Internal Revenue bulletin

Bulletin No. 2007-4
January 22, 2007

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. 2007–3, page 350.

Executory contract liabilities. This ruling provides guidance on when a taxpayer using an accrual method of accounting incurs a liability for services or insurance under section 461 of the Code.

Rev. Rul. 2007–4, page 351.

Section 1274A – Inflation adjusted numbers for 2007. This ruling provides the dollar amounts, increased by the 2007 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2005–76 supplemented and superseded.

Notice 2007–10, page 354.

This notice announces that the IRS and Treasury will amend regulations section 30l.7701–2(b)(8) to include a Bulgarian entity on the list of entities always treated as corporations under section 7701 of the Code.

Rev. Proc. 2007–12, page 354.

This procedure supersedes Rev. Proc. 98–20, 1998–1 C.B. 549, and sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except the sale or exchange of such principal residence from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Code. Rev. Proc. 98–20 superseded.

Rev. Proc. 2007–14, page 357.

This document provides procedures by which a taxpayer may obtain automatic consent to change its method of accounting for services or insurance to comply with Rev. Rul. 2007–3, page 350, in this Bulletin. Rev. Proc. 2002–9 modified and amplified.

EXEMPT ORGANIZATIONS

Announcement 2007–3, page 376.

The IRS has revoked its determination that Corporate Responsibility Capital Partners, Inc., of Washington, DC; HR–57 Center for the Advancement and Preservation of Jazz and Blues of Washington, DC; National Association of Credit Counseling, Inc., of Ft. Myers, FL; and Personal Credit Assistance, Inc., of Sacramento, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ADMINISTRATIVE

Rev. Proc. 2007–16, page 358.

This document 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 1.446–1(e)(2)(ii)(d). Rev. Procs. 2000–38, 2000–50, and 2002–9 modified. Rev. Proc. 2004–11 superseded.

Rev. Proc. 2007–17, page 368.

This procedure, which supersedes Rev. Proc. 2005–12, 2005–1 C.B. 311, provides guidance that continues the existing Pre-Filing Agreement (PFA) program with only minor changes related to the processing of PFAs. Rev. Proc. 2005–12 superseded.

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Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2007–5, page 376.

This document changes the location of the public hearing on proposed regulations (REG–127819–06, 2006–48 I.R.B. 1013) concerning the amendments made by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) to section 199.

Announcement 2007–6, page 376.

This document changes the location of the public hearing on proposed regulations (REG–136806–06, 2006–47 I.R.B. 950) relating to the standards for treating payments in lieu of taxes as generally applicable taxes for purposes of the private security or payment test.

Announcement 2007–7, page 377.

This document changes the location of the public hearing on proposed regulations (REG–141901–05, 2006–47 I.R.B. 947) that provide guidance on taxation of the exchange of property for an annuity contract.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 446.—General Rule for Methods of Accounting

This revenue procedure provides procedures by which a taxpayer may obtain automatic consent to change its method of accounting for services or insurance under section 461 to comply with Rev. Rul. 2007–3, page 350, this Bulletin. See Rev. Proc. 2007-14, page 357.

26 CFR 1.446–1: General rule for methods of accounting.

May a taxpayer change its method of accounting under § 446(e) of the Internal Revenue Code for depreciable or amortizable property after its disposition? See Rev. Proc. 2007-16, page 358.

Section 461.—General Rule for Taxable Year of Deduction

This revenue procedure provides procedures by which a taxpayer may obtain automatic consent to change its method of accounting for services or insurance under section 461 to comply with Rev. Rul. 2007–3, page 350, this Bulletin. See Rev. Proc. 2007-14, page 357.

26 CFR 1.461–1: General rule for taxable year of deduction.
(Also §§ 1.461–4, 1.461–5.)

Executory contract liabilities. This ruling provides guidance on when a taxpayer using an accrual method of accounting incurs a liability for services or insurance under section 461 of the Code.

Rev. Rul. 2007–3

ISSUES

(1) Under § 461 of the Internal Revenue Code, when does a taxpayer using an accrual method of accounting incur a liability for services?

(2) Under § 461, when does a taxpayer using an accrual method of accounting incur a liability for insurance?

FACTS

X is a corporation that uses an accrual method of accounting and files its federal income tax returns on a calendar year basis.

Situation 1. On December 15, 2006, *X* executes a contract with *Y* for the provision of services. The contract provides for services to begin on January 15, 2007, and end on January 31, 2007. Under the terms of the contract, payment for the services is due to *Y* on January 15, 2007, and *X* pays *Y* for the services on January 15, 2007. *X* uses the recurring item exception under § 1.461–5.

Situation 2. On December 15, 2006, *X* executes a contract with *W*, an insurance company regulated under state law, for the provision of insurance. The insurance contract covers the period from January 15, 2007, through December 31, 2007. Under the terms of the contract, payment of the insurance premium is due to *W* on January 15, 2007, and *X* pays the premium to *W* on January 15, 2007. *X* uses the recurring item exception under § 1.461–5.

LAW

Section 461(a) provides that the amount of any deduction or credit must be taken for the taxable year that is the proper taxable year under the method of accounting used by the taxpayer in computing taxable income.

Section 1.461–1(a)(2)(i) of the Income Tax Regulations provides that, under an accrual method of accounting, a liability is incurred, and is generally taken into account for federal income tax purposes, in the taxable year in which (1) all the events have occurred that establish the fact of the liability, (2) the amount of the liability can be determined with reasonable accuracy, and (3) economic performance has occurred with respect to the liability (the "all events test"). *See also* § 1.446–1(c)(1)(ii)(A).

The first prong of the all events test requires that all the events have occurred that establish the fact of the liability. Therefore, it is fundamental to the all events test that although expenses may be deductible before they become due and payable, liability first must be firmly established. *United States v. General Dynamics Corp.*, 481 U.S. 239, 243–4 (1987).

Generally, under § 1.461–1(a)(2), all the events have occurred that establish the fact of the liability when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment therefore is due, whichever happens earliest. Rev. Rul. 80–230, 1980–2 C.B. 169; Rev. Rul. 79–410, 1979–2 C.B. 213, *amplified by* Rev Rul. 2003–90, 2003–2 C.B. 353. The terms of a contract are relevant in determining the events that establish the fact of a taxpayer's liability. *See, e.g., Decision, Inc. v. Commissioner*, 47 T.C. 58 (1966), *acq.*, 1967–2 C.B. 2.

Section 461(h) and § 1.461–4 provide that, for purposes of determining whether an accrual basis taxpayer can treat the amount of any liability as incurred, the all events test is not treated as met any earlier than the taxable year in which economic performance occurs with respect to the liability.

Section 1.461–4(d)(2) provides that if a liability of a taxpayer arises out of the providing of services or property to the taxpayer by another person, economic performance occurs as the services or property is provided.

Section 1.461–4(g)(5) provides that if a liability of a taxpayer arises out of the provision to the taxpayer of insurance, economic performance occurs as payment is made to the person to which the liability is owed.

Section 1.461–5(b)(1) provides a recurring item exception to the general rule of economic performance. Under the recurring item exception, a liability is treated as incurred for a taxable year if: (i) at the end of the taxable year, all events have occurred that establish the fact of the liability and the amount can be determined with reasonable accuracy; (ii) economic performance occurs on or before the earlier of (a) the date that the taxpayer files a return (including extensions) for the taxable year, or (b) the 15th day of the ninth calendar month after the close of the taxable year; (iii) the liability is recurring in nature; and (iv) either the amount of the liability is not material or accrual of the liability in the taxable year results in better matching of the liability against the income to which it relates than would result from accrual of the liability in the taxable year in which economic performance occurs.

ANALYSIS

Situation 1. In *Situation 1*, the first event that occurs to establish the fact of *X*'s liability for services is that payment is due under the contract on January 15, 2007. *See* Rev. Rul. 80–230; Rev. Rul. 79–410. Thus, for purposes of § 461, the fact of the liability is established on January 15, 2007. At that time, the amount can be determined with reasonable accuracy. Economic performance with respect to the liability occurs as the services are provided, from January 15, 2007, through January 31, 2007. *See* § 1.461–4(d)(2). Therefore, *X* incurs a liability for services in 2007.

The fact of the liability is not established in 2006, even though *X* executed the service contract on December 15, 2006. It is well established that an accrual basis obligor is not permitted to deduct an expense stemming from a bilateral contractual arrangement, that is, mutual promises, prior to the performance of the contracted for services by the obligee. Rev. Rul. 80–182, 1980–2 C.B. 167, citing *Levin v. Commissioner*, 21 T.C. 996 (1954), *aff'd*, 219 F.2d 588 (3d Cir. 1955) (an agreement for services to be performed in the next year did not establish the fact of the taxpayer's liability but was simply an agreement under which a liability would be incurred in the future) and *Amalgamated Housing Corp. v. Commissioner*, 37 B.T.A. 817 (1938), *aff'd per curium*, 108 F.2d 1010 (2d Cir. 1940) (an agreement to renovate property in the future did not establish the fact of the taxpayer's liability; the accrual was for services in renovating, not the duty to renovate). Thus, the mere execution of the contract by *X* in 2006 is not sufficient, by itself, to establish the fact of the liability. Further, the recurring item exception does not apply because the fact of the liability is not established in 2006.

Situation 2. In *Situation 2*, the first event that occurs to establish the fact of *X*'s liability for insurance is that the premium is due under the contract. *See* Rev. Rul. 80–230; Rev. Rul. 79–410. Thus, for purposes of § 461, the fact of the liability is established on January 15, 2007. At that time, the amount can be determined with reasonable accuracy. Economic performance with respect to the liability occurs as payment is made, on January 15, 2007. *See* § 1.461–4(g)(5). Therefore, *X* incurs a liability for insurance in 2007.

The fact of the liability is not established in 2006, even though *X* executed the insurance contract on December 15, 2006. *See* Rev. Rul. 80–182. Although federal or state regulations may impose certain legal obligations on taxpayers, those obligations, without more, do not necessarily establish the fact of a taxpayer's liability under § 461. *See Chrysler Corp. v. Commissioner*, 436 F.3d 644 (6th Cir. 2006) (statutory obligation related to warranty obligation was not sufficient to establish the fact of the taxpayer's liability to provide warranty services). Further, the recurring item exception does not apply because the fact of the liability is not established in 2006.

HOLDINGS

(1) Under § 461, all the events have occurred that establish the fact of the liability for services provided to the taxpayer when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment is due, whichever happens earliest. The mere execution of a contract, without more, does not establish the fact of a taxpayer's liability for services.

(2) Under § 461, all the events have occurred that establish the fact of the liability for insurance when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment is due, whichever happens earliest. The mere execution of a contract, without more, does not establish the fact of a taxpayer's liability for insurance.

APPLICATION

A change in the treatment of liabilities for services or insurance to comply with this revenue ruling is a change in method of accounting within the meaning of §§ 446 and 481 and the regulations issued thereunder. Accordingly, a taxpayer that wants to change its treatment of liabilities for services or insurance to comply with this revenue ruling must obtain the consent of the Commissioner under § 446(e) and § 1.446–1(e)(2)(i) by following the procedures in Rev. Proc. 2007–14, page 357, this Bulletin.

DRAFTING INFORMATION

The principal author of this revenue ruling is Leta A. Ayres of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, contact Ms. Ayres at (202) 622–5020 (not a toll-free call).

Section 481.—Adjustments Required by Changes in Method of Accounting

This revenue procedure provides procedures by which a taxpayer may obtain automatic consent to change its method of accounting for services or insurance under section 461 to comply with Rev. Rul. 2007–3, page 350, this Bulletin. See Rev. Proc. 2007-14, page 357.

Section 1016.—Adjustments to Basis

26 CFR 1.1016–3: Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

Does the allowed or allowable rule under § 1016(a)(2) of the Internal Revenue Code 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? See Rev. Proc. 2007-16, page 358.

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

26 CFR 1.1274A–1: Special rules for certain transactions where stated principal amount does not exceed $2,800,000.
(Also §§ 483, 1274, 7872.)

Section 1274A – Inflation adjusted numbers for 2007. This ruling provides the dollar amounts, increased by the 2007 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2005–76 supplemented and superseded.

Rev. Rul. 2007–4

This revenue ruling provides the dollar amounts, increased by the 2007 inflation adjustment, for § 1274A of the Internal Revenue Code. This ruling also provides that the Internal Revenue Service will no longer publish the inflation adjustment under § 7872(g)(2) because of amendments made to § 7872 by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), Pub. L. No. 109–222, 120 Stat. 345, and the Tax Relief and Health Care Act of 2006, Pub. L. No. 109–432, 120 Stat. 2922.

BACKGROUND

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

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

In the case of a "cash method debt instrument," as defined in § 1274A(c), the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed $2,000,000; (B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged; (C) § 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) an election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A–1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

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

INFLATION-ADJUSTED AMOUNTS UNDER § 1274A

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

Rev. Rul. 2007–4 Table 1

Inflation-Adjusted Amounts Under § 1274A

Calendar Year of Sale or Exchange	*1274A(b) Amount (qualified debt instrument)*	*1274A(c)(2)(A) Amount (cash method debt instrument)*
1990	$2,933,200	$2,095,100
1991	$3,079,600	$2,199,700
1992	$3,234,900	$2,310,600
1993	$3,332,400	$2,380,300
1994	$3,433,500	$2,452,500
1995	$3,523,600	$2,516,900
1996	$3,622,500	$2,587,500
1997	$3,723,800	$2,659,900
1998	$3,823,100	$2,730,800
1999	$3,885,500	$2,775,400
2000	$3,960,100	$2,828,700
2001	$4,085,900	$2,918,500
2002	$4,217,500	$3,012,500
2003	$4,280,800	$3,057,700
2004	$4,381,300	$3,129,500

Rev. Rul. 2007–4 Table 1 Inflation-Adjusted Amounts Under § 1274A – Continued		
Calendar Year of Sale or Exchange	*1274A(b) Amount (qualified debt instrument)*	*1274A(c)(2)(A) Amount (cash method debt instrument)*
2005	$4,483,000	$3,202,100
2006	$4,630,300	$3,307,400
2007	$4,800,800	$3,429,100

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

INFLATION-ADJUSTED AMOUNTS UNDER § 7872(g)(2)

The Service will no longer publish the inflation adjustment under § 7872(g)(2), regarding the amount that a taxpayer may lend to a qualifying continuing care facility without incurring imputed interest, because of amendments made to § 7872 by TIPRA and the Tax Relief and Health Care Act of 2006.

Section 7872(g)(2) provides an exception for certain below-market loans to qualified continuing care facilities only to the extent that the aggregate outstanding amount of any loan to which § 7872(g)(1) applies (determined without regard to § 7872(g)(2)), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which § 7872(g)(1) applies, does not exceed $90,000. Section 7872(g)(5) generally provides that, for loans made during any calendar year after 1986 to which § 7872(g)(1) applies, the $90,000 limit specified in § 7872(g)(2) is increased by an inflation adjustment.

Section 7872(g)(6) generally suspends the application of § 7872(g) for any calendar year to which § 7872(h), as amended by TIPRA, applies. Section 7872(h) generally provides that § 7872 shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year. Section 7872(h)(4) provided that paragraph (h) shall not apply for any calendar year after 2010. Section 425 of the Tax Relief and Health Care Act of 2006 amended § 7872(h) by striking subsection (4), making the § 7872(h) exception for loans to qualified continuing care facilities permanent.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2005–76, 2005–2 C.B. 1072, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Richard C. LaFalce of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, please contact Mr. LaFalce at (202) 622–3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Classification of Certain Foreign Entities

Notice 2007–10

This notice announces that Treasury and the Internal Revenue Service (IRS) will amend § 301.7701–2(b)(8) of the Procedure and Administration Regulations to add the Bulgarian aktsionerno druzhestvo entity to the list of entities that are always treated as corporations under section 7701 of the Internal Revenue Code (Code).

BACKGROUND

The IRS and Treasury issued final regulations concerning the classification of business entities under section 7701 of the Code on December 18, 1996 (check-the-box regulations). See generally, T.D. 8697, 1997–1 C.B. 215 [61 FR 66584] and §§ 301.7701–1 through 3. Under the check-the-box regulations, a business entity generally can elect its classification for federal tax purposes. However, § 301.7701–2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for federal tax purposes (the *per se* corporation list).

On December 16, 2005, the IRS and Treasury published regulations (T.D. 9235, 2006–4 I.R.B. 338 [70 FR 74658]) under section 7701 of the Code adding certain foreign business entities to the *per se* list of corporations. These regulations were in response to the adoption by the Council of the European Union of a Council Regulation (2157/2001 2001 O.J. (L 294)) (the EU Regulation) that recognized a new business entity, the European public limited liability company (Societas Europaea or SE).

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE, and supplements those rules for specified issues and issues it does not otherwise address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). For further background see T.D. 9197, 2005–1 C.B. 985 [70 FR 19697] and Notice 2004–68, 2004–2 C.B. 706.

As of January 1, 2007, Bulgaria will become a member of the European Union. Accordingly, an SE will be eligible to have its registered office in Bulgaria and those SEs with a registered office in Bulgaria will, to a certain extent, be subject to the laws of the public limited liability company in Bulgaria. As a result, and consistent with T.D. 9235, it is appropriate for the IRS and Treasury to add the public limited liability company for Bulgaria to the *per se* list.

DISCUSSION

The IRS and Treasury will issue temporary and proposed regulations that will modify § 301.7701–2 to include the Bulgarian aktsionerno druzhestvo on the *per se* corporation list. This entity has been identified as the public limited liability company in Bulgaria.

EFFECTIVE DATE

The temporary and proposed regulations to be issued adding the Bulgarian aktsionerno druzhestvo to § 301.7701–2(b)(8) generally will apply to such entities formed on or after January 1, 2007. However, they shall also apply to an entity formed before such date upon a 50 percent or greater change of ownership subsequent to such date.

The principal author of this notice is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ronald M. Gootzeit at (202) 622–3860 (not a toll-free call).

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26 CFR 601.602: Tax forms and instructions.
26 CFR 1.6045–4: Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

Rev. Proc. 2007–12

SECTION 1. PURPOSE

This revenue procedure supersedes Rev. Proc. 98–20, 98–1 C.B. 549, and sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except the sale or exchange of such principal residence from the information reporting requirements for real estate transactions under § 6045(e)(5) of the Internal Revenue Code (Code). This revenue procedure incorporates amendments to section 121 of the Code made by section 840 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (October 22, 2004) (AJCA), as amended by section 403(ee) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109–135, 119 Stat. 2631 (December 21, 2005) (the GO Zone Act).

SECTION 2. BACKGROUND

.01 Section 6045(e) and § 1.6045–4 of the Income Tax Regulations generally require a real estate reporting person (as defined in § 6045(e)(2) and § 1.6045–4(e)) to file an information return regarding a real estate transaction and to furnish a payee statement to the seller regarding that transaction. The information return and statement must include the name, address, and taxpayer identification number (TIN) of the seller, and the gross proceeds of the real estate transaction. This information is reported on Form 1099–S, *Proceeds From Real Estate Transactions*.

.02 Section 312 of the Taxpayer Relief Act of 1997 (TRA 1997), Pub. L. No. 105–34, 111 Stat. 788 (August 5, 1997), as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 805 (July 22, 1998), effective for sales or exchanges after May 6, 1997, amended § 6045(e) by adding a new paragraph (5), which excepts a sale or exchange of a principal residence from the § 6045(e) information reporting requirements if the seller provides the real estate reporting person with a certification setting forth certain written assurances, including an assurance that the residence is the seller's principal residence (within the meaning of § 121) and an assurance that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under § 121.

.03 Section 312 of TRA 1997 also amended § 121 to provide new rules for the exclusion of gain on certain sales or exchanges of a principal residence. Section 121, as amended, provides that a taxpayer may exclude from gross income up to $250,000 of gain on the sale or exchange of a principal residence if certain conditions are met. In certain circumstances, a married individual filing a joint return for the taxable year of the sale or exchange may exclude from gross income up to $500,000 of gain. This exclusion also applies to the sale or exchange of stock held by a tenant-stockholder in a cooperative housing corporation (as defined in § 216) and may apply to the sale or exchange of a remainder interest in a principal residence if the taxpayer so elects. *See* Code §§ 121(d)(4) and (d)(8).

.04 Section 840 of the AJCA, as amended by the GO Zone Act, amended § 121 to provide that the exclusion for gain on the sale or exchange of a principal residence does not apply if the principal residence was acquired by the taxpayer in a like-kind exchange in which any gain was not recognized under § 1031(a) or (b) within the prior five years.

SECTION 3. SCOPE

This revenue procedure applies to the information reporting requirements under § 6045(e) for a sale or exchange of a principal residence.

SECTION 4. SELLER CERTIFICATION

.01 To be excepted from the information reporting requirements in § 6045(e) on the sale or exchange of a principal residence (including stock in a cooperative housing corporation), the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury, that assurances (1) through (6) set forth in section 4.02 of this revenue procedure are true (or, in the case of assurance (6), not applicable). For purposes of this certification, the term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

.02 The assurances are:

(1) The seller owned and used the residence as the seller's principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.

(2) The seller has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.

(3) No portion of the residence has been used for business or rental purposes after May 6, 1997, by the seller (or by the seller's spouse or former spouse, if the seller was married at any time after May 6, 1997).

(4) At least one of the following three statements applies:

The sale or exchange is of the entire residence for $250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for $500,000 or less, and the gain on the sale or exchange of the entire residence is $250,000 or less.

OR

The seller is married, the sale or exchange is of the entire residence for $500,000 or less, and (a) the seller intends to file a joint return for the year of the sale or exchange, (b) the seller's spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) the seller's spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.

(5) During the 5-year period ending on the date of the sale or exchange of the residence, the seller did not acquire the residence in an exchange to which section 1031 applied.

(6) In cases where the seller's basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date of the seller's sale or exchange of the residence.

SECTION 5. FORMAT FOR MAKING SELLER CERTIFICATION

A sample certification form that may be used by a real estate reporting person to obtain the applicable assurances from the seller is provided in the Appendix of this revenue procedure. Use of this sample certification form is not required. The requirements of the certification under § 6045(e)(5) will be met if the content and wording of a written certification provide the same information as required by section 4 of this revenue procedure.

SECTION 6. OBTAINING AND RETAINING SELLER CERTIFICATION

The real estate reporting person may obtain a certification at any time on or before January 31 of the year following the year of the sale or exchange of the residence. The certification must be retained by the real estate reporting person for 4 years after the year of the sale or exchange of the residence to which the certification applies.

SECTION 7. PENALTIES

A real estate reporting person who relies on a certification made in compliance with this revenue procedure will not be liable for the penalties under § 6721 for failure to file an information return, or under § 6722 for failure to furnish a payee statement to the seller, unless the real estate reporting person has actual knowledge that any assurance is incorrect.

SECTION 8. EFFECT ON OTHER DOCUMENTS (when applicable)

Rev. Proc. 98–20 is superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for sales or exchanges of a principal residence occurring after January 22, 2007.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1592.

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

The collection of information in this revenue procedure is in section 4 and 5 of this revenue procedure. This information is required to exempt a real estate reporting person from the requirement to file an information return and furnish a payee statement reporting the sale or exchange of a principal residence. The likely respondents are individual taxpayers who sell or exchange a principal residence and real estate businesses.

The estimated total annual reporting burden for respondents is 383,000 hours.

The estimated burden per respondent is 10 minutes. The estimated number of respondents is 2,300,000. The frequency of responses is on occasion.

The estimated total annual burden for recordkeepers is 37,500 hours.

The estimated annual burden per recordkeeper is 25 minutes. The estimated number of recordkeepers is 90,000.

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

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Timothy S. Sheppard of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Mr. Sheppard at (202) 622–4910 (not a toll-free call).

APPENDIX

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099–S, *Proceeds From Real Estate Transactions*. If the seller properly completes Parts I and III, and makes a "true" response to assurances (1) through (6) in Part II (or a "not applicable" response to assurance (6)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Part I. Seller Information

1. Name ________________________________

2. Address or legal description (including city, state, and ZIP code) of residence being sold or exchanged ________________________________

____

____

3. Taxpayer Identification Number (TIN) ________________________

Part II. Seller Assurances

Check "true" or "false" for assurances (1) through (5), and "true", "false", or "not applicable" for assurance (6).

True	False	
[ ]	[ ]	(1) I owned and used the residence as my principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.
[ ]	[ ]	(2) I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.
[ ]	[ ]	(3) I (or my spouse or former spouse, if I was married at any time during the period beginning after May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.

True	False	N/A	
[ ]	[ ]		(4) At least one of the following three statements applies: The sale or exchange is of the entire residence for $250,000 or less. OR I am married, the sale or exchange is of the entire residence for $500,000 or less, and the gain on the sale or exchange of the entire residence is $250,000 or less. OR I am married, the sale or exchange is of the entire residence for $500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.
[ ]	[ ]		(5) During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which section 1031 of the Internal Revenue Code applied.
[ ]	[ ]	[ ]	(6) If my basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 of the Internal Revenue Code applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

______________________________________ ____________________________

Signature of Seller Date

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 446, 461, 481; 1.446–1.)

Rev. Proc. 2007–14

SECTION 1. PURPOSE

This revenue procedure provides procedures by which a taxpayer may obtain the automatic consent of the Commissioner under § 446(e) of the Internal Revenue Code to change its method of accounting for liabilities for services or insurance to comply with Rev. Rul. 2007–3, page 350, this Bulletin.

SECTION 2. BACKGROUND

.01 In Rev. Rul. 2007–3, the Internal Revenue Service addressed the issue of when a taxpayer using an accrual method of accounting incurs a liability for services or insurance under § 461. The ruling holds that a liability for services or insurance is not fixed by the mere execution of a contract for the future provision of services or insurance. Instead, all the events have occurred that establish the fact of the liability when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment is due, whichever happens earliest.

.02 Under § 446(e) and § 1.446–1(e)(2)(i) of the Income Tax Regulations, a taxpayer generally must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. To obtain the Commissioner's consent to a change in method, § 1.446–1(e)(3)(i) generally requires a taxpayer to file Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer wants to make the proposed change. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures that provide the terms and conditions necessary for a taxpayer to obtain consent to change a method of accounting. The terms and conditions the Commissioner may prescribe include whether the change is to be made with a § 481(a) adjustment, and if so, the § 481(a) adjustment period, or on a cut-off basis.

.03 Rev. Proc. 2002–9, 2002–1 C.B. 327 (as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432), provides procedures under § 446(e) and § 1.446–1(e) for obtaining the automatic consent of the Commissioner to change certain methods of accounting for federal income tax purposes. Specifically, Rev. Proc. 2002–9 applies to a taxpayer requesting the Commissioner's consent to change to a method of accounting described in the APPENDIX of that revenue procedure. Rev. Proc. 2002–9 is the exclusive procedure for a taxpayer within its scope to obtain the Commissioner's consent. See Rev. Proc. 2002–9, sections 1 and 4.01.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer that is currently treating the mere execution of a contract for services or insurance as establishing the fact of the liability under § 461 and wants to change its method of accounting for liabilities for services or insurance to comply with Rev. Rul. 2007–3.

SECTION 4. APPLICATION

.01 *In General*. A change in the treatment of liabilities for services or insurance to comply with Rev. Rul. 2007–3 is a change in method of accounting within the meaning of §§ 446 and 481 and the regulations issued thereunder. Accordingly, a taxpayer within the scope of this revenue procedure that wants to change its treatment of liabilities for services or insurance to comply with Rev. Rul. 2007–3 must obtain the consent of the Commissioner under § 446(e) and § 1.446–1(e)(3).

.02 *Automatic Change*. A taxpayer within the scope of this revenue procedure that wants to change its method of accounting for liabilities for services or insurance must obtain the consent of the Commissioner by following the automatic consent procedures in Rev. Proc. 2002–9 (or its successor). For purposes of section 6.02(4)(a) of Rev. Proc. 2002–9, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number 106.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is modified and amplified to include in the APPENDIX the automatic change provided in this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2006.

DRAFTING INFORMATION

The principal author of this revenue procedure is Leta A. Ayres of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Ayres at (202) 622–5020 (not a toll-free call).

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

Rev. Proc. 2007–16

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 (hereinafter referred to collectively as "depreciable 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 (hereinafter referred to collectively as "depreciation"). This revenue procedure clarifies, modifies, amplifies, and supersedes Rev. Proc. 2004–11, 2004–1 C.B. 311. This revenue procedure also modifies Rev. Proc. 2002–9, 2002–1 C.B. 327 (as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432), and other revenue procedures to conform with § 1.446–1(e)(2)(ii)(*d*) of the Income Tax Regulations.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 446(e) and § 1.446–1(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 1.446–1(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 On January 20, 2004, the Internal Revenue Service published Rev. Proc. 2004–11, which provided an automatic consent procedure allowing a taxpayer to make a change in method of accounting under § 446(e) for depreciable property after its disposition. Rev. Proc. 2004–11 also waived the application of the two-year rule set forth in Rev. Rul. 90–38 for certain changes in depreciation. In addition, Rev. Proc. 2004–11 modified Rev. Proc. 2002–9 and other revenue procedures to conform with § 1.446–1T(e)(2)(ii)(*d*) of the temporary Income Tax Regulations.

.03 Concurrent with the issuance of this revenue procedure, §§ 1.446–1(e)(2)(ii)(*d*) and 1.1016–3(h) have been promulgated. Section 1.446–1(e)(2)(ii)(*d*) identifies the changes in depreciation that are (and are not) considered a change in method of accounting. Section 1.1016–3(h) provides that for purposes of determining whether a change in depreciation is a change in method of accounting under § 446(e), the "allowed or allowable" rule under § 1016(a)(2) will not be considered to permanently affect a taxpayer's lifetime income.

.04 In general, if a taxpayer uses an impermissible method of accounting in two or more consecutively filed federal tax returns the taxpayer has adopted a method of accounting. *See* Rev. Rul. 90–38. The Service and Treasury Department recognize that with respect to changes in depreciation this two-year rule may increase administrative and compliance costs because many taxpayers changing from an impermissible to permissible method of accounting for depreciation used the impermissible method for depreciable 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 have decided to waive the two-year rule in Rev. Rul. 90–38 for a change in depreciation to which § 1.446–1(e)(2)(ii)(*d*) applies.

.05 If depreciable 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 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.

.06 The significant changes to Rev. Proc. 2004–11 include:

(1) The application of section 3 is extended to allow a taxpayer to file a Form 3115 with an original federal tax return for the taxable year in which the depreciable property is disposed of by the taxpayer that claimed less than the depreciation allowable for that property.

(2) A new section 4.01 is added, clarifying that a change from an impermissible method of determining depreciation for depreciable property in two or more consecutively filed federal tax returns is a change in method of accounting under § 446(e) and § 1.446–1(e).

(3) A new section 6.03 is added, extending the application of section 3 of this revenue procedure to dispositions of depreciable property occurring in taxable years ending before December 30, 2003.

.07 The significant changes to Rev. Proc. 2002–9 include:

(1) Section 2.01 of the APPENDIX of Rev. Proc. 2002–9 is changed to clarify that section 2.01 of this APPENDIX does not apply to any property for which a taxpayer is revoking a timely valid election or making a late election under § 179, or to any change in method of accounting involving a change from capitalizing and depreciation the cost or other basis of any property to deducting the cost or other basis as an expense.

(2) Section 2B of the APPENDIX of Rev. Proc. 2002–9 is changed to remove section 2B.03, which provided that the change under section 2B does not apply to a change in useful life under the method described in section 5.01(2) or 6.01(2) of Rev. Proc. 2000–50.

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 property subject to §§ 167, 168, 197, 1400I, 1400L(c), to former § 168, or to any additional first year depreciation deduction provision of the Internal Revenue Code (for example, § 168(k), § 1400L(b), or § 1400N(d)):

(a) that has been disposed of by the taxpayer during the year of change (as defined in section 3.02(3)(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(3)(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 nonrecognition 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 under § 1.168(i)–6T(i) and (j) to treat the entire basis (that is, both the exchanged and excess basis (as defined in § 1.168(i)–6T(b)(7) and (8), respectively)) of the replacement MACRS property (as defined in § 1.168(i)–6T(b)(1)) as property placed in service by the taxpayer at the time of replacement and treat the adjusted depreciable basis of the relinquished MACRS property (as defined in § 1.168(i)–6T(b)(2)) as being disposed of by the taxpayer at the time of disposition.

.02 *Change in method of accounting*.

(1) *Change made on original return for year of change*. On its timely filed (including extensions) original federal tax return for the year of change (as defined in section 3.02(3)(b) of this revenue procedure), 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 property within the scope of section 3 of this revenue procedure, provided the taxpayer files the original Form 3115 in accordance with section 6.02(3) of Rev. Proc. 2002–9 (or its successor).

(2) *Change made on an amended return for year of change*. On an amended federal tax return for the year of change (as defined in section 3.02(3)(b) of this revenue procedure), 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 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(3)(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(3)(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.

(3) *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 property was disposed of by the taxpayer.

(c) If section 3.02(2) of this revenue procedure applies to the taxpayer, 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 107.

.03 *Taxpayer or property outside scope*. If a taxpayer is precluded from using section 3 of this revenue procedure because the taxpayer or the item of depreciable property is outside the scope of section 3 of this revenue procedure (for example, the item of depreciable property was not disposed of by the taxpayer), any change in method of accounting for depreciation must be made in accordance with the requirements of Rev. Proc. 97–27, 1997–1 C.B. 680 (or its successor), or Rev. Proc. 2002–9 (or its successor), as applicable.

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

.01 *In general.* If a taxpayer uses an impermissible method of determining depreciation for a depreciable 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. Accordingly, the taxpayer changing from that impermissible method of accounting must file a Form 3115 in accordance with the requirements of § 1.446–1(e)(3)(i) and, as applicable, Rev. Proc. 97–27 or Rev. Proc. 2002–9. *See* Rev. Rul. 90–38.

.02 *Waiver of two-year rule*. Notwithstanding Rev. Rul. 90–38, a taxpayer may file a Form 3115 under Rev. Proc. 97–27 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 § 1.446–1(e)(2)(ii)(*d*) for any depreciable property subject to § 1.446–1(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 4.03 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.

.03 *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 4.02 of this revenue procedure to make a change in method of accounting for depreciation under § 1.446–1(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. 2004–11 is clarified, modified, amplified, and superseded.

.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, 1400L, OR 1400N(d), OR FORMER § 168)".

.03 Rev. Proc. 2002–9 (as modified by Rev. Proc. 2004–11) is modified by deleting sections 2.01, 2.02, 2B, and 2.05 of the APPENDIX and replacing them with the text in, respectively, sections 1, 2, 3, and 4 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* § 1.446–1(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 6.01(2) of this revenue procedure is a change in method of accounting to which §§ 446 and 481 apply. Additionally, if a taxpayer is currently treating costs paid or incurred to develop computer software under section 5.01(2) of this revenue procedure in accordance with the rules provided in § 167(f)(1) and the regulations thereunder but is not currently using a useful life of 36 months, a change in useful life to 36 months is a change in method of accounting to which §§ 446 and 481 apply. *See* § 1.446–1(e)(2)(ii)(*d*)(*3*)(*i*).

SECTION 6. EFFECTIVE DATE

.01 *In general*. Except as provided in sections 6.02, 6.03, and 6.04 of this revenue procedure, this revenue procedure is effective for a Form 3115 filed for taxable years ending on or after December 26, 2006.

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

(1) For a taxable year ending on or after December 26, 2006, 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 in effect on the date on which the Form 3115 was filed with the national office by the taxpayer (*see* Rev. Proc. 2004–11) if:

(a) before December 26, 2006, 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 in effect on the date on which the Form 3115 was filed with the national office by the taxpayer 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 26, 2006, 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. 2007–16." This statement must be legibly printed or typed on the appropriate line on, or at the top of page 1 of, the Form 3115.

.03 *Application of section 3*. Section 3 of this revenue procedure is effective for a Form 3115 filed on or after December 26, 2006.

.04 *Changes made to Rev. Proc. 2000–50*. The changes made in section 5.06 of this revenue procedure to section 8.01 of Rev. Proc. 2000–50 are effective for a Form 3115 filed for the taxable years ending on or after December 26, 2006, except that:

(1) the change made to section 8.01 of Rev. Proc. 2000–50 providing that a change in useful life under the method described in section 6.01(2) of Rev. Proc. 2000–50 is a change in method of accounting is effective for property placed in service by the taxpayer in a taxable year ending on or after December 30, 2003; and

(2) the change made to section 8.01 of Rev. Proc. 2000–50 providing that a change in useful life to 36 months made by a taxpayer that is currently treating costs paid or incurred to develop computer software under section 5.01(2) of Rev. Proc. 2000–50 in accordance with the rules provided in § 167(f)(1) and the regulations thereunder but is not currently using a useful life of 36 months is a change in method of accounting is effective for property placed in service by the taxpayer in a taxable year ending on or after December 30, 2003.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Douglas H. Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Mr. 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 § 1.446–1(e)(2)(ii)(*d*);

(iii) for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), under § 168 prior to its amendment in 1986 (former § 168), or under any additional first year depreciation deduction provision of the Internal Revenue Code (for example, § 168(k), § 1400L(b), or § 1400N(d)); 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 method of determining depreciation to the permissible method of determining depreciation 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 method of determining depreciation to the permissible method of determining depreciation 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 § 1.446–1(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, § 179, § 1400I, § 1400L(c), former § 168, § 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), or any additional first year depreciation deduction provision of the Internal Revenue Code (for example, § 168(k), § 1400L(b), or § 1400N(d)). A taxpayer may request consent to revoke or make the election by submitting a request for a letter ruling under Rev. Proc. 2006–1, 2006–1 I.R.B. 1 (or any successor). However, if a taxpayer is revoking or making an election under § 179, see §179(c) and § 1.179–5. *See* § 1.446–1(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(c), former § 168, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 1400L(b), or § 1400N(d))) 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 § 1.446–1(e)(2)(ii)(*d*)(*5*)(*iv*). 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* § 1.446–1(e)(2)(ii)(*d*)(*3*)(*i*);

(viii) any depreciable property for which the use changes in the hands of the same taxpayer. *See* § 1.446–1(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, or *vice versa*;

(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(c), former § 168, § 13261(g)(2) or (3) of the 1993 Act, or any additional first year depreciation deduction provision of the Code (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 § 1.446–1(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;

(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 § 1.446–1(e)(2)(ii)(*d*)(*5*)(*v*); or

(xvi) any property for which the rehabilitation credit under § 47 was claimed and that a taxpayer is reclassifying to 3-year property, 5-year property, 7-year property, 10-year property, 15-year property, 20-year property, or water utility property (other than real property with a class life of more than 12.5 years).

(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 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;

(vi) 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

(vii) 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, qualified leasehold improvement property, qualified restaurant 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)–1 of the Income Tax Regulations), 50-percent bonus depreciation property (as defined in § 168(k)(4) and § 1.168(k)–1), qualified New York Liberty Zone (Liberty Zone) property (as defined in § 1400L(b)(2) and § 1.1400L(b)–1), or qualified Gulf Opportunity Zone (GO Zone) property (as defined in sections 2.02 and 2.03 of Notice 2006–77, 2006–40 I.R.B. 590), 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), § 1400L(b), or § 1400N(d), 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, Liberty Zone property, or GO Zone property, by taking into account the additional first year depreciation deduction provided by § 168(k), § 1400L(b), or § 1400N(d), 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, Rev. Proc. 2003–50, 2003–2 C.B. 119, or Notice 2006–77) for the class of property (as defined in § 1.168(k)–1(e)(2), § 1.1400L(b)–1(e)(2), or section 4.02 of Notice 2006–77, 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 building 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) unless the taxpayer made a timely valid election under § 1400L(c) not to use that recovery period."

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(c), § 168 prior to its amendment in 1986 (former § 168), or any additional first year depreciation deduction provision of the Internal Revenue Code (for example, § 168(k), § 1400L(b), or § 1400N(d));

(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)–1(b) of the Income Tax Regulations (change from declining-balance method to straight-line method), § 1.167(e)–1(c) (certain changes for § 1245 property), or § 1.167(e)–1(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 § 1.446–1(e)(2)(ii)(*d*)(*5*)(*iv*).

(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 (pooling) 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, as modified by Rev. Proc. 2007–16, 2007–4 I.R.B. 358. 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. 2007–16, 2007–4 I.R.B. 358, for an item of depreciable or amortizable property that has been disposed of by the taxpayer. Section 3 of Rev. Proc. 2007–16 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(4) of this APPENDIX) or any prior taxable year.

(2) *Scope*.

(a) *Applicability*. Except as provided in section 2.05(2)(b) of this APPENDIX, section 2.05 of this APPENDIX 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 §§ 167, 168, 197, 1400I, or 1400L(c), to former § 168, or to any additional first year depreciation deduction provision of the Internal Revenue Code (for example, § 168(k), § 1400L(b), or § 1400N(d)):

(i) that has been disposed of by the taxpayer during the year of change (as defined in section 2.05(4) of this APPENDIX); and

(ii) 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 2.05(4) of this APPENDIX) or any prior taxable year.

(b) *Inapplicability*. Section 2.05 of this APPENDIX does not apply to:

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

(ii) 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));

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

(iv) any property disposed of by the taxpayer in a transaction to which a nonrecognition section of the Code applies (for example, § 1031, transactions subject to § 168(i)(7)(B)(i)). However, this section 2.05(2)(b)(iv) does not apply to property disposed of by the taxpayer in a § 1031 or § 1033 transaction if the taxpayer elects under § 1.168(i)–6T(i) and (j) to treat the entire basis (that is, both the exchanged and excess basis (as defined in § 1.168(i)–6T(b)(7) and (8), respectively)) of the replacement MACRS property (as defined in § 1.168(i)–6T(b)(1)) as property placed in service by the taxpayer at the time of replacement and treat the adjusted depreciable basis of the relinquished MACRS property (as defined in § 1.168(i)–6T(b)(2)) as being disposed of by the taxpayer at the time of disposition.

(3) *Manner of making the change*.

(a) *Change made on an original return for year of change*. This change may be made on a taxpayer's timely filed (including extensions) original federal tax return for the year of change (as defined in section 2.05(4) of this APPENDIX), provided the taxpayer files the original Form 3115 in accordance with section 6.02(3) of this revenue procedure.

(b) *Change made on an amended return for year of change*. This change may also be made on an amended federal tax return for the year of change (as defined in section 2.05(4) of this APPENDIX), provided:

(i) 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(4) 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

(ii) the taxpayer's amended federal tax return for the year of change (as defined in section 2.05(4) 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.

(4) *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.

(5) *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.

(6) *Filing requirements*. Notwithstanding section 6.02(3)(a) of this revenue procedure, a taxpayer making this change in accordance with section 2.05(3)(b) of this APPENDIX 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. If a taxpayer is making this change in accordance with section 2.05(3)(a) of this APPENDIX, the filing requirements in section 6.02(3)(a) of this revenue procedure apply.

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

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26 CFR 601.202: Closing agreements.
(Also Part I, §§ 446, 482, 7121; 1.446–1, 301.7121–1.)

Rev. Proc. 2007–17

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SECTION 1. PURPOSE

.01 This revenue procedure permits a taxpayer under the jurisdiction of the Large and Mid-Size Business Division to request that the Service examine specific issues relating to tax returns before those returns are filed. This revenue procedure supersedes Rev. Proc. 2005–12, 2005–1 C.B. 311. This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the program. If the taxpayer and the Service are able to resolve the examined issues before the returns that they affect are filed, this revenue procedure authorizes the taxpayer and the Service to memorialize their agreement by executing an LMSB Pre-Filing Agreement (PFA).

.02 This revenue procedure outlines the procedures for resolving issues through pre-filing examinations. Taxpayers and the Service often resolve issues more effectively and efficiently through a pre-filing examination than a post-filing examination, because the taxpayer and the Service have more timely access to the records and personnel that are relevant to the issues. A pre-filing examination also provides the taxpayer with certainty regarding the examined issue at an earlier point in time than a post-filing examination. These procedures benefit both taxpayers and the Service by improving the quality of tax compliance while reducing costs, burdens, and delays. Unlike letter rulings and other forms of written advice provided by the Offices of the Associates Chief Counsel (see Rev. Proc. 2006–1, 2006–1 I.R.B. 1), a PFA does not determine the tax treatment of prospective or future transactions or events, but only of completed transactions or events whose tax treatment has not yet been reported on a return.

SECTION 2. BACKGROUND

.01 In Rev. Proc. 2001–22, 2001–1 C.B. 745, the Service provided procedures for LMSB taxpayers to request an examination and resolve specific issues relating to returns that were neither due (taking into account any extensions of time to file) nor filed.

.02 Because Rev. Proc. 2001–22 limited the eligible years for the PFA program to current or prior taxable years for which returns were neither due nor filed, taxpayers and the Service could not resolve issues for multiple future taxable years or issues regarding appropriate methodologies for determining tax consequences that would affect future taxable years.

.03 In Rev. Proc. 2005–12, the Service expanded the scope of the PFA program by allowing taxpayers and the Service to address certain issues over a limited number of future taxable years. In addition, the Service revised the domestic and international issues eligible for the PFA program. Section 12 of Rev. Proc. 2005–12 provided that that revenue procedure would remain in effect until December 31, 2006, unless sooner revoked, modified, or superseded.

.04 The Service has determined to renew the PFA program as described in Rev. Proc. 2005–12 with minimal changes. This revenue procedure largely continues the existing PFA program, clarifying procedures for processing a PFA request and updating the user fee requirements for a PFA. The objective of the PFA program remains to resolve, before returns are filed, issues that are likely to be disputed in post-filing audits.

SECTION 3. SCOPE

.01 *Eligible taxpayers*. This revenue procedure applies to taxpayers under the jurisdiction of LMSB that desire to resolve through a PFA issues that otherwise may be the subject of a post-filing examination.

.02 *Eligible taxable years*.

(1) *Current, past, and future taxable years*. An eligible taxpayer may request a PFA for the current taxable year, any prior taxable year for which the original return is not yet due (taking into account any extensions of time to file) and is not yet filed and, except in the case of a PFA provided under section 3.09(2), for a limited number of future taxable years.

(2) *Agreements for future taxable years*. Agreements for future taxable years are limited to four taxable years beyond the current taxable year.

.03 *Eligible issues generally*.

(1) *Factual issues and well-established law*. The Service will consider entering into a PFA on any issue that requires either a determination of facts or the application of well-established legal principles to known facts.

(2) *Issues that involve a methodology*. The Service also will, in general, consider entering into a PFA regarding a methodology used by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit.

(3) *Issues under the jurisdiction of other Service divisions*. The Service will consider entering into a PFA on an issue under the jurisdiction of an operating division of the Service other than LMSB, but only with the concurrence of that operating division.

.04 *Relationship of eligible issues to eligible taxable years*. An issue also must relate to an eligible taxable year or years in order to be an eligible issue.

.05 *Eligible domestic and eligible international issues require coordination and consultation with Associate Chief Counsel*. There is no list of eligible domestic and international issues. Any domestic or international issue that requires either a determination of facts or application of well-established legal principles to known facts and that is not excluded under section 3.08 or section 3.09 of this revenue procedure is *likely* suitable for a PFA.

The Service may, in its sole discretion, refuse to address an issue in a PFA based on considerations of sound tax administration. Before any decision is made to proceed with the taxpayer's request for a PFA, the Service must coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA. As part of this coordination and consultation, the Associate Chief Counsel may consider whether the issue is more appropriately resolved by a letter ruling or other form of written advice from the Offices of the Associates Chief Counsel, as described in Rev. Proc. 2006–1, 2006–1 I.R.B. 1, or its successors, and whether the issue is currently one with respect to which the Service will never, or will not ordinarily, issue a letter ruling. See Rev. Proc. 2006–3, 2006–1 I.R.B. 122, Rev. Proc. 2006–7, 2006–1 I.R.B. 242, and their successors.

.06 *Eligible international issues requiring Associate Chief Counsel (International) concurrence in execution*. This subsection lists specific international issues that are *likely* suitable for a PFA, but also require that the Associate Chief Counsel (International) concur with the acceptance of the issue into the PFA Program and execution of the PFA. Even though an issue in a particular case appears on this list, the Service may, in its sole discretion, refuse to address that issue based on considerations of sound tax administration. The eligible issues are:

(1) whether a unit of the taxpayer's trade or business is a qualified business unit within the meaning of section 989(a) and the regulations promulgated under that section;

(2) whether the taxpayer is engaged in a trade or business within the United States (excluding questions under section 864(b)(2));

(3) the amount of gross income that is effectively connected with the conduct by the taxpayer of a trade or business within the United States;

(4) factual determinations concerning the extent to which, under section 882(c), deductions are connected with income that is effectively connected with the taxpayer's conduct of a trade or business within the United States; and

(5) whether the taxpayer has a permanent establishment in the United States for purposes of a bilateral income tax convention to which the United States is a party and, if so, what profits are attributable to that permanent establishment.

.07 *Special provisions for requests on international issues*. The provisions of this section apply, in addition to the generally applicable provisions of this revenue procedure, to any request for a PFA on an issue having international implications.

(1) A PFA and any factual information contained in the background files is subject to exchange of information under income tax treaties or tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality, and the protection of trade secrets). In cases where the exchange of information would be discretionary, information may be exchanged to the extent consistent with sound tax administration and the practices of the relevant foreign competent authority.

(2) To minimize taxpayer and governmental uncertainty and administrative cost, taxpayers who seek a PFA on an

international issue are encouraged to seek competent authority consideration under the mutual agreement procedure of any applicable United States income tax convention. This consideration will be given after the PFA is concluded, and the PFA may be modified to reflect the outcome of the mutual agreement procedure.

(3) A taxpayer may request a PFA for an international issue that is the subject of a previously submitted request for competent authority assistance. The consideration of this competent authority request will not be suspended during the PFA process. If the taxpayer requests a PFA and the previously submitted request for competent authority assistance is ongoing, if appropriate, the taxpayer also should make a request for the Accelerated Competent Authority Procedure of Rev. Proc. 2002–52, 2002–2 C.B. 242.

.08 *Excluded issues*. The Service will not enter into a PFA on the following types of issues:

(1) Transfer pricing issues. *See* Rev. Proc. 2004–40, 2004–2 C.B. 50 (Advance Pricing Agreement program);

(2) Except as provided in section 3.09(2) of this revenue procedure, issues involving a change in accounting method. *See* Treas. Reg. § 1.446–1(e). This includes issues that are or have been the subject of a request by or with respect to the taxpayer for consent to change a method of accounting under procedures such as Rev. Proc. 97–27, 1997–1 C.B. 680 (as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432), or its predecessor or successor, or of an application filed under automatic consent procedures such as Rev. Proc. 2002–9, 2002–1 C.B. 327 (as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, as modified and amplified by Rev. Proc. 2002–19, and as amplified, clarified, and modified by Rev. Proc. 2002–54), or its predecessor or successor. This also includes issues for which a change in accounting method is necessary to resolve the issue. A taxpayer must obtain consent to make an accounting method change by using applicable administrative procedures. See generally Rev. Proc. 97–27 and Rev. Proc. 2002–9, or their successors;

(3) Issues involving the annual accounting period. See Treas. Reg. § 1.442–1. This includes issues that are or have been the subject of a request by or with respect to the taxpayer for permission to adopt, change, or retain an annual accounting period under procedures such as Rev. Proc. 2002–39, 2002–1 C.B. 1046, (as clarified and modified by Notice 2002–72, 2002–2 C.B. 843, and as modified by Rev. Proc. 2003–34, 2003–1 C.B. 856), or an application filed under automatic procedures such as Rev. Proc. 2002–37, 2002–1 C.B. 1030, and Rev. Proc. 2002–38, 2002–1 C.B. 1037, or their predecessors or successors. This also includes issues for which a ruling regarding an annual accounting period is necessary to resolve the issue;

(4) Issues of reasonable cause, due diligence, good faith, clear and convincing evidence, or any other similar standard under Subtitle F (Procedure and Administration) of the Internal Revenue Code;

(5) Issues involving the applicability of any penalty or criminal sanction;

(6) Issues that are, or will be, the subject of a pending or proposed request for a determination letter, technical advice memorandum, or letter ruling issued to or regarding the taxpayer;

(7) Issues for which the taxpayer proposes a resolution that is contrary to a private letter ruling, determination letter, technical advice memorandum, or closing agreement previously issued to or regarding the taxpayer;

(8) Issues for which the taxpayer proposes a resolution that is contrary to a position proposed by the Service in response to a request for a private letter ruling or determination letter that was withdrawn by the taxpayer;

(9) Issues that are the subject of pending litigation between the Service and the taxpayer for an earlier taxable year;

(10) Issues designated for litigation for an earlier taxable year of the taxpayer by the Office of Chief Counsel;

(11) Issues that involve a tax shelter described in section 6662(d)(2)(C)(ii);

(12) Issues that require the Service to determine whether the taxpayer, rather than another entity, is the common law employer; and

(13) Issues relating to transactions that have not yet occurred, regardless of whether the issue otherwise would qualify as one on which the Service will issue letter rulings or other forms of written guidance as described in Rev. Proc. 2006–1, 2006–1 I.R.B. 1, and successor revenue procedures.

.09 *Methods of accounting*.

(1) Except as provided in section 3.09(2) of this revenue procedure, the Service will not enter into a PFA for issues relating to a change in method of accounting. In applying the law to the facts, or establishing the facts, a change in the overall plan of accounting for gross income or deductions from the treatment of such items in prior taxable years, or a change in the treatment of any item that involves the proper time for the inclusion of an item or the taking of an item as a deduction from the treatment of such item in prior taxable years generally may be a change in method of accounting. A PFA may not be used to change a taxpayer's method of accounting.

(2) If the Service has issued a letter ruling granting consent to a change in method of accounting under Rev. Proc. 97–27, or its successor, a taxpayer may request and the Service may enter into a PFA with respect to the approved change in method of accounting. In such case, a PFA may include determinations described in section 11 of Rev. Proc. 97–27 or a similar provision of its successor. Thus, for example, a taxpayer may request and the Service may enter into a PFA with respect to the amount of the section 481(a) adjustment and the implementation of the change in method of accounting in accordance with the terms and conditions of the consent agreement and Rev. Proc. 97–27. A PFA under this provision may only apply to the taxable year of change and may not apply to any other taxable years, except that a determination of the amount of the section 481(a) adjustment under section 11.01(2) of Rev. Proc. 97–27, or a successor, shall apply to any other taxable year for which such amount is taken into account (*i.e.*, any spread period). A PFA under this provision may not be entered into with respect to a change in method of accounting requested pursuant to automatic consent procedures, such as Rev. Proc. 2002–9.

.10 *Definition of taxpayer*. For purposes of section 3 of this revenue procedure, any reference to the taxpayer also includes a related taxpayer and any predecessor of the taxpayer or a related taxpayer.

A related taxpayer is one related within the meaning of section 267 or a member of an affiliated group within the meaning of section 1504 that includes the taxpayer. A predecessor is an entity for whose tax liability the taxpayer or a related taxpayer is or was primarily or secondarily liable.

SECTION 4. REQUESTING A PRE-FILING AGREEMENT

.01 *Required information*. A request for a PFA must contain the following information:

(1) Names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties;

(2) The name, title, address and telephone number of a person to contact. If the person to contact is an authorized representative of the taxpayer, a properly executed Form 2848, *Power of Attorney and Declaration of Representative*, must accompany the request;

(3) The annual accounting period and the overall method of accounting (for example, cash receipts and disbursements or accrual) for maintaining the accounting books and filing the federal income tax returns of all interested parties;

(4) The location of the taxpayer's tax staff and records;

(5) A brief description of the taxpayer's business operations, including the principal business activity code used by the taxpayer on its last filed return;

(6) The taxable year(s) for which the PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that year (or for the first of those taxable years), and, if earlier, the date on which the taxpayer intends to file that return; and

(7) The dollar amount of assets reflected on the most recently filed return.

.02 *Specific descriptions of issues*. A request for a PFA should also contain a separate written statement for each proposed issue that concisely:

(1) Describes the issue;

(2) Summarizes all the facts that are relevant and material to the issue and, in the case of agreements for future taxable years, any related factual assumptions that may be appropriate (see section 7.02(2), below);

(3) States whether the issue involves an item or transaction in which two or more persons may take contrary positions (a "whipsaw" issue);

(4) Summarizes all relevant legal authorities, including citations to specific sections of the Internal Revenue Code, Income Tax Regulations, case law, tax treaties, and other authorities, and discusses why the issue is an eligible issue, as defined in section 3 of this revenue procedure;

(5) Summarizes and discusses the implications of any known authorities that may be potentially contrary to the position advanced, such as legislation (or pending legislation), court decisions, regulations, revenue rulings, revenue procedures, notices (including notices of proposed rulemaking), or announcements;

(6) Discusses whether and how the PFA will affect taxable years before or after the taxable year for which the PFA is sought;

(7) Describes any proposed methodology to be used;

(8) Discusses whether the issue qualifies for mutual agreement procedure consideration under any United States income tax treaty, specifies the treaty, and states whether the taxpayer previously applied or will apply for competent authority assistance with respect to the issue for the year or years in question or any prior year;

(9) States whether the taxpayer has, for the current taxable year or any prior taxable year, requested a private letter ruling (including a request for consent to a change in method of accounting or a request to adopt, change, or retain an annual accounting period), determination letter, or technical advice on the issue;

(10) Discusses whether the issue can reasonably be resolved by the earliest date on which the taxpayer intends to file any relevant return; and

(11) Describes the availability, organization, and location of the records and other information that substantiate the taxpayer's proposed position on the issue.

.03 *Perjury statement*. A request for a PFA, and any supplemental submissions (including additional documents), must include a declaration, signed by a person currently authorized to sign the taxpayer's federal income tax return, in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request for the Pre-Filing Agreement are true, correct, and complete.

.04 *Agreement regarding examination or inspection of records*. The request for a PFA also must contain a statement by the taxpayer in the following form:

> The taxpayer agrees that the review of records and information under the PFA procedures does not constitute an inspection within the meaning of section 7605(b) and will not preclude or impede (under section 7605(b) or any administrative provisions adopted by the Service) the Service from later examining any return or inspecting any records. The taxpayer further agrees that procedural restrictions, such as providing notice under section 7605(b), do not apply to actions taken under the PFA procedures.

.05 *Signature*. The request for a PFA must be signed by the taxpayer or a representative properly authorized by the taxpayer in an accompanying Form 2848, *Power of Attorney and Declaration of Representative*.

.06 *Where to submit request*. (1) In the case of a taxpayer whose return for any taxable year is currently under examination by LMSB, a request for a PFA should be submitted to the LMSB Team Manager in charge of the examination; or

(2) In the case of a taxpayer who has no returns under examination for any taxable year, a request for a PFA should be sent by any of the following methods:

(a) mail to the following address:

Internal Revenue Service
Attn: LMSB:PFT:PFS
PFA Program Manager
Mint Building
1111 Constitution Avenue, NW
Washington, DC 20224;

(b) facsimile transmission to the attention of the PFA Program Manager at (202) 283–8406 (not a toll-free call); or

(c) electronic transmission to *pfa.info@irs.gov*.

SECTION 5. SELECTING TAXPAYERS FOR THE PFA PROGRAM

.01 *Jurisdiction of LMSB Industry Director and coordination and consultation with the Associate Chief Counsel*. The

LMSB Industry Director having jurisdiction over the taxpayer, after coordination and consultation with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA, will decide whether to accept the taxpayer's request for a PFA. (For purposes of this revenue procedure, the term "LMSB Industry Director" includes a duly authorized designee of an LMSB Industry Director.) The decision regarding the acceptance of any PFA involving an international issue also will require the concurrence of the Deputy Commissioner, International (LMSB). In general, the Associate Chief Counsel will respond within 10 business days to a request for coordination and consultation to proceed with the PFA.

.02 *Criteria for selection*. The criteria for selecting taxpayers to participate in the PFA program include, but are not limited to:

(1) Whether the specific issue presented by the taxpayer's facts is an eligible issue under section 3 of this revenue procedure and is otherwise suitable for the PFA program;

(2) The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;

(3) Whether Service resources are available;

(4) Whether the taxpayer is willing and able to dedicate sufficient resources to the PFA process;

(5) Whether the PFA is likely to result in two or more persons taking contrary positions on an item or transaction (a "whipsaw" issue);

(6) The time remaining until the due date and expected filing date, if earlier than the due date, of the earliest return to which the PFA relates; and

(7) The overall probability of completing the process and entering into a PFA by the proposed date for filing the earliest return to which the PFA relates.

Early submission of a request will facilitate completion of a PFA before any associated returns become due. As a result, early requests are more likely to be selected for the PFA program and the Service urges taxpayers to submit PFA requests as early as possible.

.03 *Notification*. A representative of LMSB will contact the taxpayer within 15 business days of actual receipt of the taxpayer's request for a PFA to acknowledge that the Service has received the request. After a PFA request is received, a representative of LMSB will inform the taxpayer in writing whether the request has been selected for the PFA program and the issues the Service will consider.

.04 *Requests not accepted*. A taxpayer may not appeal the Service's decision not to accept a request for a PFA. A taxpayer not selected for the PFA program remains eligible for other early issue resolution procedures, including the Accelerated Issue Resolution (AIR) program (see Rev. Proc. 94–67, 1994–2 C.B. 800).

SECTION 6. PROCESSING A REQUEST FOR A PFA

.01 *Planning*. If the Service accepts the taxpayer's request for a PFA, a representative of LMSB will contact the taxpayer and schedule an orientation meeting with the taxpayer and examination personnel to discuss the PFA process and explain the roles and responsibilities of each participant. Immediately after the orientation meeting, the taxpayer and the Service should meet to formulate a plan and timeline that will result in a thorough development of the facts and a successful resolution of the issues before any associated returns are due. During the planning phase and throughout the PFA process, the taxpayer must provide information requested by the Service and assist the Service in the timely and efficient resolution of the examined issues. If, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the request for a PFA significantly change or, in the case of proposed agreements for future taxable years, any factual assumptions that may be appropriate significantly change, the taxpayer must promptly inform the Service through the examination team assigned to the PFA.

.02 *Continuing coordination*. After a request for a PFA has been accepted, the LMSB Industry Director having jurisdiction over the PFA request will, through the examination team and local counsel assigned to the PFA, coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over the issue proposed to be determined by the PFA to ensure that that issue remains suitable for a PFA. The LMSB Industry Director will, through the examination team and local counsel assigned to the PFA, inform the Associate Chief Counsel if, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the issue significantly change or, in the case of agreements for future taxable years, any factual assumptions that may be appropriate significantly change.

.03 *Drafting*. After the development of the facts and issues, the Team Manager will meet informally with the taxpayer to determine whether the parties agree on a PFA. If the parties reach agreement, the taxpayer will work with the Service to prepare the initial draft of the PFA. The PFA will be prepared by the taxpayer and the audit team with assistance, as necessary, from the PFA Program Manager, the Office of Chief Counsel, or other Service personnel. Except as provided in section 3.06, the Associate Chief Counsel having subject matter jurisdiction over the issue in the PFA need not execute or give final approval to the proposed PFA; however, upon execution of the PFA, the PFA Program Manager will immediately forward a copy of the PFA to the office of that Associate Chief Counsel.

.04 *Return filing requirements*. The Service's acceptance of a taxpayer's request for a PFA does not suspend or waive the normal filing requirements for any tax returns that may be affected by the proposed PFA.

.05 *TEFRA taxpayers*. If the procedures set forth in sections 6221 through 6233 apply to the taxpayer requesting the PFA and the issue determined by the PFA is a partnership item as defined in section 6231, the PFA process will be terminated for that issue if no agreement is reached with all partners by the date that is 30 business days before the due date for the partnership return (taking into account any extensions of time to file that may be in effect).

.06 *Execution prior to filing*. If a PFA is executed before a return is filed, the taxpayer must report the issues determined by the PFA according to the terms and conditions of the PFA. A copy of the PFA must be attached to the return.

.07 *Execution after filing*. If the Service and the taxpayer do not reach agreement on an issue before the taxpayer files an associated return, the Service and the taxpayer may still attempt to resolve the issue and enter into a PFA. If the filed return is inconsistent with the terms and conditions of the contemplated PFA, the taxpayer must agree to file an amended return consistent with those terms and conditions. A post-filing PFA should state whether the taxpayer is required to file an amended return. It should further state that the Service may assess additional tax due, if any, if an amended return is not filed. The taxpayer must attach a copy of the PFA to any amended return.

SECTION 7. NATURE AND EFFECT OF A PFA

.01 *Criteria for issuance*. An authorized Service official may execute a PFA if that official determines that:

(1) Entering into the PFA is consistent with the goals of the PFA program;

(2) The resolution of issues in the PFA reflects well-settled legal principles and correctly applies those principles to the facts established by the examination team;

(3) The issues determined by the PFA are eligible issues under section 3 of this revenue procedure;

(4) Any methodology approved for use by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit has a documented factual basis; and

(5) There is an advantage in having the issues permanently and conclusively resolved for the taxable years covered by the PFA, or the taxpayer shows good and sufficient reasons for desiring a PFA and the United States will suffer no disadvantage if the agreement is executed.

.02 *Form and content*.

(1) A PFA that makes determinations for the current taxable year (and any prior taxable year for which a return is not yet due) is a closing agreement under section 7121. The form and content of this type of PFA must comply with Rev. Proc. 68–16, 1968–1 C.B. 770.

(2) A PFA that makes a determination for one or more future taxable years as well as for the current taxable year (and any prior taxable year for which a return is not yet due) is a non-statutory agreement. Although not a closing agreement under section 7121, this type of PFA is a binding contract between the Service and a taxpayer. It is subject to any legislative enactment that is applicable to the taxable years to which the PFA relates. There is no prescribed format for such an agreement. The parties to a non-statutory agreement may, by mutual consent (and, if applicable, the further mutual agreement between the United States and any treaty partner that has entered into a mutual agreement that is a basis for the PFA), modify or terminate the agreement. A taxpayer who wants to modify or terminate a non-statutory agreement should submit a request to the office that originally processed the taxpayer's request for a PFA. The parties to a non-statutory agreement also may condition its determinations on the continuing validity of certain stated assumptions. A "stated assumption" is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions whose continued existence is material to the determinations of the PFA. A stated assumption might include, for example, a particular mode of conducting business operations. If a stated assumption is no longer valid, a non-statutory agreement conditioned on such stated assumption will terminate as of the first day of the taxable year in which the stated assumption is no longer valid.

(3) A PFA concerning international issues will not be subject to the special limitation of section 7.05, *Effect of Agreements or Judicial Determinations on Competent Authority Proceedings*, of Rev. Proc. 2002–52, 2002–2 C.B. 242, which sets forth the effect of a closing agreement on the procedure for competent authority consideration under the mutual agreement procedure of United States income tax conventions.

.03 *Methods and periods of accounting*.

(1) A PFA does not constitute the consent of the Commissioner under section 446(e) to any change in method of accounting or the approval under section 442 of any adoption, change, or retention of an annual accounting period by the taxpayer.

(2) A PFA does not constitute a final determination regarding the adoption, change, or retention of an annual accounting period by the taxpayer,

(3) A PFA does not constitute a final determination regarding the methods of accounting of the taxpayer for any taxable year, except to the extent authorized by section 3.09(2).

(4) A PFA authorized under section 3.09(2) must include the following agreement:

> Nothing in this agreement precludes the taxpayer from requesting, or the Service from requiring, a change in the taxpayer's method of accounting for years after the year of change.

SECTION 8. WITHDRAWAL

.01 At any time prior to the execution of the PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for a PFA. The withdrawal must be in writing and signed by the party initiating the withdrawal, *i.e.*, the taxpayer or his authorized representative or the Industry Director, Director Field Operations, or the Director Field Specialists.

.02 Notwithstanding the withdrawal by either the taxpayer or the Service of any or all the issues that are the subject of the request for a PFA, the taxpayer's agreement under section 4.04 of this revenue procedure will remain in effect.

SECTION 9. NO PFA EXECUTED

.01 *Post-filing procedures.* If the Service and the taxpayer do not agree upon and execute a PFA that resolves an issue, either before or after the filing of the return to which the PFA relates, and the Service subsequently disagrees with the taxpayer's treatment of the issue on the return, the taxpayer and the Service may continue their efforts to reach an agreement using post-filing procedures, such as the Accelerated Issue Resolution (AIR) procedures under Rev. Proc. 94–67, 1994–2 C.B. 800. This continuation of the process does not require a new application.

.02 *Administrative appeals*. If the Service and the taxpayer are unable to resolve an issue by a PFA or an AIR agreement, the taxpayer may pursue an administrative appeal either by requesting an early referral to Appeals under the procedures set forth in Rev. Proc. 99–28, 1999–2 C.B. 109, or by protesting any proposed deficiency related to the issue.

SECTION 10. USER FEE

.01 *Taxpayers subject to fees*. Taxpayers are subject to a user fee only if they are selected to participate in the PFA program.

.02 *Amount of fee*. The user fee for taxpayers selected to participate in the PFA program is $50,000. A fee will be assessed for each separate and distinct issue. The orientation meeting or the first substantive meeting with the taxpayer to discuss the PFA issues will not take place until after the fee is received.

.03 *Time and method of payment*. Payment of the user fee must be made within 15 business days of notification that the issues have been selected for the PFA program. Payment must be made by check or money order payable to the Internal Revenue Service and submitted to the address indicated in section 4.06 of this revenue procedure.

.04 *Withdrawal*. Notwithstanding the withdrawal by either the taxpayer or the Service of any or all of the issues in the request for a PFA after acceptance of the request, the user fee paid by the taxpayer generally will not be refundable. A refund or waiver of the user fee will not be entertained unless a hardship has occurred (for example, a disaster loss) or if other circumstances beyond the control of the taxpayer exist. The Industry Director has discretion in granting a request for a refund of a user fee based on considerations of sound tax administration.

SECTION 11. DISCLOSURE

PFAs are agreements described in section 6103(b)(2)(D). A PFA and the information generated or received by the Service during the PFA process constitute confidential return information. As required by the Conference Report to H.R. 4577, The Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), H.R. Conf. Rep. No. 1033, 106th Cong., 2d Sess. 1033 (2000), the Service will, consistent with the restrictions of section 6103, continue to publish annual reports summarizing the operation of the PFA program. PFAs are not written determinations under section 6110 and, accordingly, are exempt from disclosure to the public under the Freedom of Information Act.

SECTION 12. EFFECTIVE DATE AND DURATION OF PROCEDURE

This revenue procedure is effective on December 26, 2006. This revenue procedure will remain in effect until December 31, 2008, unless sooner revoked, modified, or superseded. A request for a PFA that has been accepted into the program under section 5 of this revenue procedure will remain subject to the provisions of this revenue procedure, notwithstanding the preceding sentence.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005–12, 2005–1 C.B. 311, is superseded.

SECTION 14. RECORD-KEEPING REQUIREMENTS

.01 No aspect of the PFA process will affect the record-keeping requirements imposed by any section of the Internal Revenue Code.

.02 The taxpayer must maintain a copy of the PFA supporting documents and books of account and records to enable the Service to ensure the taxpayer's compliance with the PFA. These records may be specified in the PFA itself or in separate agreements.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545–1684.

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 OMB control number. The collections of information in this revenue procedure are in sections 4, 6, and 14. The information collected under section 4 is required to provide the Service with the information necessary to determine which taxpayers should be included in the PFA program. The information collected under section 6 will be used to resolve the taxpayer's issue and to support any PFA entered into between the taxpayer and the Service. The record-keeping requirements under section 14 will be used for tax administration. The collections of information under sections 4 and 6 are voluntary. Once a PFA is entered into, the record-keeping requirements under section 14 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or record-keeping burden is 13,134 hours.

The estimated annual burden per respondent varies from 5 hours to 1,092 hours, depending on whether a taxpayer applying to the PFA program is accepted into the program. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are accepted is 1,092 hours. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are not accepted is 5 hours. The estimated number of taxpayers who apply to the PFA program and are accepted is 12. The estimated number of taxpayers who apply to the PFA program and are not accepted is 6. The estimated total number of applicants and/or recordkeepers is 18.

The estimated annual frequency of responses is on occasion.

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

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Stuart Spielman of the Office of Associate Chief Counsel (Procedure & Administration). For further information about this revenue procedure, contact Melanie Perrin, Senior Program Analyst, LMSB Office of Pre-Filing and Technical Guidance, at (202) 283–8408 (voice) (not a toll-free call), (202) 283–8406 (fax) (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2007–3

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on January 22, 2007, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Corporate Responsibility Capital
Partners, Inc.
Washington, DC

HR–57 Center for the Advancement
and Preservation of Jazz and Blues
Washington, DC

National Association of
Credit Counseling, Inc.
Ft. Myers, FL

Personal Credit Assistance, Inc.
Sacramento, CA

TIPRA Amendments to Section 199

Announcement 2007–5

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: On October 19, 2006, on page 61692 of the **Federal Register** (71 FR 61692), a notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–127819–06, 2006–48 I.R.B. 1013) announced that a public hearing concerning the application of section 199, which provides a deduction for income attributable to domestic production activities will be held February 5, 2007 in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The location of the public hearing has changed.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–0392 (not a toll-free number).

LaNita Van Dyke,
Branch Chief,
Publications and Regulations,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 22, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 26, 2006, 71 F.R. 77353)

Treatment of Payments in Lieu of Taxes Under Section 141

Announcement 2007–6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: On October 19, 2006, on page 61693 of the **Federal Register** (71 FR 61693), a notice of proposed rulemaking and notice of public hearing (REG–136806–06, 2006–47 I.R.B. 950) announced that a public hearing concerning applying the private security or payment test for State and local governmental issuers of tax-exempt bonds will be held February 13, 2007 in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The location of the public hearing has changed.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–0392 (not a toll-free number).

LaNita Van Dyke,
Branch Chief,
Publications and Regulations,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 22, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 26, 2006, 71 F.R. 77352)

Exchanges of Property for an Annuity

Announcement 2007–7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: On October 18, 2006, on page 61693 of the **Federal Register** (71 FR 61441), a notice of proposed rulemaking and notice of public hearing (REG–141901–05, 2006–47 I.R.B. 947) announced that a public hearing concerning guidance on the taxation of the exchange of property for an annuity contract will be held February 16, 2007 in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. The location of the public hearing has changed.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–0392 (not a toll-free number).

LaNita Van Dyke,
Branch Chief,
Publications and Regulations,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 26, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 27, 2006, 71 F.R. 77653)

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.
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Z —Corporation.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–27 through 2006–52 is in Internal Revenue Bulletin 2006–52, dated December 26, 2006.

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