform services for that CO in accordance with either (c) or (d) of this question and answer.

(2) In determining whether a plan is top-heavy, the aggregation rules under § 414(b), (c), and (m) apply with respect to a CO. See Q&A T–1 of § 1.416–1.

(3) Regardless of whether the plan uses the option set forth in (c) or (d) of this Q&A–2, the determination date with respect to the first plan year of the Multiple Employer Retirement Plan will be the last day of such plan year.

Q–3: **ADP and ACP Testing.** How do the actual deferral percentage (ADP) and actual contribution percentage (ACP) tests under § 401(k)(3) and (m)(2) apply to a Multiple Employer Retirement Plan in its first plan year?

A–3: (a) *General rule*. A Multiple Employer Retirement Plan must be treated as a new plan for purposes of ADP and ACP testing rules rather than as a successor plan to the PEO Retirement Plan. Thus, for the first plan year beginning after the Compliance Date, a Multiple Employer Retirement Plan can elect to use the prior year testing method for the ADP and/or ACP test without regard to the ADP and ACP testing methods used by the PEO Retirement Plan.

(b) *ADP testing*. A Multiple Employer Retirement Plan that uses the prior year testing method for the ADP test is permitted to provide that the ADP for the nonhighly compensated employees for the first plan year beginning after the Compliance Date is 3% or is determined based on the actual deferral percentages of the nonhighly compensated employees for that year.

(c) *ACP testing*. A Multiple Employer Retirement Plan that uses the prior year testing method for the ACP test is permitted to provide that the ACP for the nonhighly compensated employees for the first plan year beginning after the Compliance Date is 3% or is determined based on the actual contribution percentages of the nonhighly compensated employees for that year.

Q–4: **Minimum Distribution Requirements.** For purposes of applying the required minimum distribution rules under § 401(a)(9) with respect to Worksite Employees who have attained age 70½ but have not yet retired, who will be treated as a 5-percent owner of a CO in the first plan year of the Multiple Employer Retirement Plan, what is the first calendar year for which a minimum distribution is required, and how is the required distribution calculated for that calendar year?

A–4: (a) *General Rule*. Section 401(a)(9)(A) provides that a trust will not be a qualified trust unless the plan provides that the entire interest of each employee will be distributed to the employee not later than the required beginning date or, in accordance with the regulations, will be distributed beginning not later than the required beginning date over the life of the employee or the lives of the employee and a designated beneficiary. The required beginning date is defined in § 401(a)(9)(C) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. However, § 401(a)(9)(C)(ii) provides that, in the case of an employee who is a 5-percent owner (as defined in § 416(i)(1)(B)(i)), the required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70½.

(b) *Options for Determining 5-Percent Ownership Status*. Beginning in 2004, a Multiple Employer Retirement Plan may use either of the following two options in determining whether Worksite Employees who have attained age 70½ (but have not yet retired) before the first day of the first plan year of the Multiple Employer Retirement Plan are 5-percent owners of a CO for whom they perform services. Under the first option, a Multiple Employer Retirement Plan may opt to test whether Worksite Employees are 5-percent owners of a CO on the first day of the first plan year of the Multiple Employer Retirement Plan. If a Worksite Employee is a 5-percent owner on that day, the Worksite Employee will be treated as a 5-percent owner of the CO in the plan year ending in the calendar year in which the employee attained age 70½. Under the second option, a Multiple Employer Retirement Plan may opt to test whether Worksite Employees who are over the age of 70½ in 2004 were 5-percent owners of a CO in the year that the Worksite Employees actually attained age 70½. For this testing purpose, the Worksite Employees will be treated as employees of the CO, not the PEO.

(c) *Minimum Distribution Requirements for Worksite Employees who are 5-Percent Owners*. Under either option, a Multiple Employer Retirement Plan will not be required to make minimum distributions under § 401(a)(9) for calendar years before 2004 to Worksite Employees who have attained age 70½ before the first day of the first plan year of the Multiple Employer Retirement Plan and who have not retired (and the employees will not be subject to the excise tax under § 4974 for failure to receive required minimum distributions for those years) even if they are 5-percent owners of a CO for whom they perform services. However, a minimum distribution is required for 2004 and subsequent years for each Worksite Employee who is a 5-percent owner of a CO (determined under paragraph (b) of this Q&A–4) and who attained age 70½ before January 1, 2004, as well as each Worksite Employee who is a 5-percent owner of a CO and who attains age 70½ in 2004. The required beginning date for the 2004 required minimum distribution for those Worksite Employees (those who attained age 70½ in 2004 and in any earlier year) is April 1, 2005. Thus, the required minimum distribution for 2004 for those employees is not required to be made until April 1, 2005, but subsequent required minimum distributions must be made by the end of the calendar year for which they are made, including the required minimum distribution for 2005. For calculating the minimum required distributions for Worksite Employees for each calendar year, see Q&A–4 of § 1.401(a)(9)–5 and the Uniform Lifetime Table in Q&A–2 of § 1.401(a)(9)–9.

Q–5: **Determination of Highly Compensated Employee (HCE Status).** If an individual was a Worksite Employee in the year preceding the first plan year of the Multiple Employer Retirement Plan, is compensation received by that individual during that year taken into account in determining if the individual is a highly compensated employee, as defined in § 414(q)(1), in the first plan year of the Multiple Employer Retirement Plan?

A–5: (a) *General Rule*. HCE status is generally determined on the basis of the

plan year of the plan for which a determination is being made (the determination year) and the preceding 12-month period (the look-back year). Section 414(q)(1) defines a highly compensated employee as any employee who was a 5-percent owner at any time during the determination year or the look-back year and any employee who, for the look-back year, had compensation from the employer in excess of $80,000 (adjusted for inflation) and, if the employer elects, was in the top-paid group of employees for the look-back year.

(b) *Worksite Employees Treated as CO Employees*. For purposes of Rev. Proc. 2002–21, the HCE status of an individual who was a Worksite Employee in the year preceding the first plan year of the Multiple Employer Retirement Plan (the MERP look-back year) and who performed services for a CO in that year is determined by treating the Worksite Employee as an employee of the CO for the MERP look-back year. Any compensation received by the Worksite Employee from the PEO or the CO in the MERP look-back year for services performed for the CO must be treated as received from the CO. Accordingly, all compensation received by a Worksite Employee from the PEO or the CO for services performed for the CO in the MERP look-back year must be considered in determining whether the Worksite Employee is an HCE of the CO for the first plan year of the Multiple Employer Retirement Plan.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–21 is amplified.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Donzel H. Littlejohn of the Employee Plans, Tax Exempt and Government Entities Division and Pamela R. Kinard of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact the Employee Plans taxpayer assistance telephone service between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday by calling 1–877–829–5500 (a toll-free number). Mr. Littlejohn can be reached at (202) 283–9888 and Ms. Kinard can be reached at (202) 622–6060 (not toll-free numbers).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Return of Partnership Income

REG–115472–03

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. 9094) that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of those temporary regulations also serves as the text of these proposed regulations. The regulations generally affect both certain partnerships that invest in tax-exempt obligations and partners in those partnerships.

DATES: Written or electronic comments must be received by February 9, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–115472–03), 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–115472–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David A. Shulman, (202) 622–3070 (not a toll-free number); concerning the submissions of comments or the request for a public hearing, Guy Traynor, (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published elsewhere in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 6031(a). The temporary regulations authorize the Commissioner to provide, in guidance published in the Internal Revenue Bulletin, exceptions to the requirements of section 6031(a) if all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and §1.1275–1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(5)). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Proposed Effective Date

These regulations are proposed to apply November 5, 2003.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that relatively few partnerships have income that is primarily from tax-exempt obligations. Furthermore, the purpose of this regulation is to decrease (rather than increase) the number of entities required to file a partnership return. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David A. Shulman of the Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for "Section 1.6031(a)–1" to read in part as follows:

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

Section 1.6031(a)–1 is also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; 96 Stat. 324, 669) (TEFRA), and 26 U.S.C. 6031. * * *

Par. 2. Section 1.6031(a)–1 is amended as follows:

1. Paragraph (a)(3)(ii) is revised.

2. Paragraph (f) is revised.

The revisions read as follows:

§1.6031(a)–1 Return of partnership income.

(a) * * *

(3) * * * (i) * * *

(ii) [The text of the proposed amendment to §1.6031(a)–1(a)(3)(ii) is the same as the text of §1.6031(a)–1T (a)(3)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(f) * * *

(1) * * *

(2) [The text of the proposed amendment to §1.6031(a)–1(f)(2) is the same as the text of §1.6031(a)–1T (f)(2) 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 November 5, 2003, 1:41 p.m., and published in the issue of the Federal Register for November 10, 2003, 68 F.R. 63743)

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

Announcement 2003-71

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

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

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

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

Name	Address	Designation	Effective Date
Loy, Michael F.	Pittsburgh, KS	CPA	July 23, 2003

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Gillis, Robert F.	Jacksonville, FL	Enrolled Agent	July 1, 2003 to January 31, 2004
Ziedins, Aivars	Castle Rock, CO	Enrolled Agent	Indefinite from July 1, 2003
A. N. Hebesha	Visalia, CA	Enrolled Agent	Indefinite from July 11, 2003
Stafford, Robert M.	Allston, MA	CPA	Indefinite from July 14, 2003
Carnahan, Larry K.	Ashland, KY	Attorney	Indefinite from July 18, 2003
McAlarney, Nancy A.	Kissimmee, FL	Enrolled Agent	Indefinite from July 24, 2003
Rahman, Ernest	Melville, NY	Enrolled Agent	Indefinite from July 31, 2003
Oleksy, Dennis L.	Cary, IL	Enrolled Agent	Indefinite from August 12, 2003
Witti, Mary E.	Boulder City, NV	Enrolled Agent	Indefinite from September 1, 2003
Lau, Willie	Howell, NJ	Enrolled Agent	Indefinite from September 1, 2003
Couch, Leslie L.	Kihei, HI	Enrolled Agent	Indefinite from September 5, 2003
Khoudary, Nicholas	East Brunswick, NJ	Enrolled Agent	Indefinite from September 15, 2003

Name	Address	Designation	Date of Suspension
Solomon, Dorothy	Los Angeles, CA	Enrolled Agent	Indefinite from October 6, 2003
McMahon, Angela	Toms River, NJ	Enrolled Agent	Indefinite from October 20, 2003
Lee, Chun Hyong	Lakewood, WA	CPA	Indefinite from October 22, 2003

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Daniels, Mario	Flint, MI	CPA	Indefinite from September 4, 2003
Hertz, Kevin	McAllen, TX	CPA	Indefinite from October 1, 2003
Roselli, Antonio	Topsfield, MA	CPA	Indefinite from October 17, 2003
Moran, Maxine C.	San Clemente, CA	CPA	Indefinite from October 17, 2003
Muscio, Richard J.	Solana Beach, CA	CPA	Indefinite from October 17, 2003
Yates, James L.	LaPlata, MD	CPA	Indefinite from October 21, 2003

Censure Issued by Consent

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

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Haynes, Gwenivar L.	Ellenwood, GA	Enrolled Agent	August 1, 2003
Ritchie, Donald	Milton, MA	Enrolled Agent	September 3, 2003
Bagley, Haywood	Vista, CA	Enrolled Agent	September 4, 2003
Book, Robert L.	Plymouth, MN	Enrolled Agent	September 15, 2003

Treatment of Obligation-Shifting Transactions

Announcement 2003–79

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a proposed regulation (REG–209817–96) relating to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or other similar agreements and another party claims deductions related to that income.

FOR FURTHER INFORMATION CONTACT: Pamela Lew, (202) 622–3950, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In Notice 95–53, 1995–2 C.B. 334, (modified and superseded by Notice 2003–55, 2003–34 I.R.B. 395), the IRS and Treasury Department stated that regulations under section 7701(1) would be issued to recharacterize lease strips to prevent tax avoidance. On December 27, 1996, a notice of proposed rulemaking (REG–209817–96, 1997–1 C.B. 754 [61 FR 68175]) relating to the treatment of certain obligation-shifting transactions was published in the Federal Register. An obligation-shifting transaction is a transaction in which the transferee (the assuming party) assumes obligations or acquires property subject to obligations under an existing lease or similar agreement and the transferor (the property provider) or any other party has already received or retains the right to receive amounts that are allocable to periods after the transfer.

The proposed regulations recharacterize obligation-shifting transactions in a manner intended to reflect the economic substance of the transactions and to clearly reflect the income of the parties to the transaction. Under the recharacterization, the property provider and the assuming party must report the income from the underlying property allocable to their respective periods of ownership. This result is achieved by imputing a series of transactions to both the assuming party and the property provider that results in a rent-leveling process based on the constant rental accrual method described in § 1.467–3(d). The assuming party is required to recognize rental income for the period in which it owns the property or leasehold interest. The property provider must adjust its income for any differences between amounts it recognized and amounts it would have recognized if it had reported income on a level-rent basis for the periods that it owned the property or leasehold interest. To account for the difference between rental income the assuming party is required to recognize and rental income the assuming party actually receives, the proposed regulations treat the assuming party as issuing an interest-bearing note to the property provider as additional consideration for the obligation-shifting transaction. Both parties must account for the resulting interest income and expense appropriately. To account for any differences in timing or amount between payments the property provider actually receives after the transaction and payments treated as being made to the property provider under the note from the assuming party, the property provider is treated as an obligor or obligee under a second loan, for which the property provider must account accordingly.

After careful consideration, the IRS and Treasury Department have concluded that the complexity presented by these proposed regulations is not necessary to prevent tax avoidance in these transactions. Since the publication of the proposed regulations, the Court of Appeals for the District of Columbia Circuit has held that the partnership used in a lease strip was not a valid partnership because the participants did not join together for a non-tax business purpose. *Andantech L.L.C. v. Commissioner*, Nos. 02–1213; 02–1215, (D.C. Cir. June 17, 2003), 2003 U.S. App. LEXIS 11908, *aff'g in part and remanding for reconsideration of other issues* T.C. Memo 2002–97 (2002). Also, in *Nicole Rose v. Commissioner*, 320 F.3d 282 (2d Cir. 2002) *aff'g per curiam* 117 T.C. 328 (2001), the United States Court of Appeals for the Second Circuit upheld the Tax Court's determination that a lease transfer did not have economic substance.

In the opinion of the IRS and Treasury Department, the claimed tax treatment for lease strips improperly separates income from related deductions, and lease strips do not produce the tax consequences desired by the participants. *See* Notice 2003–55, 2003–34 I.R.B. 395.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–209817–96) that was published in the **Federal Register** on December 27, 1996 (61 FR 68175) is withdrawn.

Dale F. Hart,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 7, 2003, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2003, 68 F.R. 63744)

Credit for Increasing Research Activities; Correction

Announcement 2003–80

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations (REG–133791–02, 2003–35 I.R.B. 493) that were published in the **Federal Register** on July 29, 2003 (68 FR 44499). This regulation relates to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control.

FOR FURTHER INFORMATION CONTACT: Jolene J. Shiraishi at (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 41 of the Internal Revenue Code.

Need for correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–133791–02; REG–105606–99), which was the subject of FR Doc. 03–17870, is corrected as follows:

1. On page 44500, column 1, in the preamble under the caption "ADDRESSES", last paragraph, second line, the language "IRS Auditorium (7th Floor), Internal" is corrected to read "Room 4718, Internal".

2. On page 44503, column 3, §1.41–6(d), paragraph (ii)(B)(*3*) of *Example 1*, last line in column 3, the language "minimum). The group's fixed-base" is corrected to read "maximum). The group's fixed-base".

3. On page 44504, column 3, §1.41–6(d), paragraph (ii)(B)(*3*) of *Example 2*, column 3 fourth line from the bottom, the language "(the statutory minimum). The group's fixed" is corrected to read "(the statutory maximum). The group's fixed".

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on October 21, 2003, 8:45 a.m., and published in the issue of the Federal Register for October 22, 2003, 68 F.R. 60304)

Qualified Subchapter S Trust Election for Testamentary Trust; Correction

Announcement 2003–81

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9078, 2003–39 I.R.B. 630) that were published in the **Federal Register** on July 17, 2003 (68 FR 42251) relating to a qualified subchapter S trust election for testamentary trust.

EFFECTIVE DATE: This correction is effective July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1361 of the Internal Revenue Code.

Need for correction

As published, the final regulations (T.D. 9078), contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9078), which were the subject of FR Doc. 03–18040, is corrected as follows:

On page 42251, column 3, in the preamble under the paragraph heading **"Summary of Comments and Explanation of Provisions"**, third paragraph, line 6, the language "revocable trust (QRT) for which an" is corrected to read "revocable trust for which an".

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on October 22, 2003, 8:45 a.m., and published in the issue of the Federal Register for October 23, 2003, 68 F.R. 60625)

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

Announcement 2003–82

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 7, 2001, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Code Red Cross Training
San Ramon, CA

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2003–83

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Julie Renee Phelan Foundation f.k.a.
Assured Nonprofit Services, Inc.
Seattle, WA

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 2003-1 through 2003-26 is in Internal Revenue Bulletin 2003-27, dated July 7, 2003.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003-1 through 2003-26 is in Internal Revenue Bulletin 2003-27, dated July 7, 2003.

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