

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. 2004-5, page 295.

Charitable deductions. This ruling concludes that a trust is not prohibited from taking a charitable deduction under section 642(c) of the Code for the trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income even though the trust's governing instrument does not authorize the trustee to make charitable contributions.

T.D. 9100, page 297.

REG-116664-01, page 319.

Final, temporary, and proposed regulations under section 6011 of the Code are designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms.

T.D. 9103, page 306.

Final regulations under section 6045 of the Code provide that brokers must file information returns and furnish information statements to individuals who receive substitute payments in lieu of dividends on or after January 1, 2003.

EMPLOYMENT TAX

Announcement 2004-2, page 322.

The Service announces a new reporting code to be used beginning with the 2004 Form W-2. Employer contributions to an employee's Health Savings Account (HSA) must be reported on Form W-2 in box 12 using Code W.

ADMINISTRATIVE

Notice 2004-6, page 308.

Capitalization, business expenses, tangible property. The Service and Treasury Department intend to propose regulations that clarify the application of sections 162 and 263 of the Code to expenditures paid or incurred to repair, improve, or rehabilitate tangible property. This notice requests comments on issues relating to such expenditures by March 1, 2004.

Notice 2004-7, page 310.

Charitable contributions; intellectual property. This notice advises taxpayers that, in appropriate cases, the Service intends to disallow improper charitable contribution deductions claimed by taxpayers in connection with the transfer of patents or other intellectual property to charitable organizations. In particular, the IRS has become aware of purported charitable contributions of intellectual property in which one or more of the following issues (which may affect the availability or amount of a deduction) are present: 1) transfer of a nondeductible partial interest in intellectual property; 2) the taxpayer's expectation or receipt of a benefit in exchange for the transfer; 3) inadequate substantiation of the contribution; and 4) overvaluation of the intellectual property transferred.

Rev. Proc. 2004-11, page 311.

This procedure provides an automatic consent procedure allowing a taxpayer to make a change in method of accounting for certain depreciable or amortizable property after its disposition, waives the two-year rule in Rev. Rul. 90-38 with respect to certain changes in depreciation or amortization, and modifies other revenue procedures to conform with regulations section 1.446-1T(e)(2)(ii)(d). Rev. Procs. 2000-38, 2000-50, and 2002-9 modified.

Announcements of Disbarments and Suspensions begin on page 322.
Finding Lists begin on page ii.



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.*

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

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446-1T: *General rule for methods of accounting (temporary).*

If a taxpayer used an impermissible method of accounting for depreciation or amortization for certain depreciable or amortizable property that has been disposed of by the taxpayer, is a change to a permissible method of accounting for depreciation or amortization for that property after its disposition a change in method of accounting under §446(e) of the Internal Revenue Code? See Rev. Proc. 2004-11, page 311.

Section 556.—Undistributed Foreign Personal Holding Company Income

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 565.—Consent Dividends

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

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, 651, 652, 681, 702; 1.651(a)-1, 1.651(a)-4, 1.702-1.)*

Charitable deductions. This ruling concludes that a trust is not prohibited

from taking a charitable deduction under section 642(c) of the Code for the trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income even though the trust's governing instrument does not authorize the trustee to make charitable contributions.

Rev. Rul. 2004-5

ISSUE

Is a charitable deduction under § 642(c) of the Internal Revenue Code for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions?

FACTS

The governing instrument of trust *TR* provides that all the income is to be distributed annually to *A* for life and upon *A*'s death, *TR* will terminate and all the assets will pass to *B*. *TR*'s governing instrument does not authorize the trustee to make charitable contributions.

One of *TR*'s assets is an interest in partnership *PRS*. During the taxable year, *PRS* contributes cash from its gross income to a charitable organization for a purpose specified in § 170(c). None of *TR*'s income for the taxable year is "unrelated business income" within the meaning of § 681(a). In computing its income tax for the taxable year, *TR* takes into account its distributive share of *PRS*'s income, gain, loss, deductions (including charitable contributions), and credits.

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 the 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)). The deduction is in lieu of the charitable deduction allowed by § 170(a).

A trust subject to §§ 651 and 652 is known as a simple trust. A trust that is not a simple trust is known as a complex trust and is subject to the provisions of §§ 661-663. Section 1.651(a)-1 of the Income Tax Regulations provides that a trust may be a simple trust for one year and a complex trust for another year.

Under § 651(a), the terms of a simple trust (1) provide that all of the trust's income is to be distributed currently and (2) do not provide that any amounts are to be paid, permanently set aside, or used for the charitable purposes specified in § 642(c). Under § 1.651(a)-4, a trust is not considered to be a trust that may pay, permanently set aside, or use any amount for charitable purposes for any taxable year in which the trust is not allowed a charitable deduction under § 642(c).

Section 702(a)(4) provides that in determining a partner's income tax, each partner shall take into account separately the partner's distributive share of the partnership's charitable contributions (as defined in § 170(c)).

Section 1.702-1(a)(4) provides that each partner shall take into account, as part of the charitable contributions paid by the partner, the partner's distributive share of each class of charitable contributions paid by the partnership within the partnership's taxable year. Section 170 determines the extent to which the amount may be allowed as a deduction to the partner.

Section 1.702-1(b) provides that the character in the hands of a partner of any item of income, gain, loss, deduction, or credit described in § 702(a)(1) through (8) shall be determined as if that item were realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

Section 1.702-1(c)(1) provides that if it is necessary to determine the amount or character of the gross income of a partner, the partner's gross income shall include the partner's distributive share of the

gross income of the partnership, that is, the amount of gross income of the partnership from which was derived the partner's distributive share of partnership taxable income or loss (including items described in § 702(a)(1) through (8)).

For a trust to claim a charitable deduction under § 642(c) for amounts of gross income that it contributes for charitable purposes, the governing instrument of the trust must give the trustee the authority to make charitable contributions. This requirement is an essential element to qualify the trust to claim a deduction for a charitable contribution made directly by the trust. In the case of a trust's investment in a partnership, the partnership may make a charitable contribution from the partnership's gross income, and that income is never available to the trust. For federal tax purposes, however, the trust must take into account its distributive share of the partnership's income, gain, loss, deductions (including charitable contributions), and credits. Under these circumstances, a trust's deduction for its distributive share of a charitable contribution made by a partnership will not be disallowed under § 642(c) merely because the trust's governing instrument does not authorize the trustee to make charitable contributions. See *Estate of Bluestein v. Commissioner*, 15 T.C. 770 (1950), *acq.*, 1951-1 C.B. 1, and *Estate of Lowenstein v. Commissioner* 12 T.C. 694 (1949), *acq.* 1949-2 C.B. 2, *aff'd sub nom, First National Bank of Mobile v. Commissioner*, 183 F.2d 172 (5th Cir. 1950), reaching similar conclusions under the statutory predecessor to § 642(c).

In the present situation, PRS's charitable contribution is made from PRS's gross income. TR is allowed a charitable deduction for its distributive share of this contribution, even though TR's governing instrument does not authorize the trustee to make charitable contributions. Because none of TR's income for the taxable year would be considered "unrelated business income" for purposes of § 681(a), the amount of the charitable deduction is not limited under § 681. TR is a complex trust for the taxable year because it is allowed a charitable deduction under § 642(c) for that year.

The same result would apply if TR were always a complex trust because it was not required to distribute all its income currently.

HOLDING

A charitable deduction under § 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income is not prohibited even though the trust's governing instrument does not authorize the trustee to make charitable contributions.

DRAFTING INFORMATION

The principal author of this revenue ruling is Charlotte Chyr of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Charlotte Chyr at (202) 622-3080 (not a toll-free call).

Section 651.—Deduction for Trusts Distributing Current Income Only

26 CFR 1.651(a)-1: Simple trusts; deductions for distributions; in general.

26 CFR 1.651(a)-4: Charitable purposes.

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 652.—Inclusion of Amounts in Gross Income of Beneficiaries of Trusts Distributing Current Income Only

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 681.—Limitation on Charitable Deduction

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 702.—Income and Credits of Partner

26 CFR 1.702-1: Income and credits of partner.

Is a charitable deduction under section 642(c) for a trust's distributive share of a charitable contribution made by a partnership from the partnership's gross income prohibited because the trust's governing instrument does not authorize the trustee to make charitable contributions? See Rev. Rul. 2004-5, page 295.

Section 936.—Puerto Rico and Possession Tax Credit

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 1016.—Adjustment to Basis

26 CFR 1.1016-3T: Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913 (temporary).

Whether § 1016(a)(2) of the Internal Revenue Code permanently affects a taxpayer's lifetime income for purposes of determining whether a change in depreciation or amortization is a change in method of accounting under § 446(e)? See Rev. Proc. 2004-11, page 311.

Section 1017.—Discharge of Indebtedness

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 1368.—Distributions

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 1377.—Definitions and Special Rule

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 1502.—Regulations

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 1503.—Computation and Payment of Tax

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-1: General requirement of return, statement, or list.

T.D. 9100

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 301 and 602

Guidance Necessary to Facilitate Business Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. These regulations affect business taxpayers who file income tax returns electronically. The text of the temporary regulations also serves as the text of the proposed regulations (REG-116664-01) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on December 19, 2003.

Applicability Date: These regulations apply with respect to taxable years beginning after December 31, 2002. The applicability of §§1.170A-11T, 1.556-2T, 1.565-1T, 1.936-7T, 1.1017-1T, 1.1368-1T, 1.1377-1T, 1.1502-21T, 1.1502-75T, 1.1503-2T, 1.6038B-1T, and 301.7701-3T will expire on or before December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1868. Responses to this collection of information are mandatory.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

Books and 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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) designed to eliminate regulatory impediments to the electronic submission of tax returns and other forms filed by corporations, partnerships and other businesses.

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105-206 (112 Stat. 685) (1998). In relevant part, RRA 1998 states that the policy of Congress is to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of

RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing. On January 30, 2003, the IRS published final regulations (T.D. 9040, 2003-10 I.R.B. 568) eliminating a number of regulatory impediments to the electronic filing of Form 1040, “U.S. Individual Income Tax Return.”

The IRS has identified a number of regulatory provisions that impede the ability of business entities to file returns electronically. Some of these regulations, for example, impede electronic filing by requiring taxpayers to include third-party signatures on their tax returns or by requiring taxpayers to attach documents or statements generated by a third party. Others require a taxpayer to sign an IRS form and file it as an attachment to the taxpayer’s income tax return. These regulations eliminate the impediments for taxable years beginning after December 31, 2002. The regulations generally affect taxpayers who must file any of the following forms: Form 926, “Return by a U.S. Transferor of Property to a Foreign Corporation”; Form 972, “Consent of Shareholder To Include Specific Amount in Gross Income”; Form 973, “Corporation Claim for Deduction for Consent Dividends”; Form 982, “Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)”; Form 1120, “U.S. Corporation Income Tax Return”; Form 1120S, “U.S. Income Tax Return for an S Corporation”; Form 1122, “Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return”; Form 5471, “Information Return of U.S. Persons With Respect To Certain Foreign Corporations”; Form 5712-A, “Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)”; and Form 8832, “Entity Classification Election.”

Explanation of Provisions

1. Form 926: Return by a U.S. Transferor of Property to a Foreign Corporation

Section 6038B provides that transferors of property to foreign corporations must, in certain circumstances, file information returns with the Secretary regarding such transactions. Section 1.6038B-1(b)(1)(i) requires the transferor to file the return on Form 926 as an attachment to its income

tax return. Under §1.6038B-1(b)(1)(i) and (ii), filers of Form 926 must sign the form and attachments to the form are subject to the declaration under penalties of perjury that the information submitted is true, correct, and complete. The signature requirement impedes electronic filing of the transferor's income tax return because Form 926 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 926 and provide, instead, that Form 926 and any attachments to the form are verified by signing the income tax return with which the form and attachments are filed.

2. Form 972: Consent of Shareholder To Include Specific Amount in Gross Income

Section 565 allows a corporation and its shareholders to treat certain hypothetical corporate distributions as actual dividends. Section 1.565-1(b)(1) requires shareholders to use Form 972 to elect such treatment and requires each consenting shareholder (or an authorized agent) to sign the form. Section 1.565-1(b)(3) requires the corporation to attach the signed Form 972 to its income tax return for the taxable year in which it claims the dividends paid deduction for the hypothetical dividends. Requiring corporations to attach a signed Form 972 impedes electronic filing of their income tax returns because third-party signatures cannot be incorporated into an electronic return. These regulations provide that an unsigned copy of Form 972 may be submitted with the corporation's income tax return if the corporation retains the signed original in its records.

3. Form 973: Corporation Claim for Deduction for Consent Dividends

A corporation uses Form 973 to claim the dividend treatment permitted by section 565. Section 1.565-1(b)(3) requires the corporation to sign Form 973 under penalties of perjury and submit the form with its tax return. This signature requirement impedes electronic filing of a corporation's income tax return because Form 973 cannot yet be signed electronically. These regulations eliminate the obligation to sign Form 973 and provide, instead, that Form 973 is verified by signing the income tax return with which the form is filed.

4. Form 982: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

Section 1017 provides for basis reductions when income from discharge of indebtedness is excluded from gross income. If a partnership has income from discharge of indebtedness, §1.1017(g) permits its partners to request that the partnership reduce the basis of partnership depreciable property with respect to the partners. Section 1.1017-1(g)(2)(iii)(A) requires a partnership that consents to this basis reduction to prepare a statement describing, among other things, the amount of the reduction. Section 1.1017-1(g)(2)(iii)(B) requires the affected partners to attach a copy of that statement to their income tax returns.

Requiring partners to attach the partnership consent statement impedes the electronic filing of their income tax returns because the partnership statement cannot yet be incorporated into all electronic returns. To remedy this impediment, these regulations eliminate the obligation to attach the partnership consent statement and provide, instead, that taxpayers must retain the consent statement in their records.

5. Form 1120: U.S. Corporation Income Tax Return

Section 1503 prescribes certain rules for computing tax for corporations filing consolidated returns. Section 1.1503-2(g) permits dual consolidated losses of dual resident corporations to offset the income of domestic affiliates under specified circumstances, including entry into an agreement described in §1.1503-2(g)(2)(i). The corporation entering into the agreement must attach the agreement to its timely filed U.S. income tax return for the taxable year in which the loss is incurred. The agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503-2(g)(2)(iv)(B)(3)(iii) also requires a successor corporation to file an agreement described in §1.1503-2(g)(2)(i) to prevent recapture of the dual consolidated loss in certain circumstances. The new agreement must be signed under penalties of perjury by the person who signs the income tax return. Section 1.1503-2(g)(2)(vi)(B) requires corpora-

tions to file annual certifications with respect to dual consolidated losses. The annual certification must be signed under penalties of perjury by the person who signs the corporation's income tax return. The signature requirements in §1.1503-2(g)(2)(i), (g)(2)(iv)(B)(3)(iii), and (g)(2)(vi)(B) impede electronic filing of the corporation's income tax return because neither the agreement nor the annual certification can be signed electronically. These regulations eliminate the obligations under §1.1503-2(g)(2)(i) and (iv)(B)(3)(iii) to attach a signed agreement and provide, instead, that an unsigned copy of the agreement may be submitted with the corporation's income tax return if the corporation retains the signed original in its records. These regulations also eliminate the obligation under §1.1503-2(g)(2)(vi)(B) to sign the annual certification and provide, instead, that the annual certification is verified by signing the income tax return with which the certification is filed.

Section 170 addresses the tax deductibility of charitable contributions and gifts. Section 1.170A-11(b)(1) provides that, under certain conditions, corporations may treat a charitable contribution as paid during a taxable year even if the contribution occurs in the following taxable year. A corporation claiming a charitable deduction for a taxable year under this provision must attach a copy of the resolution of the board of directors authorizing the contribution to its return for the year. In addition, the corporation must attach a declaration, signed under penalties of perjury, that the resolution was adopted during the taxable year. See §1.170A-11(b)(2). Requiring taxpayers to attach a signed declaration impedes electronic filing of Form 1120 because the declaration cannot be signed electronically. The regulations eliminate the requirement of a signed declaration and provide, instead, that the declaration is verified by signing the return. The regulations also slightly expand the content of the declaration by requiring that it state the date on which the board of directors authorized the contribution. Requiring taxpayers to attach a copy of the resolution authorizing the contribution may also impede electronic filing of Form 1120 because including the resolution increases the size of the electronic return file in a potentially burdensome manner. The regulations eliminate this requirement and

provide, instead, that the resolution must be retained in the taxpayer's records.

Section 1.1502-21(b)(3)(i) provides that a consolidated group of corporations may elect to relinquish carryback treatment with respect to a consolidated net operating loss for any consolidated return year. The consolidated group elects this treatment by attaching a statement to the group's income tax return for the relevant year. The regulations require the statement to be signed by the common parent. This signature requirement impedes electronic filing of Form 1120 because the statement cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

Section 1.1502-21(b)(3)(ii)(B) provides that a group of corporations acquiring a new member may elect to relinquish part of the carryback period with respect to certain net operating losses of the new member. The election is made in a statement attached to the group's income tax return. The statement must be signed by the common parent, the new member, and any other corporation joining the group with the new member. This signature requirement impedes electronic filing of Form 1120 because third-party signatures cannot be incorporated into an electronic return. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement.

6. *Form 1120S: U.S. Income Tax Return for an S Corporation*

Section 1377 provides that under certain circumstances an S Corporation may elect to treat a taxable year as if it consisted of two separate taxable years. Section 1.1377-1(b)(5) provides that an S Corporation elects this treatment by attaching a signed statement to its income tax return. This signature requirement impedes electronic filing of Form 1120S because the statement described in §1.1377-1(b)(5) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368-1(g)(2)(i) provides a similar election for purposes of determining the treatment of distributions by an S Corporation in the event of certain owner-

ship changes. Section 1.1368-1(g)(2)(iii) provides that an S Corporation makes this election by attaching a statement, signed by an officer of the corporation, to its income tax return for the relevant taxable year. This signature requirement impedes electronic filing of Form 1120S because the statement described in §1.1368-1(g)(2)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

Section 1.1368-1(f) allows an S corporation to make certain elections relating to the source of its distributions. Section 1.1368-1(f)(5)(iii) provides that an S corporation makes these elections by attaching a statement containing specified information to its income tax return. An officer of the corporation must sign the statement under penalties of perjury. This signature requirement impedes electronic filing of Form 1120S because the statement described in §1.1368-1(f)(5)(iii) cannot be signed electronically. These regulations eliminate the signature requirement and permit the election to be made in an unsigned statement that is verified by signing the return.

7. *Form 1122: Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*

Section 1.1502-75(h)(2) provides that, when an affiliated group of corporations files a consolidated return for the first time, each subsidiary must consent to the filing by signing Form 1122 and the signed consent forms must be attached to the consolidated return. Requiring the group to file signed consent forms impedes electronic filing of consolidated returns because Form 1122 cannot yet be signed electronically. These regulations retain the requirement that each subsidiary consent to filing a consolidated return but eliminate the impediment to electronic filing by permitting the group to submit unsigned copies of the consents with its return if it retains the signed originals in its records.

8. *Form 5471: Information Return of U.S. Persons With Respect to Certain Foreign Corporations.*

Section 1.556-2(e)(2) provides that certain U.S. shareholders of a foreign per-

sonal holding company must attach a number of items to their income tax returns relating to property the company owns or operates. In particular, §1.556-2(e)(2)(vii) requires certain shareholders to attach a copy of the contract, lease or rental agreement covering the property. A shareholder attaches these items to Form 5471, and in turn attaches that form to its return. Requiring shareholders to attach a copy of these documents to an income tax return impedes electronic filing because the documents cannot yet be incorporated into all electronic returns. These regulations eliminate this requirement and provide, instead, that a copy of the contract, lease or rental agreement must be retained in the shareholder's records.

9. *Form 5712-A: Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)*

Section 1.936-7(a), Q&A 1 provides that a possessions corporation makes the election under section 936(h)(5) to use the cost sharing or profit split method by filing a signed Form 5712-A that includes a declaration that all affiliated group members have consented to the election. The electing corporation attaches the Form 5712-A to Form 5735, "Possessions Corporation Tax Credit," which in turn must be attached to the corporation's income tax return. Requiring taxpayers to sign Form 5712-A impedes electronic filing of corporate income tax returns because Form 5712-A cannot yet be signed electronically. These regulations eliminate the signature requirement and permit the election to be made using an unsigned Form 5712-A that is verified by signing the return.

10. *Form 8832: Entity Classification Election*

An eligible business entity may file Form 8832 to specify the way in which it is to be classified for federal tax purposes. The form must be signed under penalties of perjury. Section 301.7701-3(c)(1)(ii) provides that in certain circumstances the entity must attach a copy of Form 8832 to its tax or information returns. The requirement to attach a copy of Form 8832 impedes electronic filing of tax and information returns because a copy of the signed form cannot yet be incorporated into all electronic returns. These regula-

tions provide that the requirement to attach a copy of Form 8832 to a return may be satisfied with an unsigned copy.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary and final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.170A-11 is amended by revising paragraph (b)(2) to read as follows:

§1.170A-11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [Reserved]. For further guidance see §1.170A-11T(b)(2).

* * * * *

Par. 3. Section 1.170A-11T is added to read as follows:

§1.170A-11T Limitation on, and carryover of, contributions by corporations (temporary).

(a) [Reserved]. For further guidance, see §1.170A-11(a).

(b) Election by corporations on an accrual method—(1) [Reserved]. For further guidance, see §1.170A-11(b)(1).

(2) The election must be made at the time the return for the taxable year is filed, by reporting the contribution on the return. There shall be attached to the return when filed a written declaration stating that the resolution authorizing the contribution was adopted by the board of directors during the taxable year. For taxable years beginning before January 1, 2003, the declaration shall be verified by a statement signed by an officer authorized to sign the return that it is made under penalties of perjury, and there shall also be attached to the return when filed a copy of the resolution of the board of directors authorizing the contribution. For taxable years beginning after December 31, 2002, the declaration must also include the date of the resolution, the declaration shall be verified by signing the return, and a copy of the resolution of the board of directors authorizing the contribution is a record that the taxpayer must retain and keep available for inspection in the manner required by §1.6001-1(e).

(c) through (d) [Reserved]. For further guidance, see §1.170A-11(c) through (d).

Par. 4. Section 1.556-2 is amended by revising paragraph (e)(2)(vii) and adding paragraph (e)(3) to read as follows:

§1.556-2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [Reserved]. For further guidance, see §1.556-2T(e)(2)(vii) and (3).

* * * * *

(3) [Reserved]. For further guidance, see §1.556-2T(e)(3).

* * * * *

Par. 5. Section 1.556-2T is added to read as follows:

§1.556-2T Adjustments to taxable income (temporary).

(a) through (e)(2)(vi) [Reserved]. For further guidance, see §1.556-2(a) through (e)(2)(vi).

(e)(2)(vii) In the case of a return for a taxable year beginning before January 1, 2003, a copy of the contract, lease, or rental agreement;

(e)(2)(viii) through (xi) [Reserved]. For further guidance, see §1.556-2(e)(2)(viii) through (xi).

(3) If the statement described in §1.556-2(e)(2) is attached to a taxpayer's income tax return for a taxable year beginning after December 31, 2002, a copy of the applicable contract, lease or rental agreement is not required to be submitted with the return, but must be retained by the taxpayer and kept available for inspection in the manner required by §1.6001-1(e).

(f) [Reserved]. For further guidance, see §1.556-2(f).

Par. 6. Section 1.565-1 is amended by revising paragraph (b)(3) to read as follows:

§1.565-1 General rule.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see §1.565-1T(b)(3).

* * * * *

Par. 7. Section 1.565-1T is added to read as follows:

§1.565-1T General rule (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see §1.565-1(a) through (b)(2).

(b)(3) A consent may be filed at any time not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. With such return, and not later than the due date thereof, the corporation must file Forms 972 for each consenting shareholder, and a return on Form 973 showing by classes the stock outstanding on the first and last days of the taxable year, the dividend rights of such stock, distributions made during the taxable year to shareholders, and giving all the other information required by the form. For taxable years beginning before January 1, 2003, the Form 973 filed with the

corporation's income tax return shall contain or be verified by a written declaration that is made under the penalties of perjury and the Forms 972 filed with the return must be duly executed by the consenting shareholders. For taxable years beginning after December 31, 2002, the Form 973 filed with the corporation's income tax return shall be verified by signing the return and the Forms 972 filed with the return must be duly executed by the consenting shareholders or, if unsigned, must contain the same information as the duly executed originals. If the corporation submits unsigned Forms 972 with its return for a taxable year beginning after December 31, 2002, the duly executed originals are records that the corporation must retain and keep available for inspection in the manner required by §1.6001-1(e).

(c) [Reserved]. For further guidance, see §1.565-1(c).

Par. 8. Section 1.936-7 is amended by:

1. Designating the undesignated introductory text as paragraph (a).

2. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively.

3. Revising newly designated paragraph (b), Q. & A. 1.

The revision reads as follows:

§1.936-7 Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

(b) ***

Q. 1. [Reserved]. For further guidance, see §1.936-7T(b) Q. 1.

A. 1. [Reserved]. For further guidance, see §1.936-7T(b) A. 1.

Par. 9. Section 1.936-7T is added to read as follows:

§1.936-7T Manner of making election under section 936(h)(5); special election for export sales; revocation of election under section 936(a) (temporary).

(a) [Reserved]. For further guidance, see §1.936-7 (a).

(b) *Manner of making election.*

Q. 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

A. 1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712-A (*"Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)"*) and attaching it to its tax return. Form 5712-A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. For elections filed with respect to taxable years beginning before January 1, 2003, an authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. Elections filed for taxable years beginning after December 31, 2002, will incorporate a declaration by the electing corporation that it has received a signed consent from an authorized officer, director, or other appropriate official of each member of the affiliated group and will be verified by signing the return. The election is not valid for a taxable year unless all affiliates consent. A failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712-A with its timely filed income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit

split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

Q. & A. 2 through 8 [Reserved]. For further guidance, see §1.936-7(b), Q. & A. 2 through 8.

(c) and (d) [Reserved]. For further guidance, see §1.936-7(c) and (d).

Par. 10. Section 1.1017-1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§1.1017-1 Basis reductions following a discharge of indebtedness.

(g) ***

(2) ***

(iii) ***

(B) [Reserved]. For further guidance, see §1.1017-1T(g)(2)(iii)(B).

Par. 11. Section 1.1017-1T is amended by revising paragraphs (c) through (i) to read as follows:

§1.1017-1T Basis reductions following a discharge of indebtedness (temporary).

(c) through (g)(2)(iii)(A) [Reserved]. For further guidance, see §1.1017-1(c) through (g)(2)(iii)(A).

(g)(2)(iii)(B) *Taxpayer's requirement.* For taxable years beginning before January 1, 2003, statements described in §1.1017-1(g)(2)(iii)(A) must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). For taxable years beginning after December 31, 2002, taxpayers must retain the statements and keep them available for inspection in the manner required by §1.6001-1(e), but are not required to attach the statements to their returns.

(g)(2)(iv) through (i) [Reserved]. For further guidance, see §1.1017-1(g)(2)(iv) through (i).

Par. 12. Section 1.1368-1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§1.1368-1 Distributions by S corporations.

(f) ***

(5) ***

(iii) [Reserved]. For further guidance, see §1.1368-1T(f)(5)(iii).

(g) ***

(2) ***

(iii) [Reserved]. For further guidance, see §1.1368-1T(g)(2)(iii).

Par. 13 Section 1.1368-1T is added to read as follows:

§1.1368-1T Distributions by S corporations (temporary).

(a) through (f)(5)(ii) [Reserved]. For further guidance, see §1.1368-1(a) through (f)(5)(ii).

(f)(5)(iii) *Corporate statement regarding elections.* A corporation makes an election for a taxable year under §1.1368-1(f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under §1.1368-1(f) and must state that each shareholder consents to the election. In the case of elections for taxable years beginning before January 1, 2003, an officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. In the case of elections for taxable years beginning after December 31, 2002, the statement described in this paragraph (f)(5)(iii) shall be verified by signing the return. A statement of election to make a deemed dividend under §1.1368-1(f) must include the amount of the deemed dividend that is distributed to each shareholder.

(f)(5)(iv) through (g)(2)(ii) [Reserved]. For further guidance, see §1.1368-1(f)(5)(iv) through (g)(2)(ii).

(g)(2)(iii) *Time and manner of making election.* A corporation makes an election under §1.1368-1(g)(2)(i) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under §1.1368-1(g)(2)(i)). In the statement, the corporation must state that it is electing for

the taxable year under §1.1368-1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (*e.g.*, sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under §1.1368-1(g)(2)(i)) consents to this election. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under §1.1368-1(g)(2)(i) for the taxable year. An election made under §1.1368-1(g)(2)(i) of this section is irrevocable. In the case of elections for taxable years beginning before January 1, 2003, the statement through which a corporation makes an election under §1.1368-1(g)(2)(i) must be signed by an officer of the corporation under penalties of perjury. In the case of elections for taxable years beginning after December 31, 2002, the statement described in the preceding sentence shall be verified by signing the return.

(g)(2)(iv) [Reserved]. For further guidance, see §1.1368-1(g)(2)(iv).

Par. 14. Section 1.1377-1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§1.1377-1 Pro rata share.

(b) ***

(5) ***

(i) ***

(C) [Reserved]. For further guidance, see §1.1377-1T(b)(5)(i)(C).

Par. 15. Section 1.1377-1T is added to read as follows:

§1.1377-1T Pro rata share (temporary).

(a) through (b)(5)(i)(B) [Reserved]. For further guidance, see §1.1377-1(a) through (b)(5)(i)(B).

(b)(5)(i)(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury, except that for taxable years beginning after December 31, 2002, the election

statement described in §1.1377-1(b)(5)(i) shall be verified, and the requirement of this paragraph (b)(5)(i)(C) is satisfied, by the signature on the Form 1120S filed by the S corporation.

(b)(5)(i)(D) through (c) [Reserved]. For further guidance, see §1.1377-1(b)(5)(i)(D) through (c).

Par. 16. Section 1.1502-21 is amended by revising paragraphs (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§1.1502-21 Net operating losses.

(b) ***

(3) *** (i) [Reserved]. For further guidance, see §1.1502-21T(b)(3)(i).

(ii)(A) ***

(b)(3)(ii)(B) [Reserved]. For further guidance, see §1.1502-21T(b)(3)(ii)(B).

Par. 17. Section 1.1502-21T is amended by revising paragraphs (b)(3) through (b)(3)(ii)(B) to read as follows:

§1.1502-21T Net operating losses (temporary).

(b)(3) *Special rules—(i) Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled “THIS IS AN ELECTION UNDER §1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT”. The statement must be filed with the group’s income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in

which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(b)(3)(ii) through (b)(3)(ii)(A) [Reserved]. For further guidance, see §1.1502-21(b)(3)(ii) through (b)(3)(ii)(A).

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER §1.1502-21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” The statement must be filed with the acquiring consolidated group’s original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

Par. 18. Section 1.1502-75 is amended by revising paragraph (h)(2) to read as follows:

§1.1502-75 Filing of consolidated returns.

(h) ***

(2) [Reserved]. For further guidance, see §1.1502-75T(h)(2).

Par. 19. Section 1.1502-75T is added to read as follows:

§1.1502-75T Filing of consolidated returns (temporary).

(a) through (h)(1) [Reserved]. For further guidance, see §1.1502-75(a) through (h)(1).

(2) *Filing of Form 1122 for first year.* If, under the provisions of §1.1502-75 (a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 (“*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*”) must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by §1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

(h)(3) through (k) [Reserved]. For further guidance, see §1.1502-75(h)(3) through (k).

Par. 20. Section 1.1503-2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§1.1503-2 Dual consolidated loss.

(g) ***
(2) ***
(i) [Reserved]. For further guidance, see §1.1503-2T(g)(2)(i).

(iv) ***
(B) ***
(3) ***

(iii) [Reserved]. For further guidance, see §1.1503-2T(g)(2)(iv)(B)(3)(iii)

(vi) ***

(B) [Reserved]. For further guidance, see §1.1503-2T(g)(2)(vi)(B).

Par. 21. Section 1.1503-2T is added to read as follows:

§1.1503-2T Dual consolidated loss (temporary).

(a) through (g)(1) [Reserved]. For further guidance, see §1.1503-2(a) through (g)(1).

(2) *Elective relief provision—(i) In general.* Paragraph (b) of this section shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner elects to be bound by the provisions of §1.1503-2(g)(2) and this paragraph (g)(2). In order to elect relief under §1.1503-2(g)(2) and this paragraph (g)(2), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must attach to its timely filed U.S. income tax return for the taxable year in which the dual consolidated loss is incurred an agreement described in paragraph (g)(2)(i)(A) of this section. The agreement must be signed under penalties of perjury by the person who signs the return. For taxable years beginning after December 31, 2002, the agreement attached to the income tax return of the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must retain the original in its records in the manner specified by §1.6001-1(e). The agreement must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (g)(2)(i)(A) through (F) of this section:

(A) A statement that the document submitted is an election and an agreement under the provisions of §1.1503-2(g)(2) of the Income Tax Regulations.

(B) The name, address, identifying number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the

case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) An agreement by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner to comply with all of the provisions of paragraphs (g)(2)(iii) through (vii) of §1.1503-2 and this section.

(D) A statement of the amount of the dual consolidated loss covered by the agreement.

(E) A certification that no portion of the dual resident corporation's or separate unit's losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

(F) A certification that arrangements have been made to ensure that no portion of the dual consolidated loss will be used to offset the income of another person under the laws of a foreign country and that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner will be informed of any such foreign use of any portion of the dual consolidated loss.

(g)(2)(ii) through (iv)(B)(3)(ii) [Reserved] For further guidance, see §1.1503-2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(3)(iii) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in §1.1503-2(g)(2)(iv)(B)(1) or (2) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to §1.1503-2(g)(2)(iv)(B)(3)(iii) or this paragraph (g)(2)(iv)(B)(3)(iii). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned

copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by §1.6001-1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, see §1.1503-2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in §1.1503-2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the certification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, see §1.1503-2(g)(2)(vii) through (h).

Par. 22. Section 1.6038B-1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§1.6038B-1 Reporting of certain transfers to foreign corporations.

* * * * *

(b)(1)(i) and (ii) [Reserved]. For further guidance, see §1.6038B-1T(b)(1)(i) and (ii).

* * * * *

Par. 23. Section 1.6038B-1T is amended by revising paragraphs (a) through (b)(3) to read as follows:

§1.6038B-1T Reporting of certain transactions to foreign corporations (temporary).

(a) [Reserved]. For further guidance, see §1.6038B-1(a).

(b) *Time and manner of reporting—(1) In general—(i) Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of §1.6038B-1(b)(2), and certain exchanges described in section 354 (listed below), any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e), is required to report pursuant to section 6038B and the rules of §1.6038B-1 and this section and must attach the required information to Form 926, "Return by a U.S. Transferor of Property to a Foreign Corporation." For special rules regarding cash transfers made in tax years beginning after February 5, 1999, see §1.6038B-1(b)(3) and (g). For purposes of determining a U.S. transferor that is subject to section 6038B, the rules of §1.367(a)-1T(c) and §1.367(a)-3(d) shall apply with respect to a transfer described in section 367(a), and the rules of §1.367(a)-1T(c) shall apply with respect to a transfer described in section 367(d). Additionally, if in an exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a), then the U.S. person exchanging stock is not required to report under section 6038B. Notwithstanding any statement to the contrary on Form 926, the form and attachments must be attached to, and filed by the due date

(including extensions) of the transferor's income tax return for the taxable year that includes the date of the transfer (as defined in §1.6038B-1T(b)(4)). For taxable years beginning before January 1, 2003, any attachment to Form 926 required under the rules of this section is filed subject to the transferor's declaration under penalties of perjury on Form 926 that the information submitted is true, correct and complete to the best of the transferor's knowledge and belief. For taxable years beginning after December 31, 2002, Form 926 and any attachments shall be verified by signing the income tax return with which the form and attachments are filed.

(ii) *Reporting by corporate transferor.* For transfers by corporations in taxable years beginning before January 1, 2003, Form 926 must be signed by an authorized officer of the corporation if the transferor is not a member of an affiliated group under section 1504(a)(1) that files a consolidated Federal income tax return and by an authorized officer of the common parent corporation if the transferor is a member of such an affiliated group. For transfers by corporations in taxable years beginning after December 31, 2002, Form 926 shall be verified by signing the income tax return to which the form is attached.

(b)(2) through (b)(3) [Reserved]. For further guidance, see §1.6038B-1(b)(2) through (b)(3).

PART 301 — PROCEDURE AND ADMINISTRATION

Par. 24. The authority citation for part 301 continues to read in part as follows:

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

Par. 25. Section 301.7701-3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§301.7701-3 Classification of certain business entities.

(c) * * * (1) * * *

(ii) [Reserved]. For further guidance, see §301.7701-3T(c)(1)(ii).

Par. 26. Section 301.7701-3T is added to read as follows:

§301.7701-3T Classification of certain business entities (temporary).

(a) through (c)(1)(i) [Reserved]. For further guidance, see §301.7701-3(a) through (c)(1)(i).

(ii) *Further notification of elections.* An eligible entity required to file a federal tax or information return for the taxable year for which an election is made under §301.7701-3(c)(1)(i) must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 (“*Entity Classification Election*”) must be attached to the federal income tax or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective. An indirect owner of the entity does not have to attach a copy of the Form 8832 to its return if an entity in which it has an interest is already filing a copy of the Form 8832 with its

return. If an entity, or one of its direct or indirect owners, fails to attach a copy of a Form 8832 to its return as directed in this section, an otherwise valid election under §301.7701-3(c)(1)(i) will not be invalidated, but the non-filing party may be subject to penalties, including any applicable penalties if the federal tax or information returns are inconsistent with the entity's election under §301.7701-3(c)(1)(i). In the case of returns for taxable years beginning after December 31, 2002, the copy of Form 8832 attached to a return pursuant to this paragraph (c)(1)(ii) is not required to be a signed copy.

(c)(1)(iii) through (h) [Reserved]. For further guidance, see §301.7701-3(c)(1)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 27. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 28. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers

(b) * * *

CFR part or section where identified and described	Current OMB control No.

1.170A-11T	1545-1868

Robert E. Wenzel,
Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,
Deputy Assistant Secretary of the Treasury (Tax Policy).

Section 6038B.—Notice of Certain Transfers to Foreign Persons

Approved December 2, 2003.

(Filed by the Office of the Federal Register on December 18, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2003, 68 F.R. 70701)

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Section 6045.—Returns of Brokers

26 CFR 1.6045-2: *Furnishing statement required with respect to certain substitute payments.*

T.D. 9103

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Information Statements for Certain Substitute Payments

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6045(d) that reflect the changes to information reporting for payments in lieu of dividends effected by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). These regulations provide that brokers must file information returns and furnish information statements reporting substitute payments in lieu of dividends to individuals who receive substitute payments in lieu of dividends on or after January 1, 2003.

DATES: *Effective Date:* These final regulations are effective December 29, 2003.

Applicability Date: These regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration), (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the JGTRRA), Public Law No. 108-27 (117 Stat. 752), reduced the tax rate for “qualified dividends” paid to an individual shareholder to the same tax rate as capital gains for taxable years beginning after December 31, 2002, and beginning before January 1, 2009. The legislative history states,

however, “Payments in lieu of dividends are not eligible for the lower rates.” See H.R. REP. NO. 108-94, 108th Cong., 1st Sess. 31 n.36 (2003).

Explanation of Provisions

Section 6045(a) of the Internal Revenue Code (Code) provides that every person doing business as a broker shall, when required by the Secretary, make a return showing the name and address of each customer, together with information as required by forms and regulations. Section 6045(d) provides that brokers who transfer a customer’s securities for use in a short sale or similar transaction, and receive payments in lieu of a dividend, tax-exempt interest, or other items set forth in regulations (substitute payments), must furnish the customer with a written statement identifying the payment as being in lieu of the dividend, tax-exempt interest, or other item. This section authorizes the Secretary to prescribe regulations that require brokers to file information returns that include the information contained in the written statement.

Section 1.6045-2 of the existing Income Tax Regulations provides rules for reporting substitute payments under section 6045(d). In general, §1.6045-2(a)(3)(i) of the existing regulations excludes payments in lieu of dividends received by a broker on behalf of an individual from the broker reporting requirements of section 6045(d). Section 1.6045-2(a)(3)(ii) of the existing regulations requires reporting for certain dividend substitute payments received by a broker on behalf of an individual, such as payments in lieu of exempt interest dividends distributed by regulated investment companies.

These regulations contain amendments to the existing regulations to require reporting under section 6045(d) for payments in lieu of dividends made to individuals on or after January 1, 2003. For taxable years beginning on or after January 1, 2003, brokers must use Form 1099-MISC, “Miscellaneous Income”, to report substitute payments to individuals, including payments in lieu of dividends.

The IRS issued interim guidance regarding provisions of the JGTRRA that affect information reporting for payments in lieu of dividends in Notice 2003-67,

2003-40 I.R.B. 752. The notice also provided guidance on the definition of loanable shares and the allocation and selection of transferred shares (that is, shares giving rise to payments in lieu of dividends to customers). The IRS intends to issue comprehensive regulations amending §1.6045-2 in the future. The IRS anticipates that these regulations will define payments in lieu of dividends, provide rules for determining loanable shares, and provide rules for allocating and selecting transferred shares to customers. Pending issuance of further amendments to §1.6045-2 of the existing regulations, brokers may rely on Notice 2003-67 to comply with the requirements of the JGTRRA and section 6045(d).

In addition, pending issuance of further amendments to §1.6045-2, the IRS will permit brokers to continue to use the rules of §1.6045-2 of the existing regulations for allocating transferred shares to customers. A broker may continue to allocate transferred shares to shares of stock that the broker has borrowed under a security agreement with the customer. In addition, if a broker uses the lottery method of allocation and selection of loanable shares specified in §1.6045-2(f)(2)(ii), the broker may make the selection of the transferred shares within the individual pool described in §1.6045-2(f)(2)(ii)(C) using the methods of selection of transferred shares used within the nonindividual pool as prescribed in §1.6045-2(f)(2)(ii)(B).

Special Analyses

These final regulations are necessary to provide brokers and taxpayers with immediate guidance regarding provisions in the JGTRRA that affect information reporting for substitute payments in lieu of dividends. The regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003. Based on these considerations, it is determined that these final regulations will provide brokers and taxpayers with the necessary guidance and authority to comply with the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) and delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rule-making is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 (*et seq.*) do not apply. Further, 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. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael Hara, Office of Associate Chief Counsel (Procedures and Administration), Administrative Provisions and Judicial Practice.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Par. 2. Section 1.6045-2 is amended by:

1. Paragraph (a)(3)(i) is revised.
2. The heading for paragraph (a)(3)(ii) is revised.

The revisions read as follows:

§1.6045-2 Furnishing statement required with respect to certain substitute payments.

- (a) * * *
- (3) * * * (i) *In general.* Except as otherwise provided in paragraph (a)(3)(ii) of this section, for taxable years beginning before January 1, 2003, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual (“individual customer”) need not furnish a statement to the customer.

- (ii) *Reporting for certain dividends.*
- * * *
- * * * * *

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

Approved December 18, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 24, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 29, 2003, 68 F.R. 74847)

Section 7701.—Definitions

Regulations eliminate impediments to the electronic filing of certain income tax returns and other forms. See T.D. 9100, page 297.

Part III. Administrative, Procedural, and Miscellaneous

Request for Comments Concerning the Application of Sections 162 and 263 to Tangible Property

Notice 2004-6

The Internal Revenue Service and Treasury Department intend to propose regulations that clarify the application of §§ 162 and 263 of the Internal Revenue Code to expenditures paid or incurred to repair, improve, or rehabilitate tangible property. This notice identifies issues the Service and Treasury Department may address in the regulations. The Service and Treasury Department want to provide clear, consistent and administrable rules that will reduce the uncertainty and controversy in this area, while also preventing the distortion of income. Accordingly, the Service and Treasury Department request public comments on whether these or other issues should be addressed in the regulations and, if so, what specific rules and principles should be provided.

ISSUES ON WHICH COMMENTS ARE REQUESTED

1. What general principles of capitalization should apply to expenditures to repair or improve tangible property?

The regulations currently require capitalization for expenditures that materially increase the value of property, substantially prolong the useful life of property, or adapt property to a new or different use. Sections 1.162-4; 1.263(a)-1(b) of the Income Tax Regulations. Are these the appropriate tests for capitalization? If so, how should the forthcoming guidance clarify the application of these standards? Alternatively, should different standards apply? If so, what different standards?

2. In applying the general principles, what is the appropriate “unit of property”? Should any of the following factors be determinative or relevant in analyzing what is the appropriate unit of property: (1) whether the property is manufactured, marketed, or purchased separately; (2) whether the property is treated as a separate unit by a regulatory agency, in industry practice, or by the taxpayer in its

books and records; (3) whether the property is designed to be easily removed from a larger assembly, is regularly or periodically replaced, or is one of a fungible set of interchangeable or rotatable assets; (4) whether the property must be removed from a larger assembly to be fixed or improved; (5) whether the property has a different economic life than the larger assembly; (6) whether the property is subject to a separate warranty; (7) whether the property serves a discrete purpose or functions independently from a larger assembly; or (8) whether the property serves a dual purpose function, (e.g., inventory)? See *Smith v. Commissioner*, 300 F.3d 1023 (9th Cir. 2002); *Hawaiian Indep. Ref. Inc. v. United States*, 697 F.2d 1063 (Fed. Cir. 1983), cert. denied, 464 U.S. 816 (1983); *Electric Energy, Inc. v. United States*, 13 Cl. Ct. 644 (1987); *FedEx Corp. v. United States*, No. 01-2200 (W.D. Tenn. August 28, 2003); *Ingram Indus., Inc. v. Commissioner*, T.C.M. 2000-323; *LaSalle Trucking Co. v. Commissioner*, T.C.M. 1963-274. Are there other facts or circumstances that should be taken into account?

3. In determining whether an expenditure materially increases the value of property or substantially prolongs the useful life of property, what is the proper starting point for comparison?

Should the forthcoming guidance adopt the test in *Plainfield-Union Water Co. v. Commissioner*, 39 T.C. 333 (1962), nonacq. 1964-2 C.B. 8, which looks at “whether the expenditure materially enhances the value, use, life expectancy, strength, or capacity as compared with the status of the asset prior to the condition necessitating the expenditure”? Should the starting point be different depending on whether the expenditure was necessitated by a single event, such as a casualty, or from gradual wear and tear? See *Ingram Indus.*; Rev. Rul. 2001-4, 2001-1 C.B. 295. If the expenditure relates to a component part, does the relative importance of the component part to the functionality of the underlying asset affect the starting point? See *Smith*, 300 F.3d at 1031-32. Should the test in *Plainfield-Union* apply as well to expenditures incurred upon acquisition of the property and, if so, how would the test apply?

4. What is “value” for purposes of the “material increase in value” rule? Does “value” refer solely to the fair market value of the property? Alternatively, should any “enhanced functionality” of the property in the taxpayer’s business (e.g., an enhancement to capacity, productivity, quality, or efficiency) be treated as an additional basis for capitalization? See *Vanalco, Inc. v. Commissioner*, T.C.M. 1999-265, aff’d sub nom., *Smith v. Commissioner*, 300 F.3d 1023 (9th Cir. 2001).

5. How should it be determined whether there has been a “material increase” in value? Should an increase in the fair market value of property after the expenditure be compared to the fair market value of the property before the expenditure or the cost of equivalent new property? Should the regulations create a presumption that an addition to fair market value is material (or immaterial) if it exceeds (or is less than) a certain percentage of the fair market value of the property or the cost of equivalent new property?

If enhanced functionality constitutes a basis for requiring capitalization, should the regulations require a certain percentage of improvement before the expenditures are required to be capitalized (e.g., an X% increase in capacity, productivity, or efficiency)? If the enhanced functionality cannot be measured by a percentage of improvement (e.g., enhancements to safety) how should a “material increase” be determined?

6. What is “useful life” for purposes of the “substantially prolongs useful life” rule?

Is “useful life” the period the taxpayer may reasonably expect to use the property in its trade or business (see § 1.167(a)-1(b)) or the period of use inherent in the property? Should the following factors be considered in determining a property’s useful life: (1) wear and tear or decay and decline from natural causes; (2) normal progress of art, economic changes, inventions, and current developments within the industry or the taxpayer’s trade or business; (3) climatic and other local conditions specific to the taxpayer’s trade or business; (4) the taxpayer’s policy as to repairs, renewals, and replacements; and (5) whether the asset was subject to unusual wear and tear, for example, heavy

or extraordinary use. See § 1.167(a)–1(b). Should the recovery periods under § 168 be relevant to the determination of “useful life” for capitalization purposes?

7. **How should it be determined whether an expenditure “substantially prolongs” the useful life of the property?** If the expenditure prolongs the useful life of property for a fixed number of years is that sufficient to require capitalization? Alternatively, does the expenditure need to prolong the property's initial or remaining useful life by a relative amount (e.g., by a certain percentage)? Should the test be whether the expenditure essentially results in a rebuilding? See *Ingram Indus.; Vanalco*. Is it relevant at what point in the useful life of the property the expenditure is incurred? Are there presumptions or safe harbors that would be useful, for example, a presumption that an expenditure that prolongs the useful life of the property for less than X months or by less than Y% is not “substantial”?

8. **Is § 263(a)(2) a different test from the “substantially prolongs the useful life of the property” test?** If so, what rules should be provided for determining whether an expenditure “restores property or makes good the exhaustion thereof for which an allowance is or has been made” within the meaning of § 263(a)(2)?

9. **What factors are relevant in determining whether an expenditure adapts property to a new or different use?**

10. **What other factors should be considered in determining whether an expenditure must be capitalized?** For example, should the following factors affect the analysis of whether an expenditure increases the value of property, prolongs the useful life, or adapts the property to a new or different use and, if so, how: (1) the nature and extent of the work performed (e.g., the time and effort required to perform the work, whether the property had to be taken out of service for the work, and the portion of the property affected by the work); (2) the use of materials that reflect product enhancements, improved materials, or technological improvements; (3) the existence of regulatory mandates; (4) the frequency of the expenditure (e.g., whether the expenditure is incurred once or every couple of years); (5) the taxpayer's knowledge of pre-existing defects at the time the property was acquired; (6) whether a substantial percentage of the parts of the property

or large or significant parts of the property are replaced; (7) whether the property was functioning immediately before the expenditure; (8) the absolute or relative amount of the expenditure; (9) the relative importance of a component and the “essential functional nature” of a component (see *Smith*, 300 F.3d at 1031–32); and (10) whether the expenditure is for an activity described in a manufacturer's suggested maintenance program?

11. **Should the regulations provide “repair allowance” type rules?** For example, should the regulations provide rules similar to the percentage repair allowance system, since repealed, that is described in § 1.167(a)–11(d)(2)? If so, should the allowance be an annual amount based on a percentage of the unadjusted basis of the asset or should the allowance be an annual amount based on gross receipts or net income? Should a repair allowance be structured as a safe harbor? Should a safe harbor apply to both personal property and real property? See *Alacare Home Health Serv. Inc. v. Commissioner*, T.C.M. 2001–149.

12. **Should the regulations provide a *de minimis* rule?** If so, what should the *de minimis* amount be (e.g., a fixed amount, a percentage of the fair market value of the property, a percentage of the unadjusted or adjusted basis of the property, or a percentage of the cost of equivalent new property)? Should a *de minimis* rule be structured as a safe harbor? Should a *de minimis* rule apply to both personal property and real property? Should the *de minimis* amount be periodically increased (or decreased), and if so, how? See *Cincinnati, New Orleans and Texas Pac. Ry. Co. v. United States*, 424 F.2d 563 (Ct. Cl. 1970); *Alacare*.

13. **What facts are relevant in determining whether a repair must be capitalized under the “plan of rehabilitation” doctrine?** Should the regulations adopt a facts and circumstances analysis that looks to the purpose, nature, extent, and value of the work done? See *United States v. Wehrli*, 400 F.2d 686 (10th Cir. 1968). What connection is required between the repairs and the capital improvements for the plan of rehabilitation doctrine to apply? That is, must repairs be incident to, integral to, contemporaneous with, or because of the capital improvements? How extensive do the capital im-

provements have to be to result in a plan of rehabilitation (e.g., is at least one capital expenditure required before the doctrine applies and may a single capital expenditure cause the doctrine to apply)? Are repairs part of a plan of rehabilitation when the repairs are done in preparation for or as part of a remodeling project? See *Norwest Corp. v. Commissioner*, 108 T.C. 265 (1997). If so, what constitutes a remodeling project? Does the doctrine apply if the work is part of a continuous or ongoing process of replacing an asset over time (e.g., if normal operation requires ongoing repainting and repapering, do repainting and repapering costs become capital if they correspond with a capital remodeling project)? See *Moss v. Commissioner*, 831 F.2d 833 (9th Cir. 1987). Should the regulations establish a bright-line test that repairs of property are considered part of a plan of rehabilitation if the property is, at the time the repairs are made, not suitable for its intended use, in a general state of disrepair, or at the end of its useful life? Should the regulations address other issues, such as whether a written plan is required and whether the existence of a written plan indicates a plan of rehabilitation?

14. **Should the regulations provide specific rules for any particular type or category of expenditure?**

15. **Are there any situations in which the tax treatment of an expenditure to repair, improve, or rehabilitate tangible property should follow the financial or regulatory accounting treatment for that expenditure?**

DATES: Written and electronic comments must be submitted by March 1, 2004.

ADDRESSES: Send submissions to: CC:PA:LDP:PR (Notice 2004–6), room 5203, 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 a.m. and 4 p.m. to: CC:ITA:PR (Notice 2004–6), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, taxpayers may send submissions electronically directly to the Service at: Notice.comments@irs.counsel.treas.gov All materials submitted will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Guy Traynor (202) 622-7180; concerning this notice, Grace K. Matuszeski (202) 622-7327 (not toll-free numbers).

Charitable Contributions of Patents and Other Intellectual Property

Notice 2004-7

The Internal Revenue Service (IRS) is aware that some taxpayers that transfer patents or other intellectual property to charitable organizations are claiming charitable contribution deductions in excess of the amounts to which they are entitled under § 170 of the Internal Revenue Code. In particular, the IRS has become aware of purported charitable contributions of intellectual property in which one or more of the following issues are present: 1) transfer of a nondeductible partial interest in intellectual property; 2) the taxpayer's expectation or receipt of a benefit in exchange for the transfer; 3) inadequate substantiation of the contribution; and 4) overvaluation of the intellectual property transferred. The purpose of this notice is to advise taxpayers that, in appropriate cases, the IRS intends to disallow all or part of these improper deductions and may impose penalties under § 6662. In addition, this notice advises promoters and appraisers that the IRS intends to review promotions of transactions involving these improper deductions, and that the promoters and appraisers of the intellectual property may be subject to penalties under §§ 6700, 6701, and 6694.

Section 170(a)(1) allows as a deduction, subject to certain limitations and restrictions, any charitable contribution (as defined in § 170(c)) that is made within the taxable year.

However, § 170(f)(3) provides generally that no charitable contribution deduction is allowed for a transfer to a charitable organization of less than the taxpayer's entire interest in property. For example, if a donation agreement states that a transfer to the donee of the taxpayer's interests in a patent is subject to a right retained by the taxpayer to manufacture or use any product covered by the patent, the taxpayer has

transferred a nondeductible partial interest in the patent. For other examples of nondeductible partial interests, see Situations 1 and 2 of Rev. Rul. 2003-28, 2003-11 I.R.B. 594.

Generally, to be deductible as a charitable contribution under § 170, a transfer to a charitable organization must be a gift. A gift to a charitable organization is a transfer of money or property without receipt of adequate consideration, made with charitable intent. *See U.S. v. American Bar Endowment*, 477 U.S. 105, 117-18 (1986) (citing Rev. Rul. 67-246, 1967-2 C.B. 104, with approval); *Hernandez v. Commissioner*, 490 U.S. 680, 690 (1989); and § 1.170A-1(h)(1) and (2) of the Income Tax Regulations. A transfer to a charitable organization is not made with charitable intent if the transferor expects a return commensurate with the amount of the transfer. *Hernandez* at 690; *see also American Bar Endowment* at 116.

If a taxpayer receives a benefit in return for a transfer to a charitable organization, the transfer may be deductible as a charitable contribution, but only to the extent the amount transferred exceeds the fair market value of the benefit received, and only if the excess amount was transferred with the intent of making a gift (a "dual character" transfer). *See American Bar Endowment* at 118 (the taxpayer must "at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return.") In other words, the taxpayer must establish that it knew at the time of the transfer that the value of what it gave was greater than the value of what it received. *See id.* In this situation, the burden is on the taxpayer to show that all or part of the payment was a charitable contribution. *See* § 1.170A-1(h). All consideration provided by the charitable organization (other than benefits disregarded under § 1.170A-13(f)(8)) must be taken into account, including non-cash benefits.

For example, if a donation agreement states that the donee assumes a taxpayer's liability for a lease of a research facility, this assumption of liability is consideration from the donee. Likewise, a donee's promise to make available to the taxpayer the results of the donee's research, such as laboratory notebooks, data, and research files, is consideration from the donee.

Similarly, a charitable organization's promise to hold a patent and maintain it for a period of time is consideration to a taxpayer if the taxpayer is benefited when others are prevented from purchasing or licensing the patent. *Cf.* Rev. Rul. 2003-28, Situation 3 (taxpayer received no benefit from restriction on donated patent). In each of these examples, the taxpayer has the burden of showing that it knew, at the time of the transfer, that the value of the donated property exceeded the value of the consideration it received from the donee. The taxpayer may deduct no more than this excess amount.

A charitable contribution is allowable as a deduction only if substantiated in accordance with regulations prescribed by the Secretary. Section 170(a)(1) and (f)(8). Under § 170(f)(8), a taxpayer must substantiate its contributions of \$250 or more by obtaining from the donee a statement that includes: (1) a description of any return benefit provided by the donee; and (2) a good faith estimate of the benefit's fair market value. (*See* § 1.170A-13 for additional substantiation requirements.) The IRS intends, in appropriate cases, to disallow deductions if the taxpayer fails to comply with the substantiation requirements. *See, e.g., Addis v. Commissioner*, 118 T.C. 528 (2002).

If all requirements of § 170 are satisfied, including those discussed above, and a deduction is thereby allowed, the amount of the deduction may not exceed the fair market value of the contributed property on the date of contribution (reduced by the fair market value of any consideration received by the taxpayer). *See* § 1.170A-1(c)(1). Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Section 1.170A-1(c)(2). For example, the fair market value of a patent must be determined after taking into account, among other factors: (1) whether the patented technology has been made obsolete by other technology; (2) any restrictions on the donee's use of, or ability to transfer, the patented technology (*see* Rev. Rul. 2003-28, Situation 3); and (3) the length of time remaining before the patent's expiration.

DRAFTING INFORMATION

The principal author of this notice is Patricia Zweibel of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, please contact Ms. Zweibel at (202) 622-5020 (not a toll-free call).

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*
(Also Part I, §§ 446, 1016; 1.446-1T, 1.1016-3T.)

Rev. Proc. 2004-11

SECTION 1. PURPOSE

This revenue procedure provides an automatic consent procedure allowing a taxpayer to make a change in method of accounting under § 446(e) of the Internal Revenue Code for depreciable or amortizable property after its disposition. This revenue procedure also waives the application of the two-year rule set forth in Rev. Rul. 90-38, 1990-1 C.B. 57, for certain changes in depreciation or amortization. Finally, this revenue procedure modifies Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, Rev. Proc. 2002-19, 2002-1 C.B. 696, Rev. Proc. 2002-33, 2002-1 C.B. 963, and as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561), and other revenue procedures to conform with § 1.446-1T(e)(2)(ii)(d) of the temporary Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Section 446(e) and § 1.446-1T(e) provide that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner of Internal Revenue before changing a method of accounting for federal income tax purposes. Section 1.446-1T(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.02 Concurrently with the issuance of this revenue procedure, §§ 1.446-1T(e)(2)(ii)(d) and 1.1016-3T(h) have been promulgated. Section 1.446-1T(e)(2)(ii)(d) provides the changes in depreciation or amorti-

zation (hereinafter, both are referred to as “depreciation”) that are (and are not) changes in method of accounting under § 446(e). Section 1.1016-3T(h) provides that the “allowed or allowable” rule under § 1016(a)(2) does not permanently affect a taxpayer’s lifetime income for purposes of determining whether a change in depreciation or amortization is a change in method of accounting under § 446(e).

.03 If a taxpayer uses an impermissible method of determining depreciation for a depreciable or amortizable property, the taxpayer adopts that method of accounting for the property when the taxpayer treats the property in the same way in determining gross income or deductions in two or more consecutively filed federal tax returns. *See* Rev. Rul. 90-38. The Internal Revenue Service and Treasury Department recognize that this two-year rule increases administrative and compliance costs associated with changes in depreciation because many taxpayers changing from an impermissible to permissible method of accounting for depreciation used the impermissible method for depreciable or amortizable properties placed in service in two or more taxable years before the year of change as well as for depreciable and amortizable properties placed in service in the taxable year immediately preceding the year of change. Accordingly, in the interest of sound tax administration, the Service and Treasury Department have decided to waive the two-year rule in Rev. Rul. 90-38 for a change in depreciation to which § 1.446-1T(e)(2)(ii)(d) applies.

.04 If a depreciable or amortizable property is transferred in a transaction in which the transferee is treated as the transferor for purposes of computing the depreciation allowance for the property with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted depreciable basis in the hands of the transferor (for example, in transactions subject to § 168(i)(7) or § 381(c)(6)), the transferee may file a Form 3115, *Application for Change in Accounting Method*, to change from an impermissible method of accounting adopted by the transferor for that portion of the basis of the property to a permissible method of accounting for depreciation for the same portion of the basis of the property, provided the impermissible method of accounting for that portion of the basis of the property has not been

changed by the transferor (through filing, for example, a Form 3115 or an amended return) or by the Internal Revenue Service upon examination of the transferor’s tax returns. In this case, the § 481 adjustment will include any necessary adjustments since the property’s placed-in-service date by the transferor.

SECTION 3. METHOD CHANGE PROCEDURE FOR DISPOSED DEPRECIABLE OR AMORTIZABLE PROPERTY

.01 *Scope.*

(1) *Applicability.* Except as provided in section 3.01(2) of this revenue procedure, section 3 of this revenue procedure applies to a taxpayer that is changing from an impermissible method of accounting for depreciation to a permissible method of accounting for depreciation for any item of depreciable or amortizable property subject to § 1.446-1T(e)(2)(ii)(d):

(a) that has been disposed of by the taxpayer during the year of change (as defined in section 3.02(2)(b) of this revenue procedure); and

(b) for which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable (hereinafter, both are referred to as “claimed less than the depreciation allowable”), in the year of change (as defined in section 3.02(2)(b) of this revenue procedure) or any prior taxable year.

(2) *Inapplicability.* Section 3 of this revenue procedure does not apply to:

(a) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(b) any property for which a taxpayer is revoking a timely valid depreciation election, or making a late depreciation election, under the Code or regulations thereunder, or under other guidance published in the Internal Revenue Bulletin (including under § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993, 1993-3 C.B. 1, 128 (relating to amortizable § 197 intangibles));

(c) any property for which the taxpayer deducted the cost or other basis of the property as an expense; or

(d) any property disposed of by the taxpayer in a transaction to which a non-recognition section of the Code applies

(for example, § 1031, transactions subject to § 168(i)(7)(B)(i)). However, this section 3.01(2)(d) does not apply to property disposed of by the taxpayer in a § 1031 or § 1033 transaction if the taxpayer elects to treat the entire basis (that is, both the carryover and excess basis) of the acquired MACRS property as property placed in service by the taxpayer at the time of replacement and treat the adjusted depreciable basis of the exchanged or involuntarily converted MACRS property as being disposed of by the taxpayer at the time of disposition.

.02 Change in method of accounting.

(1) *In general.* A taxpayer within the scope of section 3 of this revenue procedure may change from an impermissible method of accounting for depreciation to a permissible method of accounting for depreciation for any item of depreciable or amortizable property within the scope of section 3 of this revenue procedure, provided:

(a) the taxpayer files the original Form 3115 in accordance with section 3.02(2)(c) of this revenue procedure, prior to the expiration of the period of limitation for assessment under § 6501(a) for the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer; and

(b) the taxpayer files an amended federal tax return for the year of change (as defined in section 3.02(2)(b) of this revenue procedure) that includes the adjustments to taxable income and any collateral adjustments to taxable income or tax liability (for example, adjustments to the amount or character of the gain or loss of the disposed depreciable or amortizable property) resulting from the change in method of accounting for depreciation made by the taxpayer under this section 3.

(2) *Application Procedures.* A taxpayer making a change in method of accounting under section 3 of this revenue procedure must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 (or its successor), with the following modifications:

(a) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply. If the taxpayer is under examination, before an appeals office, or before a federal court at the time that a copy of the Form 3115 is filed with the national office, the taxpayer must provide a copy of the Form 3115 to

the examining agent, appeals officer, or counsel for the government, as appropriate, at the time the copy of the Form 3115 is filed with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate.

(b) The year of change is the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer.

(c) Section 6.02(3)(a) of Rev. Proc. 2002-9 is modified to require the original of the Form 3115 to be attached to the taxpayer's timely filed amended federal tax return for the year of change and a copy (with signature) of the Form 3115 to be filed with the national office no later than when the original Form 3115 is filed with the amended federal tax return for the year of change.

(d) For purposes of section 6.02(4)(a) of Rev. Proc. 2002-9, the taxpayer should include on line 1a of the Form 3115 (revised December 2003) the designated automatic accounting method change number for the change in method of accounting for depreciation made under this section 3. This number for this method change is "9."

SECTION 4. WAIVER OF TWO-YEAR RULE IN REV. RUL. 90-38

.01 In general. Notwithstanding Rev. Rul. 90-38, a taxpayer may file a Form 3115 under Rev. Proc. 97-27, 1997-1 C.B. 680 (or its successor), or Rev. Proc. 2002-9, as applicable, to change from an impermissible method of accounting for depreciation to a permissible method of accounting for depreciation under § 1.446-1T(e)(2)(ii)(d) for any depreciable or amortizable property subject to § 1.446-1T(e)(2)(ii)(d) and placed in service by the taxpayer in the taxable year immediately preceding the year of change (as defined in section 5.02(2) of Rev. Proc. 97-27 or section 5.02 of Rev. Proc. 2002-9, as applicable) (hereinafter, this property is referred to as "1-year depreciable property"), provided the additional term and condition in section 4.02 of this revenue procedure is satisfied. Alternatively, the taxpayer may make the change from the impermissible depreciation method to the permissible depreciation method for the 1-year depreciable

property by filing an amended federal tax return for the placed-in-service year prior to the date the taxpayer files its federal tax return for the taxable year succeeding the placed-in-service year.

.02 Additional term and condition for filing a Form 3115. In addition to the terms and conditions provided in Rev. Proc. 97-27 or Rev. Proc. 2002-9, as applicable, the § 481 adjustment reported on a Form 3115 that is filed by a taxpayer in accordance with section 4.01 of this revenue procedure to make a change in method of accounting for depreciation under § 1.446-1T(e)(2)(ii)(d) for any 1-year depreciable property, must include the amount of any adjustment attributable to all property (including the 1-year depreciable property) subject to the Form 3115.

SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2002-9 is modified and amplified to include the accounting method change provided under section 3 of this revenue procedure in section 2.05 of the APPENDIX. See section 4 of the APPENDIX of this revenue procedure for the text of section 2.05 of the APPENDIX of Rev. Proc. 2002-9.

.02 The heading for section 2 of the APPENDIX of Rev. Proc. 2002-9 is modified to read as follows: "SECTION 2. DEPRECIATION OR AMORTIZATION (§ 56(a)(1), 56(g)(4)(A), 167, 168, 197, 1400I, OR 1400L, OR FORMER § 168)".

.03 Rev. Proc. 2002-9 (as modified by Rev. Proc. 2002-33) is modified by deleting sections 2.01, 2.02, and 2B of the APPENDIX and replacing them with the text in, respectively, sections 1, 2, and 3 of the APPENDIX of this revenue procedure.

.04 Section 6.03 of Rev. Proc. 2000-38, 2000-2 C.B. 310, 313, is modified by deleting "See § 1.446-1(e)(2)(ii)(b)." and replacing it with "See § 1.446-1T(e)(2)(ii)(d)(3)(i)."

.05 Section 8.01 of Rev. Proc. 2000-50, 2000-2 C.B. 601, is modified to read as follows: "A change in a taxpayer's treatment of costs paid or incurred to develop, purchase, lease, or license computer software to a method described in section 5, 6, or 7 of this revenue procedure is a change in method of accounting to which §§ 446 and 481 apply. Further, a change in useful life

under the method described in section 5.01(2) or 6.01(2) of this revenue procedure is a change in method of accounting. See § 1.446-1T(e)(2)(ii)(d)(3)(i) and, for the effective date, see § 1.446-1T(e)(4)(ii)(A).”

SECTION 6. EFFECTIVE DATE

.01 *In general.* Except as provided in section 6.02 of this revenue procedure, this revenue procedure is effective for a Form 3115 filed for taxable years ending on or after December 30, 2003.

.02 *Transition rule for previously filed Forms 3115 for automatic consent.*

(1) For a taxable year ending on or after December 30, 2003, a taxpayer may make a change in method of accounting previously authorized in section 2.01, 2.02, or 2B of the APPENDIX of Rev. Proc. 2002-9 before any amendments were made to those sections by this revenue procedure if:

(a) before December 30, 2003, the taxpayer filed a completed Form 3115 with the national office to make that change in method of accounting; and

(b) the taxpayer makes that change in method of accounting in compliance with all the applicable provisions of Rev. Proc. 2002-9 for the requested year of change (as defined in section 5.02 of Rev. Proc. 2002-9) on that Form 3115.

(2) If a taxpayer filed a Form 3115 with the national office to make a change in method of accounting previously authorized in section 2.01, 2.02, or 2B of the APPENDIX of Rev. Proc. 2002-9 before any amendments were made to those sections by this revenue procedure for a year of change for which this revenue procedure is effective (see section 6.01 of this revenue procedure) and the taxpayer's original federal tax return for that year of change was not filed before December 30, 2003, the taxpayer may make the change in method of accounting authorized under section 2.01, 2.02, or 2B, as applicable, of the APPENDIX of Rev. Proc. 2002-9 as revised by this revenue procedure. However, the Service will process the Form 3115 in accordance with the section of the APPENDIX of Rev. Proc. 2002-9 in effect on the date on which the Form 3115 was filed with the national office by the taxpayer unless on or before the due date (including extensions) of the taxpayer's

federal tax return for the requested year of change (as defined in section 5.02 of Rev. Proc. 2002-9) on that Form 3115, the taxpayer completes a new Form 3115 to make the change under section 2.01, 2.02, or 2B, as applicable, of the APPENDIX of Rev. Proc. 2002-9 as revised by this revenue procedure and files this newly completed Form 3115 in duplicate in accordance with section 6.02(3)(a) of Rev. Proc. 2002-9. Additionally, the newly completed Form 3115 must include the statement: “Section [insert, as appropriate: 2.01, 2.02, or 2B] of the APPENDIX of Rev. Proc. 2002-9 as revised by Rev. Proc. 2004-11.” This statement must be legibly printed or typed on the appropriate line on, or at the top of page 1 of, the Form 3115.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Sara Logan of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Logan or Douglas Kim at (202) 622-3110 (not a toll-free call).

APPENDIX

SECTION 1. Section 2.01 of the APPENDIX of Rev. Proc 2002-9 is deleted and replaced with the following:

“.01 *Impermissible to permissible method of accounting for depreciation or amortization.*

(1) *Description of change and scope.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from an impermissible to a permissible method of accounting for depreciation or amortization (depreciation) for any item of depreciable or amortizable property:

(i) for which the taxpayer used the impermissible method of accounting in at least the two taxable years immediately preceding the year of change (but see section 2.01(1)(b) of this APPENDIX for property placed in service in the taxable year immediately preceding the year of change);

(ii) for which the taxpayer is making a change in method of accounting under § 1.446-1T(e)(2)(ii)(d);

(iii) for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, § 1400L(b), or § 1400L(c), or under § 168 prior to its amendment in 1986 (former § 168); and

(iv) that is owned by the taxpayer at the beginning of the year of change (but see section 2.05 of this APPENDIX for property disposed of before the year of change).

(b) *Taxpayer has not adopted a method of accounting for the item of property.* If a taxpayer does not satisfy section 2.01(1)(a)(i) of this APPENDIX for an item of depreciable or amortizable property because this item of property is placed in service by the taxpayer in the taxable year immediately preceding the year of change (“1-year depreciable property”), the taxpayer may change from the impermissible depreciation method to the permissible depreciation method for the 1-year depreciable property by filing a Form 3115 for this change, provided the § 481 adjustment reported on the Form 3115 includes the amount of any adjustment that is attributable to all property (including the 1-year depreciable property) subject to the Form 3115. Alternatively, the taxpayer may change from the impermissible depreciation method to the permissible depreciation method for a 1-year depreciable property by filing an amended federal tax return for the property's placed-in-service year prior to the date the taxpayer files its federal tax return for the taxable year succeeding the placed-in-service year.

(c) *Certain scope limitations inapplicable.* The scope limitations in sections 4.02(7) and 4.02(8) of this revenue procedure are not applicable to this change.

(d) *Inapplicability.* This change does not apply to:

(i) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(ii) any taxpayer that is subject to § 263A and that is required to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 2.01 of this APPENDIX, if the taxpayer is not capitalizing the costs as required;

(iii) any property for which a taxpayer is making a change in depreciation under § 1.446-1T(e)(2)(ii)(d)(2)(vi) or (vii);

(iv) any property subject to § 167(g) (regarding property depreciated under the income forecast method);

(v) any § 1250 property that a taxpayer is reclassifying to an asset class of Rev. Proc. 87-56, 1987-2 C.B. 674, or Rev. Proc. 83-35, 1983-1 C.B. 745, as appropriate, that does not explicitly include § 1250 property (for example, asset class 57.0, Distributive Trades and Services);

(vi) any property for which a taxpayer is revoking a timely valid election, or making a late election, under § 167, § 168, § 1400I, § 1400L, former § 168, or § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993-3 C.B. 1, 128 (relating to amortizable § 197 intangibles). A taxpayer may request consent to revoke or make the election by submitting a request for a letter ruling under Rev. Proc. 2003-1, 2003-1 I.R.B. 1 (or any successor). See § 1.446-1T(e)(2)(ii)(d)(3)(iii);

(vii) any property for which depreciation is determined under § 56(g)(4)(A) or § 167 (other than under § 168, § 1400I, § 1400L, or former § 168) and a taxpayer is changing the useful life of the property. A change in the useful life of property is corrected by adjustments in the applicable taxable year provided under § 1.446-1T(e)(2)(ii)(d)(3)(i). However, this section 2.01(1)(d)(vii) of this APPENDIX does not apply if the taxpayer is changing to or from a useful life, recovery period, or amortization period that is specifically assigned by the Internal Revenue Code (for example, § 167(f)(1), § 168(c)), the regulations thereunder, or other guidance published in the Internal Revenue Bulletin and, therefore, this change is a change in method of accounting (unless section 2.01(1)(d)(xv) of this APPENDIX applies). See § 1.446-1T(e)(2)(ii)(d)(3)(i);

(viii) any depreciable property for which the use changes in the hands of the same taxpayer. See § 1.446-1T(e)(2)(ii)(d)(3)(ii);

(ix) any property for which depreciation is determined in accordance with § 1.167(a)-11 (regarding the Class Life Asset Depreciation Range System (ADR));

(x) any change in method of accounting involving a change from deducting the cost or other basis of any property as an expense to capitalizing and depreciating the cost or other basis;

(xi) any change in method of accounting involving a change from one permissible method of accounting for the property to another permissible method of accounting for the property. For example:

(A) a change from the straight-line method of depreciation to the income forecast method of depreciating for videocassettes. See Rev. Rul. 89-62, 1989-1 C.B. 78; or

(B) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense (provided the costs of removal are not required to be capitalized under any provision of the Code, such as, § 263(a) and including salvage proceeds in taxable income (see section 2.02 of this APPENDIX for making this change for property for which depreciation is determined under § 167);

(xii) any change in method of accounting involving both a change from treating the cost or other basis of the property as nondepreciable or nonamortizable property to treating the cost or other basis of the property as depreciable or amortizable property and the adoption of a method of accounting for depreciation requiring an election under § 167, § 168, § 1400I, § 1400L(b), former § 168, or § 13261(g)(2) or (3) of the 1993 Act (for example, a change in the treatment of the space consumed in landfills placed in service in 1990 from nondepreciable to depreciable property (assuming section 2.01(1)(d)(xiii) of the APPENDIX does not apply) and the making of an election under § 168(f)(1) to depreciate this property under the unit of production method of depreciation under § 167);

(xiii) any change in method of accounting for any item of income or deduction other than depreciation, even if the change results in a change in computing depreciation under § 1.446-1T(e)(2)(ii)(d)(2)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii). For example, a change in method of accounting involving:

(A) a change in inventory costs (for example, when property is reclassified from inventory property to depreciable property, or vice versa) (but see section 3.02 of this APPENDIX for making a change from inventory property to depreciable property for unrecoverable line pack gas or unrecoverable cushion gas); or

(B) a change in the character of a transaction from sale to lease, or vice versa (but see section 2.03 of this APPENDIX for making this change);

(xiv) a change from determining depreciation under § 168 to determining depreciation under former § 168 for any property subject to the transition rules in § 203(b) or 204(a) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 60-80; or

(xv) any change in the placed-in-service date of a depreciable or amortizable property. This change is corrected by adjustments in the applicable taxable year provided under § 1.446-1T(e)(2)(ii)(d)(3)(v).

(2) *Additional requirements.* A taxpayer also must comply with the following:

(a) *Permissible method of accounting for depreciation.* A taxpayer must change to a permissible method of accounting for depreciation for the item of depreciable or amortizable property. The permissible method of accounting is the same method that determines the depreciation allowable for the item of property (as provided in section 2.01(5) of this APPENDIX).

(b) *Statements required.* A taxpayer must provide the following statements, if applicable, and attach them to the completed application:

(i) a detailed description of the former and new methods of accounting. A general description of these methods of accounting is unacceptable (for example, MACRS to MACRS, erroneous method to proper method, claiming less than the depreciation allowable to claiming the depreciation allowable);

(ii) to the extent not provided elsewhere on the application, a statement describing the taxpayer's business or income-producing activities. Also, if the taxpayer has more than one business or income-producing activity, a statement describing the taxpayer's business or income-producing activity in which the item of property at issue is primarily used by the taxpayer;

(iii) to the extent not provided elsewhere on the application, a statement of the facts and law supporting the new method of accounting, new classification of the item of property, and new asset class in, as appropriate, Rev. Proc. 87-56 or Rev. Proc. 83-35. If the taxpayer is the owner and lessor of the item of property at issue, the statement of the facts and law supporting the new asset class also must describe

the business or income-producing activity in which that item of property is primarily used by the lessee;

(iv) to the extent not provided elsewhere on the application, a statement identifying the year in which the item of property was placed in service;

(v) if the item of property is depreciated under former § 168, a statement identifying the asset class in Rev. Proc. 83-35 that applies under the taxpayer's former and new methods of accounting (if none, state and explain);

(vi) if any item of property is public utility property within the meaning of § 168(i)(10) or former § 167(l)(3)(A), as applicable, a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) a normalization method of accounting (within the meaning of former § 167(l)(3)(G), former § 168(e)(3)(B), or § 168(i)(9), as applicable) will be used for the public utility property subject to the application;

(B) as of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar reserve account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the application; and

(C) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application;

(vii) if the taxpayer is changing the classification of an item of § 1250 property placed in service after August 19, 1996, to a retail motor fuels outlet under § 168(e)(3)(E)(iii), a statement containing the following representation: "For purposes of § 168(e)(3)(E)(iii) of the Internal Revenue Code, the taxpayer represents that (A) 50 percent or more of the gross revenue generated from the item of § 1250 property is from the sale of petroleum products (not including gross revenue from related services, such as the labor cost of oil changes and gross revenue from the sale of nonpetroleum products such as tires and oil filters), (B) 50 percent or more of the floor space in the item of property

is devoted to the sale of petroleum products (not including floor space devoted to related services, such as oil changes and floor space devoted to nonpetroleum products such as tires and oil filters), or (C) the time of § 1250 property is 1,400 square feet or less."; and

(viii) if the taxpayer is changing the classification of an item of property from § 1250 property to § 1245 property under § 168 or former § 168, a statement of the facts and law supporting the new § 1245 property classification, and a statement containing the following representation: "Each item of depreciable property that is the subject of the application filed under section 2.01 of the APPENDIX of Rev. Proc. 2002-9 for the year of change beginning [Insert the date], and that is reclassified from [Insert, as appropriate: *nonresidential real property, residential rental property, 19-year real property, 18-year real property, or 15-year real property*] to an asset class of [Insert, as appropriate, either: *Rev. Proc. 87-56, 1987-2 C.B. 674, or Rev. Proc. 83-35, 1983-1 C.B. 745*] that does not explicitly include § 1250 property, is § 1245 property for depreciation purposes."

(3) *Section 481(a) adjustment.* Because the adjusted basis of the property is changed as a result of a method change made under section 2.01 of this APPENDIX (see section 2.01(4) of this APPENDIX), items are duplicated or omitted. Accordingly, this change is made with a § 481(a) adjustment. This adjustment may result in either a negative § 481(a) adjustment (a decrease in taxable income) or a positive § 481(a) adjustment (an increase in taxable income) and may be a different amount for regular tax, alternative minimum tax, and adjusted current earnings purposes. This § 481(a) adjustment equals the difference between the total amount of depreciation taken into account in computing taxable income for the property under the taxpayer's former method of accounting (including the amount attributable to any property described in section 2.01(1)(b) of this APPENDIX that is included in the taxpayer's Form 3115), and the total amount of depreciation allowable for the property under the taxpayer's new method of accounting (as determined under section 2.01(5) of this APPENDIX, and including the amount attributable to any property

described in section 2.01(1)(b) of this APPENDIX that is included in the taxpayer's Form 3115), for open and closed years prior to the year of change. However, the amount of the § 481(a) adjustment must be adjusted to account for the proper amount of the depreciation allowable that is required to be capitalized under any provision of the Code (for example, § 263A) at the beginning of the year of change.

(4) *Basis adjustment.* As of the beginning of the year of change, the basis of depreciable property to which section 2.01 of this APPENDIX applies must reflect the reductions required by § 1016(a)(2) for the depreciation allowable for the property (as determined under section 2.01(5) of this APPENDIX).

(5) *Meaning of depreciation allowable.*

(a) *In general.* Section 2.01(5) of this APPENDIX provides the amount of the depreciation allowable determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), or former § 168. This amount, however, may be limited by other provisions of the Code (for example, § 280F).

(b) *Section 56(a)(1) property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(a)(1) is determined by using the depreciation method, recovery period, and convention provided for under § 56(a)(1) that applies for the property's placed-in-service date.

(c) *Section 56(g)(4)(A) property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(g)(4)(A) is determined by using the depreciation method, recovery period or useful life, as applicable, and convention provided for under § 56(g)(4)(A) that applies for the property's placed-in-service date.

(d) *Section 167 property.* Generally, for any taxable year, the depreciation allowable for property for which depreciation is determined under § 167, is determined either:

(i) under the depreciation method adopted by a taxpayer for the property; or

(ii) if that depreciation method does not result in a reasonable allowance for depreciation or a taxpayer has not adopted a depreciation method for the property, under the straight-line depreciation method.

For determining the estimated useful life and salvage value of the property, see § 1.167(a)–1(b) and (c), respectively.

The depreciation allowable for any taxable year for property subject to § 167(f) (regarding certain property excluded from § 197) is determined by using the depreciation method and useful life prescribed in § 167(f). If computer software is depreciated under § 167(f)(1) and is qualified property (as defined in § 168(k)(2) and § 1.168(k)–1T of the temporary Income Tax Regulations), 50-percent bonus depreciation property (as defined in § 168(k)(4) and § 1.168(k)–1T), or qualified New York Liberty Zone (Liberty Zone) property (as defined in § 1400L(b)(2) and § 1.1400L(b)–1T), the depreciation allowable for that computer software under § 167(f)(1) is also determined by taking into account the additional first year depreciation deduction provided by § 168(k) or § 1400L(b), as applicable, unless the taxpayer made a timely valid election not to deduct any additional first year depreciation for the computer software.

(e) *Section 168 property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 168, is determined as follows:

(i) by using either:

(A) the general depreciation system in § 168(a); or

(B) the alternative depreciation system in § 168(g) if the property is required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)). Property required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) includes property in a class (as set out in § 168(e)) for which the taxpayer made a timely valid election under § 168(g)(7); and

(ii) if the property is qualified property, 50-percent bonus depreciation property, or Liberty Zone property, by taking into account the additional first year depreciation deduction provided by § 168(k) or § 1400L(b), as applicable, unless the taxpayer made a timely valid election not to deduct the additional first year depreciation (or made a deemed election not to deduct the additional first year depreciation; for further guidance,

see Rev. Proc. 2002–33, 2002–1 C.B. 963, or Rev. Proc. 2003–50, 2003–29 I.R.B. 119) for the class of property (as defined in § 1.168(k)–1T(e)(2) or § 1.1400L(b)–1T(e)(2), as applicable) in which that property is included.

(f) *Section 197 property.* The depreciation allowable for any taxable year for an amortizable § 197 intangible (including any property for which a timely election under § 13261(g)(2) of the 1993 Act was made) is determined in accordance with § 1.197–2(f).

(g) *Former § 168 property.* The depreciation allowable for any taxable year for property subject to former § 168 is determined by using either:

(i) the accelerated method of cost recovery applicable to the property (for example, for 5-year property, the recovery method under former § 168(b)(1)); or

(ii) the straight-line method applicable to the property if the property is required to be depreciated under the straight-line method (for example, property described in former § 168(f)(12) or former § 280F(b)(2)) or if the taxpayer elected to determine the depreciation allowance under the optional straight-line percentage (for example, the straight-line method in former § 168(b)(3)).

(h) *Qualified revitalization building.* The depreciation allowable for any taxable year for any qualified revitalization building (as defined in § 1400I(b)(1)) for which the taxpayer has made a timely valid election under § 1400I(a) is determined as follows:

(i) if the taxpayer elected to deduct one-half of any qualified revitalization expenditures (as defined in § 1400I(b)(2)) chargeable to a capital account with respect to the qualified revitalization building for the taxable year in which the building is placed in service by the taxpayer, the depreciation allowable for the property's placed-in-service year is equal to one-half of the qualified revitalization expenditures for the property and the depreciation allowable for the remaining recovery period of the property is determined using the general depreciation system of § 168(a) or the alternative depreciation system of § 168(g), as applicable; or

(ii) if the taxpayer elected to amortize all of the qualified revitalization expenditures chargeable to a capital account with respect to the qualified revitalization build-

ing ratably over the 120-month period beginning with the month in which the building is placed in service, the depreciation allowable is determined in accordance with this election.

(i) *Qualified New York Liberty Zone leasehold improvement property.* The depreciation allowable for any taxable year for qualified New York Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is determined by using the depreciation method and recovery period prescribed in § 1400L(c)."

SECTION 2. Section 2.02 of the APPENDIX of Rev. Proc. 2002–9 is deleted and replaced with the following:

“.02 *Permissible to permissible method of accounting for depreciation.*

(1) *Description of change.* This change applies to a taxpayer that wants to change from a permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167 to another permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167. Pursuant to § 1.167(a)–7(a) and (c), a taxpayer may account for depreciable property either by treating each individual asset as an account or by combining two or more assets in a single account and, for each account, depreciation allowances are computed separately.

(2) *Scope.*

(a) *Applicability.* This change applies to any taxpayer wanting to make a change in method of accounting for depreciation specified in section 2.02(3) of this APPENDIX for the property in an account:

(i) for which the present and proposed methods of accounting for depreciation specified in section 2.02(3) of this APPENDIX are permissible methods for the property under § 56(g)(4)(A)(iv) or § 167; and

(ii) that is owned by the taxpayer at the beginning of the year of change.

(b) *Certain scope limitations inapplicable.* The scope limitations in sections 4.02(7) and 4.02(8) of this revenue procedure are not applicable to this change.

(c) *Inapplicability.* This change does not apply to:

(i) any taxpayer that is subject to § 263A and that is required to capitalize the costs with respect to which the taxpayer wants

to change its method of accounting under section 2.02 of this APPENDIX, if the taxpayer is not capitalizing the costs as required;

(ii) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(iii) any property described in § 167(f) (regarding certain property excluded from § 197);

(iv) any property subject to § 167(g) (regarding property depreciated under the income forecast method);

(v) any property for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A)(i), (ii), (iii), or (v), § 168, § 1400I, § 1400L(b), or § 1400L(c), or § 168 prior to its amendment in 1986 (former § 168);

(vi) any property that the taxpayer elected under § 168(f)(1) or former § 168(e)(2) to exclude from the application of, respectively, § 168 or former § 168;

(vii) any property for which depreciation is determined in accordance with § 1.167(a)–11 (regarding the Class Life Asset Depreciation Range System (ADR));

(viii) any depreciable property for which the taxpayer is changing the depreciation method pursuant to § 1.167(e)–1T(b) of the temporary Income Tax Regulations (change from declining-balance method to straight-line method), § 1.167(e)–1T(c) (certain changes for § 1245 property), or § 1.167(e)–1T(d) (certain changes for § 1250 property). These changes must be made prospectively and are not permitted under the cited regulations for property for which the depreciation is determined under § 168, § 1400I, § 1400L, or former § 168; or

(ix) any distributor commissions (as defined by section 2 of Rev. Proc. 2000–38, 2000–2 C.B. 310) for which the taxpayer is changing the useful life under the distribution fee period method or the useful life method (both described in Rev. Proc. 2000–38). A change in this useful life is corrected by adjustments in the applicable taxable year provided under § 1.446–1T(e)(2)(ii)(d)(3)(i).

(3) *Changes covered.* Section 2.02 of this APPENDIX only applies to the following changes in methods of accounting for depreciation:

(a) a change from the straight-line method to the sum-of-the-years-digits method, the sinking fund method, the unit-of-production method, or the declining-balance method using any proper percentage of the straight-line rate;

(b) a change from the declining-balance method using any percentage of the straight-line rate to the sum-of-the-years-digits method, the sinking fund method, or the declining-balance method using a different proper percentage of the straight-line rate;

(c) a change from the sum-of-the-years-digits method to the sinking fund method, the declining-balance method using any proper percentage of the straight-line rate, or the straight-line method;

(d) a change from the unit-of-production method to the straight-line method;

(e) a change from the sinking fund method to the straight-line method, the unit-of-production method, the sum-of-the-years-digits method, or the declining-balance method using any proper percentage of the straight-line rate;

(f) a change in the interest factor used in connection with a compound interest method or sinking fund method;

(g) a change in averaging convention as set forth in § 1.167(a)–10(b). However, as specifically provided in § 1.167(a)–10(b), in any taxable year in which an averaging convention substantially distorts the depreciation allowance for the taxable year, it may not be used (*see* Rev. Rul. 73–202, 1973–1 C.B. 81);

(h) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense and including salvage proceeds in taxable income as set forth in § 1.167(a)–8(e)(2). *See* Rev. Rul. 74–455, 1974–2 C.B. 63. This change, however, may be made under this revenue procedure only if:

(i) the change is applied to all items in the account for which the change is being made; and

(ii) the removal costs are not required to be capitalized under any provision of the Code (for example, § 263(a), 263A, or 280B);

(i) a change from crediting the depreciation reserve with the salvage proceeds realized on normal retirement sales to computing and recognizing gains and losses on

the sales (*see* Rev. Rul. 70–165, 1970–1 C.B. 43);

(j) a change from crediting ordinary income (including the combination method of crediting the lesser of estimated salvage value or actual salvage proceeds to the depreciation reserve, with any excess of salvage proceeds over estimated salvage value credited to ordinary income) with the salvage proceeds realized on normal retirement sales, to computing and recognizing gains and losses on the sales (*see* Rev. Rul. 70–166, 1970–1 C.B. 44);

(k) a change from item accounting for specific assets to multiple asset accounting for the same assets, or vice versa;

(l) a change from one type of multiple asset accounting (pooling) for specific assets to a different type of multiple asset accounting (pooling) for the same assets;

(m) a change from one method described in Rev. Proc. 2000–38 for amortizing distributor commissions (as defined by section 2 of Rev. Proc. 2000–38, 2000–2 C.B. 310) to another method described in Rev. Proc. 2000–38 for amortizing distributor commissions; or

(n) a change from pooling to a single asset, or vice versa, for distributor commissions (as defined by section 2 of Rev. Proc. 2000–38, 2000–2 C.B. 310) for which the taxpayer is using the distribution fee period method or the useful life method (both described in Rev. Proc. 2000–38).

(4) *Additional requirements.* A taxpayer also must comply with the following:

(a) *Basis for depreciation.* At the beginning of the year of change, the basis for depreciation of property to which this change applies is the adjusted basis of the property as provided in § 1011 at the end of the taxable year immediately preceding the year of change (determined under the taxpayer's present method of accounting for depreciation). If applicable under the taxpayer's proposed method of accounting for depreciation, this adjusted basis is reduced by the estimated salvage value of the property (for example, a change to the straight-line method).

(b) *Rate of depreciation.* The rate of depreciation for property changed to:

(i) the straight-line or the sum-of-the-years-digits method of depreciation must be based on the remaining useful life of the property as of the beginning of the year of change; or

(ii) the declining-balance method of depreciation must be based on the useful life of the property measured from the placed-in-service date, and not the expected remaining life from the date the change becomes effective.

(c) *Regulatory requirements.* For changes in method of depreciation to the sum-of-the-years-digits or declining-balance method, the property must meet the requirements of § 1.167(b)-0 or 1.167(c)-1, as appropriate.

(d) *Public utility property.* If any item of property is public utility property within the meaning of former § 167(l)(3)(A), the taxpayer must attach to the application a statement providing that the taxpayer agrees to the following additional terms and conditions:

(i) a normalization method of accounting within the meaning of former § 167(l)(3)(G) will be used for the public utility property subject to the application; and

(ii) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application.

(5) *Section 481(a) adjustment.* Because the adjusted basis of the property is not changed as a result of a method change made under section 2.02 of this APPENDIX, no items are being duplicated or omitted. Accordingly, no § 481(a) adjustment is required or necessary.”

SECTION 3. Section 2B of the APPENDIX of Rev. Proc. 2002-9 is deleted and replaced with the following:

“SECTION 2B. COMPUTER SOFTWARE EXPENDITURES (§§ 162, 167, AND 197)

.01 *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for the costs of computer software to a method described in Rev. Proc. 2000-50, 2000-2 C.B. 601. Section 5 of Rev. Proc. 2000-50 describes the methods applicable to the costs of developing computer software. Section 6 of Rev. Proc. 2000-50 describes the method applicable to the costs of acquired computer software. Section 7 of Rev. Proc.

2000-50 describes the method applicable to leased or licensed computer software. If a taxpayer treats the costs of computer software in accordance with the applicable method described in Rev. Proc. 2000-50, the Service will not disturb the taxpayer’s treatment of its costs of computer software.

.02 *Scope.* This change applies to all costs of computer software as defined in section 2 of Rev. Proc. 2000-50. However, this change does not apply to any computer software that is subject to amortization as an “amortizable section 197 intangible” as defined in § 197(c) and the regulations thereunder, or to costs that a taxpayer has treated as research and experimentation expenditures under § 174.

.03 *Statement required.* If a taxpayer is changing to the method described in section 5.01(2) of Rev. Proc. 2000-50, the taxpayer must attach to the application a statement providing the information required in section 8.02(2) of Rev. Proc. 2000-50.”

SECTION 4. Section 2.05 of the APPENDIX of Rev. Proc. 2002-9 is added to read as follows:

“.05 *Impermissible to permissible method of accounting for depreciation or amortization for disposed depreciable or amortizable property.*

(1) *Description of change.* This change applies to a taxpayer that wants to make the change in method of accounting for depreciation or amortization (depreciation) provided under section 3 of Rev. Proc. 2004-11, 2004-3 I.R.B. 311, for an item of depreciable or amortizable property that has been disposed of by the taxpayer. Section 3 of Rev. Proc. 2004-11 allows a taxpayer to make a change in method of accounting for depreciation for the disposed property if the taxpayer used an impermissible method of accounting for depreciation for the property under which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable, in the year of change (as defined in section 2.05(3) of this APPENDIX) or any prior taxable year.

(2) *Scope.* This change applies to a taxpayer and an item of depreciable or amortizable property that are within the scope of section 3.01 of Rev. Proc. 2004-11, provided:

(a) the taxpayer files the original Form 3115 with the taxpayer’s amended federal tax return for the year of change (as defined in section 2.05(3) of this APPENDIX) prior to the expiration of the period of limitation for assessment under § 6501(a) for the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer; and

(b) the taxpayer’s amended federal tax return for the year of change (as defined in section 2.05(3) of this APPENDIX) includes the adjustments to taxable income and any collateral adjustments to taxable income or tax liability (for example, adjustments to the amount or character of the gain or loss of the disposed depreciable or amortizable property) resulting from the change in method of accounting for depreciation made by the taxpayer under section 2.05 of this APPENDIX.

(3) *Year of change.* The year of change for this change is the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer.

(4) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply. If the taxpayer is under examination, before an appeals office, or before a federal court at the time that a copy of the Form 3115 is filed with the national office, the taxpayer must provide a copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the time the copy of the Form 3115 is filed with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate.

(5) *Filing requirements.* Notwithstanding section 6.02(3)(a) of this revenue procedure, a taxpayer making this change must attach the original Form 3115 to the taxpayer’s timely filed amended federal tax return for the year of change and must file the required copy (with signature) of the Form 3115 with the national office no later than when the original Form 3115 is filed with the amended federal tax return for the year of change.

(6) *Section 481(a) adjustment period.* A taxpayer must take the § 481(a) adjustment into account in the year of change.”

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Necessary to Facilitate Business Electronic Filing

REG-116664-01

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. 9100) designed to eliminate regulatory impediments to the electronic filing of certain business income tax returns and other forms. Those regulations affect business taxpayers who file income tax returns electronically. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 19, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116664-01), 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-116664-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Nathan Rosen (202) 622-4910; concerning submissions of comments and/or requests for a hearing, Robin Jones (202) 622-3521 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 17, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.170A-11T. Section 170 of the Code permits tax deductions, within limits, for charitable contributions by individuals and corporations. Section 170(a)(2) provides that under certain conditions, corporations may treat a charitable contribution as paid during the taxable year even if the contribution occurs in the following taxable year. Existing regulations provide that to invoke this pro-

vision, a corporation must submit with its income tax return a supporting statement and a copy of the board of directors' resolution authorizing the contribution. The proposed regulation eliminates the need to submit the resolution with the return, but provides that the supporting statement must identify the date of the resolution. This information regarding the timing of board action is required to be reported to help ensure that taxpayers properly document their entitlement to deductions for charitable contributions. The IRS cannot ascertain this information from the board resolution itself since, as noted above, taxpayers will no longer have to submit that document with their returns. The collection of information is mandatory. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 250,000 hours.

Estimated average annual burden hours per respondent: .25 hours.

Estimated number of respondents: 1,000,000.

Estimated annual frequency of responses: annually.

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

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.

Background and Explanation of Provisions

Temporary regulations (T.D. 9100) in this issue of the Bulletin contain amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301) designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms. The text of those regulations also serves as the text

of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations generally affect taxpayers who must file any of the following forms: Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*; Form 972, *Consent of Shareholder To Include Specific Amount in Gross Income*; Form 973, *Corporation Claim for Deduction for Consent Dividends*; Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*; Form 1120, *U.S. Corporation Income Tax Return*; Form 1120S, *U.S. Income Tax Return for an S Corporation*; Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*; Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*; Form 5712-A, *Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5)*; and Form 8832, *Entity Classification Election*.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described above under the heading "Paperwork Reduction Act" does not affect corporations that elect to be taxed under Subtitle A, Chapter 1, Subchapter S of the Code. Moreover, requiring a corporation to report the information described above concerning board of directors' approval of certain charitable contributions imposes virtually no incremental burden in time or expense. 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 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 Public Hearing

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

Drafting Information

The principal author of these regulations is Nathan Rosen, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.170A-11 is amended by revising paragraph (b)(2) to read as follows:

§ 1.170A-11 Limitation on, and carryover of, contributions by corporations.

* * * * *

(b) * * *

(2) [The text of the proposed amendment to §1.170A-11(b)(2) is the same as the text of §1.170A-11T(b)(2) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 3. Section 1.556-2 is amended by:

1. Revising paragraph (e)(2)(vii).
2. Adding paragraph (e)(3).

The revision and addition read as follows:

§1.556-2 Adjustments to taxable income.

* * * * *

(e) * * *

(2) * * *

(vii) [The text of the proposed amendment to §1.556-2(e)(2)(vii) is the same as the text of §1.556-2T(e)(2)(vii) published elsewhere in this issue of the Bulletin].

* * * * *

(3) [The text of the proposed amendment to §1.556-2(e)(3) is the same as the text of §1.556-2T(e)(3) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 4. Section 1.565-1 is amended by revising paragraph (b)(3) to read as follows:

§1.565-1 General rule.

* * * * *

(b) * * *

(3) [The text of the proposed amendment to §1.565-1(b)(3) is the same as the text of §1.565-1T(b)(3) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 5. Section 1.936-7 is amended by revising paragraph (b), Q.&A. 1 to read as follows:

§1.936-7 Manner of making elections under section 936(h)(5); special election for export sales; revocation of election under section 936(a).

* * * * *

(b) * * *

Q.& A. 1 [The text of the proposed amendment to §1.936-7(b), Q.& A. 1 is the same as the text of §1.936-7T(b), Q.& A. 1, published elsewhere in this issue of the Bulletin].

* * * * *

Par. 6. Section 1.1017-1 is amended by revising paragraph (g)(2)(iii)(B) to read as follows:

§1.1017-1 Basis reductions following a discharge of indebtedness.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) [The text of the proposed amendment to §1.1017-1(g)(2)(iii)(B) is the same as the text of §1.1017-1T(g)(2)(iii)(B) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 7. Section 1.1368-1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

§1.1368-1 Distributions by S corporations.

* * * * *

(f) * * *

(5) * * *

(iii) [The text of the proposed amendment to §1.1368-1(f)(5)(iii) is the same as the text of §1.1368-1T(f)(5)(iii) published elsewhere in this issue of the Bulletin].

* * * * *

(g) * * *

(2) * * *

(iii) [The text of the proposed amendment to §1.1368-1(g)(2)(iii) is the same as the text of §1.1368-1T(g)(2)(iii) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 8. Section 1.1377-1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

§1.1377-1 Pro rata share.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) [The text of the proposed amendment to §1.1377-1(b)(5)(i)(C) is the same as the text of §1.1377-1T(b)(5)(i)(C) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 9. Section 1.1502-21 is amended by revising paragraphs (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

§1.1502-21 Net operating losses.

* * * * *

(b) * * *

(3) * * * (i) [The text of the proposed amendment to §1.1502-21(b)(3)(i) is the same as the text of §1.1502-21T(b)(3)(i) published elsewhere in this issue of the Bulletin].

(ii) * * *

(B) [The text of the proposed amendment to §1.1502-21(b)(3)(ii)(B) is the same as the text of §1.1502-21T(b)(3)(ii)(B) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 10. Section 1.1502-75 is amended by revising paragraph (h)(2) to read as follows:

§1.1502-75 Filing of consolidated returns.

* * * * *

(h) * * *

(2) [The text of the proposed amendment to §1.1502-75(h)(2) is the same as the text of §1.1502-75T(h)(2) published elsewhere in the issue of the Bulletin].

* * * * *

Par. 11. Section 1.1503-2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

§1.1503-2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * * (i) [The text of the proposed amendment to §1.1503-2(g)(2)(i) is the same as the text of §1.1503-2T(g)(2)(i) published elsewhere in this issue of the Bulletin].

* * * * *

(iv) * * *

(B) * * *

(3) * * *

(iii) [The text of the proposed amendment to §1.1503-2(g)(2)(iv)(B)(3)(iii) is the same as the text of §1.1503-2T(g)(2)(iv)(B)(3)(iii) published elsewhere in this issue of the Bulletin].

* * * * *

(vi) * * *

(B) [The text of the proposed amendment to §1.1503-2(g)(2)(vi)(B) is the same as the text of §1.1503-2T(g)(2)(vi)(B) published elsewhere in this issue of the Bulletin].

* * * * *

Par. 12. Section 1.6038B-1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§1.6038B-1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) * * * (1) * * * (i) [The text of the proposed amendments to §1.6038B-1(b)(1)(i) is the same as the text of §1.6038B-1T(b)(1)(i) published elsewhere in this issue of the Bulletin].

(ii) [The text of the proposed amendment to §1.6038B-1(b)(1)(ii) is the same as the text of §1.6038B-1T(b)(1)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 13. The authority citation for part 301 continues to read in part as follows:

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

Par. 14. Section 301.7701-3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§301.7701-3 Classification of certain business entities.

* * * * *

(c) * * * (1) * * *

(ii) [The text of the proposed amendment to §301.7701-3 (c)(1)(ii) is the same as the text of §301.7701-3T(c)(1)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

Robert E. Wenzel,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 18, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2003, 68 F.R. 70747)

New Code W for the 2004 Form W-2, Box 12

Announcement 2004-2

Purpose	The purpose of this announcement is to advise employers about an additional code for use on the 2004 Form W-2. This code will be used to identify the amount of an employer's contribution to an employee's Health Savings Account (HSA).
Health Savings Accounts (HSA)	<p>A new code (Code W—Employer's contribution to an employee's Health Savings Account (HSA)) for use in box 12 on the 2004 Form W-2 has been added to the 2004 Instructions for Forms W-2 and W-3.</p> <p>The Medicare Prescription Drug Improvement and Modernization Act of 2003 requires reporting of an employer's contributions to an employee's HSA on Form W-2. The amount that an employer contributes to an employee's HSA will be shown in box 12 of Form W-2, using Code W.</p> <p>Generally, employer contributions to an employee's MSA are not subject to income, social security/Medicare, or Railroad Retirement taxes and will not affect amounts otherwise reported in boxes 1, 3, and 5 of Form W-2.</p>

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

Announcement 2004-6

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 oppor-

tunity 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
Baxley II, Milton	Gainesville, FL	CPA	October 24, 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 be-

fore 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 ac-

tuary 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
Nietupski, John E.	Springfield, MA	Enrolled Agent	Indefinite from October 15, 2005
Roberts, Dennis C.	Oklahoma City, OK	Attorney	Indefinite from October 27, 2003
Waldo-Grant, Barbara A.	Grand Rapids, MI	Enrolled Agent	Indefinite from November 1, 2003
Naylor, Dale C.	El Cajon, CA	Enrolled Agent	Indefinite from November 12, 2003
Schlude, Richard M.	Wilkes Barre, PA	Enrolled Agent	Indefinite from November 19, 2003
Stern, Samuel L.	Robbinsdale, MN	Attorney	Indefinite from November 19, 2003
Robles, Michael	Dallas, TX	CPA	Indefinite from December 1, 2003
Young Jr., Donald A.	Redondo Beach, CA	Enrolled Agent	December 1, 2003 to August 31, 2004
Hitchcock, William C.	Irvine, CA	Enrolled Agent	Indefinite from December 30, 2003
Willms, Bryant E.	Lee Summit, MO	Enrolled Agent	January 1, 2004 to December 31, 2004

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
Greene, Marvin	Chicago, IL	CPA	Indefinite from October 21, 2003
Bolusky, Eric B.	Perkins, OK	Attorney	Indefinite from October 21, 2003
Crutchfield Jr., Ernest	Latty, OH	Enrolled Agent	Indefinite from October 21, 2003
Covey, Charles	Gladstone, MO	CPA	Indefinite from October 23, 2003
Prosperi, Arnold P.	Jupiter Island, FL	Attorney	Indefinite from November 24, 2003
Lucas, Christopher	Overland Park, KS	Attorney	Indefinite from November 24, 2003
Ramsey, Henry A.	Burnet, TX	CPA	Indefinite from December 15, 2003

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Designation
Pettyplace, Edward F.	Sacramento, CA	January 30, 2004

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 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.