

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2008-10, page 676.

Interest rates; underpayments and overpayments. The rates of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 2008, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments, and 8 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 3.5 percent.

Rev. Rul. 2008-18, page 674.

S corporation; qualified subchapter S subsidiary (QSub). This ruling describes situations where an S corporation undergoes a reorganization pursuant to section 368(a)(1)(F) of the Code where the operating S corporation becomes a QSub of a newly formed holding company. The ruling holds that the newly formed parent does not have to make a new S election pursuant to Rev. Rul. 64-250. The ruling further holds that, effective 1/1/09, the new parent will have to get its own EIN rather than take over the QSub's EIN. However, for S corporations that have previously reorganized under section 368(a)(1)(F) in a manner described in this ruling, where the parent took the QSub's EIN, the parent should continue to use that EIN and the QSub will have to get a new EIN when it is treated as a separate corporation. Rev. Rul. 64-250 amplified.

Rev. Rul. 2008-19, page 669.

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2007 and 2008. Rev. Rul. 92-19 supplemented in part.

REG-127391-07, page 689.

Proposed regulations amend regulations under section 664(c) of the Code to provide that charitable remainder trusts with unrelated business taxable income (UBTI) in taxable years beginning after December 31, 2006, are exempt from federal income tax, but are subject to a 100-percent excise tax on the UBTI of the charitable remainder trust pursuant to section 424 of the Tax Relief and Health Care Act of 2006. The regulations provide that the excise tax is reported and payable in accordance with appropriate forms. The regulations clarify that, consistent with regulations section 1.664-1(d)(2), the excise tax imposed upon the charitable remainder trust with UBTI is treated as paid from corpus and the trust income that is UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. A public hearing is scheduled for April 11, 2008.

Notice 2008-38, page 683.

This notice invites public comments regarding guidance to be provided to federal, state, and local governments required to withhold on payments made by the government entities or their paying agents for services and property.

Rev. Proc. 2008-24, page 684.

This procedure provides guidance concerning the treatment under sections 1035 and 72 of the Code of the partial exchange of an annuity contract. Specifically, the procedure makes those interim rules final, with clarifications concerning (i) the length of time a taxpayer must wait before withdrawing or annuitizing amounts from either of the contracts that were subject to the exchange (ii) the status of the transactions in which the same insurance company issued both contracts involved in the exchange and (iii) the treatment of transactions that fall outside of these rules. Notice 2003-51 superseded.

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Finding Lists begin on page ii.
Index for January through March begins on page iv.



Rev. Proc. 2008–25, page 686.

This procedure provides a safe harbor method of accounting for accrual method taxpayers that incur payroll tax liabilities for compensation (including bonuses and vacation pay). It also provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting. Rev. Proc. 2002–9 modified and amplified.

EXEMPT ORGANIZATIONS

REG–127391–07, page 689.

Proposed regulations amend regulations under section 664(c) of the Code to provide that charitable remainder trusts with unrelated business taxable income (UBTI) in taxable years beginning after December 31, 2006, are exempt from federal income tax, but are subject to a 100-percent excise tax on the UBTI of the charitable remainder trust pursuant to section 424 of the Tax Relief and Health Care Act of 2006. The regulations provide that the excise tax is reported and payable in accordance with appropriate forms. The regulations clarify that, consistent with regulations section 1.664–1(d)(2), the excise tax imposed upon the charitable remainder trust with UBTI is treated as paid from corpus and the trust income that is UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. A public hearing is scheduled for April 11, 2008.

Announcement 2008–21, page 691.

This announcement explains the procedures the public may use to request from the Service the inspection and copying of a section 501(c)(3) organization's annual return reporting section 511 unrelated business income (Form 990–T).

Announcement 2008–22, page 692.

The IRS has revoked its determination that Young Lions Foundation of Sausalito, CA; Med-School, Inc., of Warner Robbins, GA; National Housing Foundation, Inc., of Schaumburg, IL; Vernon Parish School Board of Leesville, VA; Credit Success Company of St. Augustine, FL; and Computer Programming Institute of N. Royalton, OH, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

EMPLOYMENT TAX

Rev. Rul. 2008–18, page 674.

S corporation; qualified subchapter S subsidiary (QSub).

This ruling describes situations where an S corporation undergoes a reorganization pursuant to section 368(a)(1)(F) of the Code where the operating S corporation becomes a QSub of a newly formed holding company. The ruling holds that the newly formed parent does not have to make a new S election pursuant to Rev. Rul. 64–250. The ruling further holds that, effective

1/1/09, the new parent will have to get its own EIN rather than take over the QSub's EIN. However, for S corporations that have previously reorganized under section 368(a)(1)(F) in a manner described in this ruling, where the parent took the QSub's EIN, the parent should continue to use that EIN and the QSub will have to get a new EIN when it is treated as a separate corporation. Rev. Rul. 64–250 amplified.

EXCISE TAX

Rev. Rul. 2008–18, page 674.

S corporation; qualified subchapter S subsidiary (QSub).

This ruling describes situations where an S corporation undergoes a reorganization pursuant to section 368(a)(1)(F) of the Code where the operating S corporation becomes a QSub of a newly formed holding company. The ruling holds that the newly formed parent does not have to make a new S election pursuant to Rev. Rul. 64–250. The ruling further holds that, effective 1/1/09, the new parent will have to get its own EIN rather than take over the QSub's EIN. However, for S corporations that have previously reorganized under section 368(a)(1)(F) in a manner described in this ruling, where the parent took the QSub's EIN, the parent should continue to use that EIN and the QSub will have to get a new EIN when it is treated as a separate corporation. Rev. Rul. 64–250 amplified.

ADMINISTRATIVE

Rev. Rul. 2008–18, page 674.

S corporation; qualified subchapter S subsidiary (QSub).

This ruling describes situations where an S corporation undergoes a reorganization pursuant to section 368(a)(1)(F) of the Code where the operating S corporation becomes a QSub of a newly formed holding company. The ruling holds that the newly formed parent does not have to make a new S election pursuant to Rev. Rul. 64–250. The ruling further holds that, effective 1/1/09, the new parent will have to get its own EIN rather than take over the QSub's EIN. However, for S corporations that have previously reorganized under section 368(a)(1)(F) in a manner described in this ruling, where the parent took the QSub's EIN, the parent should continue to use that EIN and the QSub will have to get a new EIN when it is treated as a separate corporation. Rev. Rul. 64–250 amplified.

Notice 2008–39, page 684.

This notice describes filing rules for certain claims arising under section 41 of the Code. Notice 2002–44 superseded.

(Continued on the next page)

Announcement 2008-24, page 692.

This document provides notice of a public hearing on proposed regulations (REG-127770-07, 2007-50 I.R.B. 1171) that would expand the list of permitted loan modifications to include certain modifications of commercial mortgages. A public hearing is scheduled for April 4, 2008.

Announcement 2008-26, page 693.

This document contains a notice of public hearing on proposed regulations (REG-149856-03, 2007-24 I.R.B. 1394) relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, agreement, or who live apart at all times during the last 6 months of the calendar year. A public hearing is scheduled for April 3, 2008.

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 41.—Credit for Increasing Research Activities

A notice describes filing rules for certain claims arising under section 41 of the Code. See Notice 2008-39, page 684.

Section 72.—Annuities; Certain Proceeds of Endowment and Life Insurance Contracts

A revenue procedure supersedes the interim guidance provided in Notice 2003-51, 2003-2 C.B. 361, concerning the treatment under sections 1035 and 72 of the partial exchange of an annuity contract. Specifically, the revenue procedure makes those interim rules final, with clarifications concerning (i) the length of time a taxpayer must wait before withdrawing or annuitizing amounts from either of the contracts that were subject to the exchange, (ii) the status of the transactions in which the same insurance company issued both contracts involved in the exchange, and (iii) the treatment of transactions that fall outside of these rules. See Rev. Proc. 2008-24, page 684.

Section 368.—Definitions Relating to Corporate Reorganizations

A revenue ruling describes a reorganization that qualifies under § 368(a)(1)(F) that involves S corporations and QSubs. See Rev. Rul. 2008-18, page 674.

Section 446.—General Rule for Methods of Accounting

A revenue procedure provides a safe harbor method of accounting for accrual method taxpayers that incur payroll tax liabilities on compensation (including bonuses and vacation pay). It also provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting. See Rev. Proc. 2008-25, page 686.

Section 461.—General Rule for Taxable Year of Deduction

A revenue procedure provides a safe harbor method of accounting for accrual method taxpayers that incur payroll tax liabilities on compensation (including bonuses and vacation pay). It also provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting. See Rev. Proc. 2008-25, page 686.

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

A revenue procedure provides a safe harbor method of accounting for accrual method taxpayers that incur payroll tax liabilities on compensation (including bonuses and vacation pay). It also provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting. See Rev. Proc. 2008-25, page 686.

Section 807.—Rules for Certain Reserves

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2007 and 2008. Rev. Rul. 92-19 supplemented in part.

Rev. Rul. 2008-19

For purposes of § 807(d)(4) of the Internal Revenue Code, for taxable years beginning after December 31, 2006, this ruling supplements the schedules of prevailing state assumed interest rates set forth in Rev. Rul. 92-19, 1992-1 C.B. 227. This information is to be used by insurance companies in computing their reserves for (1) life insurance and supplementary total

and permanent disability benefits, (2) individual annuities and pure endowments, and (3) group annuities and pure endowments. As § 807(d)(2)(B) requires that the interest rate used to compute these reserves be the greater of (1) the applicable federal interest rate, or (2) the prevailing state assumed interest rate, the table of applicable federal interest rates in Rev. Rul. 92-19 is also supplemented.

Following are supplements to schedules A, B, C, and D to Part III of Rev. Rul. 92-19, providing prevailing state assumed interest rates for insurance products with different features issued in 2007 and 2008, and a supplement to the table in Part IV of Rev. Rul. 92-19, providing the applicable federal interest rates under § 807(d) for 2007 and 2008. This ruling does not supplement Parts I and II of Rev. Rul. 92-19.

This is the sixteenth supplement to the interest rates provided in Rev. Rul. 92-19. Earlier supplements were published in Rev. Rul. 93-58, 1993-2 C.B. 241 (interest rates for insurance products issued in 1992 and 1993); Rev. Rul. 94-11, 1994-1 C.B. 196 (1993 and 1994); Rev. Rul. 95-4, 1995-1 C.B. 141 (1994 and 1995); Rev. Rul. 96-2, 1996-1 C.B. 141 (1995 and 1996); Rev. Rul. 97-2, 1997-1 C.B. 134 (1996 and 1997); Rev. Rul. 98-2, 1998-1 C.B. 259 (1997 and 1998); Rev. Rul. 99-10, 1999-1 C.B. 671 (1998 and 1999); Rev. Rul. 2000-17, 2000-1 C.B. 842 (1999 and 2000); Rev. Rul. 2001-11, 2001-1 C.B. 780 (2000 and 2001); Rev. Rul. 2002-12, 2002-1 C.B. 624 (2001 and 2002); Rev. Rul. 2003-24, 2003-1 C.B. 557 (2002 and 2003); Rev. Rul. 2004-14, 2004-1 C.B. 511 (2003 and 2004); Rev. Rul. 2005-29, 2005-1 C.B. 1080 (2004 and 2005); Rev. Rul. 2006-25, 2006-1 C.B. 882 (May 15, 2006) (2005 and 2006); and Rev. Rul. 2007-10, 2007-10 I.R.B. 660 (Mar. 5, 2007) (2006 and 2007).

Part III. Prevailing State Assumed Interest Rates — Products Issued in Years After 1982.*

Schedule A

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

A. Life insurance valuation:

| Guarantee Duration (years) | Calendar Year of Issue 2008 |
|--------------------------------------|--------------------------------|
| 10 or fewer | 5.75** |
| More than 10 but not more than 20 | 5.25** |
| More than 20 | 5.00** |

Source: Rates calculated from the monthly averages, ending June 30, 2007, of Moody's Composite Yield on Seasoned Corporate Bonds.

* The terms used in the schedules in this ruling and in Part III of Rev. Rul. 92-19 are those used in the Standard Valuation Law; the terms are defined in Rev. Rul. 92-19.

** As these rates exceed the applicable federal interest rate for 2008 of 4.06 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in this table.

Part III, Schedule B

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

B. Single premium immediate annuities and annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

| <u>Calendar Year of Issue</u> | <u>Valuation Interest Rate</u> |
|-------------------------------|--------------------------------|
| 2007 | 5.50* |

Source: Rates calculated from the monthly averages, ending June 30, 2007, of Moody's Composite Yield on Seasoned Corporate Bonds (formerly known as Moody's Corporate Bond Yield Average — Monthly Average Corporates). The terms used in this schedule are those used in the Standard Valuation Law as defined in Rev. Rul. 92-19.

*As this prevailing state assumed interest exceeds the applicable federal interest rate for 2007 of 3.97 percent, the valuation interest rate of 5.50 percent is to be used for this product under § 807.

Part III, Schedule C24 — 2007

STATUTORY VALUATION INTEREST RATES
 BASED ON NAIC STANDARD VALUATION LAW
 FOR 2007 CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

C. Valuation interest rates for other annuities and guaranteed interest contracts that are valued on an issue year basis:

| Cash Settlement Options? | Future Interest Guarantee? | Guarantee Duration (years) | Valuation Interest Rate (%) For Plan Type | | |
|--------------------------|----------------------------|------------------------------------|--|----------------|-------|
| | | | A | B | C |
| Yes | Yes | 5 or fewer | 5.50 | 4.75 | 4.50 |
| | | More than 5, but not more than 10 | 5.25 | 4.75 | 4.50 |
| | | More than 10, but not more than 20 | 4.75 | 4.50 | 4.25* |
| | | More than 20 | 4.25* | 4.00* | 4.00* |
| Yes | No | 5 or fewer | 5.50 | 5.00 | 4.75 |
| | | More than 5, but not more than 10 | 5.50 | 5.00 | 4.75 |
| | | More than 10, but not more than 20 | 5.00 | 4.50 | 4.50 |
| | | More than 20 | 4.50* | 4.25* | 4.25* |
| No | Yes or No | 5 or fewer | 5.50 | | |
| | | More than 5, but not more than 10 | 5.25 | NOT APPLICABLE | |
| | | More than 10, but not more than 20 | 5.00 | | |
| | | More than 20 | 4.25* | | |

Source: Rates calculated from the monthly averages, ending June 30, 2007, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As these rates exceed the applicable federal interest rate for 2007 of 3.97 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part III, Schedule D24 — 2007

STATUTORY VALUATION INTEREST RATES
 BASED ON NAIC STANDARD VALUATION LAW
 FOR **2007** CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENTS

D. Valuation interest rates for other annuities and guaranteed interest contracts that are contracts with cash settlement options and that are valued on a change in fund basis:

| Cash Settlement Options? | Future Interest Guarantee? | Guarantee Duration (years) | Valuation Interest Rate For Plan Type | | |
|--------------------------|----------------------------|------------------------------------|---------------------------------------|------|-------|
| | | | A | B | C |
| Yes | Yes | 5 or fewer | 5.75 | 5.50 | 4.75 |
| | | More than 5, but not more than 10 | 5.75 | 5.50 | 4.75 |
| | | More than 10, but not more than 20 | 5.50 | 5.25 | 4.50 |
| | | More than 20 | 4.75 | 4.75 | 4.25* |
| Yes | No | 5 or fewer | 6.00 | 5.75 | 4.75 |
| | | More than 5, but not more than 10 | 5.75 | 5.75 | 4.75 |
| | | More than 10, but not more than 20 | 5.50 | 5.50 | 4.75 |
| | | More than 20 | 5.00 | 5.00 | 4.25* |

Source: Rates calculated from the monthly averages, ending June 30, 2007, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As the applicable federal interest rate for 2007 of 3.97 percent is less than the prevailing state assumed interest rate, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part IV. Applicable Federal Interest Rates

TABLE OF APPLICABLE FEDERAL INTEREST RATES FOR PURPOSES OF § 807

| <u>Year</u> | <u>Interest Rate</u> |
|-------------|----------------------|
| 2007 | 3.97 |
| 2008 | 4.06 |

Sources: Rev. Rul. 2004-106, 2004-2 C.B. 893, for the 2005 rate; Rev. Rul. 2005-77, 2005-2 C.B. 1071, for the 2006 rate; Rev. Rul. 2006-61, 2006-2 C.B. 1028 (Dec. 11, 2006) for the 2007 rate; and Rev. Rul. 2007-70, 2007-50 I.R.B. 1158 (Nov. 20, 2007) for the 2008 rate.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 92-19 is supplemented by the addition to Part III of that ruling of prevailing state assumed interest rates under § 807 for certain insurance products issued in 2007 and 2008 and is further supplemented by an addition to the table in Part IV of Rev. Rul. 92-19 listing applicable federal interest rates. Parts I and II of Rev. Rul. 92-19 are not affected by this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Josephine H. Firehock of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622-3970 (not a toll-free call).

Section 1361.—S Corporation Defined

A revenue ruling describes a reorganization that qualifies under § 368(a)(1)(F) that involves S corporations and QSubs. See Rev. Rul. 2008-18, page 674.

Section 1362.—Election; Revocation; Termination

A revenue ruling describes a reorganization that qualifies under § 368(a)(1)(F) that involves S corporations and QSubs. See Rev. Rul. 2008-18, page 674.

Section 6109.—Identifying Numbers

26 CFR 301.6109-1: Identifying numbers. (Also: Sections 368, 1361, 1362; 1.1361-4, 1.1361-5.)

S corporation; qualified subchapter S subsidiary (QSub). This ruling describes situations where an S corporation undergoes a reorganization pursuant to section 368(a)(1)(F) of the Code where the operating S corporation becomes a QSub of a newly formed holding company. The ruling holds that the newly formed parent does not have to make a new S election pursuant to Rev. Rul. 64-250. The ruling further holds that, effective 1/1/09, the new parent will have to get its own EIN rather than take over the QSub's EIN. However, for S corporations that have previously reorganized under section 368(a)(1)(F) in a manner described in this ruling, where the parent took the QSub's EIN, the parent should continue to use that EIN and the QSub will have to get a new EIN when it is treated as a separate corporation. Rev. Rul. 64-250 amplified.

Rev. Rul. 2008-18

ISSUE

In the transactions described in *Situations 1* and *2* below, does an S corporation election under § 1362(a) of the Internal Revenue Code (the Code) terminate and what are the proper employer identification numbers (EINs) for the entities participating in the transactions?

FACTS

Situation 1. *B*, an individual, owns all of the stock in *Y*, an S corporation. *Y*'s EIN is 22-2222222. In *Year 1*, *B* forms *Newco* and contributes all of the *Y* stock to *Newco*. *Newco* meets the requirements for qualification as a small business corporation and timely elects to treat *Y* as a qualified subchapter S subsidiary (QSub), effective immediately following the transaction. The transaction meets the requirements of a reorganization under § 368(a)(1)(F). In *Year 2*, *Newco* sells a 1% interest in *Y* to *D*.

Situation 2. *C*, an individual owns all of the stock of *Z*, an S corporation. *Z*'s EIN is 33-3333333. In *Year 1*, *Z* forms *Newco*, which in turn forms *Mergeco*. Pursuant to a plan of reorganization, *Mergeco* merges with and into *Z*, with *Z* surviving and *C* receiving solely *Newco* stock in exchange for *Z* stock. *Newco* meets the requirements for qualification as a small business corporation and timely elects to treat *Z* as a QSUB, effective immediately following the transaction. The transaction meets the requirements of a reorganization under § 368(a)(1)(F).

LAW AND ANALYSIS

S Corporation Election

Section 368(a)(1)(F) provides that a reorganization includes a mere change in identity, form, or place of organization of one corporation, however effected.

Section 1.381(b)-1(a)(2) provides that, in the case of a reorganization qualifying under § 368(a)(1)(F) (whether or not

such reorganization also qualifies under any other provision of § 368(a)(1)), the acquiring corporation shall be treated (for purposes of § 381) just as the transferor corporation would have been treated if there had been no reorganization.

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) (S election) is in effect for such year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not — (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(b)(3)(A) provides that, except as provided in regulations, a QSub shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of the QSub shall be treated as assets, liabilities and such items of the S corporation. Section 1361(b)(3)(B) provides that a QSub means any domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the QSub is held by the S corporation and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-4(a)(2) provides that, if an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation and that, except as provided in § 1.1361-4(a)(5), the tax treatment of the liquidation of a larger transaction that includes the liquidation is determined under the Code and general principles of tax law, including the step transaction doctrine.

The rules applicable to corporate reorganizations, as well as other provisions, recognize the unique characteristics of reorganizations qualifying under § 368(a)(1)(F). In contrast to other types of reorganizations, which can involve two or more operating corporations, a reorganization of a corporation under § 368(a)(1)(F) involves a single operating entity.

Rev. Rul. 64-250, 1964-2 C.B. 333, provides that when an S corporation

merges into a newly formed corporation in a transaction qualifying as a reorganization under § 368(a)(1)(F), and the newly formed surviving corporation also meets the requirements of an S corporation, the reorganization does not terminate the S election. Thus, the S election remains in effect for the new corporation. See also Rev. Rul. 2004-85, 2004-2 C.B. 189.

Identifying Numbers

Section 6011(b) authorizes the Secretary to require such information with respect to persons subject to taxes as is necessary or helpful in securing proper identification of such persons.

Section 6109(a)(1) provides generally that when required by regulations, any person required to make a return, statement, or other document shall include such identifying number as may be prescribed for securing proper identification of such person.

Section 6109(c) provides that the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

Section 301.6109-1(a)(1)(ii)(C) provides that any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an EIN. Situation 3 of Rev. Rul. 73-526, 1973-2 C.B. 404, issued prior to the amendment to the Code providing for QSubs, describes a transaction that qualifies as a reorganization under § 368(a)(1)(F). The ruling states that the broad language contained in §§ 6011(b) and 6109(a) indicates that Congress has vested in the Secretary or his delegate discretionary authority to require the use of whatever identifying number is deemed necessary or helpful for the proper identification of a taxpayer, employer, employee, or other person. Based on this authority, Rev. Rul. 73-526 in Situation 3 concludes that, in a transaction qualifying as a reorganization under § 368(a)(1)(F), the acquiring corporation should use the EIN of the transferor corporation.

However, since the publication of Rev. Rul. 73-526, the Code was amended to provide the classification of certain wholly-owned subsidiaries of S corporations as QSubs and the regulations under

§ 6109 have been amended to address the effect of QSub elections under § 1361.

Section 301.6109-1(i)(1) provides that any entity that has an EIN will retain that EIN if a QSub election is made for the entity under § 1.1361-3 or if a QSub election that was in effect for the entity terminates under § 1.1361-5. Section 301.6109-1(i)(2) provides that, except as otherwise provided in regulations or other published guidance, a QSub must use the parent S corporation’s EIN. Section 301.6109-1(i)(3) provides that if an entity’s QSub election terminates, it may not use the EIN of the parent S corporation after the termination. If the entity had an EIN prior to becoming a QSub or obtained an EIN while it was a QSub in accordance with regulations or other published guidance, the entity must use that EIN. If the entity had no EIN, it must obtain an EIN upon termination of the QSub election.

For tax years beginning after December 31, 2004, Congress amended § 1361(b)(3)(E) to provide that, except to the extent provided by the Secretary, QSubs are not disregarded for purposes of information returns under part III of subchapter A of chapter 61. Further, QSubs are not disregarded for certain other purposes as provided in regulations. For example, § 1.1361-4(a)(7) provides that a QSub is treated as a separate corporation for purposes of employment tax and related reporting requirements (effective for wages paid on or after January 1, 2009), and § 1.1361-4(a)(8) provides that a QSub is treated as a separate corporation for purposes of certain excise taxes (effective for liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008).

Because the QSub is treated as a separate corporation for certain federal tax purposes, the QSub must retain and use its EIN when it is treated as a separate corporation for federal tax purposes. Thus, it would not be appropriate for the acquiring corporation in a reorganization under § 368(a)(1)(F) to retain the EIN of the transferor corporation that becomes a QSub.

HOLDING

Situation 1. In *Situation 1*, consistent with Rev. Rul. 64-250, *Y*’s original S election does not terminate but continues for

Newco. *Newco* must obtain a new EIN. *Y* must retain its EIN (EIN 22-2222222) even though a QSub election is made for it and must use its original EIN any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates. In *Year 2*, when *Newco* sells a 1% interest of *Y* to *D*, *Y*'s QSub election terminates pursuant to § 1361(b)(3)(C). *Y* must use its original EIN of 22-2222222 following the termination of *Y*'s QSub election.

Situation 2. In *Situation 2*, consistent with Rev. Rul. 64-250, *Z*'s original S election does not terminate but continues for *Newco*. *Newco* must obtain a new EIN. *Z* must retain its EIN (EIN 33-3333333) even though a QSub election is made for *Z* and must use its original EIN any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates.

EFFECT ON OTHER RULINGS

Rev. Rul. 64-250 is amplified for transactions qualifying as a reorganization under § 368(a)(1)(F) where the transferor S corporation becomes a QSub of the acquiring corporation. The holding of *Situation 3* in Rev. Rul. 73-526 continues to apply to its facts.

EFFECTIVE DATE

This revenue ruling applies to § 368(a)(1)(F) reorganizations occurring on or after January 1, 2009. For § 368(a)(1)(F) reorganizations occurring on or after March 7, 2008 and before the effective date of this ruling, taxpayers may rely on this revenue ruling. The Service is aware that, prior to the effective date of this revenue ruling, some S corporations have undergone reorganizations under § 368(a)(1)(F) in a manner similar to those described in *Situations 1* and *2* above in which the acquiring corporation continued to use the transferor corporation's EIN in an effort to comply with Rev. Rul. 73-526. In the cases described in the immediately preceding sentence, the acquiring corporation should continue to follow Rev. Rul. 73-526 and use the transferor corporation's EIN, and furthermore, after the § 368(a)(1)(F) reorganization, the transferor (QSub) should use the parent's

EIN until such time the transferor (QSub) is otherwise treated as a separate corporation for federal tax purposes (including for employment and certain excise taxes) or until such time that the QSub terminates. At such time, the QSub must obtain a new EIN.

The IRS will need to make administrative adjustments to ensure that its Campuses recognize the continuation of the S election in the fact situations presented in this revenue ruling. Consequently, for a § 368(a)(1)(F) reorganization occurring prior to January 1, 2009, it may be prudent for the acquiring corporation to make a protective S election.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Charles J. Langley, Jr., of the Office of Associate Chief Counsel (Passthroughs and Special Industries) and Rebecca O. Burch of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Mr. Langley at (202) 622-3060 (not a toll-free call) or Ms. Burch at (202) 622-7750 (not a toll-free call).

Section 6402.—Authority to Make Credits or Refunds

A notice describes filing rules for certain claims arising under section 41 of the Code. See Notice 2008-39, page 684.

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rates of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 2008, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments, and 8 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 3.5 percent.

Rev. Rul. 2008-10

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments

and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 2008 is 3 percent. Accordingly, an overpayment rate of 6 percent (5 percent in the case of a corporation) and an underpayment rate of 6 percent are established for the calendar quarter beginning April 1, 2008. The overpayment rate for the portion of a corporate overpayment exceeding

\$10,000 for the calendar quarter beginning April 1, 2008, is 3.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 2008, is 8 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under section 6621(b)(2)(B), the 7 percent rate that applies to estimated tax underpayments for the first calendar quarter in 2008, as provided in Rev. Rul. 2007-68, 2007-52 I.R.B. 1236, also applies to estimated tax underpayments for the first 15 days in April 2008.

Interest factors for daily compound interest for annual rates of 3.5 percent, 5 percent, 6 percent, and 8 percent are published

in Tables 60, 63, 65, and 69 of Rev. Proc. 95-17, 1995-1 C.B. 556, 614, 617, 619, and 623.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Wendy Kribell of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Kribell at (202) 622-4570 (not a toll-free call).

| TABLE OF INTEREST RATES | | |
|--|------|------------------------------------|
| PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986 | | |
| OVERPAYMENTS AND UNDERPAYMENTS | | |
| PERIOD | RATE | In 1995-1 C.B. DAILY RATE TABLE |
| Before Jul. 1, 1975 | 6% | Table 2, pg. 557 |
| Jul. 1, 1975—Jan. 31, 1976 | 9% | Table 4, pg. 559 |
| Feb. 1, 1976—Jan. 31, 1978 | 7% | Table 3, pg. 558 |
| Feb. 1, 1978—Jan. 31, 1980 | 6% | Table 2, pg. 557 |
| Feb. 1, 1980—Jan. 31, 1982 | 12% | Table 5, pg. 560 |
| Feb. 1, 1982—Dec. 31, 1982 | 20% | Table 6, pg. 560 |
| Jan. 1, 1983—Jun. 30, 1983 | 16% | Table 37, pg. 591 |
| Jul. 1, 1983—Dec. 31, 1983 | 11% | Table 27, pg. 581 |
| Jan. 1, 1984—Jun. 30, 1984 | 11% | Table 75, pg. 629 |
| Jul. 1, 1984—Dec. 31, 1984 | 11% | Table 75, pg. 629 |
| Jan. 1, 1985—Jun. 30, 1985 | 13% | Table 31, pg. 585 |
| Jul. 1, 1985—Dec. 31, 1985 | 11% | Table 27, pg. 581 |
| Jan. 1, 1986—Jun. 30, 1986 | 10% | Table 25, pg. 579 |
| Jul. 1, 1986—Dec. 31, 1986 | 9% | Table 23, pg. 577 |

| TABLE OF INTEREST RATES | | | | | | |
|-----------------------------------|--------------|-------|-----|---------------|-------|-----|
| FROM JAN. 1, 1987 — DEC. 31, 1998 | | | | | | |
| | OVERPAYMENTS | | | UNDERPAYMENTS | | |
| | 1995-1 C.B. | | | 1995-1 C.B. | | |
| | RATE | TABLE | PG | RATE | TABLE | PG |
| Jan. 1, 1987—Mar. 31, 1987 | 8% | 21 | 575 | 9% | 23 | 577 |
| Apr. 1, 1987—Jun. 30, 1987 | 8% | 21 | 575 | 9% | 23 | 577 |
| Jul. 1, 1987—Sep. 30, 1987 | 8% | 21 | 575 | 9% | 23 | 577 |
| Oct. 1, 1987—Dec. 31, 1987 | 9% | 23 | 577 | 10% | 25 | 579 |
| Jan. 1, 1988—Mar. 31, 1988 | 10% | 73 | 627 | 11% | 75 | 629 |
| Apr. 1, 1988—Jun. 30, 1988 | 9% | 71 | 625 | 10% | 73 | 627 |
| Jul. 1, 1988—Sep. 30, 1988 | 9% | 71 | 625 | 10% | 73 | 627 |
| Oct. 1, 1988—Dec. 31, 1988 | 10% | 73 | 627 | 11% | 75 | 629 |
| Jan. 1, 1989—Mar. 31, 1989 | 10% | 25 | 579 | 11% | 27 | 581 |
| Apr. 1, 1989—Jun. 30, 1989 | 11% | 27 | 581 | 12% | 29 | 583 |
| Jul. 1, 1989—Sep. 30, 1989 | 11% | 27 | 581 | 12% | 29 | 583 |

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 — DEC. 31, 1998 – Continued

| | OVERPAYMENTS | | | UNDERPAYMENTS | | |
|----------------------------|--------------|-------|-----|---------------|-------|-----|
| | 1995-1 C.B. | | | 1995-1 C.B. | | |
| | RATE | TABLE | PG | RATE | TABLE | PG |
| Oct. 1, 1989—Dec. 31, 1989 | 10% | 25 | 579 | 11% | 27 | 581 |
| Jan. 1, 1990—Mar. 31, 1990 | 10% | 25 | 579 | 11% | 27 | 581 |
| Apr. 1, 1990—Jun. 30, 1990 | 10% | 25 | 579 | 11% | 27 | 581 |
| Jul. 1, 1990—Sep. 30, 1990 | 10% | 25 | 579 | 11% | 27 | 581 |
| Oct. 1, 1990—Dec. 31, 1990 | 10% | 25 | 579 | 11% | 27 | 581 |
| Jan. 1, 1991—Mar. 31, 1991 | 10% | 25 | 579 | 11% | 27 | 581 |
| Apr. 1, 1991—Jun. 30, 1991 | 9% | 23 | 577 | 10% | 25 | 579 |
| Jul. 1, 1991—Sep. 30, 1991 | 9% | 23 | 577 | 10% | 25 | 579 |
| Oct. 1, 1991—Dec. 31, 1991 | 9% | 23 | 577 | 10% | 25 | 579 |
| Jan. 1, 1992—Mar. 31, 1992 | 8% | 69 | 623 | 9% | 71 | 625 |
| Apr. 1, 1992—Jun. 30, 1992 | 7% | 67 | 621 | 8% | 69 | 623 |
| Jul. 1, 1992—Sep. 30, 1992 | 7% | 67 | 621 | 8% | 69 | 623 |
| Oct. 1, 1992—Dec. 31, 1992 | 6% | 65 | 619 | 7% | 67 | 621 |
| Jan. 1, 1993—Mar. 31, 1993 | 6% | 17 | 571 | 7% | 19 | 573 |
| Apr. 1, 1993—Jun. 30, 1993 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jul. 1, 1993—Sep. 30, 1993 | 6% | 17 | 571 | 7% | 19 | 573 |
| Oct. 1, 1993—Dec. 31, 1993 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jan. 1, 1994—Mar. 31, 1994 | 6% | 17 | 571 | 7% | 19 | 573 |
| Apr. 1, 1994—Jun. 30, 1994 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jul. 1, 1994—Sep. 30, 1994 | 7% | 19 | 573 | 8% | 21 | 575 |
| Oct. 1, 1994—Dec. 31, 1994 | 8% | 21 | 575 | 9% | 23 | 577 |
| Jan. 1, 1995—Mar. 31, 1995 | 8% | 21 | 575 | 9% | 23 | 577 |
| Apr. 1, 1995—Jun. 30, 1995 | 9% | 23 | 577 | 10% | 25 | 579 |
| Jul. 1, 1995—Sep. 30, 1995 | 8% | 21 | 575 | 9% | 23 | 577 |
| Oct. 1, 1995—Dec. 31, 1995 | 8% | 21 | 575 | 9% | 23 | 577 |
| Jan. 1, 1996—Mar. 31, 1996 | 8% | 69 | 623 | 9% | 71 | 625 |
| Apr. 1, 1996—Jun. 30, 1996 | 7% | 67 | 621 | 8% | 69 | 623 |
| Jul. 1, 1996—Sep. 30, 1996 | 8% | 69 | 623 | 9% | 71 | 625 |
| Oct. 1, 1996—Dec. 31, 1996 | 8% | 69 | 623 | 9% | 71 | 625 |
| Jan. 1, 1997—Mar. 31, 1997 | 8% | 21 | 575 | 9% | 23 | 577 |
| Apr. 1, 1997—Jun. 30, 1997 | 8% | 21 | 575 | 9% | 23 | 577 |
| Jul. 1, 1997—Sep. 30, 1997 | 8% | 21 | 575 | 9% | 23 | 577 |
| Oct. 1, 1997—Dec. 31, 1997 | 8% | 21 | 575 | 9% | 23 | 577 |
| Jan. 1, 1998—Mar. 31, 1998 | 8% | 21 | 575 | 9% | 23 | 577 |
| Apr. 1, 1998—Jun. 30, 1998 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jul. 1, 1998—Sep. 30, 1998 | 7% | 19 | 573 | 8% | 21 | 575 |
| Oct. 1, 1998—Dec. 31, 1998 | 7% | 19 | 573 | 8% | 21 | 575 |

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

| | RATE | 1995-1 C.B. | PG |
|----------------------------|------|-------------|-----|
| | | TABLE | |
| Jan. 1, 1999—Mar. 31, 1999 | 7% | 19 | 573 |
| Apr. 1, 1999—Jun. 30, 1999 | 8% | 21 | 575 |
| Jul. 1, 1999—Sep. 30, 1999 | 8% | 21 | 575 |
| Oct. 1, 1999—Dec. 31, 1999 | 8% | 21 | 575 |
| Jan. 1, 2000—Mar. 31, 2000 | 8% | 69 | 623 |
| Apr. 1, 2000—Jun. 30, 2000 | 9% | 71 | 625 |
| Jul. 1, 2000—Sep. 30, 2000 | 9% | 71 | 625 |
| Oct. 1, 2000—Dec. 31, 2000 | 9% | 71 | 625 |
| Jan. 1, 2001—Mar. 31, 2001 | 9% | 23 | 577 |

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT – Continued
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

| | RATE | 1995-1 C.B. | |
|----------------------------|------|-------------|-----|
| | | TABLE | PG |
| Apr. 1, 2001—Jun. 30, 2001 | 8% | 21 | 575 |
| Jul. 1, 2001—Sep. 30, 2001 | 7% | 19 | 573 |
| Oct. 1, 2001—Dec. 31, 2001 | 7% | 19 | 573 |
| Jan. 1, 2002—Mar. 31, 2002 | 6% | 17 | 571 |
| Apr. 1, 2002—Jun. 30, 2002 | 6% | 17 | 571 |
| Jul. 1, 2002—Sep. 30, 2002 | 6% | 17 | 571 |
| Oct. 1, 2002—Dec. 31, 2002 | 6% | 17 | 571 |
| Jan. 1, 2003—Mar. 31, 2003 | 5% | 15 | 569 |
| Apr. 1, 2003—Jun. 30, 2003 | 5% | 15 | 569 |
| Jul. 1, 2003—Sep. 30, 2003 | 5% | 15 | 569 |
| Oct. 1, 2003—Dec. 31, 2003 | 4% | 13 | 567 |
| Jan. 1, 2004—Mar. 31, 2004 | 4% | 61 | 615 |
| Apr. 1, 2004—Jun. 30, 2004 | 5% | 63 | 617 |
| Jul. 1, 2004—Sep. 30, 2004 | 4% | 61 | 615 |
| Oct. 1, 2004—Dec. 31, 2004 | 5% | 63 | 617 |
| Jan. 1, 2005—Mar. 31, 2005 | 5% | 15 | 569 |
| Apr. 1, 2005—Jun. 30, 2005 | 6% | 17 | 571 |
| Jul. 1, 2005—Sep. 30, 2005 | 6% | 17 | 571 |
| Oct. 1, 2005—Dec. 31, 2005 | 7% | 19 | 573 |
| Jan. 1, 2006—Mar. 31, 2006 | 7% | 19 | 573 |
| Apr. 1, 2006—Jun. 30, 2006 | 7% | 19 | 573 |
| Jul. 1, 2006—Sep. 30, 2006 | 8% | 21 | 575 |
| Oct. 1, 2006—Dec. 31, 2006 | 8% | 21 | 575 |
| Jan. 1, 2007—Mar. 31, 2007 | 8% | 21 | 575 |
| Apr. 1, 2007—Jun. 30, 2007 | 8% | 21 | 575 |
| Jul. 1, 2007—Sep. 30, 2007 | 8% | 21 | 575 |
| Oct. 1, 2007—Dec. 31, 2007 | 8% | 21 | 575 |
| Jan. 1, 2008—Mar. 31, 2008 | 7% | 67 | 621 |
| Apr. 1, 2008—Jun. 30, 2008 | 6% | 65 | 619 |

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

| | OVERPAYMENTS | | | UNDERPAYMENTS | | |
|----------------------------|--------------|-------|-----|---------------|-------|-----|
| | 1995-1 C.B. | | | 1995-1 C.B. | | |
| | RATE | TABLE | PG | RATE | TABLE | PG |
| Jan. 1, 1999—Mar. 31, 1999 | 6% | 17 | 571 | 7% | 19 | 573 |
| Apr. 1, 1999—Jun. 30, 1999 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jul. 1, 1999—Sep. 30, 1999 | 7% | 19 | 573 | 8% | 21 | 575 |
| Oct. 1, 1999—Dec. 31, 1999 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jan. 1, 2000—Mar. 31, 2000 | 7% | 67 | 621 | 8% | 69 | 623 |
| Apr. 1, 2000—Jun. 30, 2000 | 8% | 69 | 623 | 9% | 71 | 625 |
| Jul. 1, 2000—Sep. 30, 2000 | 8% | 69 | 623 | 9% | 71 | 625 |
| Oct. 1, 2000—Dec. 31, 2000 | 8% | 69 | 623 | 9% | 71 | 625 |
| Jan. 1, 2001—Mar. 31, 2001 | 8% | 21 | 575 | 9% | 23 | 577 |
| Apr. 1, 2001—Jun. 30, 2001 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jul. 1, 2001—Sep. 30, 2001 | 6% | 17 | 571 | 7% | 19 | 573 |
| Oct. 1, 2001—Dec. 31, 2001 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jan. 1, 2002—Mar. 31, 2002 | 5% | 15 | 569 | 6% | 17 | 571 |
| Apr. 1, 2002—Jun. 30, 2002 | 5% | 15 | 569 | 6% | 17 | 571 |
| Jul. 1, 2002—Sep. 30, 2002 | 5% | 15 | 569 | 6% | 17 | 571 |

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT — Continued
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

| | OVERPAYMENTS | | | UNDERPAYMENTS | | |
|----------------------------|--------------|-------|-----|---------------|-------|-----|
| | 1995-1 C.B. | | | 1995-1 C.B. | | |
| | RATE | TABLE | PG | RATE | TABLE | PG |
| Oct. 1, 2002—Dec. 31, 2002 | 5% | 15 | 569 | 6% | 17 | 571 |
| Jan. 1, 2003—Mar. 31, 2003 | 4% | 13 | 567 | 5% | 15 | 569 |
| Apr. 1, 2003—Jun. 30, 2003 | 4% | 13 | 567 | 5% | 15 | 569 |
| Jul. 1, 2003—Sep. 30, 2003 | 4% | 13 | 567 | 5% | 15 | 569 |
| Oct. 1, 2003—Dec. 31, 2003 | 3% | 11 | 565 | 4% | 13 | 567 |
| Jan. 1, 2004—Mar. 31, 2004 | 3% | 59 | 613 | 4% | 61 | 615 |
| Apr. 1, 2004—Jun. 30, 2004 | 4% | 61 | 615 | 5% | 63 | 617 |
| Jul. 1, 2004—Sep. 30, 2004 | 3% | 59 | 613 | 4% | 61 | 615 |
| Oct. 1, 2004—Dec. 31, 2004 | 4% | 61 | 615 | 5% | 63 | 617 |
| Jan. 1, 2005—Mar. 31, 2005 | 4% | 13 | 567 | 5% | 15 | 569 |
| Apr. 1, 2005—Jun. 30, 2005 | 5% | 15 | 569 | 6% | 17 | 571 |
| Jul. 1, 2005—Sep. 30, 2005 | 5% | 15 | 569 | 6% | 17 | 571 |
| Oct. 1, 2005—Dec. 31, 2005 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jan. 1, 2006—Mar. 31, 2006 | 6% | 17 | 571 | 7% | 19 | 573 |
| Apr. 1, 2006—Jun. 30, 2006 | 6% | 17 | 571 | 7% | 19 | 573 |
| Jul. 1, 2006—Sep. 30, 2006 | 7% | 19 | 573 | 8% | 21 | 575 |
| Oct. 1, 2006—Dec. 31, 2006 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jan. 1, 2007—Mar. 31, 2007 | 7% | 19 | 573 | 8% | 21 | 575 |
| Apr. 1, 2007—Jun. 30, 2007 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jul. 1, 2007—Sep. 30, 2007 | 7% | 19 | 573 | 8% | 21 | 575 |
| Oct. 1, 2007—Dec. 31, 2007 | 7% | 19 | 573 | 8% | 21 | 575 |
| Jan. 1, 2008—Mar. 31, 2008 | 6% | 65 | 619 | 7% | 67 | 621 |
| Apr. 1, 2008—Jun. 30, 2008 | 5% | 63 | 617 | 6% | 65 | 619 |

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 — PRESENT

| | RATE | 1995-1 C.B. | |
|----------------------------|------|-------------|-----|
| | | TABLE | PG |
| Jan. 1, 1991—Mar. 31, 1991 | 13% | 31 | 585 |
| Apr. 1, 1991—Jun. 30, 1991 | 12% | 29 | 583 |
| Jul. 1, 1991—Sep. 30, 1991 | 12% | 29 | 583 |
| Oct. 1, 1991—Dec. 31, 1991 | 12% | 29 | 583 |
| Jan. 1, 1992—Mar. 31, 1992 | 11% | 75 | 629 |
| Apr. 1, 1992—Jun. 30, 1992 | 10% | 73 | 627 |
| Jul. 1, 1992—Sep. 30, 1992 | 10% | 73 | 627 |
| Oct. 1, 1992—Dec. 31, 1992 | 9% | 71 | 625 |
| Jan. 1, 1993—Mar. 31, 1993 | 9% | 23 | 577 |
| Apr. 1, 1993—Jun. 30, 1993 | 9% | 23 | 577 |
| Jul. 1, 1993—Sep. 30, 1993 | 9% | 23 | 577 |
| Oct. 1, 1993—Dec. 31, 1993 | 9% | 23 | 577 |
| Jan. 1, 1994—Mar. 31, 1994 | 9% | 23 | 577 |
| Apr. 1, 1994—Jun. 30, 1994 | 9% | 23 | 577 |
| Jul. 1, 1994—Sep. 30, 1994 | 10% | 25 | 579 |
| Oct. 1, 1994—Dec. 31, 1994 | 11% | 27 | 581 |
| Jan. 1, 1995—Mar. 31, 1995 | 11% | 27 | 581 |
| Apr. 1, 1995—Jun. 30, 1995 | 12% | 29 | 583 |
| Jul. 1, 1995—Sep. 30, 1995 | 11% | 27 | 581 |
| Oct. 1, 1995—Dec. 31, 1995 | 11% | 27 | 581 |
| Jan. 1, 1996—Mar. 31, 1996 | 11% | 75 | 629 |
| Apr. 1, 1996—Jun. 30, 1996 | 10% | 73 | 627 |

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 — PRESENT — Continued

| | RATE | 1995-1 C.B. TABLE | PG |
|----------------------------|------|----------------------|-----|
| Jul. 1, 1996—Sep. 30, 1996 | 11% | 75 | 629 |
| Oct. 1, 1996—Dec. 31, 1996 | 11% | 75 | 629 |
| Jan. 1, 1997—Mar. 31, 1997 | 11% | 27 | 581 |
| Apr. 1, 1997—Jun. 30, 1997 | 11% | 27 | 581 |
| Jul. 1, 1997—Sep. 30, 1997 | 11% | 27 | 581 |
| Oct. 1, 1997—Dec. 31, 1997 | 11% | 27 | 581 |
| Jan. 1, 1998—Mar. 31, 1998 | 11% | 27 | 581 |
| Apr. 1, 1998—Jun. 30, 1998 | 10% | 25 | 579 |
| Jul. 1, 1998—Sep. 30, 1998 | 10% | 25 | 579 |
| Oct. 1, 1998—Dec. 31, 1998 | 10% | 25 | 579 |
| Jan. 1, 1999—Mar. 31, 1999 | 9% | 23 | 577 |
| Apr. 1, 1999—Jun. 30, 1999 | 10% | 25 | 579 |
| Jul. 1, 1999—Sep. 30, 1999 | 10% | 25 | 579 |
| Oct. 1, 1999—Dec. 31, 1999 | 10% | 25 | 579 |
| Jan. 1, 2000—Mar. 31, 2000 | 10% | 73 | 627 |
| Apr. 1, 2000—Jun. 30, 2000 | 11% | 75 | 629 |
| Jul. 1, 2000—Sep. 30, 2000 | 11% | 75 | 629 |
| Oct. 1, 2000—Dec. 31, 2000 | 11% | 75 | 629 |
| Jan. 1, 2001—Mar. 31, 2001 | 11% | 27 | 581 |
| Apr. 1, 2001—Jun. 30, 2001 | 10% | 25 | 579 |
| Jul. 1, 2001—Sep. 30, 2001 | 9% | 23 | 577 |
| Oct. 1, 2001—Dec. 31, 2001 | 9% | 23 | 577 |
| Jan. 1, 2002—Mar. 31, 2002 | 8% | 21 | 575 |
| Apr. 1, 2002—Jun. 30, 2002 | 8% | 21 | 575 |
| Jul. 1, 2002—Sep. 30, 2002 | 8% | 21 | 575 |
| Oct. 1, 2002—Dec. 30, 2002 | 8% | 21 | 575 |
| Jan. 1, 2003—Mar. 31, 2003 | 7% | 19 | 573 |
| Apr. 1, 2003—Jun. 30, 2003 | 7% | 19 | 573 |
| Jul. 1, 2003—Sep. 30, 2003 | 7% | 19 | 573 |
| Oct. 1, 2003—Dec. 31, 2003 | 6% | 17 | 571 |
| Jan. 1, 2004—Mar. 31, 2004 | 6% | 65 | 619 |
| Apr. 1, 2004—Jun. 30, 2004 | 7% | 67 | 621 |
| Jul. 1, 2004—Sep. 30, 2004 | 6% | 65 | 619 |
| Oct. 1, 2004—Dec. 31, 2004 | 7% | 67 | 621 |
| Jan. 1, 2005—Mar. 31, 2005 | 7% | 19 | 573 |
| Apr. 1, 2005—Jun. 30, 2005 | 8% | 21 | 575 |
| Jul. 1, 2005—Sep. 30, 2005 | 8% | 21 | 575 |
| Oct. 1, 2005—Dec. 31, 2005 | 9% | 23 | 577 |
| Jan. 1, 2006—Mar. 31, 2006 | 9% | 23 | 577 |
| Apr. 1, 2006—Jun. 30, 2006 | 9% | 23 | 577 |
| Jul. 1, 2006—Sep. 30, 2006 | 10% | 25 | 579 |
| Oct. 1, 2006—Dec. 31, 2006 | 10% | 25 | 579 |
| Jan. 1, 2007—Mar. 31, 2007 | 10% | 25 | 579 |
| Apr. 1, 2007—Jun. 30, 2007 | 10% | 25 | 579 |
| Jul. 1, 2007—Sep. 30, 2007 | 10% | 25 | 579 |
| Oct. 1, 2007—Dec. 31, 2007 | 10% | 25 | 579 |
| Jan. 1, 2008—Mar. 31, 2008 | 9% | 71 | 625 |
| Apr. 1, 2008—Jun. 30, 2008 | 8% | 69 | 623 |

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 — PRESENT

| | RATE | 1995-1 C.B. TABLE | PG |
|----------------------------|------|----------------------|-----|
| Jan. 1, 1995—Mar. 31, 1995 | 6.5% | 18 | 572 |
| Apr. 1, 1995—Jun. 30, 1995 | 7.5% | 20 | 574 |
| Jul. 1, 1995—Sep. 30, 1995 | 6.5% | 18 | 572 |
| Oct. 1, 1995—Dec. 31, 1995 | 6.5% | 18 | 572 |
| Jan. 1, 1996—Mar. 31, 1996 | 6.5% | 66 | 620 |
| Apr. 1, 1996—Jun. 30, 1996 | 5.5% | 64 | 618 |
| Jul. 1, 1996—Sep. 30, 1996 | 6.5% | 66 | 620 |
| Oct. 1, 1996—Dec. 31, 1996 | 6.5% | 66 | 620 |
| Jan. 1, 1997—Mar. 31, 1997 | 6.5% | 18 | 572 |
| Apr. 1, 1997—Jun. 30, 1997 | 6.5% | 18 | 572 |
| Jul. 1, 1997—Sep. 30, 1997 | 6.5% | 18 | 572 |
| Oct. 1, 1997—Dec. 31, 1997 | 6.5% | 18 | 572 |
| Jan. 1, 1998—Mar. 31, 1998 | 6.5% | 18 | 572 |
| Apr. 1, 1998—Jun. 30, 1998 | 5.5% | 16 | 570 |
| Jul. 1, 1998—Sep. 30, 1998 | 5.5% | 16 | 570 |
| Oct. 1, 1998—Dec. 31, 1998 | 5.5% | 16 | 570 |
| Jan. 1, 1999—Mar. 31, 1999 | 4.5% | 14 | 568 |
| Apr. 1, 1999—Jun. 30, 1999 | 5.5% | 16 | 570 |
| Jul. 1, 1999—Sep. 30, 1999 | 5.5% | 16 | 570 |
| Oct. 1, 1999—Dec. 31, 1999 | 5.5% | 16 | 570 |
| Jan. 1, 2000—Mar. 31, 2000 | 5.5% | 64 | 618 |
| Apr. 1, 2000—Jun. 30, 2000 | 6.5% | 66 | 620 |
| Jul. 1, 2000—Sep. 30, 2000 | 6.5% | 66 | 620 |
| Oct. 1, 2000—Dec. 31, 2000 | 6.5% | 66 | 620 |
| Jan. 1, 2001—Mar. 31, 2001 | 6.5% | 18 | 572 |
| Apr. 1, 2001—Jun. 30, 2001 | 5.5% | 16 | 570 |
| Jul. 1, 2001—Sep. 30, 2001 | 4.5% | 14 | 568 |
| Oct. 1, 2001—Dec. 31, 2001 | 4.5% | 14 | 568 |
| Jan. 1, 2002—Mar. 31, 2002 | 3.5% | 12 | 566 |
| Apr. 1, 2002—Jun. 30, 2002 | 3.5% | 12 | 566 |
| Jul. 1, 2002—Sep. 30, 2002 | 3.5% | 12 | 566 |
| Oct. 1, 2002—Dec. 31, 2002 | 3.5% | 12 | 566 |
| Jan. 1, 2003—Mar. 31, 2003 | 2.5% | 10 | 564 |
| Apr. 1, 2003—Jun. 30, 2003 | 2.5% | 10 | 564 |
| Jul. 1, 2003—Sep. 30, 2003 | 2.5% | 10 | 564 |
| Oct. 1, 2003—Dec. 31, 2003 | 1.5% | 8 | 562 |
| Jan. 1, 2004—Mar. 31, 2004 | 1.5% | 56 | 610 |
| Apr. 1, 2004—Jun. 30, 2004 | 2.5% | 58 | 612 |
| Jul. 1, 2004—Sep. 30, 2004 | 1.5% | 56 | 610 |
| Oct. 1, 2004—Dec. 31, 2004 | 2.5% | 58 | 612 |
| Jan. 1, 2005—Mar. 31, 2005 | 2.5% | 10 | 564 |
| Apr. 1, 2005—Jun. 30, 2005 | 3.5% | 12 | 566 |
| Jul. 1, 2005—Sep. 30, 2005 | 3.5% | 12 | 566 |
| Oct. 1, 2005—Dec. 31, 2005 | 4.5% | 14 | 568 |
| Jan. 1, 2006—Mar. 31, 2006 | 4.5% | 14 | 568 |
| Apr. 1, 2006—Jun. 30, 2006 | 4.5% | 14 | 568 |
| Jul. 1, 2006—Sep. 30, 2006 | 5.5% | 16 | 570 |
| Oct. 1, 2006—Dec. 31, 2006 | 5.5% | 16 | 570 |
| Jan. 1, 2007—Mar. 31, 2007 | 5.5% | 16 | 570 |
| Apr. 1, 2007—Jun. 30, 2007 | 5.5% | 16 | 570 |
| Jul. 1, 2007—Sep. 30, 2007 | 5.5% | 16 | 570 |
| Oct. 1, 2007—Dec. 31, 2007 | 5.5% | 16 | 570 |
| Jan. 1, 2008—Mar. 31, 2008 | 4.5% | 62 | 616 |
| Apr. 1, 2008—Jun. 30, 2008 | 3.5% | 60 | 614 |

Part III. Administrative, Procedural, and Miscellaneous

Government Entities Required to Withhold 3% on Payments for Services and Property

Notice 2008–38

PURPOSE

This notice invites public comments regarding guidance to be provided to Government entities, Federal, State and local, required to withhold on payments made by the Government entities or their paying agents for services and property. See sections 3401(d) and 3402(t)(3). The new withholding is required by section 3402(t) of the Internal Revenue Code (the Code), which was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109–222 (TIPRA). Section 511 of TIPRA is effective for payments made after December 31, 2010.

The Department of the Treasury and Internal Revenue Service propose to issue guidance on compliance with the withholding requirements of section 3402(t). The Treasury and Service are requesting comments from all affected entities. The information collected will assist the Treasury and Service in drafting guidance under section 3402(t).

BACKGROUND

Under section 3402(t), all Government entities (except for certain small State entities) will be required to withhold 3 percent of all payments for services or property made after December 31, 2010. Section 3402(t) identifies certain payments, such as payments that were already subject to withholding or payments that would not be subject to tax, as being excluded from the 3 percent withholding requirements. Except for those payments, all payments by affected Government entities, however made, will be subject to the mandatory 3 percent withholding requirements.

LEGISLATION

Section 3402(t)(1) of the Code provides that the Government of the United States, every State, every political subdivision thereof and every instrumentality

of the foregoing making any payment to any person providing any property or services (including any payment made in connection with a Government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

Political subdivisions of a State (or any instrumentality thereof) making less than \$100,000,000 of payments for property or services are exempt from this requirement. See section 3402(t)(2)(G). There is no statutory exception for *de minimis* payments for property or services made by a Government entity (or any instrumentality thereof) that is not exempt from this withholding requirement.

Section 3402(t)(1) of the Code does not apply to any payments made through a Federal, State, or local Government public assistance or public welfare program for which eligibility is determined by a needs or income test. See section 3402(t)(2)(H). For example, payments under Government programs providing food vouchers or medical assistance to low-income individuals are not subject to withholding under section 3402(t). However, payments under Government programs to provide health care or other services that are not based on the needs or income of the recipients are subject to withholding, including programs where eligibility is based on the age of the beneficiary. H.R. Conf. Rept. 109–455, 109th Cong., 2nd Sess., at 301 (2006).

Section 3402(t)(1) of the Code does not apply to payments of wages or to any other payment with respect to which mandatory (*e.g.*, U.S. source income of foreign taxpayers) or voluntary (*e.g.*, unemployment benefits) withholding applies under present law. See section 3402(t)(2)(A). Section 3402(t) does not exclude payments that are potentially subject to backup withholding under section 3406. If, however, payments are actually being withheld under backup withholding, withholding under section 3402(t) does not apply. See section 3402(t)(2)(B); H.R. Conf. Rept. 109–455 at 301.

In addition, section 3402(t)(1) of the Code does not apply to the following: pay-

ments of interest; payments for real property; payments to tax-exempt entities or foreign Governments; intra-Governmental payments; payments made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)); and payments to Government employees that are not otherwise excludable from the new withholding provision with respect to the employees' services as employees. See section 3402(t)(2)(C) — (F), (I). Section 3402(t) is effective for payments made after December 31, 2010. See section 511(b) of TIPRA.

The withholding requirement will apply regardless of whether the Government entity making the payment is the recipient of the property or services. For example, payments to a commodity producer under a Government commodity support program will be subject to the withholding requirement. See H.R. Conf. Rept. 109–455 at 301.

REQUESTS FOR PUBLIC COMMENT

The Treasury and Service request comments on issues as to which Government entities and their paying agents will need guidance in order to implement the requirements of section 3402(t). The Treasury and Service are particularly interested in any comments regarding:

- How to apply the withholding requirements to purchases made with credit cards or other forms of payment cards;
- How to apply the withholding requirements if the payee is not subject to U.S. tax;
- How to apply the withholding requirements to partnerships and other pass-through entities in which a Government entity is a partner or owner;
- How to apply the withholding requirements to Government contractors and Subcontractors;
- The application of the withholding requirements to so-called Government — Sponsored Entities;
- The application of the withholding requirements to *de minimis* payments for

property or services made by affected Government entities; and

- When and how the withheld amounts should be transmitted to the IRS.

Written comments should be sent to: CC:PA:LPD:PR (Notice 2008–38), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2008–38), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: *Notice.Comments@irs.counsel.treas.gov*. Please include “Notice 2008–38” in the subject line of any electronic communications.

All comments will be available for public inspection and copying. Because Government entities will need guidance on compliance with section 3402(t) as soon as possible, comments, if any, must be received by April 28, 2008.

DRAFTING INFORMATION

The principal author of this notice is Stephen J. Coleman of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Stephen J. Coleman at (202) 622–4910 (not a toll-free call).

Credit for Increasing Research Activities: Filing Address and Requirements for Certain Claims for Credit or Refund

Notice 2008–39

SECTION 1. PURPOSE

This notice prescribes filing rules for certain claims arising under section 41 of the Code.

An overpayment of tax for a taxable year generated, in whole or in part, by the research credit and not taken into account on a taxpayer’s original return may be taken into account by the timely filing of a claim for credit or refund.

Under § 6402(a), the Secretary is authorized to credit, within the applicable period of limitations, an overpayment against any liability in respect of an internal revenue tax of the person who made the overpayment, and must generally refund any balance to that person. Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in § 6511(a), unless a claim for credit or refund is filed by the taxpayer within such period.

SECTION 2. CLAIMS FOR CREDIT OR REFUND SUBJECT TO THIS NOTICE

This notice applies to taxpayers required to file Form 1120, *U.S. Corporation Income Tax Return*, with claims for credit or refund attributable, in whole or in part, to the research credit that (1) were not reported on an original return or an amended Income Tax Return, filed on or before the due date of the original Form 1120, including extensions, and (2) were not filed with the Internal Revenue Service on or before March 31, 2008.

This notice does not apply to those claims for credit or refund subject to the electronic filing requirements for amended returns stated in Treas. Reg. § 301.6011–5.

SECTION 3. REQUIREMENTS FOR CLAIMS FOR CREDIT OR REFUND SUBJECT TO THIS NOTICE

All claims for credit or refund subject to this notice shall be filed with the Ogden Service Center at the following address:

Internal Revenue Service Center
1973 North Rulon White Road
Ogden, UT 84201

The claim for credit or refund shall indicate at the top “Refund-Research Credit” and include a copy of the Form 6765, *Credit for Increasing Research Activities* (if any), filed with the original return and an amended Form 6765.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2002–44, 2002–2 C.B. 39, is superseded.

SECTION 5. CONTACT INFORMATION

For questions regarding this notice, contact Paul V. Colleran of the Office of Division Counsel (Large and Mid-Size Business) at (617) 565–7838 (not a toll-free call).

26 CFR 1.1035–1: Certain exchanges of insurance policies.
(Also Sections 1035 and 72.)

Rev. Proc. 2008–24

SECTION 1. PURPOSE

This revenue procedure addresses the tax treatment of certain tax-free exchanges of annuity contracts under § 72 and § 1035 of the Internal Revenue Code. The interim guidance provided by Notice 2003–51, 2003–2 C.B. 361, is superseded.

SECTION 2. BACKGROUND

.01 Section 1035(a)(3) provides that no gain or loss shall be recognized on the exchange of an annuity contract for another annuity contract. The legislative history of § 1035 states that exchange treatment is appropriate for “individuals who have merely exchanged one insurance policy for another better suited to their needs.” H.R. Rep. No. 1337, 83d Cong., 2d Sess. 81 (1954). Section 1.1035–1 of the Income Tax Regulations provides that “the exchange, without recognition of gain or loss, of an annuity contract for another annuity contract under § 1035(a)(3) is limited to cases where the same person or persons are the obligee or obligees under the contract received in the exchange as under the original contract.”

.02 Section 72(e) governs the federal tax treatment of distributions from an annuity contract that are not received as an annuity. Under § 72(e)(2), such amounts generally are taxed on an income-first basis. Section 72(e)(12) provides that all annuity contracts issued by the same company to the same policyholder during any calendar year are treated as a single annuity contract for purposes of § 72(e).

.03 Section 72(q)(1) imposes a 10 percent penalty on withdrawals or surrenders

of annuity contracts, unless one of the exceptions enumerated in § 72(q)(2) applies.

.04 In *Conway v. Commissioner*, 111 T.C. 350 (1998), *acq.*, 1999-2 C.B. xvi, the Tax Court held that the direct exchange by an insurance company of a portion of an existing annuity contract to an unrelated insurance company for a new annuity contract was a tax-free exchange under § 1035. Such a transaction is sometimes referred to as a “partial exchange.” The Internal Revenue Service (Service) acquiesced in *Conway v. Commissioner*, 1999-2 C.B. xvi. *See also* Rev. Rul. 2007-24, 2007-21 I.R.B. 1282 (receipt of a check under a nonqualified annuity contract and endorsement of the check to a second company as consideration for a second annuity contract treated as a distribution under § 72(e), rather than as a tax-free exchange under § 1035); Rev. Rul. 2003-76, 2003-2 C.B. 355 (direct transfer of a portion of an annuity contract for a new annuity contract treated as a tax-free exchange under § 1035); Rev. Rul. 2002-75, 2002-2 C.B. 812 (assignment of an entire annuity contract for deposit into a preexisting annuity contract treated as a tax-free exchange under § 1035).

.05 Notice 2003-51 provided interim guidance on partial exchanges. Specifically, section 4 of the notice stated that “the Service, using general principles of tax law, will consider all the facts and circumstances to determine whether a partial exchange and a subsequent withdrawal from, or surrender of, either the surviving annuity contract or the new annuity contract within 24 months of the date on which the partial exchange was completed should be treated as an integrated transaction, and thus whether the two contracts should be viewed as a single contract to determine the tax treatment of a surrender or withdrawal under § 72(e).” If however, a taxpayer could demonstrate that one of the conditions of § 72(q)(2), or any other similar life event, such as a divorce or the loss of employment, occurred between the partial exchange and the surrender or distribution, and that the surrender or distribution was not contemplated at the time of the partial exchange, the taxpayer would not be treated as having entered into the surrender or distribution for tax avoidance purposes.

.06 Treasury and the Service have determined that it is in the interest of sound tax administration to adopt the provisions of Notice 2003-51, with changes, in the form of a revenue procedure. *See* § 601.601(d)(2)(vi) of the Procedure and Administration Regulations. In doing so, Treasury and the Service have determined that the 24-month period referred to in section 4 of Notice 2003-51 should be shortened to 12 months, and the subjective requirement that certain surrenders or distributions not have been “contemplated” at the time of the exchange should be removed. In addition, Treasury and the Service have determined it is appropriate to make the following clarifications to the rules of Notice 2003-51: First, if the direct transfer of a portion of an annuity contract for a second annuity contract does not qualify as a tax-free exchange under § 1035 and the rules of this revenue procedure, it will be treated as a taxable distribution followed by a payment for the second contract. Second, the rule treating a transfer as a tax-free exchange if one of the § 72(q)(2) conditions is met cannot be satisfied based on a payment described in §§ 72(q)(2)(D) (distribution that is part of a series of substantially equal periodic payments) or (I) (distribution under an immediate annuity). *See* Rev. Proc. 2008-3, 2008-1 I.R.B. 110, section 5.02 (identifying “partial annuitization” as an area under study in which rulings or determination letters will not be issued until the Service resolves the issue through publication). Third, the Service will not require aggregation pursuant to the authority of § 72(e)(12) or otherwise of two contracts that are the subject of a tax-free exchange under § 1035 and section 4.01 of this revenue procedure, even if both contracts were issued by the same insurance company.

SECTION 3. SCOPE

.01 This revenue procedure applies to the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract, regardless of whether the two annuity contracts are issued by the same or different companies.

.02 This revenue procedure does not apply to transactions (sometimes referred to

as “partial annuitizations”) in which the holder of an annuity contract irrevocably elects to apply only a portion of the contract to purchase a stream of annuity payments under the contract, leaving the remainder of the contract to accumulate income on a tax-deferred basis.

SECTION 4. PROCEDURE

.01 A transfer that is within the scope of this revenue procedure will be treated as a tax-free exchange under § 1035 if either—

(a) no amounts are withdrawn from, or received in surrender of, either of the contracts involved in the exchange during the 12 months beginning on the date on which amounts are treated as received as premiums or other consideration paid for the contract received in the exchange (the date of the transfer); or

(b) the taxpayer demonstrates that one of the conditions described by § 72(q)(2)(A), (B), (C), (E), (F), (G), (H) or (J), or any similar life event (such as divorce or loss of employment), occurred between (i) the date of the transfer, and (ii) the date of the withdrawal or surrender.

.02 A transfer that is within the scope of this revenue procedure but not treated under § 4.01 as a tax-free exchange under § 1035 will be treated as a distribution, taxable under § 72(e), followed by a payment for the second contract.

.03 The Service will not require aggregation pursuant to the authority of § 72(e)(12), or otherwise, of two annuity contracts that are the subject of a tax-free exchange under § 1035 and section 4.01 of this revenue procedure, even if both contracts are issued by the same insurance company, but will instead treat the contracts as separate annuity contracts. *See* Rev. Rul. 2003-76.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for transfers described in section 3 of this revenue procedure that are completed on or after June 30, 2008.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2003-51 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is John E. Glover of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Glover at (202) 622-3970 (not a toll-free call).

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*
(Also Part I, §§ 446, 461, 481; 1.446-1, 1.461-1, 1.461-4, 1.461-5, 1.481-1.)

Rev. Proc. 2008-25

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting for taxpayers using an accrual method of accounting that incur Federal Insurance Contributions Act (FICA) tax and Federal Unemployment Tax Act (FUTA) tax (“payroll tax”) liabilities for compensation (including bonuses and vacation pay), and also provides procedures for taxpayers to obtain the automatic consent of the Commissioner of Internal Revenue to change to the safe harbor method of accounting.

SECTION 2. BACKGROUND

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

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

.03 Section 1.461-4(g)(6) provides generally that, if a taxpayer is liable to pay a tax, economic performance occurs as the tax is paid to the governmental authority that imposed it.

.04 Section 1.461-5(b)(1) provides a recurring item exception to the general rule of economic performance. Under the recurring item exception, a liability is treated as incurred for a taxable year if: (i) at the end of the taxable year, all events have occurred that establish the fact of the liability and the amount can be determined with reasonable accuracy; (ii) economic performance occurs on or before the earlier of (a) the date that the taxpayer files a return (including extensions) for the taxable year, or (b) the 15th day of the 9th calendar month after the close of the taxable year; (iii) the liability is recurring in nature; and (iv) either the amount of the liability is not material or accrual of the liability in the taxable year results in better matching of the liability against the income to which it relates than would result from accrual of the liability in the taxable year in which economic performance occurs. Section 1.461-5(b)(5)(ii) provides that, in the case of a liability for taxes, the matching requirement of the recurring item exception is deemed satisfied.

.05 Section 3111 imposes a liability on employers for their share of FICA taxes and § 3301 imposes a liability on employers for FUTA taxes. The employer’s portion of FICA taxes consists of a component for old-age, survivors, and disability insurance (social security tax) and a component for hospital insurance tax (Medicare tax). The social security tax applies only to wages paid by an employer to an employee during a calendar year not exceeding the contribution and benefit base (as determined under section 230 of the Social Security Act), which is \$102,000 in 2008. Thus, there is a ceiling on the wages subject to social security tax. In contrast, there is no ceiling on wages subject to the Medicare tax. See §§ 3301, 3111, and 3121(a). FUTA taxes are imposed on the first \$7,000 of wages paid to a covered employee by an employer during the calendar year. See § 3301(2). Employers are allowed credits against the FUTA tax through participation in state unemployment compensation laws. See § 3301 *et seq.*

.06 For many years, Service position was that FICA and FUTA taxes for accrual method taxpayers were treated as incurred only in the taxable year the compensation giving rise to the payroll tax liability was paid. For example, Rev. Rul. 69-587,

1969-2 C.B. 108, concludes that, under the all events test of § 461, an accrual method employer generally may not deduct payroll taxes payable with respect to bonuses and vacation pay accrued but unpaid at year-end until the taxable year in which the bonuses and vacation pay are paid. Similarly, Rev. Rul. 74-70, 1974-1 C.B. 116, concludes that, under the all events test of § 461, an accrual method employer generally may not deduct its share of FICA taxes payable with respect to wages accrued but unpaid at year-end until the taxable year in which those wages are actually or constructively paid.

The Service’s position on the accrual of payroll taxes was challenged in litigation. The Court of Claims in *Eastman Kodak Co. v. United States*, 534 F.2d 252 (Ct. Cl. 1976), *acq.*, 1996-2 C.B. 1, addressed the deductibility of FICA and FUTA taxes on wages, bonuses, and vacation pay accrued in Year 1 but paid in Year 2. The court held, contrary to Rev. Rul. 74-70, that the fact of the liability for payroll taxes on the wages was established in Year 1 as an automatic consequence of the definite and legal obligation to pay the year-end wages. However, the court also held that the fact of the liability for payroll taxes on bonuses and vacation pay was not established in Year 1 because of the uncertainty as of the end of Year 1 that the employee may have reached the payroll tax ceiling at the time of payment in Year 2.

.07 Consistent with the court’s holding in *Eastman Kodak*, the Service conceded the issue of deductibility of payroll taxes for year-end wages in Rev. Rul. 96-51, 1996-2 C.B. 36. Rev. Rul. 96-51, which revoked Rev. Rul. 74-70, concludes that, under the all events test of § 461, an accrual method employer may deduct in Year 1 its otherwise deductible payroll taxes imposed on year-end wages properly accrued in Year 1 but paid in Year 2, provided the employer satisfies the requirements of the recurring item exception in § 1.461-5 with respect to those taxes. In Rev. Rul. 96-51, the year-end wages were paid before the 15th day of the 3rd calendar month after the end of Year 1 and, thus, were not deferred compensation under § 404. Because the year-end wages were not deferred compensation, Rev. Rul. 96-51 does not address the application of § 404 to payroll taxes on deferred compensation.

.08 Rev. Rul. 2007–12, 2007–11 I.R.B. 685, revoked Rev. Rul. 69–587 and amplified Rev. Rul. 96–51. Rev. Rul. 2007–12 concludes that if the all events test and recurring item exception of § 461 are otherwise met, an accrual method taxpayer may treat its payroll tax liability as incurred in Year 1, regardless of whether the compensation to which the liability relates is deferred compensation that is deductible under § 404 in Year 2.

.09 The Service and the Department of the Treasury recognize that the proper accrual of FICA and FUTA tax liabilities continues to be an area of uncertainty for taxpayers. As noted by the Court of Claims in *Eastman Kodak*, a taxpayer that has a fixed liability to pay the compensation to which the payroll taxes relate may not know, as of the end of the taxable year, whether a particular employee will have reached any applicable payroll tax ceiling by the time the tax ultimately is paid, raising a question as to when the payroll tax liability is fixed. In addition, the ceiling limitations no longer exist on the Medicare portion of an employer's payroll tax liability, and the ceiling limitations that still exist on other portions of an employer's payroll tax liability are significantly higher than those addressed in *Eastman Kodak*. Therefore, for reasons of administrative convenience and to reduce further controversy, the Service will not challenge a taxpayer's use of the safe harbor method of accounting described in section 4.01 of this revenue procedure for payroll taxes on compensation.

.10 Under § 446(b), the Commissioner has broad authority to determine whether a method of accounting clearly reflects income. Section 1.446–1(c)(2)(ii) provides that the Commissioner may authorize a taxpayer to adopt or change to a permissible method of accounting although the method is not specifically described in the regulations as permissible if, in the opinion of the Commissioner, that method clearly reflects income.

.11 Section 446(e) and § 1.446–1(e)(2)(i) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations,

terms, and conditions necessary to obtain the Commissioner's consent to effect the change in method of accounting and to prevent amounts from being duplicated or omitted.

.12 Section 481(a) requires adjustments necessary to prevent amounts from being duplicated or omitted by reason of a change in method of accounting.

.13 Rev. Proc. 2002–9, 2002–1 C.B. 327 (as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432), provides procedures by which a taxpayer may obtain automatic consent to change to a method of accounting described in the Appendix of Rev. Proc. 2002–9.

SECTION 3. SCOPE

This revenue procedure applies to an accrual method taxpayer that uses the recurring item exception under § 1.461–5 for its payroll tax liabilities and chooses to account for its payroll tax liabilities using the safe harbor method of accounting described in section 4.01 of this revenue procedure. This revenue procedure does not apply to an employee's portion of FICA tax imposed under § 3101 and deducted by the employer from wages paid to the employee.

SECTION 4. SAFE HARBOR METHOD

.01 *In General.* Under the safe harbor method of accounting, and solely for purposes of the recurring item exception provided in § 1.461–5, a taxpayer will be treated as satisfying the requirement in § 1.461–5(b)(1)(i) for its payroll tax liability in the same taxable year in which all events have occurred that establish the fact of the related compensation liability and the amount of the related compensation liability can be determined with reasonable accuracy.

.02 *Examples.*

(1) *Example 1.* X uses an accrual method of accounting, including the use of the recurring item exception, and files its returns on a calendar year basis. X properly changes to the safe harbor method of accounting described in section 4.01 of this revenue procedure for its payroll tax liabilities. During Year 1, A, an employee of X, earns \$10,000 of vested vacation compensation for services performed during Year 1. X pays the vacation compensation to A

in February and May of Year 2. X incurs a payroll tax liability for the \$10,000 vested vacation compensation payment. Assume that, as of December 31 of Year 1, all events have occurred to establish the fact of X's vested vacation compensation liability and the amount of the liability is determinable with reasonable accuracy. Under the provisions of this revenue procedure, and solely for purposes of applying the recurring item exception, all events necessary to establish the fact of X's payroll tax liability for the \$10,000 vested vacation compensation will be treated as having occurred in Year 1 and the amount of the payroll tax liability will be treated as being determined with reasonable accuracy in Year 1.

(2) *Example 2.* Y uses an accrual method of accounting, including the use of the recurring item exception, and files its returns on a calendar year basis. X properly changes to the safe harbor method of accounting described in section 4.01 of this revenue procedure for its payroll tax liabilities. On December 28 of Year 1, Y's board of directors approves a bonus pool of \$1,000,000 to be paid to Y's employees for services provided during Year 1. The \$1,000,000 in bonuses is paid to Y's employees on January 5 of Year 2. Y incurs a payroll tax liability as a result of the \$1,000,000 in bonuses paid to its employees. Assume that, as of December 31 of Year 1, all events have occurred to establish the fact of the bonus compensation liability and the amount of the liability is determinable with reasonable accuracy. Under the provisions of this revenue procedure, and solely for purposes of applying the recurring item exception, all events necessary to establish the fact of Y's payroll tax liability for the \$1,000,000 in bonuses will be treated as having occurred in Year 1, and the amount of the payroll tax liability will be treated as being determined with reasonable accuracy in Year 1.

SECTION 5. CHANGE IN METHOD OF ACCOUNTING

.01 *In General.* A change in the treatment of payroll tax liabilities to conform to the safe harbor method provided by this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply.

.02 *Automatic change to the safe harbor method.* A taxpayer within the scope of this revenue procedure that wants to change its treatment of payroll tax liabilities to conform to the safe harbor method of accounting provided in this revenue procedure (including a change to use the recurring item exception for such payroll tax liabilities) must follow the automatic change in accounting method provisions of Rev. Proc. 2002–9, with the following modifications:

(i) The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply to a taxpayer that wants to make the change

for its first taxable year ending on or after December 31, 2007.

(ii) For purposes of completing line 1a of Form 3115, *Application for Change in Accounting Method*, the designated automatic accounting method change number for the change in method of accounting provided in this revenue procedure is No. 113.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include this automatic change in section 10.02 of the APPENDIX.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2007. The Service will not challenge a taxpayer's use of the safe harbor method of accounting described in this revenue procedure on a federal income tax return filed before March 11, 2008, if the taxpayer meets the requirements of this revenue procedure in that taxable year. Moreover, if the taxpayer's use of the safe harbor method on a federal income tax return filed before March 11, 2008, is an issue under consideration in examination, appeals,

or before a federal court, the issue will not be further pursued by the Service.

DRAFTING INFORMATION

The principal author of this revenue procedure is Martin L. Osborne of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Martin L. Osborne at (202) 622-7900 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Hearing

Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts

REG-127391-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: This document contains proposed regulations that provide guidance under Internal Revenue Code (Code) section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The proposed regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The proposed regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 6, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 11, 2008, must be received by March 28, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-127391-07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127391-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-127391-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Cynthia Morton at (202) 622-3060; concerning submissions of comments, the hearing, and/or access list to attend the hearing, contact Richard Hurst at (202) 622-7180 (not toll-free numbers) or e-mail at Richard.A.Hurst@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information 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 the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by May 6, 2008.

Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in the proposed regulation is in §1.664-1(c).

This information is required to report the excise tax imposed by section 664(c) of the Code. The likely respondents are trustees of charitable remainder trusts.

Estimated total annual reporting and/or recordkeeping burden: 50 hours.

Estimated average annual burden per respondent and/or recordkeeper: .5 hour.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: Once.

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

Background

For taxable years beginning before January 1, 2007, section 664(c) provided that a charitable remainder trust (whether a charitable remainder annuity trust or a charitable remainder unitrust) would not be exempt from income tax for any year in which the trust had any UBTI (within the meaning of section 512). Instead, such trust was taxed for each such year under subchapter J as though it were a nonexempt, complex trust. The proposed regulations reflect the changes to section 664(c) made by section 424 of the Tax Relief and Health Care Act of 2006 (Act) Public Law 109-432, 120 Stat. 2922. Section 424(a) of the Act, which applies to taxable years beginning after December 31, 2006, provides that charitable remainder trusts that have UBTI remain exempt from Federal income tax, but imposes a 100-percent excise tax on their UBTI. Pursuant to section 664(c)(2)(A), the amount of UBTI is determined pursuant to section 512. Under section 512, UBTI is computed with the modifications in section 512(b) including the \$1,000 deduction in section 512(b)(12). The excise tax imposed under section 664(c)(2)(A) is treated as imposed under the excise

tax rules that apply to private foundations and other tax-exempt organizations, other than the rules for abatement of first and second-tier taxes (chapter 42, other than subchapter E of chapter 42).

Pursuant to section 664(b), distributions from a charitable remainder trust for the year that the annuity or unitrust amount is required to be distributed are treated in the following order as: (1) Ordinary income to the extent of the trust's ordinary income for that year and undistributed ordinary income for all prior years; (2) Capital gains to the extent of the trust's capital gain for that year and undistributed capital gain for all prior years; (3) Other income (for example, tax-exempt income) to the extent of the trust's other income for that year and undistributed other income for all prior years; and (4) Corpus.

For purposes of determining the character of the distribution made to the beneficiary, the charitable remainder trust income that is UBTI is considered income of the trust. Specifically, income of the charitable remainder trust is allocated among the trust income categories in Treasury Regulation §1.664-1(d)(1) without regard to whether any part of that income constitutes UBTI under section 512. Section 1.664-1(d)(1) assigns charitable remainder trust income to one of three categories (ordinary income, capital gains, or other income) in the year in which it is required to be taken into account by the trust.

Explanation of Provisions

The proposed regulations amend the regulations under section 664(c) to provide that charitable remainder trusts with UBTI in taxable years beginning after December 31, 2006, are exempt from Federal income tax, but are subject to a 100-percent excise tax on the UBTI of the charitable remainder trust. The proposed regulations provide that the excise tax is reported and payable in accordance with the appropriate forms and instructions. Currently, the appropriate form to report and pay the excise tax on charitable remainder trusts with UBTI is Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code." The rules that apply with respect to charitable remainder trusts that have UBTI in taxable years beginning before January 1, 2007, are contained in §1.664-1(c) as in effect

for taxable years beginning before January 1, 2007. (See 26 CFR part 1 §1.664-1(c) revised as of April 2, 2007).

The proposed regulations clarify that, consistent with §1.664-1(d)(2), the excise tax imposed upon a charitable remainder trust with UBTI is treated as paid from corpus and the trust income that is UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. The proposed regulations provide examples illustrating the tax effects of UBTI on a charitable remainder trust for taxable years beginning after December 31, 2006. Finally, the proposed regulations amend §1.664-1(d)(2) to conform with section 424 of the Act.

Proposed Effective Date

The proposed regulations are proposed to be effective for taxable years beginning after December 31, 2006.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made eas-

ier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 2008, at 10 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Due to building security procedures visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 28, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Cynthia Morton, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

Par. 2. Section 1.664-1 is amended as follows:

1. In paragraph (a)(1)(i), the last sentence is revised and a sentence is added to the end of the paragraph.

2. Paragraph (c) is revised.

3. In paragraph (d)(2), the fourth sentence is revised.

The revisions and addition read as follows:

§1.664-1 Charitable remainder trusts.

(a) * * * (1) * * * (i) * * * A trust created after July 31, 1969, which is a charitable remainder trust, is exempt from all of the taxes imposed by subtitle A of the Code for any taxable year of the trust, except a taxable year beginning before January 1, 2007, in which it has unrelated business taxable income. For taxable years beginning after December 31, 2006, an excise tax, treated as imposed by chapter 42, is imposed on charitable remainder trusts that have unrelated business taxable income. See paragraph (c) of this section.

* * * * *

(c) *Excise Tax on Charitable Remainder Trusts—(1) In general.* For each taxable year beginning after December 31, 2006, in which a charitable remainder annuity trust or a charitable remainder unitrust has any unrelated business taxable income, an excise tax is imposed on that trust in an amount equal to the amount of such unrelated business taxable income. For this purpose, unrelated business taxable income is as defined in section 512, determined as if part III, subchapter F, chapter 1 subtitle A of the Internal Revenue Code applied to such trust. Such excise tax is treated as imposed by chapter 42 (other than subchapter E) and is reported and payable in accordance with the appropriate forms and instructions. Such excise tax shall be allocated to corpus and, therefore, is not deductible in determining taxable income distributed to a beneficiary. (See paragraph (d)(2) of this section.) The charitable remainder trust income that is unrelated business taxable income constitutes income of the trust for purposes of determining the character of the distribution made to the beneficiary. Income of the charitable remainder trust is allocated among the charitable remainder trust income categories in paragraph (d)(1) of this section without regard to whether any part of that income constitutes unrelated business taxable income under section 512.

(2) *Examples.* The application of the rules in this paragraph (c) may be illustrated by the following examples:

Example 1. For 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, has \$60,000 of ordinary income, including \$10,000 of gross income from a partnership that constitutes unrelated business taxable income to the trust. The trust has no deductions that are directly connected with that income. For that same year, the trust has administration expenses (deductible in computing taxable income) of \$16,000, resulting in net ordinary income of \$44,000. The amount of unrelated business taxable income is computed by taking gross income from an unrelated trade or business and deducting expenses directly connected with carrying on the trade or business, both computed with modifications under section 512(b). Section 512(b)(12) provides a specific deduction of \$1,000 in computing the amount of unrelated business taxable income. Under the facts presented in this example, there are no other modifications under section 512(b). The trust, therefore, has unrelated business taxable income of \$9,000 (\$10,000 minus the \$1,000 deduction under section 512(b)(12)). Undistributed ordinary income from prior years is \$12,000 and undistributed capital gains from prior years are \$50,000. Under the terms of the trust agreement, the trust is required to pay an annuity of \$100,000 for year 2007 to the noncharitable beneficiary. Because the trust has unrelated business taxable income of \$9,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$9,000. The character of the \$100,000 distribution to the noncharitable beneficiary is as follows: \$56,000 of ordinary income (\$44,000 from current year plus \$12,000 from prior years), and \$44,000 of capital gains. The \$9,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. At the beginning of year 2008, the amount of undistributed capital gains is \$6,000, and there is no undistributed ordinary income.

Example 2. During 2007, a charitable remainder annuity trust with a taxable year beginning on January 1, 2007, sells real estate generating gain of \$40,000. Because the trust had obtained a loan to finance part of the purchase price of the asset, some of the income from the sale is treated as debt-financed income under section 514 and thus constitutes unrelated business taxable income under section 512. The unrelated debt-financed income computed under section 514 is \$30,000. Assuming the trust receives no other income in 2007, the trust will have unrelated business taxable income under section 512 of \$29,000 (\$30,000 minus the \$1,000 deduction under section 512(b)(12)). Except for section 512(b)(12), no other exceptions or modifications under sections 512-514 apply when calculating unrelated business taxable income based on the facts presented in this example. Because the trust has unrelated business taxable income of \$29,000, the excise tax imposed under section 664(c) is equal to the amount of such unrelated business taxable income, \$29,000. The \$29,000 excise tax is allocated to corpus, and does not reduce the amount in any of the categories of income under paragraph (d)(1) of this section. Regardless of how the trust's income might be treated under sections 511-514, the entire \$40,000 is capital gain for purposes of section 664 and is allocated accordingly to and within the second of the categories of income under paragraph (d)(1) of this section.

(3) *Effective/Applicability date.* Paragraph (c) is effective for taxable years beginning after December 31, 2006. The rules that apply with respect to taxable years beginning before January 1, 2007, are contained in 1.664-1(c) in effect prior to the date these regulations are published as final regulations in the **Federal Register**. (See 26 CFR part 1, §1.664-1(c)(1) revised as of April 2, 2007).

(d) * * *

(2) * * * All taxes imposed by chapter 42 of the Code (including without limitation taxes treated under section 664(c)(2) as imposed by chapter 42) and, for taxable years beginning prior to January 1, 2007, all taxes imposed by subtitle A of the Code for which the trust is liable because it has unrelated business taxable income, shall be allocated to corpus. * * *

* * * * *

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on March 6, 2008, 8:45 a.m., and published in the issue of the Federal Register for March 7, 2008, 73 F.R. 12313)

Procedures to Request for Public Inspection or Copy a 501(c)(3) Organization's Form 990-T, Exempt Organization Business Income Tax Return

Announcement 2008-21

This document explains the procedures the public may use to request the inspection and copying of a section 501(c)(3) organization's annual return reporting section 511 unrelated business income (Form 990-T).

The Tax Technical Corrections Act of 2007, Pub. L. 110-172, H.R. 4839, provides that the Internal Revenue Service is required to make Forms 990-T that are filed by a section 501(c)(3) organization publicly available for inspection and copying pursuant to section 6104(b). This provision is effective for returns filed after August 17, 2006, the date of enactment of the Pension Protection Act of 2006, Pub. L. 109-280 (PPA).

Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political*

Organization IRS Form, is used to request from the Internal Revenue Service a copy of an exempt or political organization's return, report, or notice pursuant to section 6104(b). The Form 4506-A does not currently contain a check box for a Form 990-T, although the Internal Revenue Service is in the process of revising the Form 4506-A to include this provision. If you want to inspect or copy a Form 990-T that was filed after August 17, 2006, please mail or fax a copy of the Form 4506-A to the Internal Revenue Service following the instructions for that form. In line 7 of the Form 4506-A, however, please write in "Form 990-T". Please be advised that a CD-ROM will not be available for Form 990-T returns. The charges listed on Form 4506-A for copies will apply.

For further information, contact Melinda Williams at 202-283-9467 (not a toll-free number).

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

Announcement 2008-22

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on March 31, 2008, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Young Lions Foundation
Sausalito, CA
Med-School, Inc.
Warner Robbins, GA
National Housing Foundation, Inc.
Schaumburg, IL
Vernon Parish School Board
Leesville, VA
Credit Success Company
St. Augustine, FL
Computer Programming Institute
N. Royalton, OH

Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit (REMIC); Hearing

Announcement 2008-24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations (REG-127770-07, 2007-50 I.R.B. 1171) that would expand the list of permitted loan modifications to include certain modifications of commercial mortgages.

DATES: The public hearing is being held on Friday, April 4, 2008, at 10:30 a.m. The IRS must receive outlines of the topics

to be discussed at the public hearing by Friday, March 14, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG-127770-07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-127770-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal rulemaking Portal at www.regulations.gov (IRS-REG-127770-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Diana Imholtz or Susan Thompson Baker (202) 622-3930; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG-127770-07) that was published in the **Federal Register** on Friday, November 9, 2007 (72 FR 63523).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by February 7, 2008 must submit an outline of the topics to be addressed and the amount of time to be allotted to each topic (signed original and eight (8) copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW, entrance, 1111 Constitution Avenue, NW, Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes

before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

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

(Filed by the Office of the Federal Register on March 5, 2008, 8:45 a.m., and published in the issue of the Federal Register for March 6, 2008, 73 F.R. 12041)

Dependent Child of Divorced or Separated Parents or Parents Who Live Apart; Hearing

Announcement 2008–26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations (REG–149856–03, 2007–24 I.R.B. 1394) relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, agreement, or who live

apart at all times during the last 6 months of the calendar year.

DATES: The public hearing is being held on April 3, 2008, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by March 26, 2008.

ADDRESSES: The public hearing is being held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

Send submissions to: CC:PA:LPD:PR (REG–149856–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149856–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS internet site via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG–149856–03).

FOR FURTHER INFORMATION: Concerning the regulations, Victoria Driscoll (202) 622–4920; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Regina Johnson (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations

(REG–149856–03) that was published in the **Federal Register** on Wednesday, May 2, 2007 (72 FR 24192).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by July 31, 2007, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies).

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

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

(Filed by the Office of the Federal Register on March 17, 2008, 8:45 a.m., and published in the issue of the Federal Register for March 18, 2008, 73 F.R. 14417)

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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| | |
|-----|----------------------------------|
| Ann | Announcement |
| CD | Court Decision |
| DO | Delegation Order |
| EO | Executive Order |
| PL | Public Law |
| PTE | Prohibited Transaction Exemption |
| RP | Revenue Procedure |
| RR | Revenue Ruling |
| SPR | Statement of Procedural Rules |
| TC | Tax Convention |
| TD | Treasury Decision |
| TDO | Treasury Department Order |

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