

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

T.D. 9362, page 1050.
REG-209020-86, page 1075.

Temporary and proposed regulations under section 905 of the Code provide rules relating to a United States taxpayer's obligation to notify the Internal Revenue Service of a foreign tax re-determination, which is a change in foreign tax liability that may affect the taxpayer's foreign tax credit. These regulations also provide rules under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination.

Notice 2007-93, page 1072.

This notice describes how the amendment to section 6404(g) made by the Small Business and Work Opportunity Act of 2007 applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007.

Rev. Proc. 2007-67, page 1072.

Change in accounting method. This document allows taxpayers, under certain conditions, to request to revise the year of change for a Form 3115, *Application for Change in Accounting Method*, that is pending in the national office. It also modifies the period for taking into account a net positive section 481(a) adjustment when the Commissioner approves the taxpayer's request to revise the year of change. Rev. Proc. 97-27 modified.

Announcement 2007-110, page 1082.

This announcement contains changes in filing procedures for Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically or magnetically. These changes are effective immediately.

EMPLOYEE PLANS

Rev. Rul. 2007-67, page 1047.
Mortality tables; single sum distributions; section 417(e)(3) of the Code. This ruling pertains to the mortality table to be used when calculating a single sum distribution as a result of the amendment of section 417(e)(3) to the Code by the Pension Protection Act. Rev. Rul. 2001-62 modified.

Notice 2007-91, page 1069.
Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in November 2007; the 24-month average segment rates; the funding transitional segment rates applicable for November 2007; and the minimum present value transitional rates for October 2007.

ADMINISTRATIVE

Announcement 2007-110, page 1082.

This announcement contains changes in filing procedures for Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically or magnetically. These changes are effective immediately.

Announcements of Disbarments and Suspensions begin on page 1077.
Finding Lists begin on page ii.
Index for July through November begins on page vi.



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 417.—Definitions and Special Rules for Purposes of Minimum Survivor Annuity Requirements

26 CFR 1.417(e)-1: Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

Mortality tables; single sum distributions; section 417(e)(3) of the Code. This ruling pertains to the mortality table to be used when calculating a single sum distribution as a result of the amendment of section 417(e)(3) to the Code by the Pension Protection Act. Rev. Rul. 2001-62 modified.

Rev. Rul. 2007-67

ISSUES

1. Do the timing rules for the determination of the applicable interest rate under §§ 1.417(e)-1(d)(4) and 1.417(e)-1(d)(10)(ii) of the Income Tax Regulations continue to apply for distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008?

2. What mortality table is the applicable mortality table under § 417(e)(3)(B) of the Internal Revenue Code (“Code”) for distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008?

3. Does an amendment that implements the new interest rates and mortality table under § 417(e)(3) violate the requirements of § 411(d)(6)?

LAW AND ANALYSIS

Section 417(e)(3) provides rules for the determination of the present value of plan benefits for purposes of § 417(e). Section 417(e)(3)(A) generally provides that for purposes of § 417(e)(1) and (e)(2), the present value is not permitted to be less than the present value calculated by using the applicable mortality table and the applicable interest rate as defined in § 417(e)(3)(B) and (C) respectively. In addition, § 411(a)(11)(B) provides that the determination of present value for

purposes of § 411(a)(11)(A) is calculated in accordance with § 417(e)(3). Sections 203(e)(1), 203(e)(2), and 205(g)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) provide corresponding provisions to §§ 411(a)(11)(A), 411(a)(11)(B), and 417(e)(3) of the Code.

Section 1.417(e)-1(d)(1) provides that a defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to §§ 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in § 1.417(e)-1(d)(3) (determined for the month described in § 1.417(e)-1(d)(4)) and the applicable mortality table described in § 1.417(e)-1(d)(2). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the rules described in the preceding sentence. Under § 1.417(e)-1(d)(1), these rules must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required. Section 1.417(e)-1(d)(6) sets forth exceptions from the otherwise applicable minimum present value requirements of § 1.417(e)-1(d)(1). In addition, § 411(a)(13)(A) provides an exception for certain applicable defined benefit plans described in § 411(a)(13)(C).

The U.S. Supreme Court, in *Arizona v. Norris*, 463 U.S. 1073, 1084-1086 (1983), held that the application of sex-distinct actuarial tables to employees based upon their gender in calculating the amount of retirement benefits violates Title VII of the Civil Rights Act of 1964.

For plan years beginning prior to January 1, 2008, § 417(e)(3)(A)(ii)(II) defines the term “applicable interest rate” as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(4) generally provides that a plan must provide for the applicable interest rate to be held constant for a stability period of one calendar month, one plan quarter, one calendar quarter, one

plan year, or one calendar year, and that the applicable interest rate for each stability period is the annual rate of interest on 30-year Treasury constant maturities for a specified lookback month that is the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

For plan years beginning prior to January 1, 2008, § 417(e)(3)(A)(ii)(I) defines the term “applicable mortality table” as the mortality table prescribed by the Secretary and provides that such table shall be based on the prevailing commissioners’ standard table (described in § 807(d)(5)(A)) used to determine group reserves for group annuity contracts issued on the date as of which the present value is determined. Rev. Rul. 2001-62, 2001-2 C.B. 632, provided the applicable mortality table for plan years beginning prior to January 1, 2008, for distributions with annuity starting dates on or after December 31, 2002. Rev. Rul. 2001-62 also permitted a plan to specify any earlier date in 2002 for the required use of the mortality table set forth in that revenue ruling. Rev. Rul. 95-6, 1995-1 C.B. 80, provided the applicable mortality table for distributions with annuity starting dates prior to the application of Rev. Rul. 2001-62.

For plan years beginning on or after January 1, 2008, section 302 of the Pension Protection Act of 2006, Public Law 109-280 (PPA ’06), changed the present value determination under § 417(e)(3) of the Code. For such plan years, § 417(e)(3)(C) defines the term “applicable interest rate” as the adjusted first, second, and third segment rates applied under rules similar to the rules of § 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe. For this purpose, the adjusted first, second, and third segment rates are determined without regard to the 24-month averaging provided under § 430(h)(2)(D)(i), and § 417(e)(3)(D)(ii) provides a transition rule that phases in the use of the segment rates over five years.

In addition, for plan years beginning on or after January 1, 2008, § 417(e)(3)(B) defines the term “applicable mortality table”

as a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of § 430(h)(3) (without regard to subparagraph (C) or (D) of such section). In contrast to the phase in of the use of the segment rates with regard to the applicable interest rate, there is no transition rule with regard to the applicable mortality table. In addition, PPA '06 left unchanged the mortality table which generally must be used for the purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C), or (D).

Notice 2007-81, 2007-44 I.R.B. 899, specifies how the adjusted segment rates that are used to determine minimum present values pursuant to § 417(e)(3) are determined, and specifies those rates for August 2007.

Section § 1.430(h)(3)-1 of the proposed Income Tax Regulations (72 FR 29456) proposes rules for the mortality tables to be used in determining present value or making any computation under § 430. The proposed regulation provides for separate mortality tables for male and females and for annuitants and nonannuitants. The proposed regulation also provides an option for smaller plans to use male and female blended static tables for all participants — in lieu of separate tables for annuitants and nonannuitants. Under the proposed regulation, expected improvements in mortality would be taken into account through the use of static tables that are updated annually, or through the use of generational tables. The proposed regulation provides the static mortality tables that are to be used with respect to valuation dates occurring during 2008. The static mortality tables that are to be used with respect to valuation dates occurring in later years are to be published in the Internal Revenue Bulletin.

Section 411(d)(6)(A) generally prohibits a plan amendment that decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that an amendment that eliminates an optional form of benefit is treated as reducing a participant's accrued benefit, but permits the Secretary of the Treasury to provide for the elimination of certain optional forms of benefits under regulations. Section 1.411(d)-3(a)(1) provides that under § 411(d)(6)(A), a plan is not a qualified plan (and a trust forming

part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided under § 412(c)(8)¹ of the Code, section 4281 of the ERISA, or other applicable law.

Under section 1107 of PPA '06, a plan sponsor is permitted to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of governmental plans). This amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. If section 1107 of PPA '06 applies to an amendment of a plan, the plan does not fail to satisfy the requirements of § 411(d)(6) of the Code by reason of the amendment except as provided by the Secretary of the Treasury.

HOLDING

Issue 1

Pursuant to this revenue ruling, the rules of §§ 1.417(e)-1(d)(4) and 1.417(e)-1(d)(10)(ii) regarding the time for determining the applicable interest rate continue to apply for plan years beginning on or after January 1, 2008, without regard to the change in the basis for determining the applicable interest rate. If the first day of the first plan year beginning on or after January 1, 2008, does not coincide with the first day of a stability period for a plan, the applicable interest rate for distributions with annuity starting dates during the stability period that contains the first day of the plan year will change during that period. For distributions with annuity starting dates within that period that are before the effective date of the PPA '06 statutory change, the applicable interest rate is determined without regard to the statutory change, and for distributions with annuity starting dates within that period that are on or after the effective date of the statutory change, the applicable interest rate is determined reflecting the statutory change.

Issue 2

The § 417(e)(3) applicable mortality table for 2008 is published in the Appendix to this revenue ruling (the "2008 Applicable Mortality Table"). This mortality table is based upon a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates published in § 1.430(h)(3)-1 of the proposed regulations for valuation dates occurring in 2008. The table shows, for each age, the number living based upon a starting population of one million lives at age 1 (l_x), and the annual rate of mortality (q_x).

The § 417(e)(3) applicable mortality table for each subsequent year will be published in the future (the "Subsequent Applicable Mortality Tables"). Except as otherwise stated in future guidance, the applicable mortality table for each subsequent year will be determined from the § 430(h)(3)(A) mortality tables on the same basis as the applicable mortality table for 2008.

In general, the applicable mortality table for a year applies to distributions with annuity starting dates that occur during stability periods that begin during the calendar year to which the applicable mortality table applies. However, pursuant to the effective date rules of PPA '06, the 2008 Applicable Mortality Table does not apply before the first day of the first plan year beginning in 2008. Thus, for example, in the case of a plan with a September 1 to August 31 plan year, and a calendar year stability period, the 2008 Applicable Mortality Table (as well as the applicable interest rates that are based on the § 430(h)(2)(C) segment rates) would not apply to distributions with annuity starting dates prior to September 1, 2008, but would apply to distributions with annuity starting dates beginning on or after September 1, 2008.

A reference in a plan to the applicable § 417(e)(3) mortality table will, as of a particular date, be treated as a reference to the table that applies to distributions with annuity starting dates (other than a retroactive annuity starting date) on that date. Such a reference will mean the 2008 Applicable Mortality Table for annuity starting dates to which that mortality table applies, and each Subsequent Applica-

¹ Changed to § 412(d)(2) by amendments made by PPA '06.

ble Mortality Table for annuity starting dates to which the Subsequent Applicable Mortality Table applies. Such a reference would not have to be amended each year to reflect changes in the applicable mortality table. By contrast, a plan provision that specifically refers to an annual applicable mortality table (such as the 2008 Applicable Mortality Table) would have to be amended each year to reflect Subsequent Applicable Mortality Tables, and such amendments would have to satisfy § 411(d)(6).

Issue 3

Pursuant to section 1107 of PPA '06, an amendment to determine the applicable interest rate under the § 417(e)(3) rules in effect for plan years beginning on or after January 1, 2008, will not violate § 411(d)(6) of the Code or the corresponding provision of ERISA solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the modified segment rates for the 30-year Treasury rate for the same period. However, if the amendment changes the time for determining the interest rate, the requirements of § 1.417(e)-1(d)(10)(ii) must be satisfied. In addition, if the cause of the reduction is an amendment to substitute the modified segment rates for a rate that is not the 30-year Treasury rate, the amendment must satisfy § 411(d)(6).

Pursuant to section 1107 of PPA '06, a plan amendment to incorporate by reference the applicable mortality table under § 417(e)(3) that is prescribed by this revenue ruling and by subsequent guidance issued by the Commissioner will not violate § 411(d)(6) of the Code or the corresponding provision of ERISA solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the applicable § 417(e)(3) mortality table for the prior applicable mortality table under § 417(e)(3).

EFFECTIVE DATE

This revenue ruling is effective for plan years that begin on or after January 1, 2008.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2001-62 is modified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lawrence Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. However, other personnel from the Service and the Treasury Department participated in preparing this revenue ruling. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Isaacs may be e-mailed at RetirementPlanQuestions@irs.gov.

APPENDIX

2008 Applicable Mortality Table

Age	l_x	q_x
1	1,000,000.00	0.000380
2	999,620.00	0.000252
3	999,368.10	0.000200
4	999,168.23	0.000153
5	999,015.36	0.000139
6	998,876.50	0.000132
7	998,744.65	0.000126
8	998,618.81	0.000114
9	998,504.97	0.000110
10	998,395.13	0.000111
11	998,284.31	0.000114
12	998,170.51	0.000118
13	998,052.73	0.000124
14	997,928.97	0.000135
15	997,794.25	0.000145
16	997,649.57	0.000154
17	997,495.93	0.000164
18	997,332.34	0.000170
19	997,162.79	0.000174
20	996,989.28	0.000177
21	996,812.81	0.000182
22	996,631.39	0.000189
23	996,443.03	0.000200
24	996,243.74	0.000210
25	996,034.53	0.000224
26	995,811.42	0.000246
27	995,566.45	0.000255
28	995,312.58	0.000264
29	995,049.82	0.000278

Age	l_x	q_x
30	994,773.20	0.000303
31	994,471.78	0.000350
32	994,123.71	0.000396
33	993,730.04	0.000441
34	993,291.81	0.000486
35	992,809.07	0.000529
36	992,283.87	0.000569
37	991,719.26	0.000608
38	991,116.29	0.000636
39	990,485.94	0.000664
40	989,828.26	0.000698
41	989,137.36	0.000738
42	988,407.38	0.000784
43	987,632.47	0.000836
44	986,806.81	0.000897
45	985,921.64	0.000954
46	984,981.07	0.001010
47	983,986.24	0.001072
48	982,931.41	0.001150
49	981,801.04	0.001237
50	980,586.55	0.001347
51	979,265.70	0.001449
52	977,846.74	0.001597
53	976,285.12	0.001793
54	974,534.64	0.002020
55	972,566.08	0.002378
56	970,253.32	0.002853
57	967,485.19	0.003279
58	964,312.81	0.003746
59	960,700.49	0.004251
60	956,616.55	0.004856
61	951,971.22	0.005634
62	946,607.81	0.006471
63	940,482.31	0.007518
64	933,411.76	0.008493
65	925,484.29	0.009602
66	916,597.79	0.010968
67	906,544.55	0.012222
68	895,464.76	0.013448
69	883,422.55	0.014889
70	870,269.27	0.016329
71	856,058.64	0.017998
72	840,651.30	0.020050
73	823,796.24	0.022220
74	805,491.49	0.024781
75	785,530.61	0.027627
76	763,828.76	0.030695
77	740,383.04	0.034561
78	714,794.66	0.038635
79	687,178.57	0.043206
80	657,488.33	0.048326
81	625,714.55	0.054304
82	591,735.75	0.061007
83	555,635.73	0.067895
84	517,910.84	0.076183
85	478,454.84	0.085221
86	437,680.44	0.095318
87	395,961.62	0.107508
88	353,392.58	0.120363
89	310,857.19	0.134135
90	269,160.36	0.149293
91	228,976.60	0.163173

Age	l_x	q_x
92	191,613.80	0.178866
93	157,340.61	0.194378
94	126,757.06	0.208519
95	100,325.80	0.224167
96	77,836.07	0.237405
97	59,357.40	0.251508
98	44,428.54	0.265606
99	32,628.05	0.276614
100	23,602.67	0.286677
101	16,836.33	0.301731
102	11,756.29	0.313092
103	8,075.49	0.324542
104	5,454.65	0.335529
105	3,624.46	0.345501
106	2,372.21	0.353906
107	1,532.67	0.361363
108	978.82	0.368721
109	617.91	0.375772
110	385.72	0.382309
111	238.26	0.388123
112	145.79	0.393008
113	88.49	0.396754
114	53.38	0.399154
115	32.07	0.400000
116	19.24	0.400000
117	11.54	0.400000
118	6.92	0.400000
119	4.15	0.400000
120	2.49	1.000000

Section 446.—General Rule for Methods of Accounting

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

The Service allows taxpayers, under certain conditions, to request to revise the year of change for a Form 3115, *Application for Change in Accounting Method*, that is pending in the national office and modifies the period for taking into account a net positive section 481(a) adjustment when the Commissioner approves the taxpayer's request to revise the year of change. See Rev. Proc. 2007-67, page 1072.

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

26 CFR 1.481-1: Adjustments in general.

The Service allows taxpayers, under certain conditions, to request to revise the year of change for a Form 3115, *Application for Change in Accounting Method*, that is pending in the national office and modifies the period for taking into account a net positive section 481(a) adjustment when the Commissioner approves the taxpayer's request to revise the year of change. See Rev. Proc. 2007-67, page 1072.

Section 905.—Applicable Rules

These temporary and proposed regulations provide rules relating to a United States taxpayer's obligation under section 905(c) to notify the Internal Revenue Service of a foreign tax redetermination, which is a change in foreign tax liability that may affect the taxpayer's foreign tax credit. These regulations also provide rules under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination. See REG-209020-86, page 1075.

26 CFR 1.905-4T: Notification of foreign tax redetermination (temporary).

T.D. 9362

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

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code (Code) to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit. This document also contains temporary Procedure and Administration Regulations under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of the temporary regulations also serves as the text of the proposed regulations (REG-209020-86) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on November 7, 2007.

Applicability Dates: For dates of applicability, see §§1.905-3T(a), 1.905-4T(f), and 301.6689-1T(e). These regulations generally apply to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the amount of foreign taxes deemed paid under section 902 or 960, this section applies to foreign tax redeterminations occurring in a taxable year of a foreign corporation which ends with or within the taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. Section 1.905-3T(b) generally applies to taxes paid or accrued in taxable years of United States taxpayers beginning on or after November 7, 2007, and to taxes paid or accrued by a foreign corporation in its taxable year which ends with or within the taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For foreign tax redeterminations occurring in taxable years of United States taxpayers beginning before November 7, 2007, and foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within the taxable year of the domestic corporate shareholder beginning before November 7, 2007, see §1.905-4T(f)(2).

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622-3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1056. Responses to this collection of information are mandatory.

The collections of information in these temporary regulations are in §1.905-4T. This information is required in order for taxpayers to notify the IRS of a foreign tax redetermination that may require redetermination of the taxpayer's United States tax liability.

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

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

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

Background

Under section 905(c) and the regulations, a taxpayer that claims a foreign tax credit for taxes paid or accrued under section 901 or deemed paid under section 902 or 960 must notify the IRS when there has been a change to the amount of foreign taxes paid or accrued. In general, in the case of a foreign tax redetermination with respect to taxes claimed as a direct credit under section 901, the taxpayer's United States tax liability must be redetermined; and, in the case of a foreign tax redetermination with respect to taxes included in the computation of foreign taxes deemed paid under section 902 or 960, the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes must be adjusted (subject to exceptions described in §§1.905-3T(d)(3) and (f)). If the taxpayer fails to notify the IRS of a foreign tax redetermination, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, section 6689 imposes a penalty of 5 percent of the deficiency attributable to such redetermination if the failure is for not more than 1 month, with an additional 5 percent for each addi-

tional month during which the failure continues, but not to exceed 25 percent of the deficiency.

On June 23, 1988, the **Federal Register** published proposed (53 FR 23659) (INTL-061-86) and temporary (53 FR 23611) (T.D. 8210, 1988-2 C.B. 248) amendments to the Income Tax Regulations (26 CFR part 1) under section 905(c) and to the Procedure and Administration Regulations (26 CFR part 301) under section 6689 (the 1988 proposed and temporary regulations). These amendments reflected the changes made to the Internal Revenue Code by section 2(c)(2) of the Revenue Act of December 28, 1980 (94 Stat. 3503, 3509) and section 1261(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2591). The IRS and the Treasury Department received several written comments, which are discussed in this preamble. A public hearing concerning the proposed regulations was neither requested nor held. In response to written comments, on March 16, 1990, the IRS and the Treasury Department issued Notice 90-26, 1990-1 C.B. 336 (see §601.601(d)(2)(ii)(b)), which suspended a portion of the temporary regulations, specifically §1.905-3T(d)(2)(ii)(A) and that part of §1.905-3T(d)(2)(ii)(C) which refers to that regulation, which provided rules for accounting for foreign tax redeterminations that affect the calculation of foreign taxes deemed paid with respect to distributions or inclusions out of post-1986 undistributed earnings of a foreign corporation. Section 1.905-3T(d)(2)(ii)(A) required that, in the case of a foreign tax redetermination that affects the amount of foreign taxes deemed paid by a United States corporation for a taxable year, if the foreign tax redetermination occurs more than 90 days before the due date (with extensions) of the taxpayer's income tax return for such taxable year and before the taxpayer actually files that return, then that taxpayer must adjust the foreign tax credit to be claimed on that return for such taxable year to account for the effect of the foreign tax redetermination.

Alternatively, if a foreign tax redetermination occurs after the filing of the United States tax return, §1.905-3T(d)(2)(ii)(B) provides that appropriate upward or downward adjustments are made at the time of the foreign tax redetermination to the pools of post-1986 foreign income

taxes and post-1986 undistributed earnings of the foreign corporation. Section 1.905-3T(d)(2)(ii)(C) provides that, if the foreign tax redetermination occurs within 90 days of the due date of the United States tax return and before the taxpayer actually files its tax return, then the taxpayer may elect either to adjust the foreign tax credit to be claimed on that return in the manner described in §1.905-3T(d)(2)(ii)(A) or adjust the pools of post-1986 foreign income taxes and post-1986 undistributed earnings to reflect the effect of the foreign tax redetermination in the manner described in §1.905-3T(d)(2)(ii)(B).

Comments received by the IRS and the Treasury Department concerning the requirement in §1.905-3T(d)(2)(ii)(A) to notify the IRS of a foreign tax redetermination by adjusting the foreign tax credit on the return for the taxable year in which the foreign tax redetermination occurred stated that this requirement did not take into account the amount of time that taxpayers, especially large multinational corporations, need to prepare their income tax returns. In cases for which a foreign tax redetermination requires a redetermination of United States tax liability, §1.905-4T provides rules generally requiring taxpayers to file amended returns to notify the IRS of the redetermination.

Sections 1102(a)(1) and 1102(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 963-966 (1997)), amended sections 986(a) and 905(c), respectively, effective for taxes paid or accrued in taxable years beginning after December 31, 1997. Section 905(c)(1)(B) was added to provide that, if accrued taxes are not paid before the date two years after the close of the taxable year to which such taxes relate, the taxpayer must notify the IRS and redetermine its United States tax liability for the year or years in which it claimed credit for such taxes. Section 986(a)(1)(A) was amended to provide that, for purposes of determining the amount of foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) generally will be translated into dollars using the average exchange rate for the taxable year to which such taxes relate. However, under section 986(a)(1)(B), the spot exchange rate on the date the taxes are paid is used

to translate foreign income taxes that are paid before, or more than two years after, the taxable year to which the taxes relate. Section 986(a)(1)(C) provides that, as determined under regulations, the average exchange rate also will not apply to taxes denominated in inflationary currencies.

Subsequently, section 408(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1499 (2004)), modified section 986(a) and provided, effective for taxable years beginning after December 31, 2004, that, at the election of the taxpayer, the average exchange rate will not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency. If the taxpayer so elects, taxes will be translated into dollars using the exchange rates at the time such taxes were paid to the foreign country. See section 986(a)(1)(D)(i). Section 986(a)(1)(D)(ii) provides that this election is also applicable to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary. On May 15, 2006, the IRS and the Treasury Department issued Notice 2006-47, 2006-1 C.B. 892 (see §601.601(d)(2)(ii)(b)), which provides interim rules with respect to this election. The notice provides that a taxpayer may elect to use the payment date exchange rates to translate all foreign income taxes, or it may elect to use the payment date exchange rates to translate only those nonfunctional currency foreign income taxes that are attributable to qualified business units with United States dollar functional currencies. Section 408(b)(1) of the American Jobs Creation Act of 2004 also added a special rule at section 986(a)(1)(E) for taxes paid by regulated investment companies.

In light of the statutory changes to sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the IRS and the Treasury Department believe it is appropriate to issue new proposed and temporary regulations. These new regulations make several significant changes to the rules of the 1988 proposed and temporary regulations to take into account statutory changes and the comments received on the 1988 proposed and temporary regulations, while leaving substantial portions of the 1988 proposed and temporary regulations

unchanged. The new temporary regulations will permit the IRS to enforce properly sections 905(c) and 6689 without delay. The significant comments and revisions are described in this preamble.

Explanation of Provisions

I. Currency Translation Rules

This document contains temporary Income Tax Regulations relating to the currency translation rules that apply in determining the amount of the foreign tax credit. Section 1.905-3T(b) has been revised to reflect the statutory changes to sections 905(c) and 986(a) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New §1.905-3T(b)(1)(i) provides that, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)) that takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency will be translated into dollars using the average exchange rate (as defined in §1.989(b)-1) for the United States taxable year to which such taxes relate.

However, new §1.905-3T(b)(1)(ii) provides five exceptions to the general rule that accrual basis taxpayers translate foreign taxes using the average exchange rate. First, §1.905-3T(b)(1)(ii)(A) provides that any foreign taxes denominated in foreign currency that were paid more than two years after the close of the United States taxable year to which they relate will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

Second, §1.905-3T(b)(1)(ii)(B) provides that any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

Third, §1.905-3T(b)(1)(ii)(C) provides that any foreign income taxes the liability for which is denominated in any inflationary currency will be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. For

this purpose, the term *inflationary currency* means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of §1.905-3T(b)(1)(ii)(C), *base period* means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year. See §1.985-1(b)(2)(ii)(D).

Fourth, under the provisions of §1.905-3T(b)(1)(ii)(D), a taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes into dollars using the exchange rate as of the date of payment of the foreign taxes, provided that the liability for such taxes is denominated in nonfunctional currency. This election may be made for all foreign income taxes or for only those foreign income taxes the liability for which is denominated in nonfunctional currency and that are attributable to qualified business units with United States dollar functional currencies. This election allows taxpayers to avoid a mismatch between the translated dollar amount of foreign tax credit and the translated dollar amount of the foreign income used to pay the tax. The election must be made by attaching a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with a United States dollar functional currency. Once made, the election will apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner.

Finally, in the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, §1.905-3T(b)(1)(ii)(E) provides that foreign income taxes paid or accrued with respect to such income will be translated into dollars using the exchange rate as of the date the income accrues. This exception takes account of the spe-

cial rule at section 852(b)(9) that requires a regulated investment company to take dividends into account on the ex-dividend date, rather than on the later date on which the dividends are paid (and the tax is actually withheld). The translation rule permits greater conformity between the translated dollar amount of dividends paid in foreign currency and the translated dollar amount of taxes withheld from such dividends. For a discussion of the effective dates of the currency translation provisions, see the "Effective Date" section of this document.

Section 1.905-3T(b)(4), concerning the allocation of refunds of foreign tax to the separate categories of income under section 904(d), is not modified by these temporary regulations. Section 1.905-3T(b)(5), which provides rules with respect to the basis of foreign currency that is refunded, is revised to reflect the 1997 and 2004 changes to the currency translation rules, as provided in §1.905-3T(b)(3).

II. *Definition of Foreign Tax Redetermination*

The term "foreign tax redetermination" in §1.905-3T(c) has been revised to reflect the statutory changes made to section 905(c) in the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. New §1.905-3T(c) provides that, for purposes of §§1.905-3T and 1.905-4T, a foreign tax redetermination means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: (1) accrued taxes that when paid differ from the amounts added to post-1986 foreign income taxes or claimed as credits by the taxpayer (such as corrections to overaccruals and additional payments); (2) accrued taxes that are not paid before the date two years after the close of the taxable year to which such taxes relate; (3) any tax paid that is refunded in whole or in part; and (4) for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

Section 1.905-3T(d)(1) has been revised to reflect the modified definition

in new §1.905-3T(c) of a foreign tax redetermination that results from currency fluctuations, but new §1.905-3T(d)(1) otherwise adopts without amendment the rule in §1.905-3T(d)(1) of the 1988 regulations that provides that no redetermination of United States tax liability is required with respect to such foreign tax redetermination if the amount of such redetermination is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year. Comments requested that this exception be broadened by eliminating the \$10,000 limitation and by increasing the percentage ceiling from 2 percent to 5 percent, in order to increase the number of taxpayers eligible for the exception, therefore minimizing the administrative burden of filing amended returns for both taxpayers and the IRS. Since the 1988 temporary regulations were published, the administrative burdens of accounting for exchange rate fluctuations have been substantially reduced by the change in law allowing taxpayers claiming credits on the accrual basis to use annual average exchange rates rather than date of payment exchange rates to translate foreign tax. In addition, the IRS and Treasury Department believe that it is appropriate to limit the exception to a dollar threshold. Accordingly, this comment was not adopted.

III. *Adjustments to Pools of Post-1986 Undistributed Earnings and Post-1986 Foreign Income Taxes*

On March 16, 1990, Notice 90-26, 1990-1 C.B. 336 (see §601.601(d)(2)(ii)(b)), suspended §1.905-3T(d)(2)(ii)(A) and that part of §1.905-3T(d)(2)(ii)(C) which refers to §1.905-3T(d)(2)(ii)(A). Prior to its suspension, §1.905-3T(d)(2)(ii)(A) required taxpayers to recompute the foreign tax credit claimed on their current year income tax return to account for foreign tax redeterminations that affect the amount of foreign tax deemed paid under section 902 or 960 and that occurred more than 90 days before the due date (with extensions) of the United States tax return for that taxable year and before the actual filing date. Section 1.905-3T(d)(2)(ii)(C) permitted taxpayers to elect to apply

§1.905-3T(d)(2)(ii)(A) to a foreign tax redetermination occurring within 90 days of the due date (with extensions) of the tax return for that taxable year and before the actual filing date.

Section 1.905-3T(d)(2)(ii)(B) of the 1988 regulations requires that, if a foreign tax redetermination occurs after the filing of the United States tax return for such taxable year, then appropriate upward or downward adjustments will be made at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 foreign taxes and post-1986 earnings and profits to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in taxable years subsequent to the taxable year for which such tax return is filed. The part of §1.905-3T(d)(2)(ii)(C) not suspended by Notice 90-26 allows a taxpayer to elect to adjust the pools of post-1986 foreign taxes and post-1986 earnings and profits to reflect the effect of the foreign tax redetermination in the manner described in §1.905-3T(d)(2)(ii)(B). Notice 90-26 also provided that, pending the issuance of final regulations under section 905(c), redeterminations otherwise subject to §1.905-3T(d)(2)(ii)(A) or (C) were required to be accounted for through adjustment to the appropriate pools of post-1986 earnings and profits and post-1986 foreign taxes in the manner described in §1.905-3T(d)(3) and subject to the exceptions set forth in §1.905-3T(d)(4).

A comment concerning §1.905-3T(d)(2) of the 1988 regulations was received, suggesting that taxpayers be allowed to elect to adjust earnings and profits and tax pools or file an immediate claim for refund, in the case of an additional assessment of foreign tax which generates a potential refund of U.S. tax. Because the taxpayer must wait for a subsequent distribution to benefit from the additional credits, the comment stated that the taxpayer is inappropriately denied an immediate benefit, that is, making a claim for an immediate refund, provided by section 6511(d)(3)(A). Subsequently, the Taxpayer Relief Act of 1997 confirmed the Secretary's regulatory authority to prescribe appropriate adjustments to a foreign corporation's pools of post-1986 foreign

income taxes and post-1986 undistributed earnings in lieu of a redetermination, and amended section 905(c)(2) explicitly to provide that no redetermination of U.S. tax shall be made by reason of additional taxes paid more than two years after the year to which they relate. In light of the statutory changes, this comment was not adopted.

Section 1.905-3T(d)(2) of the 1988 regulations has been revised to reflect the provisions of Notice 90-26. New §1.905-3T(d)(2)(i) provides that appropriate upward or downward adjustments will be made at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes, in accordance with §1.905-3T(d)(2)(ii), to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to subsequent distributions and inclusions (and the amount of such distributions and inclusions).

Section 1.905-3T(d)(2)(iii) of the 1988 regulations, which provides rules with respect to the reporting requirements for adjustments to the appropriate pools of post-1986 undistributed earnings and post-1986 foreign income taxes has been revised. The 1988 regulations require that the domestic corporate shareholder attach notice of such adjustments to its return on a yearly basis. In the interest of reducing the reporting requirement burden, this notification requirement has been eliminated. New §1.905-3T(d)(2)(i) refers to §1.905-4T(b)(2), which provides that, where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under §1.905-3T(d)(2), the taxpayer is required to notify the IRS of such redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid.

The 1988 regulations provide four exceptions to the general rule in

§1.905-3T(d)(2) requiring pooling adjustments in lieu of a redetermination of United States tax liability to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on foreign taxes deemed paid under section 902 or 960. A shareholder-level redetermination of United States tax liability is required where the foreign tax liability is denominated in a hyperinflationary currency (see §1.905-3T(d)(4)(i)); where the foreign tax redetermination occurs with respect to foreign taxes deemed paid with respect to a subpart F inclusion or an actual distribution which has the effect of reducing the foreign corporation's pool of post-1986 foreign income taxes below zero (see §1.905-3T(d)(4)(iv)); or where a domestic corporate shareholder of a controlled foreign corporation receives a distribution out of previously taxed earnings and profits and a foreign country imposes tax on the foreign corporation's income, which tax is subsequently reduced (see §1.905-3T(f)). These exceptions are adopted without amendment and have been moved to §1.905-3T(d)(3)(i), (iv), and (vi), respectively, in the new temporary regulations.

The fourth exception, at §1.905-3T(d)(4)(ii) in the 1988 regulations, provides that if the foreign tax liability of a United States taxpayer is in a currency other than a hyperinflationary currency and the amount of foreign tax accrued for the taxable year to a foreign country, as measured in units of foreign currency, exceeds the amount of foreign tax paid to that foreign country for the taxable year by at least two percent, then the IRS, in its discretion, may require a redetermination of United States tax liability, in lieu of an adjustment of the pools of post-1986 undistributed earnings and post-1986 foreign income taxes. Section 1.905-3T(d)(2)(iii) of the 1988 regulations provides that, if a taxpayer may be required to redetermine its United States tax liability under §1.905-3T(d)(4)(ii), the taxpayer must attach a notice of such adjustment to its return for the year with or within which ends the foreign corporation's taxable year during which the foreign tax redetermination occurs. Comments were received with respect to these provisions, requesting that the regulations set forth the factors the IRS would take into account in determining

whether to exercise such discretion; the percentage limitation be increased to ten percent; the IRS not enforce this provision if the deficiency resulting from the overaccrual of foreign tax is less than \$25,000; and the provision only be used in specific situations, such as consistent overaccrual of foreign taxes. Further, in order to avoid taxpayers being subject to the penalty under section 6689 for failure to notify the IRS within 180 days of the foreign tax redetermination, as required by §1.905-4T(b)(2) of the 1988 regulations, a comment requested that, when the IRS exercises its discretion under §1.905-3T(d)(4)(ii), the date on which such redetermination occurs should be deemed to be the date on which the IRS notifies the taxpayer that a redetermination of U.S. tax liability is required.

In lieu of the discretionary rule in the 1988 temporary regulations, §1.905-3T(d)(3)(ii) of the new regulations requires a redetermination of United States tax liability for all affected years if a foreign tax redetermination occurs with respect to foreign taxes paid by a foreign corporation and such foreign tax redetermination, if taken into account in the taxable year of the foreign corporation to which the foreign tax redetermination relates, has the effect of reducing by ten percent or more the foreign taxes deemed paid by the domestic corporate shareholder under section 902 or 960 in the taxable year of the shareholder with or within which ends the taxable year of the foreign corporation to which the foreign tax redetermination relates or in any intervening taxable year. Thus, a redetermination of the United States taxpayer's deemed paid credit under section 902 or 960 is required by reason of a foreign tax redetermination at the foreign subsidiary level only if the overstatement of the foreign tax credit is substantial in amount, taking into account the effect of the redetermination on the entire tax pool of the foreign subsidiary and not just the tax attributable to the year to which the redetermination relates. This new rule is more consistent with the other three exceptions to pooling adjustments in §1.905-3T(d)(4)(i) and (iv) and §1.905-3T(f) of the 1988 temporary regulations, which are at new §1.905-3T(d)(3)(i), (iv), and (vi). Further, §1.905-3T(d)(3)(ii) of the new regulations provides consistent treatment among

taxpayers, adds certainty as to when adjustments to prior-year section 902 or 960 credits are required, and reduces the administrative burden associated with yearly notification of such foreign tax redeterminations.

A comment requested that the regulations be revised to address the situation where a controlled foreign corporation is sold. In a typical case, the seller of the controlled foreign corporation contracts to indemnify the buyer for any tax deficiencies arising with respect to taxable periods occurring prior to the date of the sale and will be entitled to any refunds relating to such periods. The additional assessments or refunds of tax are reflected as adjustments to the pools of the foreign corporation in the hands of the buyer but accrue economically to the seller. However, the seller derives no U.S. tax benefit or detriment from those additional payments or refunds because it no longer has an economic interest in the foreign corporation. It was suggested that the regulations should provide an additional exception to the pooling rules allowing recomputation of the seller's U.S. tax liability as if the foreign tax redetermination occurred immediately prior to the sale. The IRS and Treasury Department are continuing to study this issue and request comments on the potential scope of an additional exception to the pooling adjustment rules in the context of various types of acquisitions.

Comments are also solicited on other changes that should be made to the 1988 temporary regulations, including changes relating to the statutory changes made by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004.

IV. Time and Manner of Notification

A. Overview of new rules

New §1.905-4T(a) provides that if, as a result of a foreign tax redetermination (as defined in §1.905-3T(c)), a redetermination of United States tax liability is required under section 905(c) and §1.905-3T(d), the taxpayer must provide notification of the foreign tax redetermination. Section 1.905-4T(b)(1) of the new temporary regulations provides rules with respect to the time and manner of notifying the IRS of a foreign tax redetermination that necessitates a

redetermination of United States tax liability. New §1.905-4T(b)(1)(i) sets forth the general rule that, where a redetermination of United States tax liability is required, the taxpayer must notify the IRS by filing an amended return, Form 1118 (*Foreign Tax Credit — Corporations*) or 1116 (*Foreign Tax Credit*), and the statement required under §1.905-4T(c) for the taxable year with respect to which a redetermination of United States tax liability is required. However, where a foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k) (currently \$300, or \$600 in the case of a joint return), the individual will not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k).

B. Revision of 1988 temporary regulations in response to comments

The 1988 temporary regulations at §1.905-4T(b)(2) require taxpayers to notify the IRS of a foreign tax redetermination that reduced the amount of foreign taxes paid or deemed paid by filing an amended return for the affected year or years within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments suggesting that this rule was unduly burdensome to taxpayers. The comments noted that multiple foreign tax redeterminations requiring a redetermination of United States tax liability for the same taxable year would require the filing of multiple returns for such year, and that filing an amended Federal tax return would trigger additional state tax notification and amended return filing requirements.

In light of these comments, the new temporary regulations at §1.905-4T(b)(1)(ii) provide that, if a foreign tax redetermination reduced the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, a taxpayer must file a separate notification for each taxable year with respect to which a redetermination

of United States tax liability is required by the due date (with extensions) of the original return for the taxable year in which the foreign tax redetermination occurred. With respect to a foreign tax redetermination that increased the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, new §1.905-4T(b)(1)(iii) adopts the rule provided in the 1988 temporary regulations at §1.905-4T(b)(2) and provides that the taxpayer must file a separate notification for each taxable year with respect to which a redetermination of United States tax liability is required within the period provided by section 6511(d)(3)(A).

C. Special rules for certain redeterminations

The new temporary regulations at §1.905-4T(b)(1)(iv) provide that, where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year and those redeterminations occur within two consecutive taxable years of the taxpayer, the taxpayer may file for such taxable year one amended return, Form 1118 or 1116, and the statement required under §1.905-4T(c) that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such foreign tax redeterminations, the due date for such notification is the due date of the original return (with extensions) for the year in which the first foreign tax redetermination that reduced foreign tax liability occurred. However, because foreign tax redeterminations with respect to the taxable year for which a redetermination of United States tax liability is required may occur after the due date for providing such notification in the later of the two consecutive years, more than one amended return may be required with respect to that taxable year.

Section 1.905-4T(b)(1)(v) of the new temporary regulations provides that, where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under section 904(c), the taxpayer may, in lieu of applying the general notifica-

tion rule described in §1.905-4T(b)(1)(i) or (ii), notify the IRS by attaching a statement to the original return for the taxable year in which the foreign tax redetermination occurs. The statement must be filed by the due date (with extensions) of such return and contain the information described in §1.904-2(f), including the amounts carried back or over to the year with respect to which a redetermination of United States tax liability is required.

The 1988 temporary regulations at §1.905-3T(d)(2)(iii) provide rules concerning the time, manner, and contents of the notification statement for an adjustment of a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes due to a foreign tax redetermination. The new temporary regulations, at §1.905-4T(b)(2), modify the reporting requirement with respect to such pooling adjustments by providing that where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under §1.905-3T(d)(2), the taxpayer must notify the IRS of the redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid. New §1.905-4T(b)(2) requires the taxpayer to file the Form 1118 by the due date (with extensions) of the original return for such taxable year. In the case of multiple redeterminations that affect the computation of foreign taxes deemed paid for the same taxable year and that are required to be reported under new §1.905-4T(b)(2), a taxpayer may file one notification for all such redeterminations in lieu of filing a separate notification for each such redetermination.

D. Large and mid-size business taxpayers

Section 1.905-4T(b)(2) of the 1988 temporary regulations requires a taxpayer to notify the IRS of a foreign tax redetermination that reduced the amount of for-

eign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, by filing an amended return for the affected year within 180 days after the date that the foreign tax redetermination occurred. The IRS and the Treasury Department received several comments with respect to such rule suggesting that, in lieu of filing an amended return, taxpayers that are under continuous examination in a program such as the Coordinated Examination Program should be permitted to provide notice of foreign tax redeterminations to the examiner during an examination.

Taking into account these comments, the new temporary regulations at §1.905-4T(b)(3) provide that, where a redetermination of United States tax liability is required by reason of a foreign tax redetermination that occurs while a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division and that results in a reduction in the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must provide notice of such redetermination as part of the examination process in lieu of filing an amended return for the affected year as otherwise required by §1.905-4T(b)(1)(i) and (ii). If the taxpayer is required under §1.905-4T(b)(3) to provide notice as part of the examination process, the taxpayer must satisfy the requirements of §1.905-4T(b)(3) (in lieu of the generally applicable rules of §1.905-4T(b)(1)(i) or (ii)) in order not to be subject to the penalty under section 6689 and the regulations under that section.

Section 1.905-4T(b)(3) of the new regulations requires a taxpayer to notify the IRS of the foreign tax redetermination by providing to the examiner a statement described in §1.905-4T(c) during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of the foreign tax redetermination. The taxpayer must provide the statement to the examiner no later than 120 days after the latest of the date the foreign tax redetermination occurs, the opening conference, or the hand-delivery or postmark date of the opening letter concerning the examination. If, however, the foreign tax redetermination occurs more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening let-

ter, the taxpayer may, in lieu of applying the rules of §1.905-4T(b)(1)(i) and (ii), provide to the examiner a statement which complies with the requirements of §1.905-4T(b)(3), and the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of §1.905-4T(b)(1)(i) and (ii).

This exception in §1.905-4T(b)(3) to the generally applicable notification requirements of §1.905-4T(b)(1) is not permitted to extend the length of the notification period set forth in §1.905-4T(b)(1). In addition, no notification under §1.905-4T(b)(3) will be due before May 5, 2008.

V. Notification contents

Section 1.905-4T(c)(1) of the new temporary regulations requires the taxpayer to furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under section 905(c). The taxpayer must provide such information in a form that enables the IRS to verify and compare the original computations of the claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes resulting therefrom. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. If the written statement is submitted to the IRS under §1.905-4T(b)(3), which provides rules with respect to taxpayers under the jurisdiction of the Large and Mid-Size Business Division, the statement must also include a declaration under penalties of perjury.

Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination, new §1.905-4T(c)(2) requires that the taxpayer provide, in addition to the information described in new §1.905-4T(c)(1), specific information concerning the foreign tax redetermination. To take into account the amendment of section 986(a) (concerning translation rates for foreign taxes) by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, the new temporary regulations require the taxpayer to provide the exchange rates used to translate the amount of foreign taxes

paid, accrued, or refunded in accordance with §1.905-3T(b) (as the case may be). These new temporary regulations also include the requirement of the 1988 temporary regulations that taxpayers provide information relating to the interest paid by foreign governments or owing to the United States due to a foreign tax redetermination.

If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes are required under §1.905-3T(d)(2) of the 1988 temporary regulations in lieu of a redetermination of a domestic corporate shareholder's United States tax liability, §1.905-3T(d)(2)(iii) of the 1988 temporary regulations requires that the taxpayer provide certain information concerning the foreign tax redetermination and the pooling adjustments. In order to reduce the notification requirement burden, the new temporary regulations modify this reporting requirement, as discussed above in section IV.C., "Special Rules for Certain Redeterminations." If, as a result of a redetermination of foreign tax paid or accrued by a foreign corporation, a redetermination of United States tax liability is required under new §1.905-3T(d)(3) in lieu of a pooling adjustment, the new temporary regulations at §1.905-4T(c)(3) specify the information that the taxpayer must provide.

VI. *Payment or refund of United States tax, and application of interest and penalties*

Section 1.905-4T(d) of the new temporary regulations adopts without amendment that portion of the 1988 temporary regulations at §1.905-4T(b)(1) which provides that the amount of tax, if any, due upon a redetermination of United States tax liability will be paid by the taxpayer after notice and demand has been made by the IRS. The regulation also clarifies that deficiency procedures under Subchapter B of chapter 63 of the Internal Revenue Code will not apply with respect to the assessment of the amount due upon such redetermination, meaning that the IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition

the Tax Court, prior to the IRS' assessment and collection of the amount of additional tax due. In accordance with sections 905(c) and 6501(c)(5), the statute of limitations under section 6501(a) will not apply to the assessment and collection of the amount of additional tax due. The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid will be credited or refunded to the taxpayer in accordance with section 6511(d)(3)(A) and the provisions of §301.6511(d)-3. Accordingly, the taxpayer must file a claim for credit or refund within ten years from the last date (without extensions) prescribed for filing the return for the taxable year in which the foreign taxes were actually paid or accrued.

Similarly, §1.905-4T(e) of the new temporary regulations adopts without amendment the interest and penalties provisions of the 1988 temporary regulations at §1.905-4T(c). First, new §1.905-4T(e)(1) provides that interest on the underpayment or overpayment resulting from a redetermination of United States tax liability will be computed in accordance with sections 6601 and 6611 and the regulations under those sections. No interest will be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, will interest assessed and collected pursuant to the preceding sentence for any period before receipt of the refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations under that section for that period. Interest will be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a foreign tax refund until the taxpayer pays the additional tax due the United States.

Second, new §1.905-4T(e)(2) provides that, if an adjustment to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under §1.905-3T(d)(2) is required in lieu of a redetermination of United States tax liability, no underpayment or overpayment of United States tax liability will result from a foreign tax redetermination. Consequently, no interest will be

paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes where required under §1.905-3T(d)(2).

Third, §1.905-4T(e)(3) of the new temporary regulations provides that failure to comply with the provisions of §1.905-4T of the new temporary regulations will subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

VII. *Foreign tax redeterminations with respect to pre-1987 accumulated profits*

Section 1.905-5T of the 1988 regulations provides rules relating to foreign tax redeterminations occurring in pre-1987 taxable years, and those occurring in post-1986 taxable years with respect to pre-1987 accumulated profits. The new temporary regulations amend the cross-references to §§1.905-3T and 1.905-4T and clarify that these rules apply to foreign tax redeterminations with respect to pre-1987 accumulated profits that are accumulated in taxable years of a foreign corporation beginning after December 31, 1986, but before the first taxable year in which the ownership requirements of section 902 are met. See §1.902-1(a)(10)(i).

VIII. *Penalty under section 6689*

Under section 6689, a taxpayer that fails to notify the IRS of a foreign tax redetermination in the time and manner prescribed by regulations for giving such notice is subject to a penalty unless it is shown that such failure is due to reasonable cause and not due to willful neglect. Section 6689(a) provides that the penalty is calculated by adding to the deficiency attributable to the foreign tax redetermination an amount equal to 5 percent of the deficiency if the failure is for not more than 1 month, plus an additional 5 percent of the deficiency for each month (or fraction thereof) during which the failure continues. The total amount of the penalty is not to exceed 25 percent of the deficiency.

Section 301.6689-1T(a) has been revised to clarify that deficiency proceedings under Subchapter B of chapter 63 of the Code will not apply with respect to the amount of such penalty, meaning that the

IRS is not required to send a statutory notice of deficiency to a taxpayer, and the taxpayer does not have an opportunity to petition the Tax Court, prior to the IRS' assessment and collection of the amount of such penalty.

Comments were received suggesting that, in computing the amount of the penalty, an overpayment resulting from one foreign tax redetermination should offset an underpayment resulting from another foreign tax redetermination where both foreign tax redeterminations arise from the same foreign taxing jurisdiction and require a redetermination of United States tax liability for the same taxable year. Thus, the commentators suggested, where the underpayment is completely offset by one or more overpayments, the section 6689 penalty should not apply. Because the penalty is determined with respect to a deficiency attributable to such redetermination, there must be some deficiency for the penalty to apply. Where underpayments and overpayments offset each other to reduce or eliminate a deficiency, any penalty under section 6689 would also be reduced or eliminated. The IRS and Treasury Department do not believe an amendment to the regulations is necessary to clarify this rule.

Another comment was received suggesting that the section 6689 penalty generally should be inapplicable to Coordinated Exam Program taxpayers, provided that a notice of foreign tax redeterminations is submitted by the taxpayer at the commencement of the audit. Such a suggestion is generally adopted at §1.905-4T(b)(3). A further comment requested that the definition of reasonable care under the regulations be revised. The 1988 regulations provide that, if a taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the notification within the prescribed time, then the delay will be considered to be due to reasonable cause and not willful neglect. The comment recommended instead adopting a more objective test based on substantial compliance. This comment is rejected because ordinary business care and prudence is the general standard for reasonable care that is used in the regulations for other penalties.

Effective/applicability date

The new temporary regulations of §§1.905-3T(c) and (d) and 1.905-4T are generally applicable for foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to post-1986 undistributed earnings (or pre-1987 accumulated profits) of the foreign corporation, the new temporary regulations of §§1.905-3T(c) and (d), 1.905-4T, and 1.905-5T are generally effective for foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. See §1.905-4T(f)(1). In no case, however, will §1.905-4T(f) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

Section 1.905-3T(b), which provides rules with respect to currency translation, generally is applicable for taxes paid or accrued in taxable years of United States taxpayers beginning on or after November 7, 2007, and to taxes paid or accrued by a foreign corporation in its taxable years which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For taxable years beginning after December 31, 1997, and before November 7, 2007, section 986(a), as amended by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, shall apply. For taxable years beginning after December 31, 1986, and prior to the effective date of the Taxpayer Relief Act of 1997 (January 1, 1998), §1.905-3T of the 1988 temporary regulations shall apply.

Section 1.905-3T(b)(1)(ii)(D), which provides taxpayers otherwise required to translate foreign income taxes using the average exchange rate an election to translate taxes using the exchange rate for the date of payment, is applicable for taxable years beginning on or after November 7, 2007. For taxable years beginning after December 31, 2004, and

before November 7, 2007, the rules of Notice 2006-47, 2006-1 C.B. 892 (see §601.601(d)(2)(ii)(b)), shall apply.

Although all foreign tax redeterminations occurring in taxable years beginning after December 31, 1986, are subject to the requirements of section 905(c) and the regulations under that section, the 1988 temporary regulations did not specify the date by which the required notifications must be made in order to avoid a penalty under section 6689. The IRS and the Treasury Department recognize the burden associated with requiring notification by a specific date of all previously-unreported foreign tax redeterminations that require a United States tax redetermination with respect to post-1986 taxable years. Consequently, the new temporary regulations at §1.905-4T(f)(2) provide a specific due date only for notifications of foreign tax redeterminations that occurred in a taxpayer's three taxable years preceding the first taxable year identified in §1.905-4T(f)(1), and taxable years of foreign corporations ending with or within such taxable years of their domestic corporate shareholders. However, the unlimited statute of limitations under section 905(c) and deficiency interest provisions continue to apply to any underpayment of United States tax attributable to a foreign tax redetermination.

Section 1.905-4T(f)(2)(ii) provides notification requirements for any foreign tax redetermination which occurred in the last taxable year of a United States taxpayer beginning before November 7, 2007, and the two immediately preceding taxable years and which reduced the amount of foreign taxes paid or accrued by the taxpayer for any taxable year. This section also requires notification of any redetermination of foreign taxes paid or accrued by a foreign corporation which occurred in a taxable year of the foreign corporation which ends with or within a taxable year of a domestic corporate shareholder described in the preceding sentence and which requires a redetermination of United States tax liability under §1.905-3T(d)(3) for any taxable year. If, as of November 7, 2007, the taxpayer has not satisfied the notice requirements described in §§1.905-3T and 1.905-4T of the 1988 temporary regulations with respect to such foreign tax redeterminations, the new temporary regulations at

§1.905-4T(f)(2)(ii) generally require the taxpayer to notify the IRS of such foreign tax redetermination no later than the due date (with extensions) of its original return for the taxable year following the taxable year in which these regulations are first effective.

New §1.905-4T(f)(2)(ii) sets forth the time and manner of the notification, which must contain the previously-unreported information described in new §1.905-4T(c). The temporary regulations do not require notification of previously-unreported foreign tax redeterminations of a foreign corporation that occurred in taxable years of the foreign corporation that ended with or within a domestic corporate shareholder's taxable year beginning before November 7, 2007, if the foreign tax redetermination does not require a redetermination of United States tax liability but is accounted for by adjusting the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes.

New §1.905-4T(f)(2)(iii) provides that a taxpayer under the jurisdiction of the Large and Mid-Size Business Division that is otherwise required to file an amended return, Form 1118, and the statement required under §1.905-4T(c) as required in new §1.905-4T(f)(2)(ii) may, in lieu of applying §1.905-4T(f)(2)(ii), notify the IRS in the course of an examination of the return for the taxable year for which a redetermination of United States tax liability is required. In such case, the notification must contain the information described in new §1.905-4T(c) and must be provided within 120 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required or May 5, 2008, whichever is later. However, if November 7, 2007, is more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraph (f)(2)(ii) of this section. In addition, this exception to the notification requirements of §1.905-4T(f)(2)(ii) is not permitted to extend the length of the notification period set forth in §1.905-4T(f)(2)(ii). Therefore, §1.905-4T(f)(2)(iii) will not

apply if the last day for providing notice of the foreign tax redetermination under §1.905-4T(f)(2)(ii) precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required.

Section 1.905-4T(f)(2)(iv) provides that interest will be computed in accordance with §1.905-4T(e), and that the taxpayer must satisfy the requirements of §1.905-4T(f)(2) in order not to be subject to the penalty provisions of section 6689 and the regulations under that section.

Special Analyses

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

Drafting Information

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

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Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.905-3T is amended as follows:

1. Revise the section heading and paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(5), (c), and (d)(2)(i).
2. Revise the second and third sentences in paragraph (d)(1).
3. Remove paragraphs (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), the heading for paragraph (d)(3), and paragraph (d)(3)(i).
4. Redesignate paragraphs (d)(3), (d)(3)(ii), (d)(3)(iii), (d)(3)(iv), and (d)(3)(v) as paragraph (d)(2)(ii), (d)(2)(ii)(A), (d)(2)(ii)(B), (d)(2)(ii)(C), and (d)(2)(ii)(D), respectively.
5. Add a new paragraph heading to newly-designated paragraph (d)(2)(ii).
6. Revise newly-designated paragraphs (d)(2)(ii)(A), (d)(2)(ii)(B), and (d)(2)(ii)(D).
7. Remove the language “(d)(3)(iv)” from the second to last sentence of newly-designated paragraph (d)(2)(ii)(C) and add the language “(d)(2)(ii)(C)” in its place. Remove the language “§1.905-3T(d)(4)(iv)” from the last sentence of newly-designated paragraph (d)(2)(ii)(C) and add the language “paragraph (d)(3)(iv) of this section” in its place.
8. Redesignate paragraph (d)(4) as paragraph (d)(3).
9. Remove the language “(d)(4)” from newly-designated paragraph (d)(3) and add the language “(d)(3)” in its place.
10. Revise newly-designated paragraphs (d)(3)(ii), (d)(3)(iii), and (d)(3)(v).
11. Redesignate paragraph (f) as paragraph (d)(3)(vi).
12. Add a new paragraph (f).

The revisions and additions read as follows:

§1.905-3T Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination (temporary).

(a) *Effective/applicability dates*—(1) *Currency translation.* Except as provided in §1.905-5T, paragraph (b) of this section applies to taxes paid or accrued in

taxable years of United States taxpayers beginning on or after November 7, 2007 and to taxes paid or accrued by a foreign corporation in its taxable years which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For taxable years beginning after December 31, 1997, and before November 7, 2007, section 986(a), as amended by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004, shall apply. For taxable years beginning after December 31, 1986, and before January 1, 1998, §1.905-3T (as contained in 26 CFR part 1, revised as of April 1, 2007) shall apply.

(2) *Foreign tax redeterminations.* Paragraphs (c) and (d) of this section apply to foreign tax redeterminations occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to post-1986 undistributed earnings of the foreign corporation, paragraphs (c) and (d) of this section apply to foreign tax redeterminations occurring in taxable years of a foreign corporation which end with or within a taxable year of the domestic corporate shareholder beginning on or after November 7, 2007. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years beginning before November 7, 2007, see §§1.905-3T and 1.905-5T (as contained in 26 CFR part 1, revised as of April 1, 2007).

(b) *Currency translation rules*—(1) *Translation of foreign taxes taken into account when accrued*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, in the case of a taxpayer or a member of a qualified group (as defined in section 902(b)(2)) that takes foreign income taxes into account when accrued, the amount of any foreign taxes denominated in foreign currency that have been paid or accrued, additional tax liability denominated in foreign currency, taxes withheld in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the average exchange rate (as defined in §1.989(b)-1

for the United States taxable year to which such taxes relate.

(ii) *Exceptions*—(A) *Taxes not paid within two years.* Any foreign income taxes denominated in foreign currency that are paid more than two years after the close of the United States taxable year to which they relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. To the extent any accrued foreign income taxes denominated in foreign currency remain unpaid two years after the close of the taxable year to which they relate, see paragraph (b)(3) of this section for translation rules for the required adjustments.

(B) *Taxes paid before taxable year begins.* Any foreign income taxes paid before the beginning of the United States taxable year to which such taxes relate shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes.

(C) *Inflationary currency.* Any foreign income taxes the liability for which is denominated in any inflationary currency shall be translated into dollars using the exchange rate as of the date of payment of the foreign taxes. For this purpose, the term *inflationary currency* means the currency of a country in which there is cumulative inflation during the base period of at least 30 percent, as determined by reference to the consumer price index of the country listed in the monthly issues of International Financial Statistics, or a successor publication, of the International Monetary Fund. For purposes of this paragraph (b)(1)(ii)(C), *base period* means, with respect to any taxable year, the thirty-six calendar months immediately preceding the last day of such taxable year (see §1.985-1(b)(2)(ii)(D)). Accrued but unpaid taxes denominated in an inflationary currency shall be translated into dollars at the exchange rate on the last day of the United States taxable year to which such taxes relate.

(D) *Election to translate taxes using exchange rate for date of payment.* A taxpayer that is otherwise required to translate foreign income taxes that are denominated in foreign currency using the average exchange rate may elect to translate foreign income taxes described in this paragraph (b)(1)(ii)(D) into dollars using the exchange rate as of the date of payment of the foreign taxes, provided that the liability

for such taxes is denominated in nonfunctional currency. A taxpayer may make an election under this paragraph (b)(1)(ii)(D) for all foreign income taxes, or for only those foreign income taxes that are denominated in nonfunctional currency and are attributable to qualified business units with United States dollar functional currencies. The election must be made by attaching a statement to the taxpayer's timely filed return (including extensions) for the first taxable year to which the election applies. The statement must identify whether the election is made for all foreign taxes or only for foreign taxes attributable to qualified business units with United States dollar functional currencies. Once made, the election shall apply for the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Commissioner. Accrued but unpaid taxes subject to an election under this paragraph (b)(1)(ii)(D) shall be translated into dollars at the exchange rate on the last day of the United States taxable year to which such taxes relate. For taxable years beginning after December 31, 2004, and before November 7, 2007, the rules of Notice 2006-47, 2006-1 C.B. 892 (see §601.601(d)(2)(ii)(b)), shall apply.

(E) *Regulated investment companies.* In the case of a regulated investment company (as defined in section 851 and the regulations under that section) which takes into account income on an accrual basis, foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(2) *Translation of foreign taxes taken into account when paid.* In the case of a taxpayer that takes foreign income taxes into account when paid, the amount of any foreign tax liability denominated in foreign currency, additional tax liability denominated in foreign currency, or estimated taxes paid in foreign currency shall be translated into dollars using the exchange rate as of the date of payment of such foreign taxes. Foreign taxes withheld in foreign currency shall be translated into dollars using the exchange rate as of the date on which such taxes were withheld.

(3) *Refunds or other reductions of foreign tax liability.* In the case of a taxpayer that takes foreign income taxes into account when accrued, a reduction in the amount of previously-accrued foreign

taxes that is attributable to a refund of foreign taxes denominated in foreign currency, a credit allowed in lieu of a refund, the correction of an overaccrual, or an adjustment on account of accrued taxes denominated in foreign currency that were not paid by the date two years after the close of the taxable year to which such taxes relate, shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes. In the case of foreign income taxes taken into account when accrued but translated into dollars on the date of payment, see paragraph (d) of this section for required adjustments to reflect a reduction in the amount of previously-acrued foreign taxes that is attributable to a difference in exchange rates between the date of accrual and date of payment. In the case of a taxpayer that takes foreign income taxes into account when paid, a refund or other reduction in the amount of foreign taxes denominated in foreign currency shall be translated into dollars using the exchange rate that was used to translate such amount when originally claimed as a credit. If a refund or other reduction of foreign taxes relates to foreign taxes paid or accrued on more than one date, then the refund or other reduction shall be deemed to be derived from, and shall reduce, the last payment of foreign taxes first, to the extent of that payment. See paragraphs (d)(1) (redetermination of United States tax liability for foreign taxes paid directly by a United States person) and (d)(2)(ii) (method of adjustment of a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes) of this section.

* * * * *

(5) *Basis of foreign currency refunded*—(i) *In general.* A recipient of a refund of foreign tax shall determine its basis in the currency refunded under the following rules.

(ii) *United States dollar functional currency.* If the functional currency of the qualified business unit (QBU) (as defined in section 989 and the regulations under that section) that paid the tax and received the refund is the United States dollar or the person receiving the refund is not a QBU, then the recipient's basis in the foreign currency refunded shall be the dollar value

of the refund determined under paragraph (b)(3) of this section by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes.

(iii) *Nondollar functional currency.* If the functional currency of the QBU receiving the refund is not the United States dollar and is different from the currency in which the foreign tax was paid, then the recipient's basis in the foreign currency refunded shall be equal to the functional currency value of the non-functional currency refund translated into functional currency at the exchange rate between the functional currency and the non-functional currency. Such exchange rate is determined under paragraph (b)(3) of this section by substituting the words "functional currency" for the word "dollar" and by using, as appropriate, either the average exchange rate for the taxable year to which such taxes relate or the other exchange rate that was used to translate such amount when originally claimed as a credit or added to post-1986 foreign income taxes.

(iv) *Functional currency tax liabilities.* If the functional currency of the QBU receiving the refund is the currency in which the refund was made, then the recipient's basis in the currency received shall be the amount of the functional currency received.

(v) *Foreign currency gain or loss.* For purposes of determining foreign currency gain or loss on the initial payment of accrued foreign tax in a non-functional currency, see section 988. For purposes of determining subsequent foreign currency gain or loss on the disposition of non-functional currency the basis of which is determined under this paragraph (b)(5), see section 988(c)(1)(C).

(c) *Foreign tax redetermination.* For purposes of this section and §1.905-4T, the term *foreign tax redetermination* means a change in the foreign tax liability that may affect a taxpayer's foreign tax credit. A foreign tax redetermination includes: accrued taxes that when paid differ from the amounts added to post-1986 foreign income taxes or claimed as credits by the taxpayer (such as corrections to overaccruals and additional payments); accrued taxes that are not paid before the date two years

after the close of the taxable year to which such taxes relate; any tax paid that is refunded in whole or in part; and, for taxes taken into account when accrued but translated into dollars on the date of payment, a difference between the dollar value of the accrued tax and the dollar value of the tax paid attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

(d) * * * (1) * * * See §1.905-4T(b) which requires notification to the IRS of a foreign tax redetermination with respect to which a redetermination of United States liability is required, and see section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary information establishing its entitlement to the foreign tax credit. However, a redetermination of United States tax liability is not required (and a taxpayer need not notify the IRS) if the foreign taxes are taken into account when accrued but translated into dollars as of the date of payment, the difference between the dollar value of the accrued tax and the dollar value of the tax paid is attributable to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment, and the amount of the foreign tax redetermination with respect to each foreign country is less than the lesser of ten thousand dollars or two percent of the total dollar amount of the foreign tax initially accrued with respect to that foreign country for the United States taxable year. * * *

(2) *Foreign taxes deemed paid under sections 902 or 960*—(i) *Redetermination of United States tax liability not required.* Subject to the special rule of paragraph (d)(3) of this section, a redetermination of United States tax liability is not required to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on the foreign taxes deemed paid by a United States corporation under section 902 or 960. Instead, appropriate upward or downward adjustments shall be made, in accordance with paragraph (d)(2)(ii) of this section, at the time of the foreign tax redetermination to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes to reflect the effect of

the foreign tax redetermination in calculating foreign taxes deemed paid with respect to distributions and inclusions (and the amount of such distributions and inclusions) that are includible in the United States taxable year in which the foreign tax redetermination occurred and subsequent taxable years. See §1.905-4T(b)(2) for notification requirements where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under this paragraph (d)(2).

(ii) *Adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes—(A) Reduction in foreign tax paid or accrued.* A foreign corporation's pool of post-1986 foreign income taxes in the appropriate separate category shall be reduced by the United States dollar amount of a foreign tax refund or other reduction in the amount of foreign tax paid or accrued, translated into United States dollars as provided in paragraph (b)(3) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate separate category shall be increased by the functional currency amount of the foreign tax refund or other reduction in the amount of foreign tax paid or accrued. The allocation of the refund or other adjustment to the appropriate separate categories shall be made in accordance with paragraph (b)(4) of this section and §1.904-6. If a foreign corporation receives a refund of foreign tax in a currency other than its functional currency, that refund shall be translated into its functional currency, for purposes of computing the increase to its pool of post-1986 undistributed earnings, at the exchange rate between the functional currency and the non-functional currency, as determined under paragraph (b)(3) of this section, by substituting the words "functional currency" for the word "dollar" and by using the same average or spot rate exchange rate convention that applies for purposes of translating such foreign taxes into United States dollars.

(B) *Additional foreign tax paid or accrued.* A foreign corporation's pool of post-1986 foreign income taxes in the appropriate separate category shall be in-

creased by the United States dollar amount of the additional foreign tax paid or accrued, translated in accordance with the rules of paragraphs (b)(1) and (b)(2) of this section. A foreign corporation's pool of post-1986 undistributed earnings in the appropriate separate category shall be decreased by the functional currency amount of the additional foreign tax paid or accrued. The allocation of the additional amount of foreign tax among the separate categories shall be made in accordance with §1.904-6. If a foreign corporation pays or accrues foreign tax in a currency other than its functional currency, that tax shall be translated into its functional currency, for purposes of computing the decrease to its pool of post-1986 undistributed earnings, at the exchange rate between the functional currency and the non-functional currency, as determined under paragraph (b)(3) of this section, by substituting the words "functional currency" for the word "dollar" and by using the same average or spot rate exchange rate convention that applies for purposes of translating such foreign taxes into United States dollars.

* * * * *

(D) *Examples.* The following examples illustrate the application of this paragraph (d)(2):

Example 1. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign taxes. In 2008, CFC accrued and paid 100u of foreign income taxes with respect to non-subpart F income. The average exchange rate for 2008 was \$1:1u. In 2009, CFC received a refund of 50u of foreign taxes with respect to its non-subpart F income in 2008. CFC made no distributions to P in 2008. In accordance with paragraph (d)(2)(ii)(A) of this section and subject to paragraph (d)(3) of this section, in 2009 CFC's pool of post-1986 foreign income taxes must be reduced by \$50 (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when added to CFC's post-1986 foreign income taxes, that is, \$1:1u, the average exchange rate for 2008) and the CFC's pool of post-1986 undistributed earnings must be increased by 50u (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are denominated and paid in CFC's functional currency.

Example 2. The facts are the same as in *Example 1*, except that in 2008, CFC had general category post-1986 undistributed earnings attributable to non-subpart F income of 200u (net of foreign taxes), and CFC accrued and paid 160u in foreign income taxes with respect to those earnings. The average exchange rate for 2008 was \$1:1u. Also in 2008, CFC made a distribution to P of 50u, and P was deemed to have paid \$40 of foreign taxes with respect to that distribution (50u/200u x \$160). In 2009, CFC received a refund of foreign taxes of 5u with respect to its non-subpart F income in 2008. Also in 2009, CFC made a distribution to P of 50u. CFC had no income and paid no foreign taxes in 2009. In accordance with paragraph (d)(2)(ii) of this section, CFC's pool of general category post-1986 foreign income taxes is reduced in 2009 by \$5 to \$115 (because the refund must be translated into dollars using the exchange rate that was used to translate such amount when added to CFC's post-1986 foreign income taxes, that is, \$1:1u, the average exchange rate for 2008), and CFC's pool of general category post-1986 undistributed earnings must be increased in 2009 by 5u to 155u (because the post-1986 undistributed earnings must be increased by the functional currency amount of the refund received). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC is not required because the foreign taxes are denominated and paid in CFC's functional currency.) A redetermination of P's deemed paid credit and U.S. tax for 2008 is not required, because the 5u refund, if taken into account in 2008, would have reduced P's deemed paid taxes by less than 10% (50u/205u x \$155 = \$37.80). See paragraph (d)(3)(ii) of this section. P is deemed to pay \$37.10 of foreign taxes with respect to the distribution in 2009 of 50u (50u/155u x \$115).

Example 3. (i) CFC1 is a foreign corporation that is wholly-owned by P, a domestic corporation. CFC2 is a foreign corporation that is wholly-owned by CFC1. The functional currency of CFC1 and CFC2 is the u, and the pools of post-1986 undistributed earnings of CFC1 and CFC2 are maintained in that currency. CFC1, CFC2, and P use the average exchange rate to translate foreign income taxes. In 2008, CFC2 had post-1986 undistributed earnings attributable to non-subpart F income of 100u (net of foreign taxes) and paid 100u in foreign income taxes with respect to those earnings. The average exchange rate for 2008 was \$1:1u. CFC1 had no income and no earnings and profits other than those resulting from distributions from CFC2, as provided in either Situation 1 or Situation 2. CFC1 paid no foreign taxes.

(ii) *Situation 1.* In 2009, CFC2 received a refund of foreign taxes of 25u with respect to its 2008 taxable year. As of the close of 2009, CFC2 had 125u of post-1986 undistributed earnings (100u + 25u) and \$75 of post-1986 foreign income taxes (\$100 - \$25). In 2010, CFC2 made a distribution to CFC1 of 50u. CFC1 was deemed to have paid \$30 of foreign taxes with respect to that distribution (50u/125u x \$75). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC1 is not required because the foreign taxes are denominated and paid in CFC1's functional currency.) At the end of 2010, CFC2 had 75u of post-1986 undistributed earn-

ings (125u - 50u) and \$45 of post-1986 foreign income taxes (\$75 - \$30).

(iii) *Situation 2.* The facts are the same as in *Example 3(ii), Situation 1*, except that CFC2 made a distribution of 50u in 2009 and received a refund of 75u of foreign tax in 2010. In 2009, the amount of foreign taxes deemed paid by CFC1 is \$50 (50u/100u x \$100). In accordance with paragraph (d)(2)(ii)(C) of this section, the pools of post-1986 foreign income taxes of CFC1, as well as CFC2, must be adjusted in 2010, because the 2010 refund would otherwise have the effect of reducing below zero CFC2's pool of post-1986 foreign income taxes. Under paragraph (d)(3)(iv) of this section, the pools would have to

be adjusted in 2009, and a redetermination of P's United States tax liability would be required, if P had received or accrued a distribution or inclusion from CFC1 or CFC2 in 2009 and computed an amount of foreign taxes deemed paid. CFC1's pool of post-1986 foreign income taxes must be reduced in 2010 by \$42.86, determined as follows: \$50 (foreign taxes deemed paid on the distribution from CFC2) minus \$7.14 (the foreign taxes that would have been deemed paid had the refund occurred prior to the distribution (50u/175u x \$25)). CFC2's pool of foreign taxes must be reduced in 2010 by \$32.14, determined as follows: \$75 (75u refund translated into dollars using the exchange rate that was used

to translate such amount when originally added to post-1986 foreign income taxes, that is, \$1:1u, the average exchange rate for 2008) minus \$42.86 (the adjustment to CFC1's pool of post-1986 foreign income taxes). (An income adjustment reflecting foreign currency gain or loss under section 988 with respect to the refund of foreign taxes received by CFC1 is not required because the foreign taxes are denominated and paid in CFC1's functional currency.) The following reflects the pools of post-1986 undistributed earnings and post-1986 foreign income taxes of CFC1 and CFC2.

	Post-1986 Earnings (u)	Foreign taxes (\$)
CFC2:		
2008	100	100
2009	100 - 50 = 50	100 - 50 = 50
2010	50 + 75 = 125	50 - 32.14 = 17.86
CFC1:		
2009	50	50
2010	50	50 - 42.86 = 7.14

* * * * *

(d)(3) * * *

(ii) *Deemed paid foreign tax adjustment of ten percent or more.* A redetermination of United States tax liability is required if a foreign tax redetermination occurs with respect to foreign taxes paid by a foreign corporation and such foreign tax redetermination, if taken into account in the taxable year of the foreign corporation to which the foreign tax redetermination relates, has the effect of reducing by ten percent or more the domestic corporate shareholder's foreign taxes deemed paid under section 902 or 960 with respect to a distribution or inclusion from the foreign corporation in any taxable year of the domestic corporate shareholder. If a redetermination of United States tax is required under the preceding sentence for any taxable year, a redetermination of United States tax is also required for all subsequent taxable years in which the domestic corporate shareholder received or accrued a distribution or inclusion from the foreign corporation.

(iii) *Example.* The following example illustrates the application of paragraph (d)(3)(ii) of this section:

Example. (i) Facts. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P use the calendar year as their taxable year. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the average exchange rate to translate foreign income taxes. As of January 1, 2008,

CFC had 500u of general category post-1986 undistributed earnings and \$200 of general category post-1986 foreign income taxes. In 2008, when the average exchange rate for the year was \$1:1u, CFC earned general category income of 600u, accrued 100u of foreign income tax with respect to that income, and made a distribution to P of 100u, 10% of CFC's post-1986 undistributed earnings of 1,000u. P was deemed to have paid \$30 of foreign income taxes in 2008 with respect to that distribution (100u/1,000u x \$300). In 2009, CFC paid its actual foreign tax liability for 2007 of 80u. Also in 2009, for which the average exchange rate was \$1:1.5u, CFC earned 500u of general category income, accrued 150u of tax with respect to that income, and distributed 100u to P. In 2010, CFC incurred a general category loss of (500u) and accrued no foreign tax. The loss was carried back to 2008 for foreign tax purposes, and CFC received a refund in 2011 of all 80u of foreign taxes paid for its 2008 taxable year.

(ii) *Result in 2009.* If the 20u overaccrual of tax for 2007 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,020u, CFC's general category post-1986 foreign income taxes would be \$280, and P would be deemed to pay \$27.45 of tax with respect to the 2008 distribution of 100u (100u/1,020u x \$280 = \$27.45). Because \$2.55 is less than 10% of the \$30 of foreign taxes deemed paid as originally calculated in 2008, P is not required to redetermine its deemed paid credit and U.S. tax liability for 2008 in 2009. Instead, CFC's general category post-1986 foreign income taxes are reduced by \$20 in 2009 (because the overaccrual for 2008 is translated into dollars using the exchange rate that was used to translate such amount when originally added to post-1986 foreign income taxes, that is, \$1:1u, the average exchange rate for 2008), and the corresponding pool of general category post-1986 undistributed earnings is increased by 20u in 2009 (because the post-1986 undistributed earnings pool is increased by the functional

currency amount of the overaccrual). CFC's general category post-1986 undistributed earnings are also increased in 2009 to 1270u by the 350u earned in 2009 (900u + 20u + 350u = 1270u), and CFC's general category post-1986 foreign income taxes are increased by \$100 to \$350 (\$270 - \$20 + \$100). P is deemed to pay \$27.56 of foreign income taxes in 2009 with respect to the 100u distribution from CFC in that year (100u/1270u x \$350).

(iii) *Result in 2011.* If the 80u refund of tax for 2008 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,100u, CFC's general category post-1986 foreign income taxes would be \$200, and P would be deemed to pay \$18.18 of tax with respect to the 2008 distribution of 100u (100u/1,100u x \$200 = \$18.18). Because \$11.82 is more than 10% of the \$30 of foreign taxes deemed paid as originally calculated in 2008, under paragraph (d)(3)(ii) of this section, P is required to redetermine its deemed paid credit and U.S. tax liability for 2008 and 2009 in 2011. As redetermined in 2011, CFC's post-1986 undistributed earnings for 2009 are 1350u (1,100u as revised for 2008, less 100u distributed in 2008, plus 350u earned in 2009), and its post-1986 foreign income taxes for 2009 are \$381.82 (\$200 as revised for 2008, less \$18.18 deemed paid in 2008, plus \$100 accrued for 2009). As redetermined in 2011, P's deemed paid credit with respect to the 100u distribution from CFC in 2009 is \$24.28 (100u/1350u x \$381.82).

* * * * *

(v) *Example.* The following example illustrates the application of paragraph (d)(3)(iv) of this section:

Example. Controlled foreign corporation (CFC) is a wholly-owned subsidiary of its domestic parent, P. Both CFC and P are calendar year taxpayers. CFC has a functional currency, the u, other than the dollar, and its pool of post-1986 undistributed earnings is maintained in that currency. CFC and P use the av-

average exchange rate to translate foreign taxes. The average exchange rate for both 2008 and 2009 was \$1:1u. In 2008, CFC earned 200u of general category income, accrued and paid 100u of foreign taxes with respect to that income, and made a distribution to P of 50u, half of CFC's post-1986 undistributed earnings of 100u. P is deemed to have paid \$50 of foreign taxes with respect to that distribution (50u/100u x \$100). In 2009, CFC received a refund of all 100u of foreign taxes related to the general category income for 2008. In 2009, CFC earned an additional 290u of income, 200u of which was passive category income and 90u of which was general category income, and accrued and paid 95u of foreign tax, 40u of which was with respect to the passive category income and 45u of which was with respect to the general category income. In accordance with paragraph (d)(3)(iv) of this section, P is required to redetermine its United States tax liability for 2008 to account for the foreign tax redetermination occurring in 2009 because, if an adjustment to CFC's pool of post-1986 foreign income taxes in the general category were made, the pool would be (\$5). A deficit is not permitted to be carried in CFC's pool of post-1986 foreign income taxes in any separate category.

* * * * *

(f) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

Par. 3. Section 1.905-4T is revised to read as follows:

§1.905-4T Notification of foreign tax redetermination (temporary).

(a) *Application of this section.* The rules of this section apply if, as a result of a foreign tax redetermination (as defined in §1.905-3T(c)), a redetermination of United States tax liability is required under section 905(c) and §1.905-3T(d).

(b) *Time and manner of notification—(1) Redetermination of United States tax liability—(i) In general.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, any taxpayer for which a redetermination of United States tax liability is required must notify the Internal Revenue Service (IRS) of the foreign tax redetermination by filing an amended return, Form 1118 (*Foreign Tax Credit — Corporations*) or Form 1116 (*Foreign Tax Credit*), and the statement required under paragraph (c) of this section for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must be filed within the time prescribed by this paragraph (b) and contain the information described in paragraph (c) of this section. Where a foreign tax redetermination requires an individual to redetermine

the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k).

(ii) *Reduction in amount of foreign tax liability.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that reduces the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must file a separate notification for each such taxable year by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred.

(iii) *Increase in amount of foreign tax liability.* Except as provided in paragraphs (b)(1)(iv), (v), and (b)(3) of this section, for each taxable year of the taxpayer with respect to which a redetermination of United States tax liability is required by reason of a foreign tax redetermination that increases the amount of foreign taxes paid or accrued, or included in the computation of foreign taxes deemed paid, the taxpayer must notify the Internal Revenue Service within the period provided by section 6511(d)(3)(A). Filing of such notification within the prescribed period shall constitute a claim for refund of United States tax.

(iv) *Multiple redeterminations of United States tax liability for same taxable year.* Where more than one foreign tax redetermination requires a redetermination of United States tax liability for the same taxable year of the taxpayer and those redeterminations occur within two consecutive taxable years of the taxpayer, the taxpayer may file for such taxable year one amended return, Form 1118 or 1116, and the statement required under paragraph (c) of this section that reflect all such foreign tax redeterminations. If the taxpayer chooses to file one notification for such redeterminations, the taxpayer must file such notification by the due date (with extensions) of the original return for the

taxpayer's taxable year in which the first foreign tax redetermination that reduces foreign tax liability occurred. Where a foreign tax redetermination with respect to the taxable year for which a redetermination of United States tax liability is required occurs after the date for providing such notification, more than one amended return may be required with respect to that taxable year.

(v) *Carryback and carryover of unused foreign tax.* Where a foreign tax redetermination requires a redetermination of United States tax liability that would otherwise result in an additional amount of United States tax due, but such amount is eliminated as a result of a carryback or carryover of an unused foreign tax under section 904(c), the taxpayer may, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section, notify the IRS of such redetermination by attaching a statement to the original return for the taxpayer's taxable year in which the foreign tax redetermination occurs. Such statement must be filed by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred and contain the information described in §1.904-2(f).

(vi) *Example.* The following example illustrates the application of this paragraph (b)(1):

Example. (i) X, a domestic corporation, is an accrual basis taxpayer and uses the calendar year as its United States taxable year. X conducts business through a branch in Country M, the currency of which is the m, and also conducts business through a branch in Country N, the currency of which is the n. X uses the average exchange rate to translate foreign income taxes. Assume that X is able to claim a credit under section 901 for all foreign taxes paid or accrued.

(ii) In 2008, X accrued and paid 100m of Country M taxes with respect to 400m of foreign source general category income. The average exchange rate for 2008 was \$1:1m. Also in 2008, X accrued and paid 50n of Country N taxes with respect to 150n of foreign source general category income. The average exchange rate for 2008 was \$1:1n. X claimed a foreign tax credit of \$150 (\$100 (100m at \$1:1m) + \$50 (50n at \$1:1n)) with respect to its foreign source general category income on its United States tax return for 2008.

(iii) In 2009, X accrued and paid 100n of Country N taxes with respect to 300n of foreign source general category income. The average exchange rate for 2009 was \$1.50:1n. X claimed a foreign tax credit of \$150 (100n at \$1.5:1n) with respect to its foreign source general category income on its United States tax return for 2009.

(iv) On June 15, 2012, when the spot exchange rate was \$1.40:1n, X received a refund of 10n from Country N, and, on March 15, 2013, when the spot

exchange rate was \$1.20:1m, X was assessed by and paid Country M an additional 20m of tax. Both payments were with respect to X's foreign source general category income in 2008. On May 15, 2013, when the spot exchange rate was \$1.45:1n, X received a refund of 5n from Country N with respect to its foreign source general category income in 2009.

(v) X must redetermine its United States tax liability for both 2008 and 2009. With respect to 2008, X must notify the IRS of the June 15, 2012, refund of 10n from Country N that reduced X's foreign tax liability by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for 2008 by the due date of the original return (with extensions) for 2012. The amended return and Form 1118 must reduce the amount of foreign taxes claimed as a credit under section 901 by \$10 (10n refund translated at the average exchange rate for 2008, or \$1:1n (see §1.905-3T(b)(3))). X will recognize foreign currency gain or loss under section 988 in or after 2012 on the conversion of the 10n refund into dollars. With respect to the March 15, 2013, additional assessment of 20m by Country M, X must notify the IRS within the time period provided by section 6511(d)(3)(A), increasing the foreign taxes available as a credit by \$24 (20m translated at the exchange rate on the date of payment, or \$1.20:1m). See sections 986(a)(1)(B)(i) and 986(a)(2)(A) and §1.905-3T(b)(1)(ii)(A). X may so notify the IRS by filing a second amended return, Form 1118, and the statement required in paragraph (c) of this section for 2008, within the time period provided by section 6511(d)(3)(A). Alternatively, when X redetermines its United States tax liability for 2008 to take into account the 10n refund from Country N which occurred in 2012, X may also take into account the 20m additional assessment by Country M which occurred on March 15, 2013. See §1.905-4T(b)(1)(iv). Where X reflects both foreign tax redeterminations on the same amended return, Form 1118, and in the statement required in paragraph (c) of this section for 2008, the amount of X's foreign taxes available as a credit would be:

(A) Reduced by \$10 (10n refund translated at \$1:1n) and

(B) Increased by \$24 (20m additional assessment translated at the exchange rate on the date of payment, March 15, 2013, or \$1.20:1m). The foreign taxes available as a credit therefore would be increased by \$14 (\$24 (additional assessment) - \$10 (refund)). The due date of the 2008 amended return, Form 1118, and the statement required in paragraph (c) of this section reflecting foreign tax redeterminations in both years would be the due date (with extensions) of X's original return for 2012.

(vi) With respect to 2009, X must notify the IRS by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for 2009 that is separate from that filed for 2008. The amended return, Form 1118, and the statement required in paragraph (c) of this section for 2009 must be filed by the due date (with extensions) of X's original return for 2013. The amended return and Form 1118 must reduce the amount of foreign taxes claimed as a credit under section 901 by \$7.50 (5n refund translated at the average exchange rate for 2009, or \$1.50:1n). X will recognize foreign currency gain or loss under section 988 in or after 2013 on the conversion of the 5n refund into dollars.

(2) *Pooling adjustment in lieu of redetermination of United States tax liability.* Where a redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960, and the taxpayer is required to adjust the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes under §1.905-3T(d)(2), the taxpayer is required to notify the IRS of such redetermination by reflecting the adjustments to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on a Form 1118 for the taxpayer's first taxable year with respect to which the redetermination affects the computation of foreign taxes deemed paid. Such Form 1118 must be filed by the due date (with extensions) of the original return for such taxable year. In the case of multiple redeterminations that affect the computation of foreign taxes deemed paid for the same taxable year and that are required to be reported under this paragraph (b)(2), a taxpayer may file one notification for all such redeterminations in lieu of filing a separate notification for each such redetermination. See section 905(b) and the regulations under that section which require that a taxpayer substantiate that a foreign tax was paid and provide all necessary information establishing its entitlement to the foreign tax credit.

(3) *Taxpayers under the jurisdiction of the Large and Mid-Size Business Division.* The rules of this paragraph (b)(3) apply where a redetermination of United States tax liability is required by reason of a foreign tax redetermination that results in a reduction in the amount of foreign taxes paid or accrued, or is included in the computation of foreign taxes deemed paid, and such foreign tax redetermination occurs while a taxpayer is under the jurisdiction of the Large and Mid-Size Business Division (or similar program). The taxpayer must, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section (requiring the filing of an amended return, Form 1118, and a statement described in paragraph (c) of this section by the due date (with extensions) of the original return for the taxpayer's taxable year in which the foreign tax redetermination occurred), notify the IRS of such redetermination by providing to the examiner the statement described in paragraph (c) of this section

during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. The taxpayer must provide the statement to the examiner no later than 120 days after the latest of the date the foreign tax redetermination occurs, the opening conference of the examination, or the hand-delivery or postmark date of the opening letter concerning the examination. If, however, the foreign tax redetermination occurs more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the taxpayer may, in lieu of applying the rules of paragraphs (b)(1)(i) and (ii) of this section, provide the statement to the examiner within 120 days after the date the foreign tax redetermination occurs, and the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraphs (b)(1)(i) and (ii) of this section. A taxpayer subject to the rules of this paragraph (b)(3) must satisfy the rules of this paragraph (b)(3) (in lieu of the rules of paragraphs (b)(1)(i) and (ii) of this section) in order not to be subject to the penalty relating to the failure to file notice of a foreign tax redetermination under section 6689 and the regulations under that section. This paragraph (b)(3) shall not apply where the due date specified in paragraph (b)(1)(ii) of this section for providing notice of the foreign tax redetermination precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. In addition, any statement that would otherwise be required to be provided under this paragraph (b)(3) on or before May 5, 2008, will be considered timely if provided on or before May 5, 2008.

(4) *Example.* The following example illustrates the application of paragraph (b)(3) of this section:

Example. X, a taxpayer under the jurisdiction of the Large and Mid-Size Business Division, uses the calendar year as its United States taxable year. On October 15, 2009, X receives a refund of foreign tax that constitutes a foreign tax redetermination that necessitates a redetermination of United States tax liability for X's 2008 taxable year. Under paragraph (b)(1)(ii) of this section, X is required to notify the IRS of the foreign tax redetermination by filing an

amended return, Form 1118, and the statement required in paragraph (c) of this section for its 2008 taxable year by September 15, 2010 (the due date (with extensions) of the original return for X's 2009 taxable year). On December 15, 2010, the IRS hand delivers an opening letter concerning the examination of the return for X's 2008 taxable year, and the opening conference for such examination is scheduled for January 15, 2011. Because the date for notifying the IRS of the foreign tax redetermination under paragraph (b)(1)(ii) of this section precedes the date of the opening conference concerning the examination of the return for X's 2008 taxable year, paragraph (b)(3) of this section does not apply, and X must notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for the 2008 taxable year by September 15, 2010.

(c) *Notification contents*—(1) *In general*. In addition to satisfying the requirements of paragraph (b) of this section, the taxpayer must furnish a statement that contains information sufficient for the IRS to redetermine the taxpayer's United States tax liability where such a redetermination is required under section 905(c), and to verify adjustments to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes where such adjustments are required under §1.905-3T(d)(2). The information must be in a form that enables the IRS to verify and compare the original computations with respect to a claimed foreign tax credit, the revised computations resulting from the foreign tax redetermination, and the net changes resulting therefrom. The statement must include the taxpayer's name, address, identifying number, and the taxable year or years of the taxpayer that are affected by the foreign tax redetermination. In addition, the taxpayer must provide the information described in paragraph (c)(2) or (c)(3) of this section, as appropriate. If the statement is submitted to the IRS under paragraph (b)(3) of this section, which provides requirements with respect to reporting by taxpayers under the jurisdiction of the Large and Mid-Size Business Division, the statement must also include the following declaration signed by a person authorized to sign the return of the taxpayer: "Under penalties of perjury, I declare that I have examined this written statement, and to the best of my knowledge and belief, this written statement is true, correct, and complete."

(2) *Foreign taxes paid or accrued*. Where a redetermination of United States tax liability is required by reason of a foreign tax redetermination as defined in

§1.905-3T(c), in addition to the information described in paragraph (c)(1) of this section, the taxpayer must provide the following: the date or dates the foreign taxes were accrued, if applicable; the date or dates the foreign taxes were paid; the amount of foreign taxes paid or accrued on each date (in foreign currency) and the exchange rate used to translate each such amount, as provided in §1.905-3T(b)(1) or (b)(2); and information sufficient to determine any interest due from or owing to the taxpayer, including the amount of any interest paid by the foreign government to the taxpayer and the dates received. In addition, in the case of any foreign tax that is refunded in whole or in part, the taxpayer must provide the date of each such refund; the amount of such refund (in foreign currency); and the exchange rate that was used to translate such amount when originally claimed as a credit (as provided in §1.905-3T(b)(3)) and the exchange rate for the date the refund was received (for purposes of computing foreign currency gain or loss under section 988). In addition, in the case of any foreign taxes that were not paid before the date two years after the close of the taxable year to which such taxes relate, the taxpayer must provide the amount of such taxes in foreign currency, and the exchange rate that was used to translate such amount when originally added to post-1986 foreign income taxes or claimed as a credit. Where a redetermination of United States tax liability results in an amount of additional tax due, but the carryback or carryover of an unused foreign tax under section 904(c) only partially eliminates such amount, the taxpayer must also provide the information required in §1.904-2(f).

(3) *Foreign taxes deemed paid*. Where a redetermination of United States tax liability is required under §1.905-3T(d)(3) to account for the effect of a redetermination of foreign tax paid or accrued by a foreign corporation on foreign taxes deemed paid under section 902 or 960, in addition to the information described in paragraphs (c)(1) and (c)(2) of this section, the taxpayer must provide the balances of the pools of post-1986 undistributed earnings and post-1986 foreign income taxes before and after adjusting the pools in accordance with the rules of §1.905-3T(d)(2), the dates and amounts of any dividend distributions or other inclusions made out of

earnings and profits for the affected year or years, and the amount of earnings and profits from which such dividends were paid for the affected year or years.

(d) *Payment or refund of United States tax*. The amount of tax, if any, due upon a redetermination of United States tax liability shall be paid by the taxpayer after notice and demand has been made by the IRS. Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency procedures) shall not apply with respect to the assessment of the amount due upon such redetermination. In accordance with sections 905(c) and 6501(c)(5), the amount of additional tax due shall be assessed and collected without regard to the provisions of section 6501(a) (relating to limitations on assessment and collection). The amount of tax, if any, shown by a redetermination of United States tax liability to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of section 6511(d)(3)(A) and §301.6511(d)-3 of this chapter.

(e) *Interest and penalties*—(1) *In general*. If a redetermination of United States tax liability is required by reason of a foreign tax redetermination, interest shall be computed on the underpayment or overpayment in accordance with sections 6601 and 6611 and the regulations under these sections. No interest shall be assessed or collected on any underpayment resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, shall interest assessed and collected pursuant to the preceding sentence for any period before receipt of the foreign tax refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations under this section for that period. Interest shall be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a refund until the taxpayer pays the additional tax due the United States.

(2) *Adjustments to pools of foreign taxes*. No underpayment or overpayment of United States tax liability results from a redetermination of foreign tax unless a redetermination of United States tax liability is required. Consequently, no interest

shall be paid by or to a taxpayer as a result of adjustments to a foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes made in accordance with §1.905-3T(d)(2).

(3) *Imposition of penalty.* Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

(f) *Effective/applicability date*—(1) *In general.* This section applies to foreign tax redeterminations (defined in §1.905-3T(c)) occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, where the foreign tax redetermination affects the amount of foreign taxes paid or accrued by a United States taxpayer. Where the redetermination of foreign tax paid or accrued by a foreign corporation affects the computation of foreign taxes deemed paid under section 902 or 960 with respect to pre-1987 accumulated profits or post-1986 undistributed earnings of the foreign corporation, this section applies to foreign tax redeterminations occurring in a taxable year of the foreign corporation which ends with or within a taxable year of its domestic corporate shareholder beginning on or after November 7, 2007. In no case, however, shall this paragraph (f)(1) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

(2) *Foreign tax redeterminations occurring in taxable years beginning before November 7, 2007*—(i) *Scope.* This paragraph (f)(2) applies to any foreign tax redetermination (as defined in §1.905-3T(c)) which occurred in any of the three taxable years of a United States taxpayer immediately preceding the taxpayer's first taxable year beginning on or after November 7, 2007; reduced the amount of foreign taxes paid or accrued by the taxpayer; and requires a redetermination of United States tax liability for any taxable year. This paragraph (f)(2) also applies to any redetermination of foreign tax paid or accrued by a foreign corporation which occurred in a taxable year of the foreign corporation which ends with or within any of the three taxable years of a domestic corporate shareholder immediately preceding such shareholder's first taxable year beginning on or after November 7, 2007; reduced foreign taxes included in the computation of foreign taxes deemed paid by such

shareholder under section 902 or 960; and requires a redetermination of United States tax liability under §1.905-3T(d)(3) for any taxable year. For corresponding rules applicable to foreign tax redeterminations occurring in taxable years beginning before the third taxable year immediately preceding the taxable year beginning on or after November 7, 2007, see 26 CFR §§1.905-4T and 1.905-5T (as contained in 26 CFR part 1, revised as of April 1, 2007).

(ii) *Notification required.* If, as of November 7, 2007, the taxpayer has not satisfied the notification requirements described in §1.905-3T and this section (as contained in 26 CFR part 1, revised as of April 1, 2007, as modified by Notice 90-26, 1990-1 C.B. 336, see §601.601(d)(2)(ii)(b) of this chapter), with respect to a foreign tax redetermination described in paragraph (f)(2)(i) of this section, the taxpayer must notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118 or 1116, and the statement required in paragraph (c) of this section for the taxable year with respect to which a redetermination of United States tax liability is required. Such notification must be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following the taxable year in which these regulations are first effective. Where the foreign tax redetermination requires an individual to redetermine the individual's United States tax liability, and as a result of such foreign tax redetermination the amount of creditable taxes paid or accrued by such individual during the taxable year does not exceed the applicable dollar limitation in section 904(k), the individual shall not be required to file Form 1116 with the amended return for such taxable year if the individual satisfies the requirements of section 904(k). The rules of paragraphs (b)(1)(iv) and (v) of this section (concerning multiple redeterminations of United States tax liability for the same taxable year, and the carryback and carryover of unused foreign tax) shall apply.

(iii) *Taxpayers under the jurisdiction of the Large and Mid-Size Business Division.* If a taxpayer under the jurisdiction of the Large and Mid-Size Business Division is otherwise required under paragraph (f)(2)(ii) of this section to notify the IRS

of a foreign tax redetermination described in paragraph (f)(2)(ii) of this section by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section, such taxpayer may, in lieu of applying the rules of paragraph (f)(2)(ii) of this section, provide to the examiner the information described in paragraph (c) of this section during an examination of the return for the taxable year for which a redetermination of United States tax liability is required by reason of such foreign tax redetermination. The taxpayer must provide the information to the examiner on or before the date that is the later of May 5, 2008, or 120 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required. However, if November 7, 2007, is more than 180 days after the latest of the opening conference or the hand-delivery or postmark date of the opening letter, the IRS, in its discretion, may accept such statement or require the taxpayer to comply with the rules of paragraph (f)(2)(ii) of this section. This paragraph (f)(2)(iii) shall not apply where the due date specified in paragraph (f)(2)(ii) of this section for providing notice of the foreign tax redetermination precedes the latest of the opening conference or the hand-delivery or postmark date of the opening letter concerning an examination of the return for the taxable year for which a redetermination of United States tax liability is required.

(iv) *Interest and penalties.* Interest shall be computed in accordance with paragraph (e) of this section. Failure to comply with the provisions of this paragraph (f)(2) shall subject the taxpayer to the penalty provisions of section 6689 and the regulations under that section.

(3) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

Par. 4. Section 1.905-5T is amended as follows:

1. Remove the language "earnings and profits accumulated in taxable years of a foreign corporation beginning prior to January 1, 1987" from the second sentence of paragraph (a) and add the language "pre-1987

- accumulated profits (as defined in §1.902-1(a)(10)(i) in its place.
2. Remove the language “§1.905-4(b)(3)” from the second sentence of paragraph (d)(1) and add the language “§1.905-4T(c)” in its place.
 3. Remove the language “§1.905-4T(b)(3)(ii)(A)” from paragraph (d)(2) and add the language “§1.905-4T(c)(2)” in its place.
 4. Remove the language “paragraph (b)(3)(iii)” from paragraph (d)(3) and add the language “§1.905-4T(c)(3)” in its place.
 5. Remove the language “§1.905-4T(b)(3)(iii) in lieu of the exchange rate for the date of the accrual” from paragraph (d)(4) and add the language “§1.905-4T(c)(3)” in its place.
 6. Revise the heading and the first sentence of paragraph (f).
 7. Add a new paragraph (g).

The revision and addition read as follows:

§1.905-5T Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (temporary).

(f) *Special effective/applicability date.* See §1.905-4T(f) for the applicability date of notification requirements relating to foreign tax redeterminations that affect foreign taxes deemed paid under section 902 or section 960 with respect to pre-1987 accumulated profits accumulated in taxable years of a foreign corporation beginning on or after January 1, 1987. ***

(g) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read as follows:

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

Par. 6. Section 301.6689-1T is amended as follows:

1. Add a new sentence at the end of paragraph (a).
2. Revise paragraph (e).

The addition and revision read as follows:

§301.6689-1T Failure to file notice of redetermination of foreign tax (temporary).

(a) * * * Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency proceedings) shall not apply with respect to the assessment of the amount of the penalty.

(e) *Effective/applicability date—(1) In general.* This section applies to foreign tax redeterminations (as defined in §1.905-3T(c) of this chapter) occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, and in the three immediately preceding taxable years. For corresponding rules applicable to foreign tax redeterminations occurring in earlier taxable years of United States taxpayers, see §301.6689-1T (as contained in 26 CFR part 301, revised as of April 1, 2007).

(2) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved August 9, 2007.

Karen A. Sowell,
Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on November 6, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 7, 2007, 72 F.R. 62771)

Section 6689.—Failure to File Notice of Redetermination of Foreign Tax

These temporary regulations provide rules relating to the civil penalty imposed under section 6689 for failure to satisfy the notification requirements of section 905(c). The regulations also provide rules concerning section 905(c), which requires taxpayers to notify the IRS of a foreign tax redetermination, or a change in foreign tax liability that may affect the taxpayer's foreign tax credit. See T.D. 9362, page 1050.

These proposed regulations provide rules relating to the civil penalty imposed under section 6689 for failure to satisfy the notification requirements of section 905(c). The regulations also provide rules concerning section 905(c), which requires taxpayers to notify the IRS of a foreign tax redetermination, or a change in foreign tax liability that may affect the taxpayer's foreign tax credit. See REG-209020-86, page 1075.

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2007-91

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liabil-

ity. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-36 I.R.B. 366.

The composite corporate bond rate for October 2007 is 6.14 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range		
Month	Year		90%	to	100%
November	2007	5.89	5.30		5.89

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), section 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412 of the Code. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each

of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the

24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from October 2007 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of October 2007 are, respectively, 5.17, 6.02, and 6.38. The three 24-month average corporate bond segment rates applicable for November 2007 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.31	5.88	6.40

The transitional segment rates under § 430(h)(2)(G) applicable for November

2007, taking into account the corporate

bond weighted average of 5.89 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.70	5.89	6.06

30-YEAR TREASURY SECURITIES INTEREST RATE

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury secu-

rities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for October 2007 is 4.77 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2037.

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) of the Code

are segment rates computed without regard to a 24 month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for October 2007, taking into account the October 2007 30-year Treasury rate of 4.77 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.85	5.02	5.09

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at RetirementPlanQuestions@irs.gov.

Table I
 Monthly Yield Curve for October 2007

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	5.15	20.5	6.27	40.5	6.39	60.5	6.43	80.5	6.45
1.0	5.09	21.0	6.28	41.0	6.39	61.0	6.43	81.0	6.45
1.5	5.05	21.5	6.28	41.5	6.39	61.5	6.43	81.5	6.45
2.0	5.05	22.0	6.29	42.0	6.39	62.0	6.43	82.0	6.45
2.5	5.07	22.5	6.29	42.5	6.39	62.5	6.43	82.5	6.45
3.0	5.12	23.0	6.30	43.0	6.40	63.0	6.43	83.0	6.45
3.5	5.19	23.5	6.30	43.5	6.40	63.5	6.43	83.5	6.45
4.0	5.26	24.0	6.30	44.0	6.40	64.0	6.44	84.0	6.45
4.5	5.33	24.5	6.31	44.5	6.40	64.5	6.44	84.5	6.45
5.0	5.41	25.0	6.31	45.0	6.40	65.0	6.44	85.0	6.46
5.5	5.48	25.5	6.32	45.5	6.40	65.5	6.44	85.5	6.46
6.0	5.54	26.0	6.32	46.0	6.40	66.0	6.44	86.0	6.46
6.5	5.61	26.5	6.32	46.5	6.41	66.5	6.44	86.5	6.46
7.0	5.67	27.0	6.33	47.0	6.41	67.0	6.44	87.0	6.46
7.5	5.72	27.5	6.33	47.5	6.41	67.5	6.44	87.5	6.46
8.0	5.77	28.0	6.33	48.0	6.41	68.0	6.44	88.0	6.46
8.5	5.82	28.5	6.34	48.5	6.41	68.5	6.44	88.5	6.46
9.0	5.86	29.0	6.34	49.0	6.41	69.0	6.44	89.0	6.46
9.5	5.90	29.5	6.34	49.5	6.41	69.5	6.44	89.5	6.46
10.0	5.94	30.0	6.34	50.0	6.41	70.0	6.44	90.0	6.46
10.5	5.98	30.5	6.35	50.5	6.41	70.5	6.44	90.5	6.46
11.0	6.01	31.0	6.35	51.0	6.41	71.0	6.44	91.0	6.46
11.5	6.04	31.5	6.35	51.5	6.42	71.5	6.44	91.5	6.46
12.0	6.06	32.0	6.36	52.0	6.42	72.0	6.44	92.0	6.46
12.5	6.09	32.5	6.36	52.5	6.42	72.5	6.44	92.5	6.46
13.0	6.11	33.0	6.36	53.0	6.42	73.0	6.45	93.0	6.46
13.5	6.13	33.5	6.36	53.5	6.42	73.5	6.45	93.5	6.46
14.0	6.14	34.0	6.36	54.0	6.42	74.0	6.45	94.0	6.46
14.5	6.16	34.5	6.37	54.5	6.42	74.5	6.45	94.5	6.46
15.0	6.17	35.0	6.37	55.0	6.42	75.0	6.45	95.0	6.46
15.5	6.19	35.5	6.37	55.5	6.42	75.5	6.45	95.5	6.46
16.0	6.20	36.0	6.37	56.0	6.42	76.0	6.45	96.0	6.46
16.5	6.21	36.5	6.38	56.5	6.42	76.5	6.45	96.5	6.46
17.0	6.22	37.0	6.38	57.0	6.43	77.0	6.45	97.0	6.46
17.5	6.23	37.5	6.38	57.5	6.43	77.5	6.45	97.5	6.46
18.0	6.24	38.0	6.38	58.0	6.43	78.0	6.45	98.0	6.46
18.5	6.24	38.5	6.38	58.5	6.43	78.5	6.45	98.5	6.46
19.0	6.25	39.0	6.38	59.0	6.43	79.0	6.45	99.0	6.46
19.5	6.26	39.5	6.39	59.5	6.43	79.5	6.45	99.5	6.46
20.0	6.26	40.0	6.39	60.0	6.43	80.0	6.45	100.0	6.46

Interim Guidance Under Section 6404(g)

Notice 2007-93

PURPOSE

This notice describes how the amendment to section 6404(g) made by the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-028, § 8242, 121 Stat. 190, 200 (May 25, 2007), applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007.

SCOPE

This notice applies to notices under section 6404(g)(1) that are provided on or after November 26, 2007, with respect to individual Federal income tax returns that were timely filed before that date. This notice provides interim guidance and will remain in effect until further guidance or regulations are issued.

BACKGROUND

Effective for taxable years ended after July 22, 1998, if an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the Service does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the Service shall generally suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. Prior to amendment by the Small Business and Work Opportunity Tax Act of 2007 (the Act), a notice is timely if provided before the close of the eighteen-month period beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period and ends twenty-one days after the Service provides the notice. This suspension rule applies separately with respect to each item or adjustment.

The Act amended section 6404(g) by striking "18-month period" in paragraphs

(1)(A) and (3)(A) and inserting "36-month period." The Act states that the amendment "shall apply to notices provided by the Secretary of the Treasury or his delegate after the date that is six months after the date of enactment" of the Act — that is, on or after November 26, 2007. In a recent Notice of Proposed Rulemaking and Notice of Public Hearing on the Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions, the Treasury Department and the Service acknowledged that questions have been raised regarding the effective date of the changes made by the Act, specifically how the amendment is intended to apply to notices provided on or after November 26, 2007, and stated that further guidance was under consideration. See Prop. Treas. Reg. § 301.6404-4, 72 Fed. Reg. 34199, 34200 (June 21, 2007). This notice provides that guidance.

DISCUSSION

The Act extends to thirty-six months the period within which the Service may issue a notice to an individual taxpayer specifically stating the taxpayer's liability and the basis for that liability before the accrual of interest and certain penalties are suspended under section 6404(g). The Service will apply the following rules to notices issued on or after November 26, 2007, that relate to a return that was timely filed before that date.

1. If, as of November 25, 2007, the eighteen-month period has closed and the Service has not provided notice to the taxpayer, interest and applicable penalties will be suspended beginning on the day after the close of the eighteen-month period and ending on the date that is twenty-one days after the notice is provided.

2. In all other cases, interest and applicable penalties will be suspended beginning on the day after the close of the thirty-six month period and ending on the date that is twenty-one days after the notice is provided.

The following examples illustrate these rules. The examples assume that none of the exceptions in section 6404(g)(2) to the general rule for suspension applies. The dates in the examples are used to illustrate the effective date changes made by the Act and do not provide guidance as to the computation of interest generally.

Example 1: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). On January 2, 2009 (less than thirty-six months after the due date of the return), the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will not be suspended with respect to the taxpayer's return.

Example 2: An individual files a federal income tax return for 2005 by April 17, 2006 (the last day to timely file pursuant to section 7503). On December 26, 2007, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has closed as of November 25, 2007, interest and applicable penalties will be suspended with respect to the taxpayer's return beginning on October 17, 2007 (the day after the close of the eighteen-month period), and ending on January 16, 2008 (the date that is twenty-one days after the notice is provided).

Example 3: An individual files a federal income tax return for 2006 by April 17, 2007 (the last day to timely file pursuant to section 7503). The individual consents to extend the time within which the Service may assess any tax due on the return until June 30, 2011. On December 20, 2010, the Service provides a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability. Because the eighteen-month period has not closed as of November 25, 2007, interest and applicable penalties will be suspended beginning on April 17, 2010 (the day after the close of the thirty-six month period), and ending on January 10, 2011 (the date that is twenty-one days after the notice is provided).

DRAFTING INFORMATION

The principal author of this notice is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Stuart Spielman at (202) 622-3620 (not a toll-free call).

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

Rev. Proc. 2007-67

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, which provides the general procedures for obtaining the advance consent of the Commissioner of Internal Revenue

to change a method of accounting. This revenue procedure allows taxpayers, under certain conditions, to request to revise the year of change for a Form 3115, *Application for Change in Accounting Method*, that is pending in the national office, and modifies the period for taking into account a net positive adjustment under § 481(a) of the Internal Revenue Code when the Commissioner approves the taxpayer's request to revise the year of change.

SECTION 2. BACKGROUND

.01 Section 446(e) states that, except as otherwise provided, a taxpayer must secure the consent of the Secretary before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(i) of the Income Tax Regulations requires that, in general, in order to obtain the Commissioner's consent to a change in accounting method, a taxpayer must file a Form 3115 during the taxable year in which the taxpayer desires to make the proposed change.

.02 Rev. Proc. 97-27 provides the general procedures for obtaining the advance consent of the Commissioner to change a method of accounting. *See also* Rev. Proc. 2007-1, 2007-1 I.R.B. 1 (or successor).

.03 Section 3.05 of Rev. Proc. 97-27 defines the year of change as the taxable year for which a change in method of accounting is effective, that is, the first taxable year the new accounting method is to be used. The year of change is also the first taxable year for complying with the terms and conditions of the Commissioner's consent to change a method of accounting.

.04 Section 5.02(3)(a) of Rev. Proc. 97-27 provides, in general, that the § 481(a) adjustment period is four taxable years for a net positive adjustment for an accounting method change, and one taxable year for a net negative adjustment for an accounting method change.

.05 In some instances a taxpayer's Form 3115 filed under Rev. Proc. 97-27 may be pending in the national office when the taxpayer prepares and files its federal income tax return for the requested year of change. Therefore, the Service has determined that it is appropriate, under certain conditions, to allow a taxpayer to request to revise the year of change for a pending Form 3115.

SECTION 3. CHANGES TO REV. PROC. 97-27

.01 Section 5.02(3)(a) of Rev. Proc. 97-27 is modified to read as follows:

(a) *In general.* Except as otherwise provided in sections 5.02(3)(b), 7.03, and 12.01(3) of this revenue procedure, the § 481(a) adjustment period is four taxable years for a net positive adjustment for an accounting method change, and one taxable year for a net negative adjustment for an accounting method change.

.02 Rev. Proc. 97-27 is modified to renumber sections 12 through 15 as sections 13 through 16.

.03 Rev. Proc. 97-27 is modified by inserting new section 12 to read as follows:

SECTION 12. REQUEST TO REVISE THE YEAR OF CHANGE

.01 *In general.* The taxpayer may request, and the Service ordinarily will allow, the taxpayer to revise the year of change for a Form 3115 that is pending in the national office to a subsequent taxable year, but no later than the taxpayer's current taxable year (with no additional user fee), in lieu of submitting a new Form 3115 for the subsequent taxable year, under the following conditions:

(1) The taxpayer must submit a written request pursuant to section 12.04 of this revenue procedure to revise the year of change on or after, but not before, the first day of the fourth month following the month in which the taxpayer's federal income tax return is due (without regard to extension) for the original year of change requested on the Form 3115 (for example, a calendar year C corporation must submit a written request on or after, but not before, July 1 following the year of change requested on the Form 3115);

(2) The Form 3115 is pending in the national office on the date of the request; and

(3) Unless the Commissioner has determined that the requested change in accounting method will be made using a cut-off method or a modified cut-off method —

(a) The taxpayer must agree, in writing, to accelerate into the revised year of change the percentage of any net positive § 481(a) adjustment the taxpayer would have taken into account for each prior tax-

able year under section 5.02(3)(a) of this revenue procedure had the taxpayer not revised the year of change (for example, if the year of change is revised to the first succeeding taxable year, the taxpayer must agree to take into account one-half of any net positive § 481(a) adjustment in the revised year of change and one-fourth in each of its next two taxable years); and

(b) The taxpayer must agree to provide the § 481(a) adjustment (positive or negative) for the revised year of change within 21 calendar days (or a longer period if agreed to by the national office) after the Service first notifies the taxpayer that its request to revise the year of change is approved.

.02 *Multiple applicants on one Form 3115.* If the Form 3115 is for an identical change in accounting method for more than one applicant, the taxpayer must request to revise the year of change for all applicants to which the Form 3115 relates.

.03 *Compelling circumstances.*

(1) *In general.* In the case of a taxpayer that does not meet the condition in section 12.01(1) of this revenue procedure, a taxpayer with compelling circumstances may request to revise the year of change for the Form 3115, in lieu of submitting a new Form 3115 for the proposed revised year of change. The taxpayer must demonstrate those compelling circumstances. An example of compelling circumstances would include the following.

(2) *Example.* A calendar year partnership with 50 individual partners timely files a Form 3115 under Rev. Proc. 97-27 for a change in method of accounting for its 2007 taxable year. The partnership's Form 1065, *U.S. Return of Partnership Income*, and Schedules K-1, *Partner's Share of Income, Deductions, Credits, etc.*, and the partners' Forms 1040, *U.S. Individual Income Tax Return*, for the requested year of change are all due April 15, 2008. On March 17, 2008, the partnership submits a request to revise the year of change for its pending Form 3115 to its 2008 taxable year because the partnership's Form 3115 is pending in the national office. Because the Form 3115 is pending in the national office 30 days prior to the due date of the partners' Forms 1040, the partnership will be unable to provide timely Schedules K-1 that take into account the proposed accounting method change before the partners prepare and file their 2007 Forms 1040. Therefore, to avoid the potential for the 50 partners to be required to file amended 2007 Forms 1040 to take into account the partnership's requested change in method of accounting for the 2007 taxable year, once approved, the Service will ordinarily allow the partnership to revise the year of change for its Form 3115 to its 2008 taxable year. If the accounting method change is approved for the partnership's 2008 taxable year, in lieu of tak-

ing into account any net positive § 481(a) adjustment over four taxable years, the partnership must take into account one-half of any net positive § 481(a) adjustment in its 2008 taxable year and one-fourth in each of its next two taxable years.

.04 *Submitting a request for a revised year of change.* A request to revise the year of change for a Form 3115 pending in the national office should include the name of the filer (and each applicant, if applicable) on the Form 3115, the national office reference number (for example, CAM-123456-07), the name of the national office contact person for the Form 3115 (if known), the due date (without extension) for the filer's federal income tax return for the year of change, and a statement agreeing to the applicable requirements in section 12.01(3) of this revenue procedure. The request must be accompanied by the penalties of perjury statement in section 9.08(3) of Rev. Proc. 2007-1 (or successor) and should be submitted to the applicable address in section 9.08(6) of Rev. Proc. 2007-1 (or successor). Alternatively, the request may be faxed to a fax number provided by the national office contact person for the Form 3115. If faxed, a copy of the request and an original signed penalties of perjury statement must also be mailed or delivered to the applica-

ble address in section 9.08(6) of Rev. Proc. 2007-1 (or successor).

.05 *Notification of approval or denial.* The national office will notify the taxpayer, orally and later in writing, of the approval or denial of the taxpayer's request to revise the year of change for a pending Form 3115.

.06 *Service's discretion to deny a request.* The Service reserves the right to deny a taxpayer's request for a revised year of change for a pending Form 3115 in any situation in which the Service determines it would not be in the best interest of sound tax administration to allow the taxpayer to revise the year of change. A taxpayer is not entitled to a conference with the Service if the request to revise the year of change for a pending Form 3115 is denied.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-27 is modified.

SECTION 5. EFFECTIVE DATE

.01 *In general.* This revenue procedure is effective for Forms 3115 filed on or after, or pending in the national office on, November 6, 2007.

.02 *Transition rule for pending consent agreements.* If on or before November 26, 2007, a taxpayer has received a letter ruling approving a change in accounting method for which the taxpayer has not signed and returned the consent agreement and the period of time for signing and returning the consent agreement (see section 8.11 of Rev. Proc. 97-27) has not expired, the taxpayer may request to revise the year of change for the change in accounting method under the provisions of this revenue procedure. The taxpayer must submit any such request to revise the year of change prior to, and within the period of time for, signing and returning the consent agreement.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Brenda D. Wilson of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Wilson at (202) 622-4800 (not a toll-free call).

Part IV. Items of General Interest

Partial Withdrawal of Notice of Proposed Rulemaking and Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Foreign Tax Credit: Notification of Foreign Tax Redeterminations

REG-209020-86

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published on June 23, 1988, relating to sections 905(c) and 6689 (the 1988 proposed regulations). In addition, in this issue of the Bulletin, the IRS and the Treasury Department are issuing temporary regulations relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination. The IRS and the Treasury Department are also issuing temporary regulations on Procedure and Administration under section 6689 relating to the civil penalty for failure to notify the IRS of a foreign tax redetermination as required under section 905(c). These temporary regulations affect taxpayers that have paid foreign taxes which have been redetermined and provide guidance needed to comply with statutory changes made to the applicable law by the Taxpayer Relief Act of 1997 and the American Jobs Creation Act of 2004. The text of those temporary regulations (T.D. 9362) also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by February 5, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-209020-86), room

5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-209020-90), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-209020-86).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Teresa Burrige Hughes, (202) 622-3850 (not a toll-free number); concerning the submission of comments, Kelly Banks, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 7, 2008. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collections of information;

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

How the burden of complying with the proposed collections of information may

be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collections of information in this notice of proposed rulemaking are in §1.905-4. This information is required to enable the IRS to verify the amounts of the foreign tax redeterminations and to determine the amount of the penalty under section 6689, if a taxpayer fails to notify the IRS of a foreign tax redetermination. This information will be used by the IRS for examination purposes. The collections of information are mandatory. The likely respondents are individuals and business or other for-profit institutions.

Estimated total annual reporting: 54,000 hours.

The estimated annual burden per respondent varies from 3 hours to 8 hours, depending on individual circumstances, with an estimated average of 4.2 hours.

Estimated number of respondents: 13,000.

Estimated frequency of responses: Annually.

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

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

Background and Explanation of Provisions

On June 23, 1988, the IRS published in the **Federal Register** a notice of proposed rulemaking (53 FR 23659) (INTL-061-86) (the 1988 proposed regulations) that would have provided rules with respect to the time and manner of reporting a foreign tax redetermination and to the penalty under section 6689. Written comments were received; however, no hearing was requested or held. Subse-

quently, section 1102(a)(1) and 1102(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 963-966 (1997)), amended section 905(c), effective for taxes paid or accrued in taxable years beginning after December 31, 1997. Subsequently, section 408(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1499 (2004)), modified section 986(a), effective for taxable years beginning after December 31, 2004. In light of the comments received on the 1988 proposed regulations and the statutory changes to sections 905(c) and 986(a), sections of the 1988 proposed regulations are revised and other sections are withdrawn. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the following regulations, §§1.905-3, 1.905-4, 1.905-5, and 301.6689-1. With respect to §1.905-4, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information requirement under §1.905-4 that is imposed on small entities flows directly from section 905(c), which states that, “[T]he taxpayer shall notify the Secretary,” of a foreign tax redetermination that may result in a redetermination of the taxpayer’s United States tax liability. In order for the taxpayer to satisfy this notification requirement, information with respect to all foreign tax redeterminations must be collected. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of this document is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development.

* * * * *

Partial Withdrawal of a Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §1.905-3(d)(2)(iii) and (iv) and §1.905-3(d)(4) of the notice of proposed rulemaking (INTL-061-86, REG-209020-86) published in the **Federal Register** on June 23, 1988 (53 FR 23659) are withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.905-3 is added to read as follows:

§1.905-3 Adjustments to United States tax liability and to the pools of post-1986 undistributed earnings and post-1986

foreign income taxes as a result of a foreign tax redetermination.

[The text of this section is the same as the text of §1.905-3T(a) through (e) published elsewhere in this issue of the Bulletin.]

Par. 3. Section 1.905-4 is added to read as follows:

§1.905-4 Notification of foreign tax redetermination.

[The text of this section is the same as the text of §1.905-4T(a) through (f)(2) published elsewhere in this issue of the Bulletin.]

§1.905-5 Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987.

[The text of this section is the same as the text of §1.905-5T(a) through (f) published elsewhere in this issue of the Bulletin.]

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The citation authority for part 301 continues to read as follows:

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

Par. 5. Section 301.6689-1 is added to read as follows:

§301.6689-1 Failure to file notice of redetermination of foreign tax .

(a) [The text of the proposed amendments to §301.6689-1(a) is the same as the text of §301.6689-1T(a) published elsewhere in this issue of the Bulletin.]

(b) through (d) [Reserved]. For further guidance, see §301.6689-1T(b) through (d).

(e) [The text of the proposed amendments to §301.6689-1(e)(1) is the same as the text of §301.6689-1T(e)(1) published elsewhere in this issue of the Bulletin.]

Kevin M. Brown,
Deputy Commissioner for
Services and Enforcement.

(Filed by the Office of the Federal Register on November 6, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 7, 2007, 72 FR. 62805)

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

Announcement 2007-104

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

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attor-

ney, certified public accountant, enrolled agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Dotson, Lewis S.	Mattoon, IL	Attorney	April 8, 2007
Adams, Jr., Joseph T.	Philadelphia, PA	Enrolled Agent	July 30, 2007
Cramer, George C.	Chicago, IL	CPA	July 30, 2007
Garlikov, Mark B.	Dayton, OH	Attorney	July 30, 2007
Grant, Elaine C.	Woodway, WA	Enrolled Agent	July 30, 2007
Rubesh, Leland	Gillette, WY	CPA	July 30, 2007
Schawe, Rudolph B.	Brenham, TX	Enrolled Agent	July 30, 2007
Sobel, Herbert L.	Elkins Park, PA	CPA	July 30, 2007
Welch, Frank G.	Stamford, CT	CPA	July 30, 2007
Ferguson, Charles E.	Naples, FL	CPA	July 31, 2007
Lim, Edgar E.	St. Louis, MO	Attorney	July 31, 2007
Sneathen, Lowell D.	Orange, CA	CPA	August 30, 2007
Smith, David B.	Kettering, OH	Enrolled Agent	September 9, 2007
Young, Ronald B.	Fairfield, CT	CPA	September 9, 2007
Sheiman, Alan P.	Sherman Oaks, CA	Enrolled Agent	September 14, 2007
DiSiena, Frank E.	Somers, NY	CPA	September 19, 2007

Name	Address	Designation	Date of Reinstatement
Leggio, Joseph J.	Katonah, NY	CPA	September 24, 2007

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from prac-

tice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or en-

rolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Hunter, Richard	Moweaqua, IL	Enrolled Agent	Indefinite from July 16, 2007
Sheehy, William J.	Northville, MI	Attorney	Indefinite from July 16, 2007
Szwyd, Edward R.	Housatonic, MA	CPA	Indefinite from July 16, 2007
Lettieri, Louis E.	Red Bank, NJ	CPA	Indefinite from August 1, 2007
Stein, Jerold A.	Alpharetta, GA	CPA	Indefinite from August 1, 2007
Tutino, Philip R.	East Hampton, NY	CPA	Indefinite from August 1, 2007
Dorr, Mark A.	Gillette, WY	CPA	Indefinite from August 7, 2007
Nelson, Carole S.	Riverside, CA	Enrolled Agent	Indefinite from August 8, 2007
Siegel, Herbert	New City, NY	CPA	Indefinite from August 10, 2007
Taylor, Linda W.	Las Vegas, NV	CPA	Indefinite from August 15, 2007
Finkelstein, Meyer	Staten Island, NY	CPA	Indefinite from August 15, 2007

Name	Address	Designation	Date of Suspension
Schenck, Thomas M.	Tampa, FL	CPA	Indefinite from August 20, 2007
Shah, Sudhir P.	Richardson, TX	CPA	Indefinite from August 20, 2007
Bender, Elmer P.	Missoula, MT	CPA	Indefinite from August 31, 2007
Tselepis, John	Jarrettsville, MD	CPA	Indefinite from September 5, 2007
Perez, Ricardo L.	Cedar Lake, IN	CPA	Indefinite from September 10, 2007
Golden, Roberta A.	Framington, MA	Attorney	Indefinite from September 13, 2007
Ward, Thomas R.	St. Louis Park, MN	Attorney	Indefinite from September 13, 2007

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Murphy, John F.	Wellsboro, PA	Attorney	Indefinite from June 28, 2007
Aakre, Steven K.	Hawley, MN	Attorney	Indefinite from July 11, 2007
Brogan, Jane K.	York, NE	Attorney	Indefinite from July 11, 2007
Clark, Clifford A.	Raleigh, NC	CPA	Indefinite from July 11, 2007

Name	Address	Designation	Date of Suspension
Downing, Jr., Eugene W.	Arlington, MA	Attorney	Indefinite from July 11, 2007
Kahn, Arthur M.	Woodstock, NY	Attorney	Indefinite from July 11, 2007
Kossmeyer, Carl F.	Town and Country, MO	CPA	Indefinite from July 11, 2007
Lee, John C.	Charlotte, NC	Attorney	Indefinite from July 11, 2007
McAvoy, Donald L.	Windermere, FL	CPA	Indefinite from July 11, 2007
McCabe, Edwin A.	Gloucester, MA	Attorney	Indefinite from July 11, 2007
O'Donnell, Judith R.	Westborough, MA	Attorney	Indefinite from July 11, 2007
Taylor, John G.	Lincoln, NE	Attorney	Indefinite from July 11, 2007
Turner, D. Scott	Mooresville, NC	Attorney	Indefinite from July 11, 2007
Csaszar, James J.	Columbus, OH	CPA	Indefinite from July 13, 2007
Fischer, Mark W.	Boulder, CO	Attorney	Indefinite from July 16, 2007
Behunin, Michael N.	Sandy, UT	Attorney	Indefinite from August 8, 2007
Carpenter, Jr., Darwin R.	Melbourne, FL	CPA	Indefinite from August 23, 2007
Gresham, James L.	Broken Arrow, OK	CPA	Indefinite from August 23, 2007
Krezminski, Allen D.	Milwaukee, WI	Attorney	Indefinite from August 23, 2007

Name	Address	Designation	Date of Suspension
Neary, Hugh M.	Ottumwa, IA	Attorney	Indefinite from August 23, 2007
Weiss, Randy A.	Potomac, MD	Attorney	Indefinite from August 23, 2007
Whiddon, Edward L.	Houston, TX	CPA	Indefinite from August 23, 2007
Hazen, Robert D.	Lindon, UT	CPA	Indefinite from August 29, 2007
Schafer, III, Harry J.	Edmond, OK	CPA	Indefinite from September 6, 2007
Pullin, Wendy F.	San Antonio, TX	CPA	Indefinite from September 24, 2007

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

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Newton, Douglas M.	Fernandina Beach, FL	CPA	Indefinite from June 4, 2007
Snell, Barry A.	Santa Monica, CA	CPA	Indefinite from June 6, 2007
Khoury, Naif S.	Fort Smith, AR	Attorney	Indefinite from June 14, 2007
Bukovac, Jane	Alexandria, VA	Enrolled Agent	Indefinite from June 29, 2007
Kreke, David J.	Bartelso, IL	Enrolled Agent	Indefinite from July 12, 2007
Dunkley, John D.	San Antonio, TX	Enrolled Agent	Indefinite from July 27, 2007

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

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

Name	Address	Designation	Effective Date
Ruocchio, Robert	Havertown, PA	CPA	June 11, 2007
Turner, John S.	Paradise, CA	Enrolled Agent	June 15, 2007
Johnson, Ted R.	Frankfort, IN	Attorney	July 30, 2007
Ayers, Dani D.	Kelseyville, CA	Enrolled Agent	August 6, 2007

Announcement 2007-110

This announcement is an update to Publication 1187, *Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically or Magnetically* revised September 2006. Continue to use this Publication along with the changes listed below for your Tax Year 2007 filing. The following changes are effective for Tax Year 2007 filed in calendar year 2008.

- An explanatory note was added to the Recipient 'Q' Record which reads: If you are a nominee that is the withholding agent under Code Section 1446, enter the Publicly Traded Partnership's (PTP) name and other information in the NQI/FLW-THR fields; positions 401-666.

- In the Recipient 'Q' Record, a new field, NQI/FLW-THR State Code, was added to positions 643-644. Enter the two-alpha character state code (see table Part A, Sec. 14). If a state code or APO/FPO is not applicable then blank fill.
- Additional instructions were added to the Recipient "Q" Record, NQI/FLW-THR Country Code, positions 647-648. The instructions read: Enter the two-character Country Code abbreviation, where the NQI/FLW-THR is located. Enter blanks if the NQI/FLW-THR has a U.S. address.
- The Field Title was changed and additional instructions were added to the Recipient "Q" Record, NQI/FLW-THR Postal Code or ZIP

Code, positions 649-657. The instructions read: Enter the alpha/numeric foreign postal code or U.S. ZIP Code for all U.S. addresses including territories, possessions and APO/FPO. Enter the code in the left most position and blank fill the remaining positions. **DO NOT** use hyphens or blanks between numbers or letters (*e.g.* if the postal code written as A6B 3C5 input as A6B3C5). Left-justify.

If you have questions concerning the filing of Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, please contact the Internal Revenue Service ECC-MTB toll-free at 866-455-7438.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
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SPR	Statement of Procedural Rules
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